

AMENDED IN ASSEMBLY APRIL 5, 1999

AMENDED IN SENATE MARCH 18, 1999

AMENDED IN SENATE MARCH 9, 1999

AMENDED IN SENATE MARCH 4, 1999

SENATE BILL

No. 47

Introduced by Senator Sher

(Principal coauthor: Assembly Member Wayne)

December 7, 1998

An act to repeal and add Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, relating to hazardous substances, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 47, as amended, Sher. Hazardous substance account: extension.

(1) Under prior law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, which was repealed on January 1, 1999, with certain exceptions, imposed liability for hazardous substance removal or remedial actions and required the Department of Toxic Substances Control to adopt, by regulation, criteria for the selection and for the priority ranking of hazardous substance release sites for removal or remedial action under the act. The act required the department or, if appropriate, a California regional water quality control board, to prepare or approve remedial action

plans for each listed site and provided for an arbitration process for the apportionment of liability for removal or remedial actions. The act authorized the department to expend the funds in the Toxic Substances Control Account in the General Fund, upon appropriation by the Legislature, to pay for, among other things, removal and remedial actions related to the release of hazardous substances. However, certain provisions of the act, including the Johnston-Filante Hazardous Substance Cleanup Bond Act of 1984 and related provisions, will not be repealed until the date when the bonds issued and sold pursuant to the bond act have been paid and the General Fund reimbursed.

Among other things, the act annually appropriated \$5,000,000 from the Hazardous Substance Clearing Account to pay the principal of, and interest on, bonds issued and sold pursuant to the bond act and continuously appropriated \$1,000,000 from the Toxic Substances Control Account to the department as a reserve account for emergencies. The act also continuously appropriated certain funds deposited in a subaccount for removal and remedial actions at a specific site and funds in a subaccount established by the Controller for site operation and maintenance. The act authorized a person to apply to the State Board of Control for compensation of a loss caused by the release of a hazardous substance, and provided that any person who knowingly gives, or causes to be given, any false information as a part of a claim for compensation is guilty of a misdemeanor.

This bill would repeal, reenact, and revise the act, thereby extending the effect of the act indefinitely. This bill would revise the term “operation and maintenance” and would define the terms “response,” “respond,” “response action,” and “site.”

The bill would direct the department or California regional water quality board to require a responsible party who is required to comply with operation and maintenance requirements to demonstrate and maintain financial assurance, in a specified manner, except as specified. The bill would require the remedial action plan to evaluate each alternative remedial action considered and rejected by the department or a regional board and to include specified



information regarding those alternatives. The bill would require the department to issue orders for removal or remedial actions to the largest manageable number of potentially responsible parties, after considering specified factors, and would exempt ~~this requirement~~ *certain determinations made by the department, when issuing those orders*, from judicial review. The bill would require that any response action taken or approved pursuant to the act be based upon, and be no less stringent than, specified federal regulations and state statutes, regulations, and policies, and would require a health or ecological risk assessment prepared in conjunction with such a response action to meet specified criteria and include specified assumptions.

The bill would require the department and the regional board to provide specified information to the affected community and to develop a public participation work plan, and would provide for the establishment of community advisory groups under specified conditions. The bill would authorize a community advisory group to request a technical assistance grant for a site. The department and the State Water Resources Control Board would be required to create 2 community service offices, by July 1, 2000, to perform specified duties.

The bill would require the Attorney General, at the request of the department, to recover, pursuant to state or federal law, any costs incurred by the department or regional board in carrying out the act. The bill would exempt certain owners of property from liability for groundwater releases, except as specified.

The bill would require the department to propose a final administrative or judicial expedited settlement with potentially responsible parties who have contributed a minimal amount of hazardous substances to a site.

The bill would establish the Orphan Share Reimbursement Trust Fund in the State Treasury and would authorize the administrator of the fund to expend the money in that fund, upon appropriation by the Legislature, for specified purposes, including the reimbursement of the orphan share of a site, as defined. The bill would require the administrator of the fund to be appointed by the Governor, subject to confirmation by



the Senate. The bill would provide that the provisions establishing the fund and the related provisions would not become operative until the operative date of a statute that either appropriates funds to implement those provisions or establishes a revenue source for the fund, or both, and would provide for the suspension of the operation of those provisions under specified conditions.

The bill would make an appropriation by reenacting the continuous appropriations specified above. The bill, by reenacting the act, would also extend that misdemeanor provision, thereby imposing a state-mandated local program by creating a new crime.

The bill would provide that any action taken pursuant to the former act by the department, a California regional water quality control board, or any other state or local agency, would remain in effect on and after January 1, 1999, and be subject to the act, as reenacted by this bill. The bill would provide that it does not terminate, affect, or modify any proceeding, order, or agreement issued or entered into by the department, the regional board, by any other state or local agency pursuant to the former act or any rights or obligations arising out of a bond issue and that the reenacted act would apply retroactively, on and after January 1, 1999, to those proceedings, orders, agreements, or bonds.

The bill would require that funds expended by the department to pay the costs of carrying out actions to remove hazardous substances from sites of illegal drug laboratories during the period from January 1, 1999, until the effective date of the bill, to be paid from a specified appropriation made in the Budget Act of 1998, and would provide for the transfer of a specified amount of funds expended by the department from that appropriation.

(2) 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.

(3) The bill would declare that it is to take effect immediately as an urgency statute.



Vote: 2/3. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Chapter 6.8 (commencing with Section
2 25300) of Division 20 of the Health and Safety Code is
3 repealed.

4 SEC. 2. Chapter 6.8 (commencing with Section
5 25300) is added to Division 20 of the Health and Safety
6 Code, to read:

7
8 CHAPTER 6.8. HAZARDOUS SUBSTANCE ACCOUNT
9

10 Article 1. Short Title and Legislative Intent
11

12 25300. This chapter shall be known and may be cited
13 as the Carpenter-Presley-Tanner Hazardous Substance
14 Account Act.

15 25301. It is the intent of the Legislature to do all of the
16 following:

17 (a) Establish a program to provide for response
18 authority for releases of hazardous substances, including
19 spills and hazardous waste disposal sites that pose a threat
20 to the public health or the environment.

21 (b) Compensate persons, under certain
22 circumstances, for out-of-pocket medical expenses and
23 lost wages or business income resulting from injuries
24 proximately caused by exposure to releases of hazardous
25 substances.

26 (c) Make available adequate funds in order to permit
27 the State of California to assure payment of its 10-percent
28 share of the costs mandated pursuant to Section
29 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).
30

31 Article 2. Definitions
32

33 25310. The definitions set forth in this article shall
34 govern the interpretation of this chapter. Unless the
35 context requires otherwise and except as provided in this



1 article, the definitions contained in Section 101 of the
2 federal act (42 U.S.C. Sec. 9601) shall apply to the terms
3 used in this chapter.

4 25311. “Contract competitor” means any person
5 competing for a state contract pursuant to subdivision (c)
6 of Section 25358.3.

7 25312. “Department” means the Department of
8 Toxic Substances Control.

9 25313. “Director” means the Director of Toxic
10 Substances Control.

11 25314. “Feasibility study” means the identification
12 and evaluation of technically feasible and effective
13 remedial action alternatives to protect public health and
14 the environment, at a hazardous substance release site, or
15 other activities deemed necessary by the department for
16 the development of a remedial action plan.

17 25315. “Federal act” means the Comprehensive
18 Environmental Response, Compensation, and Liability
19 Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

20 25316. “Hazardous substance” means:

21 (a) Any substance designated pursuant to Section
22 1321 (b)(2)(A) of Title 33 of the United States Code.

23 (b) Any element, compound, mixture, solution, or
24 substance designated pursuant to Section 102 of the
25 federal act (42 U.S.C. Sec. 9602).

26 (c) Any hazardous waste having the characteristics
27 identified under or listed pursuant to Section 6921 of Title
28 42 of the United States Code, but not including any waste
29 the regulation of which under the Solid Waste Disposal
30 Act (42 U.S.C. Sec. 6901 et seq.) has been suspended by
31 act of Congress.

32 (d) Any toxic pollutant listed under Section 1317 (a) of
33 Title 33 of the United States Code.

34 (e) Any hazardous air pollutant listed under Section
35 7412 of Title 42 of the United States Code.

36 (f) Any imminently hazardous chemical substance or
37 mixture with respect to which the Administrator of the
38 United States Environmental Protection Agency has
39 taken action pursuant to Section 2606 of Title 15 of the
40 United States Code.



1 (g) Any hazardous waste or extremely hazardous
2 waste as defined by Sections 25117 and 25115,
3 respectively, unless expressly excluded.

4 25317. “Hazardous substance” does not include:

5 (a) Petroleum, including crude oil or any fraction
6 thereof which is not otherwise specifically listed or
7 designated as a hazardous substance in subdivisions (a) to
8 (f), inclusive, of Section 25316, and natural gas, natural
9 gas liquids, liquefied natural gas, or synthetic gas usable
10 for fuel (or mixtures of natural gas and such synthetic
11 gas), or the ash produced by a resource recovery facility
12 utilizing a municipal solid waste stream.

13 (b) Nontoxic, nonflammable, noncorrosive
14 stormwater runoff drained from underground vaults,
15 chambers, or manholes into gutters or storm sewers.

16 25318.5. “Operation and maintenance” means those
17 activities initiated or continued at a hazardous substance
18 release site following completion of a removal or
19 remedial action that are deemed necessary by the
20 department or regional board in order to protect public
21 health or safety or the environment, to maintain the
22 effectiveness of the removal or remedial action at the site,
23 or to achieve or maintain the removal or remedial action
24 standards and objectives established by the final remedial
25 action plan or final removal action work plan applicable
26 to the site.

27 25319. “Person” means an individual, trust, firm, joint
28 stock company, business concern, corporation, including,
29 but not limited to, a government corporation,
30 partnership, limited liability company, and association.
31 “Person” also includes any city, county, city and county,
32 district, commission, the state or any department, agency,
33 or political subdivision thereof, any interstate body, and
34 the United States and its agencies and instrumentalities,
35 to the extent permitted by law.

36 25319.5. “Preliminary endangerment assessment”
37 means an activity that is performed to determine
38 whether current or past waste management practices
39 have resulted in the release or threatened release of



1 hazardous substances that pose a threat to public health
2 or the environment.

3 25319.6. “Regional board” means a California
4 regional water quality control board.

5 25320. “Release” means any spilling, leaking,
6 pumping, pouring, emitting, emptying, discharging,
7 injecting, escaping, leaching, dumping, or disposing into
8 the environment.

9 25321. “Release” does not include any of the
10 following:

11 (a) Any release that results in exposure to persons
12 solely within a workplace, with respect to a claim those
13 exposed persons may assert against their employer.

14 (b) Emissions from the engine exhaust of a motor
15 vehicle, rolling stock, aircraft, vessel, or pipeline
16 pumping station engine.

17 (c) Release of source, byproduct, or special nuclear
18 material from a nuclear incident, as those terms are
19 defined in the Atomic Energy Act of 1954 (42 U.S.C. Sec.
20 2011, et seq.), if such release is subject to requirements
21 with respect to financial protection established by the
22 Nuclear Regulatory Commission under Section 2210 of
23 Title 42 of the United States Code or, for the purposes of
24 Section 104 of the federal act (42 U.S.C. Sec. 9604) or any
25 other response action, any release of source byproduct, or
26 special nuclear material from any processing site
27 designated under Section 7912(a)(1) or 7942(a) of Title
28 42 of the United States Code, which sections are a part of
29 the Uranium Mill Tailings Radiation Control Act of 1978.

30 (d) The normal application of fertilizer, plant growth
31 regulants, and pesticides.

32 25322. “Remedy” or “remedial action” includes all of
33 the following:

34 (a) Those actions that are consistent with a permanent
35 remedy, that are taken instead of, or in addition to,
36 removal actions in the event of a release or threatened
37 release of a hazardous substance into the environment, as
38 further defined by Section 101(24) of the federal act (42
39 U.S.C. Sec. 9601(24)), except that any reference in
40 Section 101(24) of the federal act (42 U.S.C. Sec.



1 9601(24)) to the President, relating to determinations
2 regarding the relocation of residents, businesses, and
3 community facilities shall, for the purposes of this
4 chapter, be deemed to be a reference to the Governor
5 and any other reference in that section to the President
6 shall, for the purposes of this chapter, be deemed a
7 reference to the Governor, or the director, if designated
8 by the Governor.

9 (b) Those actions that are necessary to monitor, assess,
10 and evaluate a release or a threatened release of a
11 hazardous substance.

12 (c) Site operation and maintenance.

13 25322.1. “Remedial design” means the detailed
14 engineering plan to implement the remedial action
15 alternative or initial remedial measure approved by the
16 department.

17 25322.2. “Remedial investigation” means those
18 actions deemed necessary by the department to
19 determine the full extent of a hazardous substance
20 release at a site, identify the public health and
21 environment threat posed by the release, collect data on
22 possible remedies, and otherwise evaluate the site for
23 purposes of developing a remedial action plan.

24 25323. “Remove” or “removal” includes the cleanup
25 or removal of released hazardous substances from the
26 environment or the taking of other actions as may be
27 necessary to prevent, minimize, or mitigate damage
28 which may otherwise result from a release or threatened
29 release, as further defined by Section 101(23) of the
30 federal act (42 U.S.C. Sec. 9601(23)).

31 25323.1. “Removal action work plan” means a work
32 plan prepared or approved by the department or a
33 California regional water quality control board that is
34 developed to carry out a removal action, in an effective
35 manner, that is protective of the public health and safety
36 and the environment. The removal action work plan shall
37 include a detailed engineering plan for conducting the
38 removal action, a description of the onsite contamination,
39 the goals to be achieved by the removal action, and any



1 alternative removal options that were considered and
2 rejected and the basis for that rejection.

3 25323.3. “Response,” “respond,” or “response action”
4 have the same meanings as defined in Section 9701(25)
5 of the federal act (42 U.S.C. Sec. 9701(25)). The
6 enforcement and oversight activities of the department
7 and regional board are included within the meaning of
8 “response,” “respond,” or “response action.”

9 25323.5. (a) (1) “Responsible party” or “liable
10 person,” for the purposes of this chapter, means those
11 persons described in Section 107(a) of the federal act (42
12 U.S.C. Sec. 9607(a)).

13 (2) (A) Notwithstanding paragraph (1), but except as
14 provided in subparagraph (B), a person is not a
15 responsible party or liable person, for purposes of this
16 chapter, for the reason that the person has developed or
17 implemented innovative investigative or innovative
18 remedial technology with regard to a release site, if the
19 use of the technology has been approved by the
20 department for the release site and the person would not
21 otherwise be a responsible party or liable person. Upon
22 approval of the use of the technology, the director shall
23 acknowledge, in writing, that, upon proper completion of
24 the innovative investigative or innovative remedial
25 action at the release site, the immunity provided by this
26 subparagraph shall apply to the person.

27 (B) Subparagraph (A) does not apply in any of the
28 following cases:

29 (i) Conditions at the release site have deteriorated as
30 a result of the negligence of the person who developed or
31 implemented the innovative investigative or innovative
32 remedial technology.

33 (ii) The person who developed or implemented the
34 innovative investigative or innovative remedial
35 technology withheld or misrepresented information that
36 was relevant to the potential risks or harms of the
37 technology.

38 (iii) The person who implemented the innovative
39 investigative or innovative remedial technology did not



1 follow the implementation process approved by the
2 department.

3 (b) For the purposes of this chapter, the defenses
4 available to a responsible party or liable person shall be
5 those defenses specified in Sections 101(35) and 107(b) of
6 the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)).

7 (c) Any person who unknowingly transports
8 hazardous waste to a solid waste facility pursuant to the
9 exemption provided in subdivision (e) of Section 25163
10 shall not be considered a responsible party for purposes
11 of this chapter solely because of the act of transporting the
12 waste. Nothing in this subdivision shall affect the liability
13 of this person for his or her negligent acts.

14 25323.9. “Site” has the same meaning as the term
15 “facility” is defined by Section 101(9) of the federal act
16 (42 U.S.C. Sec. 9601(9)).

17 25324. “State account” means the Toxic Substances
18 Control Account established pursuant to Section 25173.6,
19 except that in Section 25334 and Article 7.5 (commencing
20 with Section 25385), “state account” means the
21 Hazardous Substance Account established pursuant to
22 Section 25330. Notwithstanding any other provision of
23 this section, any costs incurred and payable from the
24 Hazardous Substance Account, the Hazardous Waste
25 Control Account, or the Site Remediation Account prior
26 to July 1, 1998, to implement this chapter, as it read prior
27 to January 1, 1999, or Chapter 6.85 (commencing with
28 Section 25396), shall be recoverable from the liable
29 person or persons pursuant to Section 25360 as if the costs
30 were incurred and payable from the state account.

31 25325. “Federally permitted release” has the same
32 meaning as defined in Section 101(10) of the federal act
33 (42 U.S.C. Sec. 9601(10)).

34 25326. “A release authorized or permitted pursuant
35 to state law” means any release into the environment
36 which is authorized by statute, ordinance, regulation, or
37 rule of any state, regional, or local agency or government
38 or by any specific permit, license, or similar authorization
39 from such an agency, including one of the foregoing, that
40 recognizes a standard industry practice, including



1 variances obtained from the agency which allow
2 operations for facilities during a period of time when
3 releases from the facilities do not conform with relevant
4 statutes, ordinances, regulations, or rules. The term
5 includes a federally permitted release, as defined by
6 Section 25325, and releases that are in accordance with
7 any court order or consent decree.

8 25326.5. “Site cleanup evaluation” means an
9 evaluation by the department of the effectiveness of a
10 removal or remedial action conducted by a responsible
11 party, to reduce or eliminate actual or potential public
12 health and environmental threats posed by a hazardous
13 substance release site if the action itself is not the subject
14 of oversight by the department.

15 25327. “Tier” means a grouping of hazardous
16 substance release sites that require removal and remedial
17 actions, that are listed alphabetically, and that are of a
18 roughly equivalent priority for removal and remedial
19 action.

20

21 Article 3. Hazardous Substance Account

22

23 25330. There is in the General Fund the Hazardous
24 Substance Account which shall be administered by the
25 director. In addition to any other money appropriated by
26 the Legislature to the account, the following amounts
27 shall be deposited in the account:

28 (a) Any interest earned on money deposited in the
29 account.

30 (b) Any money transferred from the state account
31 pursuant to Section 25173.6 or 25336.

32 25330.2. Funds in the state account appropriated for
33 removal or remedial action pursuant to this chapter are
34 available for encumbrance for three fiscal years
35 subsequent to the fiscal year in which the funds are
36 appropriated and are available for disbursement in
37 liquidation of encumbrances pursuant to Section 16304.1
38 of the Government Code.

39 25330.4. (a) Notwithstanding any other provision of
40 law, the Controller shall establish a separate subaccount



1 in the state account, for any funds received from a
2 settlement agreement or the General Fund for a removal
3 or remedial action to be performed at a specific site.

4 (b) Notwithstanding Section 13340 of the
5 Government Code, funds deposited in the subaccount for
6 those removal or remedial actions are hereby
7 continuously appropriated to the department, without
8 regard to fiscal years, for removal or remedial action at
9 the specific site, and for administrative costs associated
10 with the removal or remedial action at the specific site.

11 (c) Notwithstanding any other provision of law,
12 money in the subaccount for those removal or remedial
13 actions shall not revert to the General Fund or be
14 transferred to any other fund or account in the State
15 Treasury, except for purposes of investment as provided
16 in Article 4 (commencing with Section 16470) of Chapter
17 3 of Part 2 of Division 4 of Title 2 of the Government Code.

18 (d) Notwithstanding Section 16305.7 of the
19 Government Code, all interest or other increment
20 resulting from investment of the funds specified in
21 subdivision (a) pursuant to Article 4 (commencing with
22 Section 16470) of Chapter 3 of Part 2 of Division 4 of Title
23 2 of the Government Code shall be deposited in the
24 subaccount for removal or remedial action at the specific
25 sites.

26 (e) At the conclusion of all removal or remedial
27 actions at the specific site, any unexpended funds in any
28 subaccounts established pursuant to this section shall be
29 transferred to the subaccount for site operation and
30 maintenance established pursuant to Section 25330.5, if
31 necessary, for those activities at the site, or, if not needed
32 for site operation and maintenance at the site, to the
33 Toxic Substances Control Account.

34 25330.5. (a) The Controller shall establish a separate
35 subaccount for site operation and maintenance in the
36 state account. All of the following amounts shall be
37 deposited in the subaccount:

38 (1) Funds received from responsible parties for site
39 operation and maintenance.



1 (2) Funds received from the federal government
2 pursuant to the federal act for site operation and
3 maintenance.

4 (3) Funds received from cities, counties, or any other
5 state or local agency for site operation and maintenance.

6 (4) Funds appropriated from the state account by the
7 Legislature for site operation and maintenance.

8 (b) Notwithstanding Section 13340 of the
9 Government Code, funds deposited in the subaccount for
10 site operation and maintenance are hereby continuously
11 appropriated to the department, without regard to fiscal
12 years, for site operation and maintenance, and for
13 administrative costs associated with site operation and
14 maintenance.

15 (c) Notwithstanding any other provision of law,
16 money in the subaccount for site operation and
17 maintenance shall not revert to the General Fund or be
18 transferred to any other fund or account in the State
19 Treasury, except for purposes of investment as provided
20 in Article 4 (commencing with Section 16470) of Chapter
21 3 of Part 2 of Division 4 of Title 2 of the Government Code.

22 (d) Notwithstanding Section 16305.7 of the
23 Government Code, all interest or other increment
24 resulting from investment of the funds specified in
25 subdivision (a) pursuant to Article 4 (commencing with
26 Section 16470) of Chapter 3 of Part 2 of Division 4 of Title
27 2 of the Government Code shall be deposited in the
28 subaccount for site operation and maintenance.

29 25331. The state account may sue and be sued in its
30 own name.

31 25334. There is within the state account, the
32 Hazardous Substance Clearing Account, which shall be
33 used to pay the principal of, and interest on, bonds sold
34 pursuant to Article 7.5 (commencing with Section 25385).
35 Notwithstanding Section 25351, all of the following
36 moneys shall be deposited in the account for the payment
37 of the principal of, and interest on, bonds:

38 (a) Transfers from the Superfund Bond Trust Fund
39 made pursuant to Section 25385.8.



1 (b) Amounts received pursuant to Sections 25356.4
2 and 25360, as specified in those sections, if the
3 expenditures for removal or remedial actions were paid
4 from the proceeds of the bonds sold pursuant to Article
5 7.5 (commencing with Section 25385).

6 (c) Federal moneys received pursuant to the federal
7 act which are designated to be used for removal or
8 remedial actions paid for by proceeds from the bonds
9 issued pursuant to Article 7.5 (commencing with Section
10 25385).

11 (d) Any moneys appropriated by the Legislature for
12 the payment of the principal of, and interest on, these
13 bonds.

14 (e) Any moneys derived from the premiums and
15 accrued interest on these bonds.

16 25334.7. (a) The department shall report to the
17 Governor and the Legislature on the progress of the
18 cleanup of the San Gabriel Valley groundwater sites in
19 Los Angeles County, and on the progress of enforcement
20 actions relating to those sites, in the biennial report
21 specified in Section 25178. The report shall include, but
22 not be limited to, all of the following:

- 23 (1) State expenditures and planned expenditures.
- 24 (2) Actions accomplished at the sites.
- 25 (3) Actions planned, including a time schedule for the
26 accomplishment of planned actions.

27 (b) The report may be prepared in cooperation with
28 other state and federal agencies involved with the sites,
29 and shall include a summary of the activities of those
30 additional agencies.

31 25336. There shall be deposited in the Hazardous
32 Substance Account any money transferred, upon
33 appropriation by the Legislature, from the state account.
34 Those moneys may be expended for repayment of
35 principal of, and interest on, bonds sold pursuant to
36 Article 7.5 (commencing with Section 25385), and for all
37 other purposes for which the Hazardous Substance
38 Account or the state account may be used pursuant to
39 Article 7.5 (commencing with Section 25385).



1 25337. (a) There is in the General Fund the Site
2 Remediation Account, which shall be administered by
3 the director. The account shall be funded by money
4 transferred from the state account, upon appropriation
5 by the Legislature. Consistent with the requirements of
6 Section 114(c) of the federal act (42 U.S.C. Sec. 9614(c)),
7 the moneys in the account may be expended by the
8 department, upon appropriation by the Legislature, for
9 direct site remediation costs.

10 (b) (1) For purposes of this section, “direct site
11 remediation costs” means payments to contractors for
12 investigations, characterizations, removal, remediation,
13 or long-term operation and maintenance at sites
14 contaminated or suspected of contamination by
15 hazardous materials, where those actions are authorized
16 pursuant to this chapter.

17 (2) “Direct site remediation costs” also means the
18 state-mandated share pursuant to Section 104(c)(3) of
19 the federal act (42 U.S.C. Sec. 9604(c)(3)).

20 (3) “Direct site remediation costs” does not include
21 the department’s administrative expenses or the
22 department’s expenses for staff to perform oversight of
23 investigations, characterizations, removals, remediations,
24 or long-term operation and maintenance.

25

26 Article 4. Fees

27

28 25342. The Director of Finance shall schedule in the
29 annual Budget Act the projects proposed in any fiscal
30 year, that will incur direct costs for removal and remedial
31 actions at hazardous substance release sites.

32 25343. (a) Except as provided in subdivisions (b) and
33 (c), any potentially responsible party at a site, or any
34 person who has notified the department of that person’s
35 intent to undertake removal or remediation at a site, shall
36 reimburse the department, pursuant to Chapter 6.66
37 (commencing with Section 25269), for the costs incurred
38 by the department for its oversight of any preliminary
39 endangerment assessment at that site.



1 (b) This section does not apply to any notice of intent
2 submitted to the department prior to July 1, 1998. Any
3 person who submitted such a notice shall pay the fee, if
4 not already paid, as required by this section as it read on
5 December 31, 1997, unless the department and that
6 person mutually agree to enter into a reimbursement
7 agreement in lieu of any unpaid portion of the required
8 fee.

9 (c) The changes made in this section by Chapter 870
10 of the Statutes of 1997 do not require amendment of, or
11 otherwise affect, any agreement entered into prior to July
12 1, 1998, pursuant to which any person has agreed to
13 reimburse the department for the costs incurred by the
14 department for its oversight of a preliminary
15 endangerment assessment.

16
17 Article 5. Uses of the State Account
18

19 25350. For response actions taken pursuant to the
20 federal act, only those costs for actions that are consistent
21 with the priorities, guidelines, criteria, and regulations
22 contained in the national contingency plan, as revised
23 and republished pursuant to Section 105 of the federal act
24 (42 U.S.C. Sec. 9605), shall qualify for appropriation by
25 the Legislature and expenditure by the director pursuant
26 to Sections 25351, 25352, and 25354. For response actions
27 not taken pursuant to the federal act or for response
28 actions taken that are not specifically addressed by the
29 priorities, guidelines, criteria, and regulations contained
30 in the national contingency plan, as revised and
31 republished, the costs thereof shall also qualify for
32 appropriation by the Legislature and expenditure by the
33 department pursuant to Sections 25351, 25352, and 25354
34 provided they are, to the maximum extent possible,
35 consistent with the priorities, guidelines, criteria, and
36 regulations contained in the national contingency plan
37 for similar releases, situations, or events. No response
38 actions taken pursuant to this chapter by the department
39 or regional or local agencies shall duplicate federal
40 response actions.

1 25351.1. Notwithstanding Section 13340 of the
2 Government Code, there is hereby transferred annually
3 from the Hazardous Substance Account to the Hazardous
4 Substance Clearing Account, and appropriated
5 therefrom, an amount of not more than five million
6 dollars (\$5,000,000) which is required to pay the principal
7 of, and interest on, bonds sold pursuant to Article 7.5
8 (commencing with Section 25385) to the extent that the
9 funds in the Hazardous Substance Clearing Account and
10 the Superfund Bond Trust Fund are insufficient to pay
11 the principal of, and interest on, these bonds.

12 25351.2. (a) A city or county may initiate a removal
13 or remedial action for a site listed pursuant to Section
14 25356 in accordance with this section. Except as provided
15 in subdivision (d), the city or county shall, before
16 commencing the removal or remedial action, take all of
17 the following actions:

18 (1) The city or county shall notify the department of
19 the planned removal or remedial action. Upon receiving
20 this notification, the department shall make a reasonable
21 effort to notify any person identified by the department
22 as a potentially responsible party for the site. If a
23 potentially responsible party is taking the removal or
24 remedial action properly and in a timely fashion, or if a
25 potentially responsible party will commence such an
26 action within 60 days of this notification, the city or county
27 may not initiate a removal or remedial action pursuant to
28 this section.

29 (2) If a potentially responsible party for the site has not
30 taken the action specified in paragraph (1), the city or
31 county shall submit the estimated cost of the removal or
32 remedial action to the department, which shall, within 30
33 days after receiving the estimate, approve or disapprove
34 the reasonableness of the cost estimate. If the department
35 disagrees with the cost estimate, the city or county and
36 the department shall, within 30 days, attempt to enter
37 into an agreement concerning the cost estimate.

38 (3) The city or county shall demonstrate to the
39 department that it has sufficient funds to carry out the
40 approved removal or remedial action without taking into



1 account any costs of the action that may be, or have been,
2 paid by a potentially responsible party.

3 (b) If the director approves the request of the city or
4 county to initiate a removal or remedial action and a final
5 remedial action plan has been issued pursuant to Section
6 25356.1 for the hazardous substance release site, the city
7 or county shall be deemed to be acting in place of the
8 department for purposes of implementing the remedial
9 action plan pursuant to this chapter.

10 (c) Upon reimbursing a city or county for the costs of
11 a removal or remedial action, the department shall
12 recover these costs pursuant to Section 25360.

13 (d) In order for a city or county to be reimbursed for
14 the costs of a removal or remedial action incurred by the
15 city or county from the Hazardous Substance Cleanup
16 Fund, the city or county shall obtain the approval of the
17 director before commencing the removal or remedial
18 action. The director shall grant an approval only when all
19 actions required by law prior to implementation of a
20 remedial action plan have been taken.

21 25351.5. The department shall adopt any regulations
22 necessary to carry out its responsibilities pursuant to this
23 chapter, including, but not limited to, regulations
24 governing the expenditure of, and accounting
25 procedures for, moneys allocated to state, regional, and
26 local agencies pursuant to this chapter.

27 25351.6. Notwithstanding Section 16304 of the
28 Government Code, the funds deposited in the Hazardous
29 Substance Cleanup Fund are available, upon
30 appropriation by the Legislature, for encumbrance
31 without regard to fiscal years.

32 25351.7. Any treatment, storage, transfer, or disposal
33 facility built on the Stringfellow Quarry Class I Hazardous
34 Waste Disposal Site, that was built for the purpose of a
35 remedial or removal action at that site, shall only be used
36 to treat, store, transfer, or dispose of hazardous substances
37 removed from that site.

38 25351.8. Notwithstanding any other provision of law,
39 including, but not limited to, Sections 25334.5 and 25356,
40 the department shall place the highest priority on taking



1 removal and remedial actions at the Stringfellow Quarry
2 Class I Hazardous Waste Disposal Site and shall devote
3 sufficient resources to accomplish the tasks required by
4 this section.

5 25352. Money deposited in the state account may also
6 be appropriated by the Legislature to the department on
7 a specific site basis for the following purposes:

8 (a) For all costs incurred in restoring, rehabilitating,
9 replacing, or acquiring the equivalent of, any natural
10 resource injured, degraded, destroyed, or lost as a result
11 of any release of a hazardous substance, to the extent the
12 costs are not reimbursed pursuant to the federal act and
13 taking into account processes of natural rehabilitation,
14 restoration, and replacement.

15 (b) For all costs incurred in assessing short-term and
16 long-term injury to, degradation or destruction of, or any
17 loss of any natural resource resulting from a release of a
18 hazardous substance, to the extent that the costs are not
19 reimbursed pursuant to the federal act. No costs may be
20 incurred for any release of a hazardous substance from
21 any facility or project pursuant to subdivision (a) or this
22 subdivision for injury, degradation, destruction, or loss of
23 any natural resource where the injury, degradation,
24 destruction, or loss was specifically identified as an
25 irreversible and irretrievable commitment of natural
26 resources in an environmental impact statement
27 prepared under the authority of the National
28 Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.), or
29 was identified as a significant environmental effect to the
30 natural resources which cannot be avoided in an
31 environmental impact report prepared pursuant to the
32 California Environmental Quality Act (Division 13
33 (commencing with Section 21000) of the Public
34 Resources Code), and a decision to grant a permit,
35 license, or similar authorization for any facility or project
36 is based upon a consideration of the significant
37 environmental effects to the natural resources, and the
38 facility or project was otherwise operating within the
39 terms of its permit, license, or similar authorization at the
40 time of release.



1 (c) Notwithstanding Section 25355, the Governor, or
2 the authorized representative of the state, shall act on
3 behalf of the public as trustee of the natural resources to
4 recover costs expended pursuant to subdivision (a) or
5 (b).

6 25353. (a) Except as provided in (b), the department
7 may not expend funds from the state account or the
8 Hazardous Substance Cleanup Fund for a removal or
9 remedial action with respect to a hazardous substance
10 release site owned or operated by the federal
11 government or a state or local agency at the time of
12 disposal to the extent that the federal government or the
13 state or local agency would otherwise be liable for the
14 costs of that action, except that the department may
15 expend those funds, upon appropriation by the
16 Legislature, to oversee the carrying out of a removal or
17 remedial action at the site by another party.

18 (b) Except as provided in subdivision (f), the
19 department may expend funds from the state account or
20 the Hazardous Substance Cleanup Fund, upon
21 appropriation by the Legislature, to take a removal or
22 remedial action at a hazardous substance release site
23 which was owned or operated by a local agency at the
24 time of release, if all of the following requirements are
25 met:

26 (1) The department has substantial evidence that a
27 local agency is not the only responsible party for the site.

28 (2) The department has issued a cleanup order to, or
29 entered into an enforceable agreement with, the local
30 agency pursuant to Section 25355.5 and has made a final
31 determination that the local agency is not in compliance
32 with the order or enforceable agreement.

33 (c) The department shall recover any funds expended
34 pursuant to subdivision (a) or (b) to the maximum
35 possible extent pursuant to Section 25360.

36 (d) If a local agency is identified as a potentially
37 responsible party in a remedial action plan prepared
38 pursuant to Section 25356.1, and the department expends
39 funds pursuant to this chapter to pay for the local agency's
40 share of the removal and remedial action, the



1 expenditure of these funds shall be deemed to be a loan
2 from the state to the local agency. If the department
3 determines that the local agency is not making adequate
4 progress toward repaying the loan made pursuant to this
5 section, the State Board of Equalization shall, upon notice
6 by the department, withhold the unpaid amount of the
7 loan, in increments from the sales and use tax transmittals
8 made pursuant to Section 7204 of the Revenue and
9 Taxation Code, to the city or county in which the local
10 agency is located. The State Board of Equalization shall
11 structure the amounts to be withheld so that complete
12 repayment of the loan, together with interest and
13 administrative charges, occurs within five years after a
14 local agency has been notified by the department of the
15 amount which it owes. The State Board of Equalization
16 shall deposit any funds withheld pursuant to this section
17 in the Hazardous Substance Clearing Account for the
18 purposes specified in Section 25334, if the department
19 expended the funds from the Hazardous Substance
20 Cleanup Fund, or into the state account, if the
21 department expended the funds from the state account.

22 (e) The department may not expend funds from the
23 state account or the Hazardous Substance Cleanup Fund
24 for the purposes specified in Section 25352 where the
25 injury, degradation, destruction, or loss to natural
26 resources, or the release of a hazardous substance from
27 which the damages to natural resources resulted, has
28 occurred prior to September 25, 1981.

29 (f) The department may not expend funds from the
30 state account or the Hazardous Substance Cleanup Fund
31 for a removal or remedial action at any waste
32 management unit owned or operated by a local agency if
33 it meets both of the following conditions:

34 (1) It is classified as a class III waste management unit
35 pursuant to Subchapter 15 (commencing with Section
36 2510) of Chapter 3 of Title 23 of the California
37 Administrative Code.

38 (2) It was in operation on or after January 1, 1988.

39 25354. (a) There is hereby continuously
40 appropriated from the state account to the department



1 the sum of one million dollars (\$1,000,000) for each fiscal
2 year as a reserve account for emergencies,
3 notwithstanding Section 13340 of the Government Code.
4 The department shall expend moneys available in the
5 reserve account only for the purpose of taking immediate
6 corrective action necessary to remedy or prevent an
7 emergency resulting from a fire or an explosion of, or
8 human exposure to, hazardous substances caused by the
9 release or threatened release of a hazardous substance.

10 (b) (1) Notwithstanding any other provision of law,
11 the department may enter into written contracts for
12 corrective action taken or to be taken pursuant to
13 subdivision (a).

14 (2) Notwithstanding any other provision of law, the
15 department may enter into oral contracts, not to exceed
16 ten thousand dollars (\$10,000) in obligation, when, in the
17 judgment of the department, immediate corrective
18 action is necessary to remedy or prevent an emergency
19 specified in subdivision (a).

20 (3) The contracts made pursuant to this subdivision,
21 whether written or oral, may include provisions for the
22 rental of tools or equipment, either with or without
23 operators furnished, and for the furnishing of labor and
24 materials necessary to accomplish the work.

25 (4) If the department finds that the corrective action
26 includes the relocation of individuals, the department
27 may contract with those individuals for out-of-pocket
28 expenses incurred in moving for an amount of not more
29 than one thousand dollars (\$1,000).

30 (c) The department shall include in the biennial
31 report specified in Section 25178 an accounting of the
32 moneys expended pursuant to this section. Once the
33 appropriation made pursuant to subdivision (a) is fully
34 expended, the director may file a report with the
35 Legislature if it is in session or, if it is not in session, with
36 the Committee on Rules of the Assembly and the Senate
37 as to the moneys expended pursuant to this section. The
38 Legislature may appropriate moneys from the state
39 account, in addition to those moneys appropriated
40 pursuant to subdivision (a), to the department for the



1 purpose of taking corrective action pursuant to
2 subdivision (a).

3 (d) Except as provided in subdivision (c), the amount
4 deposited in the reserve account and appropriated
5 pursuant to this section shall not exceed one million
6 dollars (\$1,000,000) in any fiscal year. On June 30 of each
7 year, the unencumbered balance of the reserve account
8 shall revert to and be deposited in the state account.

9 25354.5. (a) Any state or local law enforcement
10 officer or investigator or other law enforcement agency
11 employee who, in the course of an official investigation or
12 enforcement action regarding the manufacture of any
13 illegal controlled substance, comes in contact with, or is
14 aware of, the presence of a substance that the person
15 suspects is a hazardous substance at a site where an illegal
16 controlled substance is or was manufactured, shall notify
17 the department for the purpose of taking removal action,
18 as necessary, to prevent, minimize, or mitigate damage
19 that might otherwise result from the release or
20 threatened release of the hazardous substance, except for
21 samples required to be kept for evidentiary purposes.

22 (b) (1) Notwithstanding any other provision of law,
23 upon receipt of a notification pursuant to subdivision (a),
24 the department shall take removal action, as necessary,
25 with respect to any hazardous substance that is an illegal
26 controlled substance, a precursor of a controlled
27 substance, a material intended to be used in the unlawful
28 manufacture of a controlled substance, or a waste
29 material from the unlawful manufacture of a controlled
30 substance. The department may expend funds
31 appropriated from the Illegal Drug Lab Cleanup Account
32 created pursuant to subdivision (e) to pay the costs of
33 removal actions required by this section. The department
34 may enter into oral contracts, not to exceed ten thousand
35 dollars (\$10,000) in obligation, when, in the judgment of
36 the department, immediate corrective action to a
37 hazardous substance subject to this section is necessary to
38 remedy or prevent an emergency.

39 (2) The department shall, as soon as the information is
40 available, report the location of any removal action that



1 will be carried out pursuant to paragraph (1), and the
2 time that the removal action will be carried out, to the
3 local environmental health officer within whose
4 jurisdiction the removal action will take place, if the local
5 environmental officer does both of the following:

6 (A) Requests, in writing, that the department report
7 this information to the local environmental health officer.

8 (B) Provides the department with a single 24-hour
9 telephone number to which the information can be
10 reported.

11 (c) (1) For purposes of Chapter 6.5 (commencing
12 with Section 25100) or this chapter, any person who is
13 found to have operated a site for the purpose of
14 manufacturing an illegal controlled substance or a
15 precursor of an illegal controlled substance is the
16 generator of any hazardous substance at, or released
17 from, the site that is subject to removal action pursuant
18 to this section.

19 (2) During the removal action, for purposes of
20 complying with the manifest requirements in Section
21 25160, the department, the county health department,
22 the local environmental health officer, or their designee
23 may sign the hazardous waste manifest as the generator
24 of the hazardous waste. In carrying out that action, the
25 department, the county health department, the local
26 environmental health officer, or their designee shall be
27 considered to have acted in furtherance of their statutory
28 responsibilities to protect the public health and safety and
29 the environment from the release, or threatened release,
30 of hazardous substances, and the department, the county
31 health department, the local environmental health
32 officer, or their designee are not responsible parties for
33 the release or threatened release of the hazardous
34 substances.

35 (3) The officer, investigator, or agency employee
36 specified in subdivision (a) is not a responsible party for
37 the release or threatened release of any hazardous
38 substances at, or released from, the site.



1 (d) The department may adopt regulations to
2 implement this section in consultation with appropriate
3 law enforcement and local environmental agencies.

4 (e) The Illegal Drug Lab Cleanup Account is hereby
5 created in the General Fund and the department may
6 expend any money in the account, upon appropriation by
7 the Legislature, to carry out the removal actions required
8 by this section. The account shall be funded by moneys
9 appropriated directly from the General Fund.

10 (f) The responsibilities assigned to the department by
11 this section apply only to the extent that sufficient
12 funding is made available for that purpose.

13 25355. (a) The Governor is responsible for the
14 coordination of all state response actions for sites
15 identified in Section 25356 in order to assure the
16 maximum use of available federal funds.

17 (b) The director may initiate removal or remedial
18 action pursuant to this chapter unless these actions have
19 been taken, or are being taken properly and in a timely
20 fashion, by any responsible party.

21 (c) (1) At least 30 days before initiating removal or
22 remedial actions, the department shall make a reasonable
23 effort to notify the persons identified by the department
24 as potentially responsible parties and shall also publish a
25 notification of this action in a newspaper of general
26 circulation pursuant to the method specified in Section
27 6061 of the Government Code. This subdivision does not
28 apply to actions taken pursuant to subdivision (b) of
29 Section 25358.3 or immediate corrective actions taken
30 pursuant to Section 25354. A responsible party may be
31 held liable pursuant to this chapter whether or not the
32 person was given the notice specified in this subdivision.

33 (2) Notwithstanding subdivision (a) of Section 25317,
34 any person may voluntarily enter into an enforceable
35 agreement with the department pursuant to this
36 subdivision that allows removal or remedial actions to be
37 conducted under the oversight of the department at sites
38 with petroleum releases from sources other than
39 underground storage tanks, as defined in Section
40 25299.24. Agreements entered into pursuant to this



1 subdivision shall provide that the party will reimburse the
2 department for all costs incurred including, but not
3 limited to, oversight costs pursuant to the enforceable
4 agreement associated with the performance of the
5 removal or remedial actions and Chapter 6.66
6 (commencing with Section 25269).

7 (d) The department shall notify the owner of the real
8 property of the site of a hazardous substance release
9 within 30 days after listing a site pursuant to Section
10 25356, and at least 30 days before initiating a removal or
11 remedial action pursuant to this chapter, by sending the
12 notification by certified mail to the person to whom the
13 real property is assessed, as shown upon the last equalized
14 assessment roll of the county, at the address shown on the
15 assessment roll. The requirements of this subdivision do
16 not apply to actions taken pursuant to subdivision (b) of
17 Section 25358.3 or to immediate corrective actions taken
18 pursuant to Section 25354.

19 25355.2. (a) Except as provided in subdivision (c),
20 the department or the regional board shall require any
21 responsible party who is required to comply with
22 operation and maintenance requirements as part of a
23 response action, to demonstrate and to maintain financial
24 assurance in accordance with this section. The
25 responsible party shall demonstrate financial assurance
26 prior to the time that operation and maintenance
27 activities are initiated and shall maintain it throughout
28 the period of time necessary to complete all required
29 operation and maintenance activities.

30 (b) (1) For purposes of subdivision (a), the
31 responsible party shall demonstrate and maintain one or
32 more of the financial assurance mechanisms set forth in
33 subdivisions (a) to (e), inclusive, of Section 66265.143 of
34 Title 22 of the California Code of Regulations.

35 (2) As an alternative to the requirement of paragraph
36 (1), a responsible party may demonstrate and maintain
37 financial assurance by means of a financial assurance
38 mechanism other than those listed in paragraph (1), if the
39 alternative financial assurance mechanism has been
40 submitted to, and approved by, the department or the



1 regional board as being at least equivalent to the financial
2 assurance mechanisms specified in paragraph (1). The
3 department or the regional board shall evaluate the
4 equivalency of the proposed alternative financial
5 assurance mechanism principally in terms of the
6 certainty of the availability of funds for required
7 operation and maintenance activities and the amount of
8 funds that will be made available. The department or the
9 regional board shall require the responsible party to
10 submit any information necessary to make a
11 determination as to the equivalency of the proposed
12 alternative financial assurance mechanism.

13 (c) The department or the regional board shall waive
14 the financial assurance required by subdivision (a) if the
15 department or the regional board makes one of the
16 following determinations:

17 (1) The responsible party is a small business and has
18 demonstrated all of the following:

19 (A) The responsible party cannot qualify for any of the
20 financial assurance mechanisms set forth in subdivisions
21 (b), (c), and (d) of Section 66265.143 of Title 22 of the
22 California Code of Regulations.

23 (B) The responsible party financially cannot meet the
24 requirements of subdivision (a) of Section 66265.143 of
25 Title 22 of the California Code of Regulations.

26 (C) The responsible party is not capable of meeting
27 the eligibility requirements set forth in subdivision (e) of
28 Section 66265.143 of Title 22 of the California Code of
29 Regulations.

30 (2) The responsible party is a small business and has
31 demonstrated that the responsible party financially is not
32 capable of establishing one of the financial assurance
33 mechanisms set forth in subdivisions (a) to (e), inclusive,
34 of Section 66265.143 of Title 22 of the California Code of
35 Regulations while at the same time financing the
36 operation and maintenance requirements applicable to
37 the site.

38 (3) The responsible party is not separately required to
39 demonstrate and maintain a financial assurance



1 mechanism for operation and maintenance activities at a
2 site because of all of the following conditions:

3 (A) The site is a multiple responsible party site.

4 (B) Financial assurance that operation and
5 maintenance activities at the site will be carried out is
6 demonstrated and maintained by a financial assurance
7 mechanism established jointly by all, or some, of the
8 responsible parties.

9 (C) The financial assurance mechanism specified in
10 subparagraph (B) meets the requirements of
11 subdivisions (a) and (b).

12 (d) The department or the regional board shall
13 withdraw a waiver granted pursuant to paragraph (1) or
14 (2) of subdivision (c) if the department or the regional
15 board determines that the responsible party that
16 obtained the waiver no longer meets the eligibility
17 requirements for the waiver.

18 (e) Notwithstanding Section 7550.5 of the
19 Government Code, on or before January 15, 2001, the
20 department shall report to the Legislature all of the
21 following:

22 (1) The number of requests the department and the
23 regional boards have received for waivers from the
24 financial assurance requirements of this section during
25 the period between the effective date of the act that
26 enacts this section and January 1, 2001.

27 (2) The disposition of the requests that were received
28 and the reasons for granting the waivers that were
29 allowed and rejecting the waivers that were disallowed.

30 (3) The total number of businesses or other entities
31 that were required by this section to demonstrate and
32 maintain financial assurance, the number of businesses or
33 other entities that were able to comply with the
34 requirement, the number that were unable to comply
35 and the reasons why they could not or did not comply, and
36 the history of compliance with this chapter and Chapter
37 6.5 (commencing with Section 25100) by responsible
38 parties that requested waivers.

39 (4) Financial assurance mechanisms other than the
40 financial assurance mechanisms referenced in paragraph



1 (1) of subdivision (b) that may be available to responsible
2 parties.

3 (f) For purposes of this section, “small business” is a
4 business that meets the requirements set forth in
5 subdivision (d) of Section 14837 of the Government
6 Code.

7 25355.5. (a) Except as provided in subdivisions (b),
8 (c), and (d), no money shall be expended from the
9 Hazardous Substance Account or the Hazardous
10 Substance Cleanup Fund for removal or remedial actions
11 on any site selected for inclusion on the list established
12 pursuant to Section 25356, unless the department first
13 takes both of the following actions:

14 (1) The department issues one of the following orders
15 or enters into the following agreement:

16 (A) The department issues an order specifying a
17 schedule for compliance or correction pursuant to
18 Section 25187.

19 (B) The department issues an order establishing a
20 schedule for removing or remedying the release of a
21 hazardous substance at the site, or for correcting the
22 conditions that threaten the release of a hazardous
23 substance. The order shall include, but is not limited to,
24 requiring specific dates by which necessary corrective
25 actions shall be taken to remove the threat of a release,
26 or dates by which the nature and extent of a release shall
27 be determined and the site adequately characterized, a
28 remedial action plan shall be prepared, the remedial
29 action plan shall be submitted to the department for
30 approval, and a removal or remedial action shall be
31 completed.

32 (C) The department enters into an enforceable
33 agreement with a potentially responsible party for the
34 site that requires the party to take necessary corrective
35 action to remove the threat of the release, or to determine
36 the nature and extent of the release and adequately
37 characterize the site, prepare a remedial action plan, and
38 complete the necessary removal or remedial actions, as
39 required in the approved remedial action plan.



1 Any enforceable agreement entered into pursuant to
2 this section may provide for the execution and recording
3 of a written instrument that imposes an easement,
4 covenant, restriction, or servitude, or combination
5 thereof, as appropriate, upon the present and future uses
6 of the site. The instrument shall provide that the
7 easement, covenant, restriction, or servitude, or
8 combination thereof, as appropriate, is subject to the
9 variance or removal procedures specified in Sections
10 25233 and 25234. Notwithstanding any other provision of
11 law, an easement, covenant, restriction, or servitude, or
12 any combination thereof, as appropriate, executed
13 pursuant to this section and recorded so as to provide
14 constructive notice runs with the land from the date of
15 recordation, is binding upon all of the owners of the land,
16 their heirs, successors, and assignees, and the agents,
17 employees, or lessees of the owners, heirs, successors, and
18 assignees, and is enforceable by the department pursuant
19 to Article 8 (commencing with Section 25180) of Chapter
20 6.5.

21 (2) The department determines, in writing, that the
22 potentially responsible party or parties for the hazardous
23 substance release site have not complied with all of the
24 terms of an order issued pursuant to subparagraph (A) or
25 (B) of paragraph (1) or an agreement entered into
26 pursuant to subparagraph (C) of paragraph (1). Before
27 the department determines that a potentially responsible
28 party is not in compliance with the order or agreement,
29 the department shall give the potentially responsible
30 party written notice of the proposed determination and
31 an opportunity to correct the noncompliance or show
32 why the order should be modified. After the department
33 has made the final determination that a potentially
34 responsible party is not in compliance with the order or
35 agreement, the department may expend money from the
36 Hazardous Substance Account or the Hazardous
37 Substance Cleanup Fund for a removal or remedial
38 action.

39 (b) Subdivision (a) does not apply, and money from
40 the Hazardous Substance Account or the Hazardous



1 Substance Cleanup Fund shall be available, upon
2 appropriation by the Legislature, for removal or remedial
3 actions, if any of the following conditions apply:

4 (1) The department, after a reasonable effort, is
5 unable to identify a potential responsible party for the
6 hazardous substance release site.

7 (2) The department determines that immediate
8 corrective action is necessary, as provided in Section
9 25354.

10 (3) The director determines that removal or remedial
11 action at a site is necessary because there may be an
12 imminent and substantial endangerment to the public
13 health or welfare or to the environment.

14 (c) Notwithstanding subdivision (a), the department
15 may expend funds, upon appropriation by the
16 Legislature, from the Hazardous Substance Cleanup
17 Fund or the Hazardous Substance Account to conduct
18 activities necessary to verify that an uncontrolled release
19 of hazardous substances has occurred at a suspected
20 hazardous substance release site, to issue an order or
21 enter into an enforceable agreement pursuant to
22 paragraph (1) of subdivision (a), and to review, comment
23 upon, and approve or disapprove remedial action plans
24 submitted by potentially responsible parties subject to
25 the orders or the enforceable agreement.

26 (d) Notwithstanding subdivision (a), the department
27 may expend funds, upon appropriation by the
28 Legislature, from the Hazardous Substance Cleanup
29 Fund or the Hazardous Substance Account, to provide for
30 oversight of removal and remedial actions, or, if the site
31 is also listed on the federal act (42 U.S.C. Sec. 9604(c)(3)),
32 to provide the state's share of a removal or remedial
33 action.

34 (e) A responsible party who fails, as determined by the
35 department in writing, to comply with an order issued
36 pursuant to subparagraph (A) or (B) of paragraph (1) of
37 subdivision (a), or to comply with all of the terms of an
38 enforceable agreement entered into pursuant to
39 subparagraph (C) of paragraph (1) of subdivision (a),
40 shall be deemed, for purposes of subdivision (b) of



1 Section 25355, to have failed to take action properly and
2 in a timely fashion with respect to a hazardous substance
3 release or a threatened release.

4 25355.6. (a) The State Water Resources Control
5 Board or a California regional water quality control board
6 that has jurisdiction over a hazardous substance release
7 site pursuant to Division 7 (commencing with Section
8 13000) of the Water Code may refer the site to the
9 department as a candidate for listing pursuant to Section
10 25356. After determining that the site meets the criteria
11 adopted pursuant to subdivision (a) of Section 25356, the
12 department may place the site on the list of sites subject
13 to this chapter and establish its priority ranking pursuant
14 to Section 25356.

15 (b) If a hazardous substance release site is referred to
16 the department and is listed pursuant to subdivision (a),
17 the department may expend money from the state
18 account or the Hazardous Substance Cleanup Fund for
19 removal or remedial action at the site, upon
20 appropriation by the Legislature, without first issuing an
21 order or entering into an agreement pursuant to
22 paragraph (1) of subdivision (a) of Section 25355.5, if all
23 of the following apply:

24 (1) The State Water Resources Control Board or a
25 California regional water quality control board has issued
26 either a cease and desist order pursuant to Section 13301
27 of the Water Code or a cleanup and abatement order
28 pursuant to Section 13304 of the Water Code to the
29 potentially responsible party for the site.

30 (2) The State Water Resources Control Board or the
31 California regional water quality control board has made
32 a final finding that the potentially responsible party has
33 not complied with the order issued pursuant to paragraph
34 (1).

35 (3) The State Water Resources Control Board or the
36 California regional water quality control board has
37 notified the potentially responsible party of the
38 determination made pursuant to paragraph (2) and that
39 the hazardous substance release site has been referred to
40 the department pursuant to subdivision (a).



1 (c) If a hazardous substance release site is referred to
2 the department pursuant to subdivision (a), and the
3 department makes either of the following
4 determinations, the department shall notify the
5 appropriate California regional water quality control
6 board and the State Water Resources Control Board:

7 (1) The department determines that the site does not
8 meet the criteria established pursuant to subdivision (a)
9 and the site cannot be placed, pursuant to Section 25356,
10 on the list of sites subject to this chapter.

11 (2) The department determines that a removal or
12 remedial action at the site will not commence for a period
13 of one year from the date of listing due to a lack of funds
14 or the low priority of the site.

15 (d) If a California regional water resources control
16 board or the State Water Resources Control Board
17 receives a notice pursuant to subdivision (c), the regional
18 board or state board may take any further action
19 concerning the hazardous substance release site which
20 the regional board or state board determines to be
21 necessary or feasible, and which is authorized by this
22 chapter or Division 7 (commencing with Section 13000)
23 of the Water Code.

24 25355.7. The department and the State Water
25 Resources Control Board concurrently shall establish
26 policies and procedures consistent with this chapter that
27 the department's representatives shall follow in
28 overseeing and supervising the activities of responsible
29 parties who are carrying out the investigation of, and
30 taking removal or remedial actions at, hazardous
31 substance release sites. The policies and procedures shall
32 be consistent with the policies and procedures established
33 pursuant to Section 13307 of the Water Code, and shall
34 include, but are not limited to, all of the following:

35 (a) The procedures the department will follow in
36 making decisions as to when a potentially responsible
37 party may be required to undertake an investigation to
38 determine if a hazardous substance release has occurred.



1 (b) Policies for carrying out a phased, step-by-step
2 investigation to determine the nature and extent of
3 possible soil and groundwater contamination at a site.

4 (c) Procedures for identifying and utilizing the most
5 cost-effective methods for detecting contamination and
6 carrying out removal or remedial actions.

7 (d) Policies for determining reasonable schedules for
8 investigation and removal or remedial action at a site. The
9 policies shall recognize the dangers to public health and
10 the environment posed by a release and the need to
11 mitigate those dangers, while taking into account, to the
12 extent possible, the financial and technical resources
13 available to a responsible party.

14 25355.8. (a) The department shall not agree to
15 oversee the preparation of, or to review, a preliminary
16 endangerment assessment for property if action is, or
17 may be, necessary to address a release or threatened
18 release of a hazardous substance, and the department
19 shall not issue a letter stating that no further action is
20 necessary with regard to property, unless the person
21 requesting the department action does either of the
22 following:

23 (1) Provides the department with all of the following:

24 (A) Proof of the identity of all current record owners
25 of fee title to the property and their mailing addresses.

26 (B) Written evidence that the owners of record have
27 been sent a notice that describes the actions completed
28 or proposed by the requesting person.

29 (C) An acknowledgment of the receipt of the notice
30 required in subparagraph (B), from the property owners
31 or proof that the requesting person has made reasonable
32 efforts to deliver the notice to the property owner and
33 was unable to do so.

34 (2) Proof of the identity of all current record owners
35 of fee title to the property and proof that the requesting
36 person has made reasonable efforts to locate the property
37 owners and was unable to do so.

38 (b) The department shall take all reasonable steps
39 necessary to accommodate property owner participation
40 in the site remediation process and shall consider all input



1 and recommendations received from the owner of
2 property which is the subject of the proposed action.

3 (c) This section only applies to instances where a
4 person requests the department to oversee the
5 preparation of, or to review, a preliminary endangerment
6 assessment, or requests the department to issue a letter
7 stating that no further action is necessary with regard to
8 property. Nothing in this section imposes a condition
9 upon, limits, or impacts in any way, the department's
10 authority to compel any potentially responsible party to
11 take any action in response to a release or threatened
12 release of a hazardous substance or to recover costs
13 incurred from any potentially responsible party.

14 25356. (a) The department shall adopt, by
15 regulation, the criteria for the selection and for the
16 priority ranking of sites pursuant to subdivision (b), for
17 response action under this chapter, and shall adopt
18 criteria for the assignment of sites to one of the three tiers
19 pursuant to subdivision (b). The criteria shall take into
20 account the pertinent factors relating to the public health
21 and the environment, which shall include, but are not
22 limited to, potential hazards to public health and
23 environment, the risk of fire or explosion, toxic hazards,
24 the extent to which the deferral of a response action will
25 result, or is likely to result, in a rapid increase in cost, or
26 in hazard to human health and the environment, and the
27 criteria established pursuant to Section 105(8) of the
28 federal act (42 U.S.C. Sec. 9605(8)). The criteria may
29 include a minimum hazard threshold, below which sites
30 shall not be listed pursuant to this section, if the sites are
31 subject to the authority of the department to order
32 response action, or similar action, pursuant to Chapter 6.5
33 (commencing with Section 25100).

34 (b) (1) The department shall publish and revise, at
35 least annually, a listing of the sites subject to this chapter.
36 The sites shall be categorized and placed on one of the
37 following lists:

38 (A) A list of the hazardous substance release sites for
39 which the department has identified a responsible party,
40 and the responsible party is in compliance, as determined



1 by the department, with an order issued, or an
2 enforceable agreement entered into, pursuant to
3 subdivision (a) of Section 25355.5. The department shall
4 publish the list of sites under this subparagraph in an
5 appendix to the site-specific plan of expenditures
6 prepared pursuant to Section 25334.5.

7 (B) A list of the hazardous substance release sites for
8 which all of the following apply:

9 (i) The department has not been able to identify a
10 responsible party or the responsible party is not in
11 compliance, as determined by the department, with an
12 order issued, or an enforceable agreement entered into,
13 pursuant to subdivision (a) of Section 25355.5.

14 (ii) The nature and extent of the hazardous substance
15 release at the site has not been adequately characterized
16 by the responsible party or the department.

17 The department shall characterize a site on the list
18 before ranking the site on the list described in
19 subparagraph (C).

20 (C) A list of the hazardous substance release sites that
21 were previously listed pursuant to subparagraph (A), if
22 the sites have been adequately characterized but the
23 responsible parties are not in compliance with an order
24 or enforceable agreement issued or entered into
25 pursuant to subdivision (a) of Section 25355.5, or sites that
26 were previously listed pursuant to subparagraph (B) but
27 which have since been adequately characterized by the
28 department. Sites on the list specified in this
29 subparagraph shall be ranked numerically in accordance
30 with the criteria adopted for the priority ranking of sites.

31 (2) The department shall assign each site listed
32 pursuant to subparagraphs (B) and (C) of paragraph (1),
33 sites listed on the National Priorities List pursuant to the
34 federal act, and sites that are federal military facilities to
35 one of three tiers for the purpose of informing the public
36 of the relative hazard of the sites. The listing of sites by
37 tiers shall be widely disseminated to the public. The
38 “priority one” tier shall include any site that poses a
39 known or probable immediate threat to public health
40 through direct human contact, explosions, fires, or



1 acutely serious air emissions, has a high potential to
2 contaminate or to continue to contaminate groundwater
3 resources that are present or possible future sources of
4 drinking water, or any site for which the costs for
5 response action pose the risk of increasing rapidly if
6 response action is deferred. The “priority two” tier shall
7 include any site that poses a substantial but less
8 immediate threat to public health and safety or the
9 environment. The “priority three” tier shall include any
10 site that will require response action, but presents only a
11 limited and defined threat to human health or the
12 environment. Priority two and three tiers may contain
13 sites formerly listed in tiers one or two for which direct
14 human health threats have been removed and at which
15 physical deterioration in environmental quality has been
16 stabilized. For the purpose of this paragraph, in informing
17 the public of the relative environmental and public
18 health threats posed by a site, the department shall list
19 sites alphabetically within each of the three tiers. The
20 department shall periodically update the list of sites by
21 tiers to reflect new information regarding existing sites or
22 the addition of new sites requiring response action. No
23 site listed pursuant to subparagraph (A) of paragraph (1)
24 shall be listed pursuant to this subdivision.

25 (c) Hazardous substance release sites listed by the
26 department pursuant to subdivision (b) are subject to this
27 chapter and all actions carried out in response to
28 hazardous substance releases or threatened releases at
29 listed sites shall comply with the procedures, standards,
30 and other requirements set forth in this chapter or
31 established pursuant to the requirements of this chapter.

32 (d) The department’s development and publication of
33 the listings of sites, pursuant to subdivision (b) and the
34 adoption of a minimum hazard threshold and the
35 classification of a site as within that threshold pursuant to
36 subdivision (a), are not subject to Chapter 3.5
37 (commencing with Section 11340) of Part 1 of Division 3
38 of Title 2 of the Government Code.

39 (e) Funds appropriated to the department for
40 remedial action shall be expended in conformance with



1 the priority ranking of sites, as established on the list of
2 sites specified in subparagraph (C) of paragraph (1) of
3 subdivision (b), except that funds appropriated for
4 remedial action may be expended without conforming to
5 the priority ranking if either of the following apply:

6 (1) The funds are necessary to monitor removal or
7 remedial actions conducted by private parties listed
8 pursuant to subparagraph (A) of paragraph (1) of
9 subdivision (b) or the state funds are necessary for the
10 state share of a removal or remedial action pursuant to
11 Section 104(c)(3) of the federal act (42 U.S.C. Sec.
12 9604(c)(3)).

13 (2) The funds are used for either of the following
14 purposes:

15 (A) To assess, evaluate, and characterize the nature
16 and extent of a hazardous substance release on sites listed
17 pursuant to subparagraph (B) of paragraph (1) of
18 subdivision (b).

19 (B) To carry out activities pursuant to subparagraph
20 (B) or (C) of paragraph (1) of subdivision (b), or
21 subdivision (c) or (d) of, Section 25355.5.

22 (f) Funds may be expended on more than one site on
23 the list specified in subparagraphs (B) and (C) of
24 paragraph (1) of subdivision (b) at any one time. In
25 addition, funds may be expended for oversight of any
26 activities conducted by a responsible party on more than
27 one site on the list specified in subparagraph (A) of
28 paragraph (1) of subdivision (b) at any one time.

29 (g) This section does not require the department to
30 characterize every site listed pursuant to subparagraph
31 (C) of paragraph (1) of subdivision (b) before the
32 department may begin removal or remedial actions at
33 sites listed pursuant to subparagraph (C) of paragraph
34 (1) of subdivision (b).

35 (h) The department, or, if appropriate, the California
36 regional water quality control board, is the state agency
37 with sole responsibility for ensuring that required action
38 in response to a hazardous substance release or
39 threatened release at a listed site is carried out in
40 compliance with the procedures, standards, and other



1 requirements set forth in this chapter, and shall, as
2 appropriate, coordinate the involvement of interested or
3 affected agencies in the response action.

4 25356.1. (a) For purposes of this section, “regional
5 board” means a California regional water quality control
6 board and “state board” means the State Water Resources
7 Control Board.

8 (b) Except as provided in subdivision (h), the
9 department, or, if appropriate, the regional board shall
10 prepare or approve remedial action plans for all sites
11 listed pursuant to Section 25356.

12 (c) A potentially responsible party may request the
13 department or the regional board, when appropriate, to
14 prepare or approve a remedial action plan for any site not
15 listed pursuant to Section 25356, if the department or the
16 regional board determines that a removal or remedial
17 action is required to respond to a release of a hazardous
18 substance. The department or the regional board shall
19 respond to a request to prepare or approve a remedial
20 action plan within 90 days of receipt. This subdivision
21 does not affect the authority of any regional board to issue
22 and enforce a cleanup and abatement order pursuant to
23 Section 13304 of the Water Code or a cease and desist
24 order pursuant to Section 13301 of the Water Code.

25 (d) All remedial action plans prepared or approved
26 pursuant to this section shall be based upon Section 25350,
27 Subpart E of the National Oil and Hazardous Substances
28 Pollution Contingency Plan (40 C.F.R. 300.400 et seq.),
29 and any amendments thereto, and upon all of the
30 following factors, to the extent that these factors are
31 consistent with these federal regulations and do not
32 require a less stringent level of cleanup than these federal
33 regulations:

34 (1) Health and safety risks posed by the conditions at
35 the site. When considering these risks, the department or
36 the regional board shall consider scientific data and
37 reports which may have a relationship to the site.

38 (2) The effect of contamination or pollution levels
39 upon present, future, and probable beneficial uses of
40 contaminated, polluted, or threatened resources.



1 (3) The effect of alternative remedial action measures
2 on the reasonable availability of groundwater resources
3 for present, future, and probable beneficial uses. The
4 department or the regional board shall consider the
5 extent to which remedial action measures are available
6 that use, as a principal element, treatment that
7 significantly reduces the volume, toxicity, or mobility of
8 the hazardous substances, as opposed to remedial actions
9 that do not use this treatment. The department or the
10 regional board shall not select remedial action measures
11 which use offsite transport and disposal of untreated
12 hazardous substances or contaminated materials if
13 practical and cost-effective treatment technologies are
14 available.

15 (4) Site-specific characteristics, including the
16 potential for offsite migration of hazardous substances,
17 the surface or subsurface soil, and the hydrogeologic
18 conditions, as well as preexisting background
19 contamination levels.

20 (5) Cost-effectiveness of alternative remedial action
21 measures. In evaluating the cost-effectiveness of
22 proposed alternative remedial action measures, the
23 department or the regional board shall consider, to the
24 extent possible, the total short-term and long-term costs
25 of these actions and shall use, as a major factor, whether
26 the deferral of a remedial action will result, or is likely to
27 result, in a rapid increase in cost or in the hazard to public
28 health or the environment posed by the site. Land
29 disposal shall not be deemed the most cost-effective
30 measure merely on the basis of lower short-term cost.

31 (6) The potential environmental impacts of
32 alternative remedial action measures, including, but not
33 limited to, land disposal of the untreated hazardous
34 substances as opposed to treatment of the hazardous
35 substances to remove or reduce its volume, toxicity, or
36 mobility prior to disposal.

37 (e) A remedial action plan prepared pursuant to this
38 section shall include the basis for the remedial action
39 selected and shall include an evaluation of each
40 alternative considered and rejected by the department or



1 the regional board for a particular site. The plan shall
2 include an explanation for rejection of alternative
3 remedial actions considered but rejected. The plan shall
4 also include an evaluation of the consistency of the
5 selected remedial action with the requirements of the
6 federal regulations and the factors specified in
7 subdivision (d), if those factors are not otherwise
8 adequately addressed through compliance with the
9 federal regulations. The remedial action plan shall also
10 include a nonbinding preliminary allocation of
11 responsibility among all identifiable potentially
12 responsible parties at a particular site, including those
13 parties which may have been released, or may otherwise
14 be immune, from liability pursuant to this chapter or any
15 other provision of law. Before adopting a final remedial
16 action plan, the department or the regional board shall
17 prepare or approve a draft remedial action plan and shall
18 do all of the following:

19 (1) Circulate the draft plan for at least 30 days for
20 public comment.

21 (2) Notify affected local and state agencies of the
22 removal and remedial actions proposed in the remedial
23 action plan and publish a notice in a newspaper of general
24 circulation in the area affected by the draft remedial
25 action plan. The department or the regional board shall
26 also post notices in the location where the proposed
27 removal or remedial action would be located and shall
28 notify, by direct mailing, the owners of property
29 contiguous to the site addressed by the plan, as shown in
30 the latest equalized assessment roll.

31 (3) Hold one or more meetings with the lead and
32 responsible agencies for the removal and remedial
33 actions, the potentially responsible parties for the
34 removal and remedial actions, and the interested public,
35 to provide the public with the information which is
36 necessary to address the issues which concern the public.
37 The information to be provided shall include an
38 assessment of the degree of contamination, the
39 characteristics of the hazardous substances, an estimate
40 of the time required to carry out the removal and



1 remedial actions, and a description of the proposed
2 removal and remedial actions.

3 (4) Comply with Section 25358.7.

4 (f) After complying with subdivision (e), the
5 department or the regional board shall review and
6 consider any public comments, and shall revise the draft
7 plan, if appropriate. The department or the regional
8 board shall then issue the final remedial action plan.

9 (g) (1) A potentially responsible party named in the
10 final remedial action plan issued by the department or
11 the regional board may seek judicial review of the final
12 remedial action plan by filing a petition for writ of
13 mandate pursuant to Section 1085 of the Code of Civil
14 Procedure within 30 days after the final remedial action
15 plan is issued by the department or the regional board.
16 Any other person who has the right to seek judicial review
17 of the final remedial action plan by filing a petition for
18 writ of mandate pursuant to Section 1085 of the Code of
19 Civil Procedure shall do so within one year after the final
20 remedial action plan is issued. No action may be brought
21 by a potentially responsible party to review the final
22 remedial action plan if the petition for writ of mandate is
23 not filed within 30 days of the date that the final remedial
24 action plan was issued. No action may be brought by any
25 other person to review the final remedial action plan if
26 the petition for writ of mandate is not filed within one
27 year of the date that the final remedial action plan was
28 issued. The filing of a petition for writ of mandate to
29 review the final remedial action plan shall not stay any
30 removal or remedial action specified in the final plan.

31 (2) For purposes of judicial review, the court shall
32 uphold the final remedial action plan if the plan is based
33 upon substantial evidence available to the department or
34 the regional board, as the case may be.

35 (3) This subdivision does not prohibit the court from
36 granting any appropriate relief within its jurisdiction,
37 including, but not limited to, enjoining the expenditure
38 of funds pursuant to paragraph (2) of subdivision (b) of
39 Section 25385.6.



1 (h) (1) This section does not require the department
2 or a regional board to prepare a remedial action plan if
3 conditions present at a site present an imminent or
4 substantial endangerment to the public health and safety
5 or to the environment or, if the department, a regional
6 board, or a responsible party takes a removal action at a
7 site and the estimated cost of the removal action is less
8 than one million dollars (\$1,000,000). The department or
9 a regional board shall prepare or approve a removal
10 action workplan for all sites where a nonemergency
11 removal action is proposed and where a remedial action
12 plan is not required. For sites where removal actions are
13 planned and are projected to cost less than one million
14 dollars (\$1,000,000), the department or a regional board
15 shall make the local community aware of the hazardous
16 substance release site and shall prepare, or direct the
17 parties responsible for the removal action to prepare, a
18 community profile report to determine the level of public
19 interest in the removal action. Based on the level of
20 expressed interest, the department or regional board
21 shall take appropriate action to keep the community
22 informed of project activity and to provide opportunities
23 for public comment which may include conducting a
24 public meeting on proposed removal actions.

25 (2) A remedial action plan is not required pursuant to
26 subdivision (b) if the site is listed on the National Priority
27 List by the Environmental Protection Agency pursuant
28 to the federal act, if the department or the regional board
29 concurs with the remedy selected by the Environmental
30 Protection Agency's record of decision. The department
31 or the regional board may sign the record of decision
32 issued by the Environmental Protection Agency if the
33 department or the regional board concurs with the
34 remedy selected.

35 (3) The department may waive the requirement that
36 a remedial action plan meet the requirements specified
37 in subdivision (d) if all of the following apply:

38 (A) The responsible party adequately characterizes
39 the hazardous substance conditions at a site listed
40 pursuant to Section 25356.



1 (B) The responsible party submits to the department,
2 in a form acceptable to the department, all of the
3 following:

4 (i) A description of the techniques and methods to be
5 employed in excavating, storing, handling, transporting,
6 treating, and disposing of materials from the site.

7 (ii) A listing of the alternative remedial measures
8 which were considered by the responsible party in
9 selecting the proposed removal action.

10 (iii) A description of methods that will be employed
11 during the removal action to ensure the health and safety
12 of workers and the public during the removal action.

13 (iv) A description of prior removal actions with similar
14 hazardous substances and with similar public safety and
15 environmental considerations.

16 (C) The department determines that the remedial
17 action plan provides protection of human health and
18 safety and for the environment at least equivalent to that
19 which would be provided by a remedial action plan
20 prepared in accordance with subdivision (c).

21 (D) The total cost of the removal action is less than two
22 million dollars (\$2,000,000).

23 (4) For purposes of this section, the cost of a removal
24 action includes the cleanup of removal of released
25 hazardous substances from the environment or the taking
26 of other actions which are necessary to prevent,
27 minimize, or mitigate damage which may otherwise
28 result from a release or threatened release, as further
29 defined by Section 9601 (23) of Title 42 of the United
30 States Code.

31 (5) Paragraph (2) of this subdivision does not apply to
32 a removal action paid from the Hazardous Substance
33 Cleanup Fund.

34 (i) Article 2 (commencing with Section 13320), Article
35 3 (commencing with Section 13330), Article 5
36 (commencing with Section 13350), and Article 6
37 (commencing with Section 13360) of Chapter 5 of
38 Division 7 of the Water Code apply to any action or failure
39 to act by a regional board pursuant to this section.



1 25356.1.3. (a) In exercising its authority at a hazardous
2 substance release site pursuant to subdivision (a) of
3 Section 25355.5 or 25358.3, the department shall issue
4 orders to the largest manageable number of potentially
5 responsible parties after considering all of the following:

6 (1) The adequacy of the evidence of each potentially
7 responsible party's liability.

8 (2) The financial viability of each potentially
9 responsible party.

10 (3) The relationship or contribution of each
11 potentially responsible party to the release, or threat of
12 release, of hazardous substances at the site.

13 (4) The resources available to the department.

14 (b) The department shall schedule a meeting
15 pursuant to Section 25269.5 and notify all identified
16 potentially responsible parties of the date, time, and
17 location of the meeting.

18 (c) A person issued an order pursuant to Section
19 25355.5 or 25358.3 may identify additional potentially
20 responsible parties for the site to which the order is
21 applicable and may request the department to issue an
22 order to those parties. The request shall include, with
23 appropriate documentation, the factual and legal basis for
24 identifying those parties as potentially responsible parties
25 for the site. The department shall review the request and
26 accompanying information and, within a reasonable
27 period of time, determine if there is a factual and legal
28 basis for identifying other persons as potentially
29 responsible parties, and notify the person that made the
30 request of the action the department will take in response
31 to the request.

32 (d) Any determination made by the department
33 *regarding the largest manageable number of potentially*
34 *responsible parties or the identification of other persons*
35 *as potentially responsible parties* pursuant to this section
36 is not subject to judicial review. *This subdivision does not*
37 *affect the rights of any potentially responsible party or*
38 *the department under any other provision of this chapter.*



1 25356.1.5. (a) Any response action taken or approved
2 pursuant to this chapter shall be based upon, and be no
3 less stringent than, all of the following requirements:

4 (1) The requirements established under federal
5 regulation pursuant to Subpart E of the National Oil and
6 Hazardous Substances Pollution Contingency Plan (40
7 C.F.R. 300.400 et seq.), as amended.

8 (2) The regulations established pursuant to Division 7
9 (commencing with Section 13000) of the Water Code, all
10 applicable water quality control plans adopted pursuant
11 to Section 13170 of the Water Code and Article 3
12 (commencing with Section 13240) of Chapter 4 of
13 Division 7 of the Water Code, and all applicable state
14 policies for water quality control adopted pursuant to
15 Article 3 (commencing with Section 13140) of Chapter 3
16 of Division 7 of the Water Code, to the extent that the
17 department or the regional board determines that those
18 regulations, plans, and policies do not require a less
19 stringent level of remediation than the federal
20 regulations specified in paragraph (1) and to the degree
21 that those regulations, plans, and policies do not authorize
22 ~~decisionmaking procedures regarding the feasibility of~~
23 ~~response action that are at variance with the federal~~
24 *decisionmaking procedures that may result in less*
25 *stringent response action requirements than those*
26 *required by the federal* regulations specified in
27 paragraph (1).

28 (3) Any applicable provisions of this chapter, to the
29 extent those provisions are consistent with the federal
30 regulations specified in paragraph (1) and do not require
31 a less stringent level of remediation than, or
32 decisionmaking procedures that are at variance with, the
33 federal regulations set forth in paragraph (1).

34 (b) Any health or ecological risk assessment prepared
35 in conjunction with a response action taken or approved
36 pursuant to this chapter shall be based upon Subpart E of
37 the National Oil and Hazardous Substances Pollution
38 Contingency Plan (40 C.F.R. 300.400 et seq.), the policies,
39 guidelines, and practices of the United States
40 Environmental Protection Agency developed pursuant



1 to the federal act, and the most current sound scientific
2 methods, knowledge, and practices of public health and
3 environmental professionals who are experienced
4 practitioners in the fields of epidemiology, risk
5 assessment, environmental contamination, ecological
6 risk, fate and transport analysis, and toxicology. Risk
7 assessment practices shall include the most current sound
8 scientific methods for data evaluation, exposure
9 assessment, toxicity assessment, and risk characterization,
10 documentation of all assumptions, methods, models, and
11 calculations used in the assessment, and any health risk
12 assessment shall include all of the following:

13 (1) Evaluation of risks posed by acutely toxic
14 hazardous substances based on levels at which no known
15 or anticipated adverse effects on health will occur, with
16 an adequate margin of safety.

17 (2) Evaluation of risks posed by carcinogens or other
18 hazardous substances that may cause chronic disease
19 based on a level that does not pose any significant risk to
20 health.

21 (3) Consideration of possible synergistic effects
22 resulting from exposure to, or interaction with, two or
23 more hazardous substances.

24 (4) Consideration of the effect of hazardous
25 substances upon subgroups that comprise a meaningful
26 portion of the general population, including, but not
27 limited to, infants, children, pregnant women, the
28 elderly, individuals with a history of serious illness, or
29 other subpopulations, that are identifiable as being at
30 greater risk of adverse health effects due to exposure to
31 hazardous substances than the general population.

32 (5) Consideration of exposure and body burden level
33 that alter physiological function or structure in a manner
34 that may significantly increase the risk of illness and of
35 exposure to hazardous substances in all media, including,
36 but not limited to, exposures in drinking water, food,
37 ambient and indoor air, and soil.

38 (c) If currently available scientific data are insufficient
39 to determine the level of a hazardous substance at which
40 no known or anticipated adverse effects on health will



1 occur, with an adequate margin of safety, or the level that
2 poses no significant risk to public health, the risk
3 assessment prepared in conjunction with a response
4 action taken or approved pursuant to this chapter shall be
5 based on the level that is protective of public health, with
6 an adequate margin of safety. This level shall be based
7 exclusively on public health considerations, shall, to the
8 extent scientific data are available, take into account the
9 factors set forth in paragraphs (1) to (5), inclusive, of
10 subdivision (b), and shall be based on the most current
11 principles, practices, and methods used by public health
12 professionals who are experienced practitioners in the
13 fields of epidemiology, risk assessment, fate and transport
14 analysis, and toxicology.

15 (d) The exposure assessment of any risk assessment
16 prepared in conjunction with a response action taken or
17 approved pursuant to this chapter shall include the
18 development of reasonable maximum estimates of
19 exposure for both current land use conditions and
20 reasonably foreseeable future land use conditions at the
21 site.

22 25356.2. (a) There is hereby created in the Office of
23 Environmental Health Hazard Assessment a Hazardous
24 Substance Cleanup Arbitration Panel.

25 (b) The panel shall apportion liability for the costs of
26 removal and remedial actions in accordance with
27 Sections 25356.3 and 25356.4. All meetings and records of
28 the panel are exempt from Chapter 3.5 (commencing
29 with Section 6250) of Division 7 of Title 1 of, and Article
30 9 (commencing with Section 11120) of Chapter 1 of Part
31 1 of Division 3 of Title 2 of, the Government Code.

32 (c) The panel shall be comprised of independent
33 private arbitrators who have applied to the Office of
34 Environmental Health Hazard Assessment for
35 membership on the panel. Panel members shall have (1)
36 relevant arbitration background and (2) expertise in
37 engineering, expertise in the physical, biological, or
38 health sciences, or other relevant experience and
39 qualifications. Three arbitrators shall be selected from the
40 panel to apportion liability for a single hazardous



1 wastesite. A majority of the arbitrators selected for a
2 single site may apportion liability for the panel under this
3 chapter.

4 (d) The arbitrators shall be selected for an individual
5 hazardous wastesite as follows:

6 (1) One arbitrator shall be selected by the department
7 or by the regional water quality control board.

8 (2) One arbitrator shall be selected by the potentially
9 responsible party, or a majority of the potentially
10 responsible parties, who have submitted to binding
11 arbitration by the panel.

12 (3) The two arbitrators selected pursuant to
13 paragraphs (1) and (2) shall jointly select a third
14 arbitrator.

15 25356.3. (a) The department or the California
16 regional water quality control board shall serve a copy by
17 mail of the draft remedial action plan upon all potentially
18 responsible parties identified in the plan. Within 15 days
19 after the issuance of a final remedial action plan, any
20 potentially responsible parties with aggregate alleged
21 liability in excess of 50 percent of the costs of removal and
22 remedial action, as set forth in the statement of reasons
23 issued pursuant to subdivision (d) of Section 25356.1, but
24 excluding any costs that are the subject of an agreement
25 under which any party agrees to assume liability for those
26 costs, may convene an arbitration proceeding by
27 agreeing to submit to binding arbitration by the panel.
28 The filing of a demand to convene an arbitration panel
29 shall not stay any removal or remedial actions specified in
30 the plan. If an arbitration panel is convened pursuant to
31 this section, any other potentially responsible party may
32 elect to submit to binding arbitration by the panel. Any
33 person submitting to arbitration under this section shall
34 agree not to contest the fact of liability in the arbitration.
35 The panel shall, and the parties are entitled to, address
36 the proper apportionment of liability pursuant to
37 subdivision (b). Submission to arbitration under this
38 section is not an admission of liability for any other
39 purpose or in any other proceeding, including a
40 subsequent arbitration proceeding concerning the same



1 site. The department or the regional water quality control
2 board, whichever issued the final remedial action plan,
3 shall participate in the arbitration proceedings to the
4 same extent as the potentially responsible parties which
5 have submitted to the arbitration.

6 (b) The panel shall apportion liability for the costs of
7 all removal and remedial actions specified in the final
8 remedial action plan.

9 (c) In panel proceedings, liability for the costs of
10 removal and remedial actions shall be apportioned
11 among all identifiable potentially responsible parties
12 regardless of whether those parties are before the panel
13 or have otherwise been released, or are immune, from
14 liability pursuant to this chapter or any other provision of
15 law. The panel shall apportion liability based on all of the
16 following criteria:

17 (1) The amount of hazardous substance for which each
18 party may be responsible.

19 (2) The degree of toxicity of the hazardous substance.

20 (3) The degree of involvement of the potentially
21 responsible parties in the generation, transportation,
22 treatment, or disposal of the hazardous substance.

23 (4) The degree of care exercised by the potentially
24 responsible parties with respect to the hazardous
25 substances, taking into account the characteristics of the
26 substance.

27 (5) The degree of cooperation by the potentially
28 responsible parties with federal, state, and local officials
29 to prevent harm to human health and the environment.

30 (d) The panel may issue subpoenas and subpoenas
31 duces tecum to require attendance of a person or the
32 production of documents, at the request of any person
33 identified as potentially responsible in the remedial
34 action plan, on its own motion, or at the request of the
35 department or the appropriate regional water quality
36 control board. A person requesting a subpoena duces
37 tecum shall comply with Section 1985 of the Code of Civil
38 Procedure. The jurisdiction of subpoenas and subpoenas
39 duces tecum issued by the panel extends to all parts of the
40 state. The subpoenas and subpoenas duces tecum shall be



1 served pursuant to Sections 1987 and 1988 of the Code of
2 Civil Procedure.

3 If the panel determines that a person is refusing to
4 respond to a subpoena or subpoena duces tecum, or is
5 guilty of a misconduct during the arbitration and
6 negotiation process, the panel shall certify the facts to the
7 superior court of the county in which the site is located.
8 The court shall thereupon issue an order directing the
9 person to appear before the court and show cause why the
10 person should not be punished for contempt pursuant to
11 Section 1209 of the Code of Civil Procedure. The order
12 and a copy of the certified statement shall be served on
13 the person, and thereafter the court shall have
14 jurisdiction of the matter. The same proceedings shall be
15 followed, the same penalties may be imposed, and the
16 person charged may be purged of contempt in the same
17 way as if the person has committed a contempt in the trial
18 of a civil action before a superior court.

19 After receipt of documents pursuant to a subpoena
20 duces tecum, any party may request the panel for a
21 continuance for a reasonable period of time to review the
22 documents prior to proceeding with the arbitration. The
23 panel may grant a continuance for that purpose upon a
24 showing of good cause.

25 (e) This chapter does not require a regional water
26 quality control board or the State Water Resources
27 Control Board to engage in arbitration pursuant to this
28 section or Section 25356.2 for any enforcement action
29 taken pursuant to Division 7 (commencing with Section
30 13000) of the Water Code.

31 (f) The costs of conducting the arbitration shall be
32 borne by the potentially responsible parties submitting to
33 the arbitration pursuant to subdivision (a), except that
34 any filing fees, witness fees, costs of discovery, or any
35 other costs necessarily incurred by one party shall not be
36 shared by any other party.

37 25356.4. (a) After making an apportionment of
38 liability among the potentially responsible parties
39 pursuant to Section 25356.3, the panel shall prepare a
40 draft arbitration decision which contains a statement of



1 reasons supporting the apportionment and shall circulate
2 the draft arbitration decision for at least 30 days for public
3 comment. After review and consideration of any public
4 comment, the panel shall issue the final arbitration
5 decision within 30 days after the comment period.

6 (b) Each potentially responsible party whose liability
7 has been apportioned by the panel is liable to the
8 department or the regional water quality control board
9 for its apportioned share of the costs of all removal and
10 remedial actions at the site which is the subject of the final
11 remedial action plan issued pursuant to Section 25356.1.
12 The department or the regional water quality control
13 board and one or more potentially responsible parties
14 may enter into a cleanup agreement which is consistent
15 with the remedial action plan and which provides for the
16 satisfaction of the liability of a potentially responsible
17 party by the party's performance of specified removal or
18 remedial actions at the site.

19 (c) The moneys in the state account or the Hazardous
20 Substance Cleanup Fund may be expended, upon
21 appropriation by the Legislature, to pay any share of
22 those potentially responsible parties who did not submit
23 to binding arbitration pursuant to Section 25356.3 or did
24 not otherwise agree to pay the costs of the removal and
25 remedial actions specified in the remedial action plan.

26 (d) The department or the regional water quality
27 control board shall identify, and the Attorney General
28 shall pursue recovery from, those potentially responsible
29 parties who have not submitted to binding arbitration
30 pursuant to Section 25356.3 or who have not discharged
31 their obligations required by the final arbitration decision
32 or the cleanup agreement.

33 (e) Advances from the state account, upon
34 appropriation by the Legislature, shall be made available,
35 where appropriate, to those responsible parties who are
36 required by a cleanup agreement to perform specified
37 removal or remedial actions pursuant to the remedial
38 action plan. Moneys from the Hazardous Substance
39 Cleanup Fund may be expended by the department,
40 upon appropriation by the Legislature, to make advances,



1 where appropriate, to responsible parties who are
2 required by a cleanup agreement to perform specified
3 removal or remedial actions pursuant to the remedial
4 action plan, for the purposes specified in Section 25385.6.

5 25356.5. The department shall include in the biennial
6 report specified in Section 25178 an accounting of all of
7 the following:

8 (a) The actual funds expended for each site listed
9 during the preceding two years pursuant to Section
10 25356.

11 (b) Removal and remedial actions at hazardous
12 substance release sites pursuant to Section 25356.

13 (c) The state's efforts to obtain available federal funds
14 for the purposes of this chapter.

15 (d) Federal funds which have been obtained by, or
16 committed to, the state for purposes of this chapter.

17 (e) The state's efforts to obtain contributions to
18 removal or remedial actions from potentially responsible
19 parties.

20 25356.6. (a) Notwithstanding any other provision of
21 state law or any local ordinance or regulation, except as
22 provided in subdivision (b), to encourage the prompt and
23 effective cleanup of hazardous substance release sites, a
24 potentially responsible party has no additional civil
25 liability to any governmental entity under state or local
26 law, for any prior acts or omissions associated with the
27 conditions addressed in the remedial action plan which is
28 the subject of the arbitration decision, if the potentially
29 responsible party has submitted to binding arbitration
30 and has discharged its obligations under the arbitration
31 decision, either by paying that party's apportioned share
32 of the costs of all removal and remedial actions to the
33 department or the regional water quality control board,
34 or by performing the specified removal and remedial
35 actions pursuant to a cleanup agreement. The release
36 from liability specified in this section is conditioned on
37 complete implementation of the remedial action plan,
38 including, where appropriate, adequate sampling,
39 testing, and maintenance of the site to which the
40 remedial action plan is applicable to ensure that the level



1 of cleanup required is achieved and maintained.
2 However, this section does not affect the liability of any
3 person for costs recoverable under Section 25352, unless
4 these costs are specifically addressed in the arbitration
5 decision or cleanup agreement. Where these costs are not
6 addressed in the arbitration decision or cleanup
7 agreement, the liability for these costs shall be
8 determined pursuant to the applicable sections of this
9 chapter and may be apportioned among the potentially
10 responsible parties pursuant to Sections 25356.3 and
11 25356.4.

12 (b) The department, the California regional water
13 quality control board, any party to the arbitration
14 decision, or any party substantially affected by the
15 arbitration decision may petition the panel to modify the
16 apportionment of liability in an arbitration decision.
17 Upon a showing of a material change in the facts known
18 to the parties to the arbitration decision at the time it was
19 issued, the panel shall modify the apportionment of
20 liability specified in the arbitration decision, as
21 appropriate, to reflect these changed facts. Upon a
22 showing of a material change in the facts known to the
23 department at the time it issued the final remedial action
24 plan, or the discovery of new facts, the department or
25 regional board shall modify the remedial action plan, as
26 appropriate, to reflect new or additional facts. The
27 arbitration panel shall then modify its arbitration decision
28 to reflect any modification of the remedial action plan
29 made by the department.

30 (c) This section does not affect the existing rights of
31 any individual to recover civil damages or to obtain
32 equitable relief against any person, including a
33 potentially responsible party, for physical injury or
34 property damage caused by the release of hazardous
35 substances at the site covered by the arbitration decision
36 or at any other location.

37 (d) A party who has submitted to arbitration pursuant
38 to this article and whose liability has been apportioned by
39 the arbitration panel in an arbitration proceeding may
40 seek indemnity from any other person liable for the



1 party's apportioned share of the removal and remedial
2 actions taken at a site which is the subject of the
3 arbitration decision, including any department, agency
4 contractor, or any other governmental agency. A
5 potentially responsible party who does not submit to
6 binding arbitration pursuant to this article, but whose
7 liability has been apportioned in the arbitration decision
8 and is subsequently found liable under this chapter has no
9 right to indemnification for any removal or remedial
10 action which is the subject of the arbitration decision from
11 any party to that arbitration decision who has discharged
12 its obligation under the arbitration decision or the
13 cleanup agreement.

14 25356.7. In order to encourage rapid resolution of
15 differences among responsible parties and to speed the
16 cleanup of sites, and notwithstanding any other provision
17 of law, the following evidence is admissible in a court of
18 law only to show the good faith of the parties who have
19 discharged their obligations under an arbitration decision
20 issued, or cleanup agreement entered into, pursuant to
21 Section 25356.4 or that the following removal and
22 remedial actions specified in the remedial action plan
23 were to be performed:

24 (a) A preliminary allocation of responsibility pursuant
25 to Section 25356.1.

26 (b) The fact that any person has either participated or
27 has not participated in a panel arbitration proceeding.

28 (c) The fact that any person has voluntarily
29 implemented a remedial action plan, regardless of
30 whether the plan is final for purposes of Section 25356.1.

31 (d) Any finding of fact or conclusion of law by the
32 panel, including the apportionment of liability pursuant
33 to Section 25356.3.

34 (e) Admissions made during the arbitration
35 proceeding.

36 (f) Documents prepared by a party which has
37 submitted to binding arbitration if the documents are
38 prepared after the remedial action plan has been issued,
39 and if the documents are prepared solely for the
40 arbitration.



1 25356.8. (a) Judicial review of the arbitration
2 decision on the apportionment of liability is limited to a
3 showing of fraud by a party to the arbitration proceeding
4 or an abuse of discretion by the panel, or both.

5 (b) Judicial review of a decision by the department or
6 the regional water quality control board modifying the
7 remedial action plan pursuant to subdivision (b) of
8 Section 25356.6 shall be conducted pursuant to Section
9 1085 of the Code of Civil Procedure and the standard of
10 review shall be the same as that specified in subdivision
11 (f) of Section 25356.1.

12 25356.9. (a) The provisions of this chapter relating to
13 the preparation, approval, and issuance of remedial
14 action plans and to procedures for the apportionment of
15 liability by the Hazardous Substance Cleanup Arbitration
16 Panel do not do either of the following:

17 (1) Apply to any actions taken pursuant to Chapter 6.5
18 (commencing with Section 25100).

19 (2) Prohibit the department or the Attorney General,
20 upon the request of the department, from pursuing the
21 remedies specified in subdivision (a) of Section 25358.3
22 when the director determines that there may be an
23 imminent or substantial endangerment to the public
24 health or welfare or to the environment, because of a
25 release or a threatened release of a hazardous substance.

26 (b) The department and the Attorney General may
27 pursue any existing legal, equitable, or administrative
28 remedies, pursuant to federal or state law, against any
29 potentially responsible party named in a remedial action
30 plan if the party does not submit to arbitration pursuant
31 to Section 25356.3 or if the party has not discharged that
32 party's obligations under an arbitration decision or
33 cleanup agreement.

34 25356.10. The Office of Environmental Health
35 Hazard Assessment shall adopt, and may, from time to
36 time, modify, revise, or repeal, regulations, consistent
37 with this article, to implement the provisions of this
38 article concerning arbitration proceedings. The
39 regulations may include, but are not required to be
40 limited to, all of the following:



1 (a) The method of initiating arbitration.

2 (b) The place of hearing, based upon the convenience
3 of the parties.

4 (c) Procedures for the selection of neutral arbitrators.

5 (d) Procedure for conducting hearings.

6 (e) The providing of experts to assist the arbitrators if
7 assistance is needed.

8 (f) Procedures for reimbursing the expenses which
9 the panel incurs in conducting arbitrations.

10 25357. Expenditures from the state account shall not
11 be made in excess of the total amount of money in the
12 state account at any one time. Expenditures in excess of
13 such amount may be made only when additional money
14 is collected or otherwise added to the state account.

15 25357.5. (a) In any judicial action under this chapter,
16 judicial review of any issues concerning the adequacy of
17 any response action taken or ordered by the department
18 shall be limited to the administrative record. Otherwise
19 applicable principles of administrative law shall govern
20 whether any supplemental materials may be considered
21 by the court.

22 (b) If the court finds that the selection of the response
23 action was not in accordance with law, the court shall
24 award only the response costs or damages that are not
25 inconsistent with the National Contingency Plan, as
26 specified in Part 300 (commencing with Section 300.1) of
27 Subchapter J of Chapter I of Title 40 of the Code of
28 Federal Regulations, and any other relief that is
29 consistent with the National Contingency Plan.

30 (c) In reviewing an action brought by the department
31 under this chapter, in which alleged procedural errors by
32 the department are raised as a defense, the court may
33 impose costs or damages only if the errors were serious
34 and related to matters of central relevance to the action,
35 so that the action would have been significantly changed
36 had the errors not been made.

37 25358. The state shall actively seek to obtain all
38 federal funds to which it is entitled under the federal act
39 and shall take all actions necessary to enter into
40 contractual or cooperative agreements under Sections



1 104 (c) (3) and 104 (d) (1) of the federal act (42 U.S.C.
2 Sec. 9604 (c) (3) and 42 U.S.C. Sec. 9604 (d) (1)).

3 25358.1. (a) The department, a representative of the
4 department, or any person designated by the director
5 may take the actions specified in this section only if there
6 is a reasonable basis to believe that there may be a release
7 or threatened release of a hazardous substance, and only
8 for the purpose of determining under this chapter the
9 need for a response action, the choosing or taking of a
10 response action, or otherwise for the purpose of enforcing
11 this chapter.

12 (b) Any officer or employee of the department, a
13 representative of the director, or a person designated by
14 the director may require any potentially responsible
15 party, or any person who has, or may have, acquired
16 information relevant to any of the following matters in
17 the course of a commercial, ownership, or contractual
18 relationship with any potentially responsible party, to
19 furnish, upon reasonable notice, information or
20 documents relating to the following matters:

21 (1) The identification, nature, and quantity of
22 materials which have been, or are, generated, treated,
23 stored, or disposed of at a hazardous substance release site
24 or which have been, or are, transported to a hazardous
25 substance release site.

26 (2) The nature or extent of a release or a threatened
27 release of a hazardous substance at, or from, a hazardous
28 substance release site.

29 (c) A person who is required to provide information
30 pursuant to subdivision (b) shall, in accordance with
31 subdivision (h), allow the officer, employee,
32 representative, or designee, upon reasonable notice and
33 at reasonable times, to have access to, and copy, all
34 records relating to the hazardous substances for purposes
35 of assisting the department in determining the need for
36 an action in response to a release or threatened release
37 pursuant to this chapter.

38 (d) Any officer or employee of the department,
39 representative of the director, or person designated by
40 the director may, in accordance with subdivision (h),



1 enter, at reasonable times, any of the following
2 properties:

3 (1) Any nonresidential establishment or other place or
4 property where any hazardous substances may be, or
5 have been, produced, stored, treated, disposed of, or
6 transported from.

7 (2) Any nonresidential establishment or other place or
8 property from which, or to which, a hazardous substance
9 has been, or may have been, released.

10 (3) Any nonresidential establishment or other place or
11 property where a hazardous substance release is, or may
12 be, threatened.

13 (4) Any nonresidential establishment or other place or
14 property where entry is needed to determine the need
15 for a response action, or the appropriate remedial action,
16 to effectuate a response action under this chapter.

17 (5) Any residential place or property which, if it were
18 a nonresidential establishment or other place or property,
19 would otherwise meet the criteria described in
20 paragraphs (1) to (4), inclusive, if the department,
21 representative, or person designated by the director is
22 able to establish, based upon reasonably available
23 evidence, that hazardous substances have been released
24 onto or under the residential place or real property and
25 if entry is made only at reasonable times and after
26 reasonable notification to the owners and occupants.

27 (e) Any officer or employee of the department,
28 representative of the director, or person designated by
29 the director may, in accordance with subdivision (h),
30 carry out any of the following activities:

31 (1) Inspect and obtain samples from any
32 establishment or other place or property specified in
33 subdivision (d) or from any location of any suspected
34 hazardous substance.

35 (2) Inspect and obtain samples of any substances from
36 any establishment or place or property specified in
37 subdivision (d).

38 (3) Inspect and obtain samples of any containers or
39 labeling for the suspected hazardous substances, and



1 samples of the soil, vegetation, air, water, and biota on the
2 premises.

3 (4) Set up and maintain monitoring equipment for the
4 purpose of assessing or measuring the actual or potential
5 migration of hazardous substances.

6 (5) Survey and determine the topographic, geologic,
7 and hydrogeologic features of the land.

8 (6) Photograph any equipment, sample, activity, or
9 environmental condition described in paragraphs (2) to
10 (5) inclusive.

11 (f) (1) If photographs are to be taken pursuant to
12 paragraph (6) of subdivision (e), the department shall do
13 all of the following:

14 (A) Comply with all procedures established pursuant
15 to subdivision (b) of Section 25358.2.

16 (B) Notify the person whose facility is photographed
17 prior to public disclosure of the photographs.

18 (C) Upon the request of the person owning the
19 facility, submit a copy of any photograph to the person for
20 the purpose of determining whether trade secret
21 information, as defined in Section 25358.2, or facility
22 security, would be revealed by the photograph.

23 (2) "Disclosure," as used in Section 25358.2, for
24 purposes of this paragraph, does not include the review
25 of the photograph by a court of competent jurisdiction or
26 by an administrative law judge. A court or judge may
27 review the photograph in camera.

28 (g) An officer, employee, representative, or designee
29 who enters a place, establishment, or property pursuant
30 to this section shall make a reasonable effort to inform the
31 owner or the owners' authorized representative of the
32 inspection and shall provide split samples to the owner or
33 the representative upon request.

34 (h) If the owner or the owner's authorized
35 representative does not voluntarily grant access to a
36 place, establishment, or property pursuant to this section,
37 the officer, employee, representative, or designee shall
38 first obtain a warrant pursuant to Title 13 (commencing
39 with Section 1822.50) of Part 3 of the Code of Civil
40 Procedure. However, if there is an emergency posing an



1 immediate threat to public health and safety, the officer,
2 employee, representative, or designee may enter the
3 place, establishment, or property without the consent of
4 the owner or owner's authorized representative and
5 without the issuance of a warrant.

6 (i) The department, and any person authorized by the
7 department to enter upon any lands for the purpose of
8 taking removal or remedial action pursuant to this
9 chapter, shall not be held liable, in either a civil or
10 criminal proceeding, for trespass or for any other acts
11 which are necessary to carry out the corrective action.

12 25358.2. (a) "Trade secrets," as used in this section,
13 may include, but are not limited to, any formula, plan,
14 pattern, process, tool, mechanism, compound,
15 procedure, production data, or compilation of
16 information which is not patented, which is known only
17 to certain individuals within a commercial concern who
18 are using it to fabricate, produce, develop, or compound
19 an article of trade or a service having commercial value,
20 and which gives its user an opportunity to obtain a
21 business advantage over competitors who do not know or
22 use it.

23 (b) The department may disclose trade secrets
24 received by the department pursuant to this chapter to
25 authorized representatives, contractors, or other
26 governmental agencies only in connection with the
27 department's responsibilities pursuant to this chapter.
28 The department shall establish procedures to ensure that
29 these trade secrets are utilized only in connection with
30 these responsibilities and are not otherwise disseminated
31 without the consent of the person who provided the
32 information to the department.

33 (c) The department may also make available to the
34 Environmental Protection Agency any and all
35 information required by law to be furnished to that
36 agency. The sharing of information between the
37 department and that agency pursuant to this section does
38 not constitute a waiver by the department or any affected
39 person of any privilege or confidentiality provided by law
40 which pertains to the information.



1 (d) Any person providing information pursuant to
2 subdivision (a) of Section 25358.1 shall, at the time of its
3 submission, identify all information which the person
4 believes is a trade secret. Any information or record not
5 identified as a trade secret is available to the public, unless
6 exempted from disclosure by other provisions of law.

7 (e) Any person who knowingly and willfully
8 disseminates information protected by this section or
9 procedures established by the department pursuant to
10 subdivision (b) shall, upon conviction, be punished by a
11 fine of not more than five thousand dollars (\$5,000),
12 imprisonment in the county jail not to exceed one year,
13 or by both that fine and imprisonment.

14 25358.3. (a) Whenever the director determines that
15 there may be an imminent or substantial endangerment
16 to the public health or welfare or to the environment,
17 because of a release or a threatened release of a hazardous
18 substance, the director may do any or all of the following:

19 (1) Order any responsible party or parties to take or
20 pay for appropriate removal or remedial action necessary
21 to protect the public health and safety and the
22 environment. No order under this section shall be made
23 to an owner of real property solely on the basis of that
24 ownership as specified in Sections 101(35) and 107(b) of
25 the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)).
26 The director shall give the responsible party an
27 opportunity to assert all defenses to the order.

28 (2) Take or contract for any necessary removal or
29 remedial action.

30 (3) Request the Attorney General to secure such relief
31 as may be necessary from the responsible party or parties
32 to abate the danger or threat. The superior court of the
33 county in which the threat or danger occurs shall have
34 jurisdiction to grant the relief which the public interest
35 and equities of the case may require to protect public
36 health and welfare and the environment. Upon a showing
37 by the department that a release or threatened release of
38 a hazardous substance has occurred or is occurring, and
39 that there may be an imminent or substantial
40 endangerment to the public health and safety or to the



1 environment, the court may grant a temporary
2 restraining order or a preliminary or permanent
3 injunction pursuant to subdivision (e).

4 (b) When the director determines that a release of a
5 hazardous substance has occurred or is about to occur, the
6 director may do any or all of the following:

7 (1) Undertake those investigations, monitoring,
8 surveys, testing, and other information gathering
9 necessary to identify the existence, source, nature, and
10 extent of the hazardous substances involved and the
11 extent of danger to the public health or environment.

12 (2) Undertake those planning, legal, fiscal, economic,
13 engineering, architectural, and other studies or
14 investigations which are necessary or appropriate to plan
15 and direct response actions, to recover the cost of those
16 actions, and to enforce this chapter.

17 (c) Whenever there is a release or threatened release
18 of a hazardous substance into the environment, the
19 director may take or contract for any necessary removal
20 or remedial action and may take or contract for any
21 actions authorized by subdivision (b), in compliance with
22 the provisions of this chapter, including, but not limited
23 to, subdivision (b) of Section 25355.

24 (d) Any person bidding for a contract specified in
25 subdivision (c) shall submit a disclosure statement, as
26 specified by Section 25112.5, except for a federal, state, or
27 local agency. The director may prohibit a person from
28 bidding on such a contract if the director makes any of the
29 following determinations:

30 (1) The director determines, in writing, that the
31 bidder, or, if the bidder is a business entity, any trustee,
32 officer, director, partner, or any person holding more
33 than 5 percent of the equity in or debt liability of that
34 business entity, has engaged in activities resulting in any
35 federal or state conviction which are significantly related
36 to the fitness of the bidder to perform the bidder's duties
37 or activities under the contract. For purposes of this
38 paragraph, "conviction" means a plea or verdict of guilty
39 or a conviction following a plea of nolo contendere. Any
40 action that the department may take pursuant to this



1 subdivision relating to the department's refusal to permit
2 a person to bid on the contract may be based upon a
3 conviction for which any of the following has occurred:

4 (A) The time for appeal has elapsed.

5 (B) The judgment of conviction has been affirmed on
6 appeal.

7 (C) Any order granting probation is made suspending
8 the imposition of sentence, notwithstanding a subsequent
9 order pursuant to Section 1203.4 of the Penal Code
10 permitting that person to withdraw the plea of guilty and
11 to enter a plea of not guilty, or setting aside the verdict
12 of guilty, or dismissing the accusation, information, or
13 indictment.

14 (2) The director determines, in writing, that the
15 bidder, or, if the bidder is a business entity, any trustee,
16 officer, director, partner, or any person holding more
17 than 5 percent of the equity in or debt liability of that
18 business entity, has violated or failed to comply with this
19 chapter or Chapter 6.5 (commencing with Section 25100)
20 or Chapter 6.7 (commencing with Section 25280) of this
21 division, the Porter-Cologne Water Quality Control Act
22 (Division 7 (commencing with Section 13000) of the
23 Water Code), the Resource Conservation and Recovery
24 Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), the
25 Hazardous Materials Transportation Authorization Act of
26 1994, as amended (49 U.S.C. Sec. 5101 et seq.), the
27 Comprehensive Environmental Response,
28 Compensation, and Liability Act of 1980, as amended (42
29 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act
30 (15 U.S.C. Sec. 2601 et seq.), or any other equivalent
31 federal or state statute or any requirement or regulation
32 adopted pursuant thereto relating to the generation,
33 transportation, treatment, storage, recycling, disposal, or
34 handling of a hazardous waste, as defined in Section
35 25117, a hazardous substance, as defined in Section 25316,
36 or a hazardous material, as defined in Section 353 of the
37 Vehicle Code, if the violation or failure to comply shows
38 a repeating or recurring pattern or may pose a threat to
39 public health or safety or the environment.



1 (3) The director determines, in writing, that the
2 bidder has had a license, permit, or registration for the
3 generation, transportation, treatment, storage, recycling,
4 disposal, or handling of hazardous waste or hazardous
5 substances revoked or suspended.

6 (e) Whenever there is a release or threatened release
7 of a hazardous substance, the director may request the
8 Attorney General to secure such relief as may be
9 necessary from the responsible party or parties to abate
10 the release or threatened release. The superior court of
11 the county in which the release or threatened release
12 occurs has jurisdiction to grant that relief which the
13 public interest and equities of the case may require to
14 protect the public health and safety and the
15 environment. Upon a showing by the department that a
16 release or threatened release of a hazardous substance has
17 occurred or is occurring, and that there may be an
18 imminent or substantial endangerment to the public
19 health and safety or to the environment, the court may
20 grant a temporary restraining order or a preliminary or
21 permanent injunction.

22 (f) Upon the failure of any person to comply with any
23 order issued by the department pursuant to this section
24 or Section 25355.5, the director may request the Attorney
25 General to petition the superior court for the issuance of
26 an injunction requiring that person to comply with the
27 order. The superior court shall have jurisdiction to grant
28 a temporary restraining order or a preliminary or
29 permanent injunction.

30 (g) In any civil action brought pursuant to this chapter
31 in which a temporary restraining order or a preliminary
32 or permanent injunction is sought, the department shall
33 prove that the defendant is a responsible party and that
34 there is a release or threatened release of a hazardous
35 substance. It shall not be necessary to allege or prove at
36 any stage of the proceeding that irreparable damage will
37 occur should the temporary restraining order or the
38 preliminary or permanent injunction not be issued, or
39 that the remedy at law is inadequate; and the temporary
40 restraining order or the preliminary or permanent



1 injunction shall issue without those allegations and
2 without that proof.

3 25358.4. The analysis of any material that is required
4 to demonstrate compliance with this chapter shall be
5 performed by a laboratory accredited by the department
6 pursuant to Article 3 (commencing with Section 100825)
7 of Chapter 4 of Part 1 of Division 101.

8 25358.5. Any removal or remedial action taken or
9 contracted by the department pursuant to Section 25354
10 or subdivision (a) of Section 25358.3 shall be exempt from
11 all of the following provisions:

12 (a) State Contract Act (Chapter 1 (commencing with
13 Section 10100) of Part 2 of Division 2 of the Public
14 Contract Code).

15 (b) Chapter 10 (commencing with Section 4525) of
16 Division 5 of Title 1 of the Government Code.

17 (c) Article 5 (commencing with Section 10355) of
18 Chapter 2 of Part 2 of Division 2 of the Public Contract
19 Code.

20 25358.6. (a) The department may prequalify bidders
21 for remedial or removal actions taken pursuant to Section
22 25354 or subdivision (a) of Section 25358.3. The
23 department may reject the bid of any prospective bidder
24 that has not been prequalified.

25 (b) To prequalify bidders, the department shall adopt
26 and apply a uniform system of rating bidders. In order to
27 obtain information for such rating, the department may
28 require from prospective bidders answers to questions,
29 including, but not limited to, questions about the bidder's
30 financial ability, the bidder's experience in removal and
31 remedial action involving hazardous substances, the
32 bidder's past safety record, and the bidder's past
33 performance on federal, state, or local government
34 projects. The department may also require prospective
35 bidders to submit financial statements.

36 (c) The department shall utilize the business financial
37 data and information submitted by a bidder pursuant to
38 subdivision (b) only for the purposes of prequalifying
39 bidders pursuant to this section and shall not otherwise
40 disseminate this data or information.



1 (d) The system of rating bidders may be adopted by
2 the department as emergency regulations in accordance
3 with Chapter 3.5 (commencing with Section 11340) of
4 Part 1 of Division 3 of Title 2 of the Government Code,
5 and for purposes of that chapter, when these regulations
6 are adopted as emergency regulations pursuant to
7 Section 11349.6 of the Government Code, the regulations
8 shall be deemed to be necessary for the immediate
9 preservation of the public peace, health and safety, and
10 general welfare. It is the intent of the Legislature that
11 emergency regulations adopted pursuant to this
12 subdivision shall remain in effect until the regulations are
13 adopted as final regulations, pursuant to Chapter 3.5
14 (commencing with Section 11340) of Part 1 of Division 3
15 of Title 2 of the Government Code.

16 25358.7. (a) The department or the regional board,
17 as appropriate, shall take the actions specified in this
18 section to provide an opportunity for meaningful public
19 participation in response actions undertaken for sites
20 listed pursuant to Section 25356.

21 (b) The department, or the regional board, as
22 appropriate, shall conduct a baseline community survey
23 as soon as possible after taking an action to investigate or
24 remediate a hazardous substance release site listed
25 pursuant to Section 25356. The purpose of this survey shall
26 be to inform the public, and in particular, persons living
27 in close proximity to the site, of the existence of the site
28 and the department's or regional board's intentions to
29 conduct an investigation and a remedial action, to
30 determine the level of public interest and desire for
31 involvement in this process, and to solicit and evaluate
32 concerns and information regarding the site from the
33 affected community. Based on the results of the baseline
34 survey, the department or regional board shall develop a
35 public participation work plan that shall establish
36 appropriate communication and outreach measures
37 commensurate with the level of interest expressed by
38 survey respondents. The public participation work plan
39 shall be updated as necessary to reflect any significant
40 changes in the degree of public interest as the site



1 investigation and cleanup process moves toward
2 completion.

3 (c) The department or regional board shall provide
4 any person affected by a response action undertaken for
5 sites listed pursuant to Section 25356 with the opportunity
6 to participate in the department's or regional board's
7 decisionmaking process regarding that action by taking
8 all of the following actions:

9 (1) Provide that person with access to information
10 which the department or regional board is required to
11 release pursuant to the California Public Records Act
12 (Chapter 3.5 (commencing with Section 6250) of
13 Division 7 of Title 1 of the Government Code), relating
14 to the action, except for the following:

15 (A) Trade secrets, as defined in subdivision (a) of
16 Section 25358.2.

17 (B) Business financial data and information, as
18 specified in subdivision (c) of Section 25358.6.

19 (C) Information which the department or regional
20 board is prohibited from releasing pursuant to any state
21 or federal law.

22 (2) The department or regional board shall provide
23 factsheets, based on the expressed level of public interest,
24 regarding plans to conduct the major elements of the site
25 investigation and response actions. The factsheets shall
26 present the relevant information in nontechnical
27 language and shall be detailed enough to provide
28 interested persons with a good understanding of the
29 planned activities. The factsheets shall be made available
30 in languages other than English if appropriate.

31 (3) Provide the person notification, upon request, of
32 any public meetings held by the department or regional
33 board concerning the action.

34 (4) Provide the person the opportunity to attend and
35 to participate at those public meetings.

36 (5) Based on the results of the baseline community
37 survey, the department or regional board shall provide
38 opportunities for public involvement at key stages of the
39 response action process, including the health risk
40 assessment, the preliminary assessment, the site



1 inspection, the remedial investigation, and the feasibility
2 study stages of the process. If the department or regional
3 board determines that public meetings or other
4 opportunities for public comment are not appropriate at
5 any of the stages listed in this section, the department or
6 regional board shall provide notice of that decision to the
7 affected community.

8 (d) The department or regional board shall develop
9 and make available to the public a schedule of activities
10 for each site for which remedial action is expected to be
11 taken by the department or regional board pursuant to
12 this chapter and shall make available to the public any
13 plan provided to the department or regional board by any
14 responsible party, unless the department is prohibited
15 from releasing the information pursuant to any state or
16 federal law.

17 (e) In making decisions regarding the methods to be
18 used for removal or remedial actions taken pursuant to
19 this chapter, the department or regional board shall
20 incorporate or respond in writing to the advice of persons
21 affected by the actions.

22 (f) This section does not apply to emergency actions
23 taken pursuant to Section 25354.

24 25358.7.1. (a) At each site, a community advisory
25 group may be established by the affected community to
26 review any response action and comment on the response
27 action to be conducted in that community. The
28 department or regional board shall regularly
29 communicate, and confer as appropriate, with the
30 community advisory committee. The department or
31 regional board shall also advise local environmental
32 regulatory agencies and other appropriate local agencies
33 of planned response actions and provide opportunities for
34 review and comment. If the department or regional
35 board, whichever ~~has jurisdiction over~~ *is overseeing* a
36 response action, receives a petition signed by at least 50
37 members of a community affected by the response action
38 at a site or a resolution adopted by the legislative body of
39 the jurisdiction within which the response action has
40 been or will be initiated, the department or regional



1 board shall assist the petitioners or the legislative body to
2 establish a community advisory group to review the
3 response action at the site.

4 (b) To the extent possible, the composition of each
5 community advisory group shall reflect the composition
6 of the affected community and the diversity of interests
7 of the community by including all of the following types
8 of individuals on the community advisory group:

9 (1) Persons owning or residing on property located
10 near the hazardous substance release site or in an
11 adjacent community, or other persons who may be
12 directly affected by the response action.

13 (2) Individuals from the local business community.

14 (3) Local political or government agency
15 representatives.

16 (4) Local citizen, civic, environmental, or public
17 interest group members residing in the community.

18 (c) The following entities may participate in
19 community advisory group meetings in order to provide
20 information and technical expertise:

21 (1) The department or regional boards.

22 (2) Representatives of local environmental regulatory
23 agencies.

24 (3) The potentially responsible parties or other persons
25 who are conducting the response action.

26 (d) The existence of a community advisory group shall
27 not diminish any other obligation of the department or
28 regional board with respect to public participation
29 requirements specified in Section 25358.7. Nothing in this
30 section shall affect the status of any citizen advisory group
31 formed before the enactment of this section, a federal
32 Department of Defense Restoration Advisory Board, or
33 a federal Department of Energy Advisory Board.

34 25358.7.2. (a) On or before July 1, 2000, the
35 department and the State Water Resources Control
36 Board shall establish two community service offices, one
37 to serve northern California and the other to serve
38 southern California. With regard to sites listed pursuant
39 to Section 25356 where the department or regional board
40 is taking action to investigate or remediate the site, the



1 community assistance offices shall facilitate
2 communication between the department or regional
3 board, the responsible parties, and the affected
4 community, including any community advisory group
5 that may have been formed in the community where the
6 hazardous substance release site is located.

7 (b) Notwithstanding subdivision (c) of Section
8 25390.3, the department and, *if appropriate*, the State
9 Water Resources Control Board shall expend *a total of*
10 four hundred thousand dollars (\$400,000) per year from
11 the Orphan Share Reimbursement Trust Fund
12 established pursuant to Article 7.8 (commencing with
13 Section 25390) on the operation of the community service
14 offices established pursuant to this section. The offices
15 shall use these funds to provide direct technical and
16 logistical support to any community advisory group
17 established pursuant to Section 25358.7.1. Funds allocated
18 pursuant to this subdivision shall supplement, and not
19 supplant, any funds expended for the purposes of
20 developing and implementing other public participation
21 activities required to be undertaken pursuant to this
22 chapter, including, but not limited to, activities
23 undertaken pursuant to the National Contingency Plan
24 or the public participation workplan required to be
25 adopted by the department pursuant to Section 25358.7.

26 (c) The State Water Resources Control Board may
27 contract with the department to provide this service on
28 behalf of a regional board if the State Water Resources
29 Control Board finds that it would be more practical and
30 economical to do so.

31 (d) *In implementing this section, the department and*
32 *the regional boards are not obligated to expend funds*
33 *beyond the amounts appropriated in any fiscal year for*
34 *purposes of developing and implementing public*
35 *participation activities required by other provisions of*
36 *this chapter unless the Orphan Share Reimbursement*
37 *Trust Fund contains funding at the level specified in*
38 *subdivision (b).*

39 25358.8. A community advisory group established
40 pursuant to Section 25358.7.1 may request, in writing, and



1 a potentially responsible party or parties may fund, a
2 technical assistance grant for a site for the purpose of
3 providing technical assistance to the community advisory
4 group.

5 25358.9. (a) To the extent consistent with the
6 Resource Conservation and Recovery Act of 1976, as
7 amended, (42 U.S.C. Sec. 6901 et seq.), the department
8 may exclude any portion of a response action conducted
9 entirely onsite from the hazardous waste facility permit
10 requirements of Section 25201 if both of the following
11 apply:

12 (1) The removal or remedial action is carried out
13 pursuant to a removal action work plan or a remedial
14 action plan prepared pursuant to Section 25356.1.

15 (2) The removal action work plan or the remedial
16 action plan requires that the response action complies
17 with all laws, rules, regulations, standards, and
18 requirements, criteria, or limitations applicable to the
19 construction, operation, and closure of the type of facility
20 at the hazardous substance release site and with any other
21 condition imposed by the department as necessary to
22 protect public health and safety and the environment.

23 (b) The department may enforce in the court for the
24 county in which a response action exempted pursuant to
25 subdivision (a) is located any federal or state law, rule,
26 regulation, standard, requirements, criteria, or limitation
27 with which the remedial or removal action is required to
28 comply. Any consent decree entered into pursuant to an
29 enforcement action authorized by this subdivision shall
30 require the parties to attempt expeditiously to informally
31 resolve any disagreements concerning the
32 implementation of the response action with the
33 appropriate federal and state agencies and shall provide
34 for administrative enforcement. The consent decree shall
35 stipulate that the penalty for violation of the consent
36 decree shall be an amount not more than twenty-five
37 thousand dollars (\$25,000) per day, which may be
38 enforced by the state. These penalties do not impair or
39 affect the authority of the court to order compliance with
40 the specific terms of the consent decree.



1 25359. (a) Any person who is liable for a release, or
2 threat of a release, of hazardous substances and who fails,
3 without sufficient cause, as determined by the court, to
4 properly provide a removal or remedial action upon
5 order of the director or the court, pursuant to Section
6 25358.3, is liable to the department for damages equal to
7 three times the amount of any costs incurred by the state
8 account pursuant to this chapter as a result of the failure
9 to take proper action.

10 (b) No treble damages shall be imposed under this
11 section against an owner of real property who did not
12 generate, treat, transport, store, or dispose of any
13 hazardous substance on, in, or at the facility located on
14 that real property, as specified in Sections 101(35) and
15 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and
16 9607(b)).

17 25359.1. There shall be no recovery of punitive
18 damages under Section 25359 for an injury to or loss of
19 natural resources that occurred wholly before September
20 25, 1981. This section shall not be construed as precluding
21 the recovery of punitive damages for injury to or loss of
22 natural resources in an action brought pursuant to any
23 other provision of law.

24 25359.2. Any person subject to a removal or remedial
25 action order or other order issued pursuant to Section
26 25355.5 or 25358.3 who does not comply with that order
27 without sufficient cause shall be subject to a civil penalty
28 of not more than twenty-five thousand dollars (\$25,000)
29 for each day of noncompliance. Liability under this
30 section may be imposed in a civil action or liability may
31 be imposed administratively pursuant to Section 25359.3.

32 25359.3. (a) The department may issue a complaint
33 to any person subject to a penalty pursuant to Sections
34 25359.2 and 25359.4. The complaint shall allege the acts or
35 failures to act that constitute a basis for liability and the
36 amount of the proposed penalty. The complaint shall be
37 served by personal service or certified mail and shall
38 inform the party so served of the right to a hearing. Any
39 person served with a complaint pursuant to this
40 subdivision may, within 45 days after service of the



1 complaint, request a hearing by filing a notice of defense
2 with the department. A notice of defense is deemed to be
3 filed within a 45-day period if it is postmarked within the
4 45-day period. If no notice of defense is filed within 45
5 days after service of the complaint, the department shall
6 issue an order setting liability in the amount proposed in
7 the complaint, unless the department and the party have
8 entered into a settlement agreement, in which case the
9 department shall issue an order setting liability in the
10 amount specified in the settlement agreement. Where
11 the party has not filed a notice of defense or where the
12 department and the party have entered into a settlement
13 agreement, the order shall not be subject to review by any
14 court or agency.

15 (b) Any hearing required under this section shall be
16 conducted in accordance with Chapter 5 (commencing
17 with Section 11500) of Part 1 of Division 3 of Title 2 of the
18 Government Code, and the department shall have all
19 powers granted by those provisions. In making a
20 determination, the administrative law judge shall
21 consider the nature, circumstances, extent, and gravity of
22 the violation, the violator's past and present efforts to
23 prevent, abate, or clean up conditions posing a threat to
24 the public health and safety or the environment, the
25 violator's ability to pay the proposed penalty, and the
26 prophylactic effect that imposition of the proposed
27 penalty will have on both the violator and on the
28 regulated community as a whole.

29 (c) All penalties collected under this section and
30 Section 25359.2 shall be deposited in the Hazardous
31 Substance Account and shall be available for expenditure
32 by the department upon appropriation by the
33 Legislature.

34 25359.4. (a) A person shall not release, or allow or
35 cause a release of, a reportable quantity of a hazardous
36 substance into the environment that is not authorized or
37 permitted pursuant to state law.

38 (b) Any release of a reportable quantity of hazardous
39 substance shall be reported to the department in writing



1 within 30 days of discovery, unless any of the following
2 apply:

3 (1) The release is permitted or in the permit process.

4 (2) The release is authorized by state law.

5 (3) The release requires immediate reporting to the
6 Office of Emergency Services pursuant to Section 11002
7 or 11004 of Title 42 of the United States Code, or pursuant
8 to Section 25507.

9 (4) The release has previously been reported to the
10 department or the Office of Emergency Services.

11 (5) The release occurred prior to January 1, 1994.

12 (c) For the purposes of this section, “reportable
13 quantity” means either of the following:

14 (1) The quantity of a hazardous substance established
15 in Part 302 (commencing with Section 302.1) of Title 40
16 of the Code of Federal Regulations, the release of which
17 requires notification pursuant to that part.

18 (2) Any quantity of a hazardous substance that is not
19 reportable pursuant to paragraph (1), but that may pose
20 a significant threat to public health and safety or to the
21 environment. The department may establish guidelines
22 for determining which releases are reportable under this
23 paragraph.

24 (d) The owner of property on which a reportable
25 release has occurred and any person who releases, or
26 causes a reportable release and who fails to make the
27 written report required by subdivision (b), shall be liable
28 for a penalty not to exceed twenty-five thousand dollars
29 (\$25,000) for each separate violation and for each day that
30 a violation continues. Each day on which the released
31 hazardous substance remains is a separate violation unless
32 the person has either filed the report or is in compliance
33 with an order issued by a local, state, or federal agency
34 with regard to the release.

35 (e) Liability under this section may be imposed in a
36 civil action or may be administratively imposed by the
37 department pursuant to Section 25359.3.

38 (f) If the violation of subdivision (b) results in, or
39 significantly contributes to, an emergency, including, but
40 not limited to, a fire, to which a county, city, or district is



1 required to respond, the responsible party may be
2 assessed the full cost of the emergency response by the
3 city, county, or district.

4 25359.4.5. (a) A responsible party who has entered
5 into an agreement with the department and is in
6 compliance with the terms of that agreement, or who is
7 in compliance with an order issued by the department,
8 may seek, in addition to contribution, treble damages
9 from any contribution defendant who has failed or
10 refused to comply with any order or agreement, was
11 named in the order or agreement, and is subject to
12 contribution. A contribution defendant from whom
13 treble damages are sought in a contribution action shall
14 not be assessed treble damages by any court where the
15 contribution defendant, for sufficient cause, as
16 determined by the court, failed to comply with an
17 agreement or with an order issued by the department, or
18 where the contribution defendant is an owner of real
19 property who did not generate, treat, transport, store, or
20 dispose of the hazardous substance on, in, or at the facility
21 located on that real property, as specified in Sections 101
22 (35) and 107 (b) of the federal act (42 U.S.C. Secs. 9601
23 (35) and 9607 (b)), or where the principles of
24 fundamental fairness would be violated, as determined
25 by the court. A party seeking treble damages pursuant to
26 this section shall show that the party, the department, or
27 another entity provided notice, by means of personal
28 service or certified mail, of the order or agreement to the
29 contribution defendant from whom the party seeks treble
30 damages.

31 (b) One-half of any treble damages awarded pursuant
32 to this section shall be paid to the department, for deposit
33 in the Hazardous Substance Account. Nothing in this
34 subdivision affects the rights of any party to seek
35 contribution pursuant to any other statute or under
36 common law.

37 (c) A contribution defendant from whom treble
38 damages are sought pursuant to this section shall be
39 deemed to have acted willfully with respect to the



1 conduct that gave rise to this liability for purposes of
2 Section 533 of the Insurance Code.

3 25359.5. (a) After making a determination, based
4 upon a preliminary site assessment that there has been a
5 release of a hazardous substance on, under, or into the
6 land on a site, the department or a county health officer
7 shall order the property owner to secure the site if all of
8 the following conditions apply to that site:

9 (1) The release does not comply with the terms of a
10 current permit or interim status document or regulation
11 of the department.

12 (2) The site poses a public health risk if human contact
13 is made with the hazardous waste or the surrounding
14 contaminated area.

15 (3) There is a likelihood of human or domestic animal
16 contact.

17 (b) The order to secure the site shall require, within
18 five days after receiving notification of the order, the
19 posting of the site with signs. The order shall also require,
20 within five days after receiving notification of the order,
21 that the site be enclosed with a fence, unless it is
22 physically and economically infeasible or unless the
23 fencing is unnecessary because it will not alleviate the
24 danger to the public health.

25 (c) If fencing is ordered, the fences shall be
26 maintained at the site to prevent unauthorized persons
27 from gaining access to the site. The signs shall be
28 maintained and shall meet all of the following
29 requirements:

30 (1) The signs shall be bilingual, appropriate to the local
31 area, and may include international symbols, as required
32 by the department.

33 (2) The signs shall have lettering which is legible from
34 a distance of at least 25 feet.

35 (3) The signs shall read: “Caution: Hazardous
36 Substance Area, Unauthorized Persons Keep Out” and
37 shall have the name and phone number of the
38 department or the county health officer that ordered the
39 posting.



1 (4) The signs shall be visible from the surrounding
2 contaminated area and posted at each route of entry into
3 the site, including those routes which are likely to be used
4 by unauthorized persons, at access roads leading to the
5 site, and facing navigable waterways where appropriate.

6 (5) The signs shall be of a material able to withstand
7 the elements.

8 (d) A property owner who fails to comply with an
9 order of the department or the county health officer is
10 subject to a civil penalty of up to twenty-five thousand
11 dollars (\$25,000). In determining the amount of a civil
12 penalty to be imposed, the court shall consider all
13 relevant circumstances, including, but not limited to, the
14 economic assets of the property owner and whether the
15 property owner has acted in good faith.

16 If the property owner fails to secure and post the site,
17 the department or the county health officer shall secure
18 and post the site pursuant to subdivision (b) within 30
19 days of the expiration of the five-day period and shall seek
20 recovery of the costs of that securing and posting from the
21 property owner. If the site is an abandoned site, as defined
22 in Section 25359.6, if the site cannot be traced to a specific
23 owner, or if the owner has been declared bankrupt, the
24 department or the county health officer shall secure and
25 post the site, using any source of funds, pursuant to
26 subdivision (b).

27 (e) The department or the county health officer shall
28 advise other agencies on the public health risks and the
29 need for fencing and posting of sites when those agencies
30 confirm the release of a hazardous substance pursuant to
31 subdivision (a).

32 (f) The remedies and penalties specified in this section
33 and Section 25359.6 are in addition to, and do not affect,
34 any other remedies, enforcement actions, requirements,
35 or penalties otherwise authorized by law.

36 25359.6. (a) The director shall notify, within 20
37 working days, each of the appropriate county health
38 officers as to all the potential abandoned sites of which the
39 department has knowledge or which the department is
40 investigating for releases of hazardous substances that



1 may have occurred or might be occurring at abandoned
2 sites. The county health officers may request quarterly
3 updates on the status of the investigations of these sites.

4 As used in this section, “abandoned site” means an
5 inactive disposal, treatment, or storage facility which
6 cannot, with reasonable effort, be traced to a specific
7 owner, a site whose owner has been determined
8 bankrupt, or a location where a hazardous substance has
9 been illegally disposed.

10 (b) Within 10 working days of the identification of an
11 abandoned site, the department or a county health officer
12 shall notify the other agency of the status of the site. The
13 department and the county health officer shall inform the
14 other agency of orders to fence and post these sites and
15 the status of compliance with those orders. The
16 department or the county health officers may request
17 quarterly updates of the testing, enforcement action, and
18 remedial or removal actions that are proposed or
19 ongoing.

20 25359.7. (a) Any owner of nonresidential real
21 property who knows, or has reasonable cause to believe,
22 that any release of hazardous substance has come to be
23 located on or beneath that real property shall, prior to the
24 sale, lease, or rental of the real property by that owner,
25 give written notice of that condition to the buyer, lessee,
26 or renter of the real property. Failure of the owner to
27 provide written notice when required by this subdivision
28 to the buyer, lessee, or renter shall subject the owner to
29 actual damages and any other remedies provided by law.
30 In addition, where the owner has actual knowledge of the
31 presence of any release of a material amount of a
32 hazardous substance and knowingly and willfully fails to
33 provide written notice to the buyer, lessee, or renter, as
34 required by this subdivision, the owner is liable for a civil
35 penalty not to exceed five thousand dollars (\$5,000) for
36 each separate violation.

37 (b) Any lessee or renter of real property who knows or
38 has reasonable cause to believe that any release of a
39 hazardous substance has come or will come to be located
40 on or beneath that real property shall, within a reasonable



1 period of time, either prior to the release or following the
2 discovery by the lessee or renter of the presence or
3 believed presence of the hazardous substance release,
4 give written notice of that condition to the owner of the
5 real property or to the lessor under the lessee's or renter's
6 lease or rental agreement.

7 (1) A lessee or renter who fails to provide written
8 notice when required by this subdivision to the owner or
9 lessor is subject to actual damages and any other remedy
10 provided by law.

11 (2) If the lessee or renter has knowledge of the
12 presence of a release of a material amount of a hazardous
13 substance, or of a hazardous substance release that is
14 required to be reported to a state or local agency pursuant
15 to law, on or under the real property leased or rented by
16 the lessee or renter and knowingly and willfully fails to
17 provide written notice when required by this subdivision
18 to the owner or lessor, both of the following shall apply:

19 (A) The failure is deemed to constitute a default, upon
20 the owner's or lessor's written notice to the lessee or
21 renter, under the lessee's or renter's lease or rental
22 agreement, except that this subparagraph does not apply
23 to lessees and renters of property used exclusively for
24 residential purposes.

25 (B) The lessee or renter is liable for a civil penalty not
26 to exceed five thousand dollars (\$5,000) for each separate
27 violation.

28 (3) A lessee or renter may cure a default under the
29 lessee's or renter's lease or rental agreement which
30 resulted from a violation of this subdivision, by promptly
31 commencing and completing the removal of, or taking
32 other appropriate remedial action with respect to, the
33 hazardous substance release. The removal or remedial
34 action shall be conducted in accordance with all
35 applicable laws and regulations and in a manner which is
36 reasonably acceptable to, and which is approved in
37 writing by, the owner or lessor. This paragraph does not
38 relieve the lessee or renter of any liability for actual
39 damages or for any civil penalty for a violation of this
40 subdivision.



Article 6. Recovery Actions

1
2
3 25360. (a) Any costs incurred by the department or
4 regional board in carrying out this chapter shall be
5 recoverable pursuant to state or federal law by the
6 Attorney General, upon the request of the department *or*
7 *regional board*, from the liable person or persons. The
8 amount of any response action costs that may be
9 recovered pursuant to this section shall include interest
10 on any amount paid. The interest on amounts paid from
11 the Hazardous Substance Cleanup Fund shall be
12 calculated at a rate equal to the interest rate of the bonds
13 sold pursuant to Article 7.5 (commencing with Section
14 25385) and interest on any amount paid from the state
15 account or the Site Remediation Account shall be
16 calculated at the rate of return earned on investment in
17 the Surplus Money Investment Fund pursuant to Section
18 16475 of the Government Code.

19 (b) A person who is liable for costs incurred at a site
20 shall have the liability reduced by any reimbursements
21 that were actually paid by that person pursuant to this
22 chapter in connection with that site, including any
23 reimbursements paid pursuant to Section 25343.

24 (c) The amount of cost determined pursuant to this
25 section shall be recoverable at the discretion of the
26 department, either in a separate action or by way of
27 intervention as of right in an action for contribution or
28 indemnity. Nothing in this section deprives a party of any
29 defense that the party may have.

30 (d) Money recovered by the Attorney General
31 pursuant to this section shall be deposited in the state
32 account, except that, if the costs incurred were paid from
33 the Hazardous Substance Cleanup Fund, the Attorney
34 General shall deposit the amounts recovered into the
35 Hazardous Substance Clearing Account. Money
36 deposited in the Hazardous Substance Clearing Account
37 pursuant to this section are available to pay the principal
38 of, and interest on, bonds sold pursuant to Article 7.5
39 (commencing with Section 25385).



1 25360.1. Any monetary obligation to the department
2 pursuant to Chapter 6.5 (commencing with Section
3 25100) or this chapter shall be subject to interest from the
4 date of the demand at the same rate of return earned on
5 investment in the Surplus Money Investment Fund
6 pursuant to Section 16475 of the Government Code,
7 except the department may waive the interest if the
8 obligation is satisfied within 60 days from the date of
9 invoice.

10 25360.2. (a) For purposes of this section, the
11 following definitions apply:

12 (1) "Owner" means either (A) the owner of property
13 who occupies a single-family residence constructed on
14 the property, or (B) the owner of common areas within
15 a residential common interest development who owns
16 those common areas for the benefit of the residential
17 homeowners. This paragraph does not include the
18 developer of the common interest development.

19 (2) "Property" means either (A) real property of five
20 acres or less which is zoned for, and on which has been
21 constructed, a single-family residence, or (B) common
22 areas within a residential common interest development.

23 (b) (1) Notwithstanding any other provision of this
24 chapter, an owner of property that is the site of a
25 hazardous substance release is presumed to have no
26 liability pursuant to this chapter for either of the
27 following:

28 (A) A hazardous substance release that has occurred
29 on the property.

30 (B) A release of a hazardous substance to groundwater
31 underlying the property if the release occurred at a site
32 other than the property.

33 (2) The presumption may be rebutted as provided in
34 subdivision (d).

35 (c) An action for recovery of costs or expenditures
36 incurred from the state account or the Hazardous
37 Substance Cleanup Fund pursuant to this chapter in
38 response to a hazardous substance release shall not be
39 brought against an owner of property unless the



1 department first certifies that, in the opinion of the
2 department, one of the following applies:

3 (1) The hazardous substance release that occurred on
4 the property occurred after the owner acquired the
5 property.

6 (2) The hazardous substance release that occurred on
7 the property occurred before the owner acquired the
8 property and at the time of acquisition the owner knew
9 or had reason to know of the hazardous substance release.

10 (3) The owner of property where there has been a
11 release of a hazardous substance to groundwater
12 underlying the property took, or is taking, one or more of
13 the following actions:

14 (A) Caused or contributed to a release of a hazardous
15 substance to the groundwater.

16 (B) Fails to provide the department, or its authorized
17 representative, with access to the property.

18 (C) Interferes with response action activities.

19 (d) In an action brought against an owner of property
20 to recover costs or expenditures incurred from the state
21 account or the Hazardous Substance Cleanup Fund
22 pursuant to this chapter in response to a hazardous
23 substance release, the presumption established in
24 subdivision (b) may be rebutted if it is established by a
25 preponderance of the evidence that the facts upon which
26 the department made the certification pursuant to
27 paragraph (1), (2), or (3) of subdivision (c) are true.

28 (e) Notwithstanding any other provision of this
29 chapter, this section governs liability pursuant to this
30 chapter for an owner of property, as defined in
31 subdivision (a).

32 25360.3. (a) For the purposes of this section, the
33 following terms have the following meaning:

34 (1) “Easement” means a conservation easement, as
35 defined in Section 815.1 of the Civil Code.

36 (2) “Environmental assessment” means an
37 investigation of real property, conducted by an
38 independent qualified environmental consultant, to
39 discover the presence or likely presence of a release or a
40 threat of a release of a hazardous substance at, on, to, or



1 from the real property. An environmental assessment
2 shall include, but is not limited to, an investigation of the
3 historical use of the real property, any prior releases,
4 records, consultant reports and regulatory agency
5 correspondence, a visual survey of the real property, and,
6 if warranted, sampling and analytical testing.

7 (3) “Owner” means either of the following:

8 (A) An independent special district, as defined in
9 Section 56044 of the Government Code.

10 (B) An entity or organization that holds an easement.

11 (4) “Property” means either of the following:

12 (A) Real property acquired by a special district by
13 means of a gift or donation for which an environmental
14 assessment was completed prior to the transfer or
15 conveyance of the real property to the special district.

16 (B) An easement for which an environmental
17 assessment was completed prior to the transfer or
18 conveyance of the easement to an entity or organization
19 authorized to accept the easement pursuant to Section
20 815.3 of the Civil Code.

21 (b) (1) Notwithstanding any other provision of this
22 chapter, if an environmental assessment of property
23 discovers no evidence of the presence or likely presence
24 of a release or a threat of a release of a hazardous
25 substance, and a hazardous substance release is
26 subsequently discovered on, to, or from that property, the
27 owner of that property is entitled to a rebuttable
28 presumption, affecting the burden of producing
29 evidence, that the owner is not a liable person or
30 responsible party for purposes of this chapter. An owner
31 is entitled to this presumption whether the action is
32 brought by the state or by a private party seeking
33 contribution or indemnification.

34 (2) In an action brought against an owner of property
35 to recover costs or expenditures incurred from the state
36 account or the Hazardous Substance Cleanup Fund
37 pursuant to this chapter in response to a hazardous
38 substance release, the presumption may be rebutted if it
39 is established by a preponderance of the evidence that
40 the facts upon which the department made the



1 certification pursuant to paragraph (1), (2), (3), or (4) of
2 subdivision (c) are true.

3 (c) An action for recovery of costs or expenditures
4 incurred from the state account or the Hazardous
5 Substance Cleanup Fund pursuant to this chapter in
6 response to a hazardous substance release shall not be
7 brought against an owner of property unless the
8 department first certifies that, as found by the
9 department, one of the following situations applies:

10 (1) The hazardous substance release occurred on or
11 after the date that the owner acquired the property.

12 (2) The hazardous substance release occurred before
13 the date that the owner acquired the property and, at the
14 time of the acquisition, the owner knew, or had reason to
15 know, of the hazardous substance release.

16 (3) The environmental assessment applicable to the
17 property was not properly carried out, was fraudulently
18 completed, or involves the negligent or intentional
19 nondisclosure of information.

20 (4) The hazardous substance release was discovered
21 on or after the date of acquisition and the owner failed to
22 exercise due care with respect to the release, taking into
23 consideration the characteristics of the hazardous
24 substance in light of all relevant facts and circumstances.

25 (d) Notwithstanding any other provision of this
26 chapter, this section governs liability pursuant to this
27 chapter for an owner of property, as defined in
28 subdivision (a).

29 (e) This section is applicable only to property that is
30 acquired by the owner on or after January 1, 1995.

31 25360.4. (a) An action under Section 25360 for the
32 recovery of the costs of removal or remedial action
33 incurred by the department from the state account, the
34 Hazardous Substance Cleanup Fund, or any other source
35 authorized by law, or for the recovery of administrative
36 costs incurred by the department in connection with any
37 removal or remedial action performed by the
38 department or by any responsible party, shall be
39 commenced within three years after completion of the



1 removal or remedial action has been certified by the
2 department.

3 (b) An action under subdivision (c) of Section 25352
4 for costs incurred by the department for the purposes
5 specified in subdivision (a) or (b) of Section 25352 shall
6 be commenced within three years after certification by
7 the department of the completion of the activities
8 authorized under subdivisions (a) and (b) of Section
9 25352.

10 (c) In any action described in subdivision (a) or (b)
11 for recovery of the costs of a removal action, a remedial
12 action, administrative costs, or damages, where the court
13 has entered a judgment for these past costs or damages,
14 the court shall also enter an order reserving jurisdiction
15 over the case and the court shall have continuing
16 jurisdiction to determine any future liability and the
17 amount. The department may immediately enforce the
18 judgment for past costs and damages. The department
19 may apply for a court judgment as to future costs and
20 damages that have been incurred at any time during the
21 removal and remedial actions or during the performance
22 of the activities authorized by Section 25352, but the
23 application shall be made not later than three years after
24 the certification of completion of the actions or activities.

25 (d) An action may be commenced under Section
26 25360 or subdivision (c) of Section 25352 at any time prior
27 to expiration of the three-year limitation period provided
28 for by this section.

29 25360.6. (a) The department shall, when it
30 determines that it is practicable and in the public interest,
31 propose a final administrative or judicial expedited
32 settlement with potentially responsible parties if such a
33 settlement involves only a minor portion of the response
34 costs at a facility and, if in the judgment of the
35 department, either of the following conditions are met:

36 (1) The amount of hazardous substances and the toxic
37 or other hazardous effects of the hazardous substances
38 contributed by the potentially responsible party to the
39 facility are minimal in comparison to the amount and
40 effects of other hazardous substances at the facility.



1 (2) The potentially responsible party is the owner of
2 the real property on or in which the facility is located, did
3 not conduct or permit the generation, transportation,
4 storage, treatment, or disposal of any hazardous
5 substance at the facility, and did not contribute to the
6 release or threat of release of a hazardous substance at the
7 facility through any act or omission. This paragraph does
8 not apply if the potentially responsible party, at the time
9 of the purchase of the real property, knew or should have
10 known that the property was used for the generation,
11 transportation, storage, treatment, or disposal of any
12 hazardous substance.

13 (b) A party who has resolved its liability to the state
14 under this section shall not be liable for claims for
15 contribution regarding matters addressed in the
16 settlement. A settlement under this section does not
17 discharge any of the other potentially responsible parties
18 unless its terms so provide, but it reduces the potential
19 liability of the others by the amount of the settlement.

20 (c) Any person who enters into a settlement under this
21 section shall provide any information relevant to the
22 administration of this chapter that is requested by the
23 department. In order to obtain the contribution
24 protection provided by subdivision (b), a potentially
25 responsible party participating in a de minimus
26 settlement shall certify that it has responded fully and
27 accurately to all of the department's requests for
28 information, and that it has provided all of the relevant
29 documents pertaining to the facility to the department.

30 (d) Nothing in this section shall be construed to affect
31 the authority of the department or regional board to
32 reach settlements with other potentially responsible
33 parties under this chapter.

34 25361. (a) The state account or the Hazardous
35 Substance Cleanup Fund shall be a party in any action for
36 recovery of costs or expenditures under this chapter
37 incurred from the state account or the Hazardous
38 Substance Cleanup Fund.

39 (b) In the event a district attorney or a city attorney
40 has brought an action for civil or criminal penalties



1 pursuant to Chapter 6.5 (commencing with Section
2 25100) against any person for the violation of any
3 provision of that chapter, or any rule, regulation, permit,
4 covenant, standard, requirement, or order issued,
5 adopted, or executed thereunder, and the department
6 has expended moneys from the state account pursuant to
7 Section 25354 for immediate corrective action in response
8 to a release, or threatened release, of a hazardous
9 substance which has resulted, in whole or in part, from
10 the person's acts or omissions, the state account may be
11 made a party to that action for the purpose of recovering
12 the costs against that person. If the state account is made
13 a party to the action, the Attorney General shall represent
14 the state account for the purpose of recovering the
15 moneys expended from the account. Notwithstanding
16 any other provision of law, and under terms that the
17 Attorney General and the department deem
18 appropriate, the Attorney General may delegate the
19 authority to recover the costs to the district attorney or
20 city attorney who has brought the action pursuant to
21 Chapter 6.5 (commencing with Section 25100). The
22 failure to seek the recovery of moneys expended from the
23 state account as part of the action brought pursuant to
24 Chapter 6.5 (commencing with Section 25100) does not
25 foreclose the Attorney General from recovering the
26 moneys in a separate action.

27 25362. Upon motion and sufficient showing by any
28 party, the court shall join to the action any person who
29 may be liable for costs or expenditures of the type
30 recoverable under this chapter.

31 25363. (a) Except as provided in subdivision (f), any
32 party found liable for any costs or expenditures
33 recoverable under this chapter who establishes by a
34 preponderance of the evidence that only a portion of
35 those costs or expenditures are attributable to that party's
36 actions, shall be required to pay only for that portion.

37 (b) Except as provided in subdivision (f), if the trier
38 of fact finds the evidence insufficient to establish each
39 party's portion of costs or expenditures under subdivision
40 (a), the court shall apportion those costs or expenditures,



1 to the extent practicable, according to equitable
2 principles, among the defendants.

3 (c) The state account shall pay any portion of the
4 judgment in excess of the aggregate amount of costs or
5 expenditures apportioned under subdivisions (a) and
6 (b).

7 (d) The standard of liability for any costs or expenses
8 recoverable pursuant to this chapter is strict liability.

9 (e) Any person who has incurred removal or remedial
10 action costs in accordance with this chapter or the federal
11 act may seek contribution or indemnity from any person
12 who is liable pursuant to this chapter, except that no claim
13 may be asserted against a person whose liability has been
14 determined and which has been or is being, fully
15 discharged pursuant to Section 25356.6, or against a
16 person who is actively participating in a pending
17 apportionment proceeding pursuant to Section 25356.6.
18 An action to enforce a claim may be brought as a
19 cross-complaint by any defendant in an action brought
20 pursuant to Section 25360 or this section, or in a separate
21 action after the person seeking contribution or indemnity
22 has paid removal or remedial action costs in accordance
23 with this chapter or the federal act. Any plaintiff or cross
24 complainant seeking contribution or indemnity shall give
25 written notice to the director upon filing an action or
26 cross complaint under this section. In resolving claims for
27 contribution or indemnity, the court may allocate costs
28 among liable parties using those equitable factors which
29 are appropriate.

30 (f) Notwithstanding this chapter, any response action
31 contractor who is found liable for any costs or
32 expenditures recoverable under this chapter and who
33 establishes by a preponderance of the evidence that only
34 a portion of those costs or expenditures are attributable
35 to the response action contractor's actions, shall be
36 required to pay only that portion of the costs or
37 expenditures attributable to the response action
38 contractor's actions.

39 25364. Except as provided in Section 25364.1, no
40 indemnification, hold harmless, conveyance, or similar



1 agreement shall be effective to transfer any liability for
2 cost or expenditures recoverable under this chapter. This
3 section shall not bar any agreement to insure, hold
4 harmless, or indemnify a party to the agreement for any
5 costs or expenditures under this chapter.

6 25364.1. (a) For purposes of this section, the
7 following definitions shall apply:

8 (1) “Affiliate” means any entity that directly, or
9 indirectly through one or more intermediaries, controls,
10 is controlled by, or is under common control with, the
11 responsible party owner. For purposes of this paragraph,
12 “control” means the possession, direct or indirect, of the
13 power to direct or cause the direction of the management
14 and policies of an entity, or ownership of shares or
15 interests in the entity possessing more than 50 percent of
16 the voting power.

17 (2) “Qualified independent consultant” means either
18 a geologist who is registered pursuant to Section 7850 of
19 the Business and Professions Code or a professional
20 engineer who is registered pursuant to Section 6762 of the
21 Business and Professions Code.

22 (3) “Responsible party owner” means the owner of all
23 or part of the site on January 1, 1993, or if all or a part of
24 the site is transferred to a joint venture formed for
25 purposes of development of the site, the owner of the site
26 immediately prior to that transfer.

27 (4) “Site” means the site of the former Kaiser Steel
28 Corporation steel mill located near the City of Fontana.

29 (b) Notwithstanding any other provision of law,
30 except as provided in subdivisions (c) and (e), the
31 director may release from liability under this chapter or
32 Chapter 6.5 (commencing with Section 25100), and from
33 liability for any claims of the state for recovery of response
34 costs under the federal act, any of the following persons,
35 with regard to a removal or remedial action at the site:

36 (1) Any person who provides financing for all, or a
37 substantial part of, the costs of performing a removal or
38 remedial action at the site pursuant to a remedial action
39 plan prepared by a qualified independent consultant and
40 issued by the department pursuant to subdivision (e) of



1 Section 25356.1, except that the release from liability shall
2 not release the person providing this financing from
3 liability for any hazardous substance release or
4 threatened release resulting from that person's exercise
5 of decisionmaking control over the performance of the
6 removal or remedial action while the responsible party
7 owner remains in possession of the site.

8 (2) Any person who enters into an agreement with the
9 responsible party owner to provide development services
10 for the development of all, or a part of, the site, including
11 a developer, who becomes a partner in a joint venture
12 partnership with the responsible party owner, if the joint
13 venture is formed for purposes of the development of the
14 site and legal title to the site is transferred by the
15 responsible party owner to the joint venture. If a release
16 from liability is granted to a developer pursuant to this
17 paragraph and the legal title to the site is transferred by
18 the responsible party owner to a joint venture between
19 the developer and the responsible party owner of the site,
20 the responsible party owner shall not be relieved of
21 liability under this chapter.

22 (3) Any person who acquires an ownership or
23 leasehold interest in all or a part of the site after
24 performance of the removal or remedial action specified
25 in the remedial action plan for the site, or part of the site,
26 has been completed to the satisfaction of the department.

27 (c) A release from liability shall not be granted
28 pursuant to subdivision (b) unless all of the following
29 conditions are met:

30 (1) A responsible party owner has entered into a
31 stipulated settlement of an order issued by the
32 department pursuant to Section 25187, 25355.5, or 25358.3
33 to perform the removal or remedial action at the site in
34 accordance with the remedial action plan and has
35 arranged financing, contingent only upon obtaining
36 releases from potential liability pursuant to subdivision
37 (b), for the costs of performing the removal or remedial
38 action.

39 (2) A responsible party owner agrees to pay all
40 applicable oversight fees required by Section 25343 and



1 to pay any additional costs that are recoverable pursuant
2 to Section 25360.

3 (3) No person to be released from liability pursuant to
4 subdivision (b) is a responsible party or an affiliate of a
5 responsible party, with respect to any hazardous
6 substance release existing at the site at the time the
7 release from liability is granted.

8 (4) The stipulated settlement requires the responsible
9 party owner to provide irrevocable financial assurances
10 for full performance of the remedial action plan. The
11 financial assurances may consist of one or more of the
12 financial assurance instruments described in Section
13 66264.143 of Title 22 of the California Code of Regulations.
14 Upon the approval of the department, the forms of these
15 instruments may be revised as appropriate to apply to the
16 costs of performing the removal or remedial action
17 specified in the remedial action plan.

18 (5) The director finds that the release from liability to
19 be granted will promote the purposes and goals of this
20 chapter and encourage private investment in property
21 that is in need of remediation.

22 (d) The site may be subdivided to create subdivided
23 parcels of land, pursuant to the Subdivision Map Act
24 (Division 2 (commencing with Section 66410) of Title 7
25 of the Government Code), in order to facilitate removal
26 or remedial action at the site, secure financing for
27 removal or remedial action, or secure financing for
28 development which would generate funds for removal or
29 remedial action at the site.

30 (e) Notwithstanding any other provision of this
31 section, a release from liability granted pursuant to
32 subdivision (b) shall not extend to any of the following:

33 (1) Any person who was a responsible party for a
34 hazardous substance release existing at the site before the
35 release from liability was granted, and any entity which
36 is an affiliate of such a responsible party.

37 (2) Any contractor who prepares the remedial action
38 plan or performs the removal or remedial action
39 provided for in the remedial action plan.



1 (3) Any person who obtains a release pursuant to
2 subdivision (b) by fraud or negligent or intentional
3 nondisclosure or misrepresentation.

4 (4) Any liability for a release or threatened release of
5 a hazardous substance first deposited at the site by a
6 person released from liability pursuant to subdivision (b)
7 after the release from liability is granted.

8 (f) Any release from liability granted by the director
9 pursuant to this section shall contain the following
10 provision: "If, for any reason, the responsible party does
11 not complete the removal or remedial action, this release
12 does not extend to any subsequent actions or activities
13 performed by the released party that exacerbate the
14 conditions at the site."

15 25364.7. The repeal of Section 25364.6 shall not affect
16 any indemnity provided pursuant to that section for any
17 cause of action brought because of any act or omission
18 which occurs before the repeal of that section.

19 25365. The entry of judgment against any party to the
20 action shall not be deemed to bar any future action by the
21 state account against any person who is later discovered
22 to be potentially liable for costs and expenditures paid by
23 the state account.

24 25365.6. (a) Any costs or damages incurred by the
25 department or regional board pursuant to this chapter
26 constitutes a claim and lien upon the real property owned
27 by the responsible party that is subject to, or affected by,
28 the removal and remedial action. This lien shall attach
29 regardless of whether the responsible party is insolvent.
30 A lien established by this section shall be subject to the
31 notice and hearing procedures required by due process
32 of the law and shall arise at the time costs are first
33 incurred by the department or regional board with
34 respect to a response action at the site.

35 (b) The department shall not be considered a
36 responsible party for a hazardous substance release site
37 because a claim and lien is imposed pursuant to this
38 section.

39 (c) The lien provided by this section shall continue
40 until the liability for these costs or damages, or a



1 judgment against the responsible party, is satisfied.
2 However, if it is determined by the court that the
3 judgment against the responsible party will not be
4 satisfied, the department may exercise its rights under
5 the lien.

6 (d) The lien imposed by this section shall have the
7 force and effect of, and the priority of, a judgment lien
8 upon its recordation in the county in which the property
9 subject to the lien is located. The lien shall contain the
10 legal description of the real property, the assessor's parcel
11 number, and the name of the owner of record, as shown
12 on the latest equalized assessment roll. The lien shall also
13 contain a legal description of the property which is the
14 site of the hazardous substance release, the assessor's
15 parcel number for that property, and the name of the
16 owner of record, as shown on the latest equalized
17 assessment roll, of that property.

18 (e) All funds recovered pursuant to this section shall
19 be deposited in the state account, except that, if the costs
20 incurred were paid from the Hazardous Substance
21 Cleanup Fund, the recovered funds shall be deposited in
22 the Hazardous Substance Clearing Account.

23 25366. (a) This chapter shall not be construed as
24 imposing any new liability associated with acts that
25 occurred on or before January 1, 1982, if the acts were not
26 in violation of existing state or federal laws at the time
27 they occurred.

28 (b) Nothing in this chapter shall be construed as
29 authorizing recovery for response costs or damages
30 resulting from any release authorized or permitted
31 pursuant to state law or a federally permitted release.

32 (c) Except as provided in Sections 25360, 25361, 25362,
33 and 25363, nothing in this chapter shall affect or modify
34 in any way the obligations or liability of any person under
35 any other provision of state or federal law, including
36 common law, for damages, injury, or loss resulting from
37 a release of any hazardous substance or for removal or
38 remedial action or the costs of removal or remedial action
39 of the hazardous substance.



1 25366.5. (a) Any public agency operating a
2 household hazardous waste collection program or any
3 person operating such a program under a written
4 agreement with a public agency, or, for material received
5 from the public as used oil, any person operating a
6 certified used oil collection center as provided in Section
7 48660 of the Public Resources Code, shall not be held
8 liable in any cost recovery action brought pursuant to
9 Section 25360, including, but not limited to, any action to
10 recover the fees imposed by Section 25343, for any waste
11 which has been properly handled and transported to an
12 authorized hazardous waste treatment or disposal facility
13 at a location other than that of the collection program.

14 (b) For purposes of this section, “household hazardous
15 waste collection program” means a program in which
16 hazardous wastes from households and small quantity
17 commercial sources, as defined in subdivision (d) of
18 Section 25158.1, are collected and ultimately transferred
19 to an authorized hazardous waste treatment, storage, or
20 disposal facility.

21 (c) Except as provided in subdivision (a), this section
22 does not affect or modify the obligations or liabilities of
23 any person imposed pursuant to any state or federal law.

24 25367. Any person who commits any of the following
25 acts shall be liable for a civil penalty not to exceed
26 twenty-five thousand dollars (\$25,000) for each separate
27 violation, or for continuing violations, for each day during
28 which that violation continues:

29 (a) Intentionally makes any false statement or
30 representation in any report or information furnished
31 pursuant to Section 25358.1.

32 (b) Intentionally fails to provide any information
33 requested pursuant to Section 25358.1.

34 (c) Refuses or prevents, without sufficient cause, any
35 activity authorized pursuant to Section 25358.1 or 25358.3.

36

37 Article 6.3. Technology Demonstration Program

38

39 25368. Notwithstanding Section 25355.5, the
40 department shall carry out a program of full-scale



1 demonstrations to evaluate treatment technologies that
2 can be safely utilized for removal and remedial actions to
3 hazardous substance releases.

4 25368.1. For the purposes of this article, the following
5 definitions apply:

6 (a) “Treatment technologies” means methods,
7 techniques, or processes, including proprietary or
8 patented methods, that permanently alter the
9 composition of hazardous substances at hazardous
10 substance release sites through chemical, biological, or
11 physical means so as to make the substances
12 nonhazardous or to significantly reduce the toxicity,
13 mobility, or volume, or any combination thereof, of the
14 hazardous substances or contaminated materials being
15 treated.

16 (b) “Full-scale demonstration” means a
17 demonstration of a technology that is of a size or capacity
18 which permits valid comparison of the technology to the
19 technical performance and cost of conventional
20 technologies, that is likely to be cost-effective, and that
21 will result in a substantial or complete remedial or
22 removal action to a hazardous substance release site.

23 25368.2. The department shall select technology
24 demonstration projects to be evaluated pursuant to this
25 article using criteria that include, at a minimum, all of the
26 following requirements:

27 (a) The project proposal includes complete and
28 adequate documentation of technical feasibility.

29 (b) The project proposal includes evidence that a
30 technology has been sufficiently developed for full-scale
31 demonstration and can likely operate on a cost-effective
32 basis.

33 (c) The department has determined that a site is
34 available and suitable for demonstrating the technology
35 or technologies, taking into account the physical,
36 biological, chemical, and geological characteristics of the
37 site, the extent and type of contamination found at the
38 site, and the capability to conduct demonstration projects
39 in a manner to ensure the protection of human health and
40 the environment.



1 (d) The technology to be demonstrated preferably has
2 widespread applicability in removal and remedial actions
3 at other sites in the state.

4 (e) The project will be developed to the extent that a
5 successful demonstration on a hazardous substance
6 release site may lead to commercial utilization by
7 responsible parties at other sites in the state.

8 (f) The department has determined that adequate
9 funding is available from one or more of the following
10 sources:

11 (1) Responsible parties.

12 (2) The Environmental Protection Agency.

13 (3) The Hazardous Substance Cleanup Fund.

14 (4) The state account.

15 25368.3. The department shall identify hazardous
16 substance release sites, listed pursuant to Section 25356,
17 that are particularly well-suited for technology
18 demonstration projects. In identifying hazardous
19 substance release sites, the department shall consider, at
20 a minimum, all of the following:

21 (a) The state's priority ranking for removal and
22 remedial actions to hazardous substance release sites
23 adopted pursuant to Section 25356.

24 (b) The volume and variability of the hazardous
25 substance release at the site.

26 (c) The availability of data characterizing the
27 hazardous substance release.

28 (d) The accessibility of the hazardous substance
29 release.

30 (e) Availability of required utilities.

31 (f) Support of federal and local governments.

32 (g) Potential for adverse effects to public health and
33 the environment.

34 25368.4. (a) The department shall annually, on or
35 before July 1, publish a solicitation for proposals to
36 conduct treatment demonstration projects which utilize
37 technologies which are at a stage of development suitable
38 for full-scale demonstrations at hazardous substance
39 release sites. The solicitation notice shall prescribe
40 information to be included in the proposal, including



1 technical and economic data derived from the applicant's
2 own research and development efforts, and any other
3 information which may be prescribed by the department
4 to assess the technology's potential and safety and the
5 types of removal or remedial action to which it may be
6 applicable.

7 (b) Any person and private or public entity may
8 submit an application to the department in response to
9 the solicitation. The application shall contain a proposed
10 treatment demonstration plan setting forth how the
11 treatment demonstration project is to be carried out and
12 any other information which the department may
13 require.

14 25368.5. (a) On or before January 1, after reviewing
15 all proposals submitted pursuant to Section 25368.4, the
16 department shall annually select at least two treatment
17 demonstration projects, to be commenced during that
18 calendar year, using, at a minimum, the criteria specified
19 in Section 25368.2.

20 (b) If the department determines that the required
21 number of demonstrations required by subdivision (a)
22 cannot be initiated consistent with the criteria specified
23 in Section 25368.2 in any fiscal year, the department shall
24 inform the appropriate committees of the Legislature of
25 the reasons for its inability to conduct these
26 demonstration projects.

27 (c) Each treatment demonstration project selected
28 pursuant to this section shall be performed by the
29 applicant, or by a person approved by the applicant and
30 the department.

31 25368.6. Notwithstanding Section 25360, if the
32 department determines that using an alternative
33 treatment technology to conduct a removal or remedial
34 action at a hazardous substance release site listed
35 pursuant to paragraph (2) or (3) of subdivision (b) of
36 Section 25356 would be more costly than another
37 available and feasible removal or remedial action method
38 that would also achieve satisfactory results, the
39 department may determine not to attempt to recover
40 from the liable person the incremental costs of the



1 removal or remedial action attributable to the alternative
2 treatment technology.

3 25368.7. The department shall conduct a technology
4 transfer program that shall include the development,
5 collection, evaluation, coordination, and dissemination of
6 information relating to the utilization of alternative or
7 innovative hazardous waste treatment technologies
8 demonstrated pursuant to this article. The information
9 shall include an evaluation of each treatment
10 demonstration project's efficacy relating to performance
11 and cost in achieving permanent and significant
12 reduction in risks from hazardous substance releases. The
13 information shall also include documentation of the
14 testing procedures utilized in the project, the data
15 collected, and the quality assurance and quality control
16 which was conducted. The information shall also include
17 the technology's applicability, pretreatment and
18 posttreatment measurements, and the technology's
19 advantages or disadvantages compared to other available
20 technologies.

21 25368.8. Notwithstanding paragraph (5) of
22 subdivision (c) of Section 25356.1, when preparing or
23 approving a remedial action plan for a site listed pursuant
24 to paragraph (2) or (3) of subdivision (b) of Section
25 25356, that has been selected for a treatment
26 demonstration project pursuant to this article, the
27 department shall consider the cost-effectiveness of the
28 project but is not required to choose the most
29 cost-effective measure.

30

31 Article 6.5. Abandoned Site Program

32

33 25369. The department shall establish an abandoned
34 site program to survey counties where abandoned site
35 surveys have not been completed. As part of the program,
36 the department shall do all of the following:

37 (a) Develop protocols and procedures for conducting
38 an abandoned site survey of rural unsurveyed counties.
39 These protocols shall address all types of sites likely to be
40 found in these counties, including, but not limited to,



1 crop-duster airstrips, abandoned mining operations,
2 pesticide formulators and manufacturers, abandoned
3 wells, oil exploration and extraction, wood treatment
4 plants, land disposal sites, and scrap metal operations.

5 (b) Notify the California regional water quality
6 control boards, the Department of Fish and Game, local
7 health officers, county directors of environmental health,
8 county agricultural commissioners, and state and federal
9 land management agencies of the abandoned site
10 program. Notifications shall consist of the following:

11 (1) Explanation of the abandoned site program.

12 (2) Description of the California Superfund Program,
13 including the availability of state funds for cleaning up
14 abandoned hazardous waste sites, and that discovery of a
15 site does not impose liability for cleanup.

16 (3) Provide a copy of the program's protocols and
17 procedures outlining sites the state is attempting to
18 identify.

19 (4) Request that, as part of each respective agency's
20 duties, it report to the state abandoned site program any
21 suspected abandoned waste site.

22 (5) Request that each participating agency, as a part
23 of its regular activities, notify the department of sites
24 identified in writing at least quarterly.

25 (c) Prepare an inventory of suspected abandoned
26 hazardous substance release sites.

27 (d) Contact the owners and occupants of suspected
28 abandoned sites.

29 (e) Maintain individual records for each suspected
30 abandoned site.

31 (f) Develop a methodology for screening sites
32 identified.

33 (g) Conduct a field assessment of those sites which the
34 screening procedures specified in subdivision (f) indicate
35 require this assessment.

36 (h) Rank the assessed sites, in order of priority, as
37 presenting a potential hazard to public health or the
38 environment consistent with Section 25356 or regulations
39 adopted pursuant to that section.



1 (i) Report to the Legislature quarterly, on an update
2 on the progress of the abandoned sites survey, identifying
3 which agencies have identified and reported sites to the
4 department, as well as which agencies have reported that
5 they do not intend to participate in the program.

6

7

Article 7. Compensation

8

9 25370. "Board," as used in this article, means the State
10 Board of Control.

11 25372. Any person may apply to the board, pursuant
12 to Section 25373, for compensation of a loss caused by the
13 release, in California, of a hazardous substance if any of
14 the following conditions are met:

15 (a) The source of the release of the hazardous
16 substance, or the identity of the party liable for damages
17 in connection therewith or responsible for the costs of
18 removal of the hazardous substance, is unknown or
19 cannot, with reasonable diligence, be determined.

20 (b) The loss was not compensable pursuant to law,
21 including Chapter 6.5 (commencing with Section 25100),
22 because there is no liable party or the judgment could not
23 be satisfied, in whole or part, against the party
24 determined to be liable for the release of the hazardous
25 substance.

26 (c) The person has presented a written demand for
27 compensation, which sets forth the basis for the claim, to
28 the party which the person reasonably believes is liable
29 for a loss specified in paragraph (1) of subdivision (a) of
30 Section 25375 which was incurred by that person and is
31 compensable pursuant to this article, the person has
32 presented the board with a copy of the demand, and,
33 within 60 days after presenting the demand, the party has
34 either rejected, in whole or in part, the demand to be
35 compensated for a loss specified in paragraph (1) of
36 subdivision (a) of Section 25375, or has not responded to
37 the demand. Only losses specified in paragraph (1) of
38 subdivision (a) of Section 25375 are compensable under
39 a claim filed pursuant to this subdivision.



1 25373. The board shall prescribe appropriate forms
2 and procedures for claims filed pursuant to this article,
3 which shall include, as a minimum, all of the following:

4 (a) A provision requiring the claimant to make a
5 sworn verification of the claim to the best of his or her
6 knowledge.

7 (b) A full description, supported by appropriate
8 evidence from government agencies of the release of the
9 hazardous substance claimed to be the cause of the
10 physical injury or illness or loss of income.

11 (c) Certification by the claimant of dates and places of
12 residence for the five years preceding the date of the
13 claim.

14 (d) Certification of the medical history of the claimant
15 for the five years preceding the date of the claim, along
16 with certification of the alleged physical injury or illness
17 and expenses for the physical injury or illness. The
18 certification shall be made by hospitals, physicians, or
19 other qualified medical authorities.

20 (e) The claimant's income as reported on the
21 claimant's federal income tax return for the preceding
22 three years in order to compute lost wages or income.

23 (f) Any person who knowingly gives, or causes to be
24 given, any false information as a part of any such claim
25 shall be guilty of a misdemeanor and shall, upon
26 conviction, be fined up to five thousand dollars (\$5,000),
27 or imprisoned for not more than one year, or both.

28 25374. All decisions rendered by the board shall be in
29 writing, with notification to all appropriate parties, and
30 shall be rendered within 90 days of submission of a claim
31 to the board unless all the parties to the claim agree in
32 writing to an extension of time. The decision shall be
33 considered a final agency action for the purposes of
34 judicial review of the decision by any party to the
35 proceedings resulting in the decision.

36 25375. (a) If the board makes the determination,
37 specified in subdivision (b), that losses resulted from the
38 claimant's damages, injury, or disease, only the following
39 losses are compensable pursuant to this article:



1 (1) One hundred percent of uninsured, out-of-pocket
2 medical expenses, for up to three years from the onset of
3 treatment.

4 (2) Eighty percent of any uninsured, actual lost wages,
5 or business income in lieu of wages, caused by injury to
6 the claimant or the claimant's property, not to exceed
7 fifteen thousand dollars (\$15,000) per year for three
8 years.

9 (3) One hundred percent of uninsured, out-of-pocket
10 expenses for remedial action on the claimant's property
11 undertaken to address a release of a hazardous substance
12 when all of the following apply:

13 (A) The claimant's property is an owner-occupied
14 single-family residence.

15 (B) The remedial action was ordered by federal, state,
16 or local authorities due to a release of a hazardous
17 substance.

18 (C) The department makes one of the following
19 determinations:

20 (i) The release of the hazardous substance originated
21 outside the boundaries of the property.

22 (ii) The release of the hazardous substance occurred
23 on the property, was the result of an action which violated
24 state or federal law, and the responsible party cannot be
25 identified or cannot be located, or a judgment against the
26 responsible party cannot be satisfied.

27 The maximum compensation under this paragraph is
28 limited to twenty-five thousand dollars (\$25,000) per
29 residence and to one hundred thousand dollars
30 (\$100,000) for five contiguous residential properties. Any
31 compensation provided shall be reduced by the amount
32 that the remedial action results in a capital improvement
33 to the claimant's residence.

34 (4) One hundred percent of the fair market value of
35 owner-occupied real property that is rendered
36 permanently unfit for occupancy because of the release
37 of a hazardous substance. For purposes of this paragraph,
38 real property is rendered permanently unfit for
39 occupancy only if a state or federal agency requires that
40 it be evacuated for a period of six or more months because



1 of the release of a hazardous substance. The fair market
2 value of the real property shall be determined by an
3 independent appraiser, and shall be considered by the
4 independent appraiser as being equal to the value of the
5 real property prior to the release of the hazardous
6 substance that caused the evacuation of the property.
7 Where compensation is made by the board pursuant to
8 this paragraph, sole ownership of the real property shall
9 be transferred to the state and any proceeds resulting
10 from the final disposition of the real property shall be
11 deposited into the state account, for expenditure by the
12 department upon appropriation by the Legislature. To be
13 eligible for compensation pursuant to this paragraph,
14 claims for compensation shall be made within 12 months
15 of the date on which the evacuation was ordered.

16 (5) One hundred percent of the expenses incurred
17 due to the evacuation of a residence ordered by a state or
18 federal agency. For purposes of this paragraph,
19 “evacuation expenses” include the cost of shelter and any
20 other emergency expenditures incurred due to an
21 evacuation ordered by a state or federal agency. The
22 board may provide compensation, pursuant to this
23 paragraph, only if it finds that the evacuation expenses
24 represent reasonable costs for the goods or services
25 purchased, and would not have been incurred if an
26 evacuation caused by a hazardous substance release had
27 not occurred. The board may provide compensation for
28 these evacuation expenses only if they were incurred
29 within 12 months from the date on which evacuation was
30 ordered.

31 (b) A loss specified in subdivision (a) is compensable
32 if the board makes all of the following findings, based
33 upon a preponderance of the evidence:

- 34 (1) A release of a hazardous substance occurred.
- 35 (2) The claimant or the claimant’s property was
36 exposed to the release of the hazardous substance.
- 37 (3) The exposure of the claimant to the release of the
38 hazardous substance was of such a duration, and to such
39 a quantity of the hazardous substance, that the exposure



1 caused the damages, injury, or disease which resulted in
2 the claimant's loss.

3 (4) For purposes of paragraphs (4) and (5) of
4 subdivision (a), the hazardous substance release, or the
5 order which resulted in the claim for compensation
6 occurred on or after January 1, 1986.

7 (5) The conditions and requirements of this article
8 including, but not limited to, the conditions of Sections
9 25372 and 25373, have been met.

10 (c) No money shall be used for the payment of any
11 claim authorized by this chapter, where the claim is the
12 result of long-term exposure to ambient concentrations of
13 air pollutants.

14 25375.5. (a) Except as specified in subdivision (b),
15 the procedures specified in Article 8 (commencing with
16 Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of
17 Title 2 of, and in Section 11513 of, the Government Code
18 apply to the proceedings conducted by the board
19 pursuant to this article.

20 (b) Notwithstanding subdivision (a), Sections 801, 802,
21 803, 804, and 805 of the Evidence Code apply to the
22 proceedings conducted by the board pursuant to this
23 article.

24 (c) The board may consider evidence presented by
25 any person against whom a demand was made pursuant
26 to subdivision (c) of Section 25372. The evidence
27 presented by that person shall become a part of the
28 record upon which the board's decision shall be based.

29 25376. No claim may be presented to the board
30 pursuant to this article later than three years from the
31 date of discovery of the loss or from January 1, 1982,
32 whichever is later.

33 25377. Nothing in this article shall require, or be
34 deemed to require, pursuit of any claim against the board
35 as a condition precedent to any other remedy.

36 25378. (a) Compensation of any loss pursuant to this
37 article shall preclude indemnification or reimbursement
38 from any other source for the identical loss, and
39 indemnification or reimbursement from any other source
40 shall preclude compensation pursuant to this article.



1 (b) If a claimant recovers any compensation from a
2 party in a civil or administrative action for a loss for which
3 the claimant has received compensation pursuant to this
4 article, the claimant shall reimburse the state account in
5 an amount equal to the compensation which the claimant
6 has received from the state account pursuant to this
7 article. The Attorney General may bring an action against
8 the claimant to recover the amount which the claimant
9 is required to reimburse the state account, and until the
10 account is reimbursed, the state shall have a lien of first
11 priority on the judgment or award recovered by the
12 claimant. If the state account is reimbursed pursuant to
13 this subdivision, the state shall not acquire, by
14 subrogation, the claimant's rights pursuant to Section
15 25380.

16 (c) The Legislature hereby finds and declares that it
17 is the purpose of this section to prevent double recovery
18 for a loss compensable pursuant to this article.

19 25379. (a) The following evidence is not admissible
20 as evidence in any civil or criminal proceeding, including
21 a subrogation action by the state pursuant to Section
22 25380, to establish the liability of any person for any
23 damages alleged to have been caused by a release of a
24 hazardous substance:

25 (1) A final decision made by the board pursuant to this
26 article.

27 (2) A decision made by the board to admit or not admit
28 any evidence.

29 (3) Any finding of fact or conclusion of law entered by
30 the board in a proceeding for a claim pursuant to this
31 article.

32 (4) The fact that any person has done any of the
33 following in a proceeding for a claim pursuant to Section
34 25372:

35 (A) Chosen to participate or appear.

36 (B) Chosen not to participate or appear.

37 (C) Failed to appear.

38 (D) Settled or offered to settle the claim.

39 (b) Subdivision (a) does not apply to any civil action
40 or writ by a claimant against the board for any act,



1 decision, or failure to act on a claim submitted by the
2 claimant.

3 25380. Compensation of any loss pursuant to this
4 article shall be subject to the state's acquiring, by
5 subrogation, all rights of the claimant to recover the loss
6 from the party determined to be liable therefor. Upon the
7 request of the board, the Attorney General shall
8 commence an action in the name of the people of the
9 State of California to recover any amount paid in
10 compensation for any loss pursuant to this article against
11 any party who is liable to the claimant for any loss
12 compensable pursuant to this article in accordance with
13 the procedures set forth in Sections 25360 to 25364,
14 inclusive. Moneys recovered pursuant to this section shall
15 be deposited in the state account.

16 25381. (a) The board shall, in consultation with the
17 department, adopt, and revise when appropriate, all rules
18 and regulations necessary to implement this article,
19 including methods that provide for establishing that a
20 claimant has exercised reasonable diligence in satisfying
21 the conditions specified in Sections 25372, 25373, 25375,
22 and 25375.5, and regulations that specify the proof
23 necessary to establish a loss compensable pursuant to this
24 article.

25 (b) Claims approved by the board pursuant to this
26 article shall be paid from the state account.

27 (c) The Legislature may appropriate up to two million
28 dollars (\$2,000,000) annually from the state account to be
29 used by the board for the payment of awards pursuant to
30 this article.

31 (d) Claims against or presented to the board shall not
32 be paid in excess of the amount of money appropriated for
33 this purpose from the state account. These claims shall be
34 paid only when additional money is collected,
35 appropriated, or otherwise added to that account.

36 25382. The board may expend from the state account
37 those sums of money as are reasonably necessary to
38 administer and carry out this article.

39



1 Article 7.5. Hazardous Substance Cleanup Bond Act of
2 1984

3
4 25385. This article shall be known and may be cited as
5 the Johnston-Filante Hazardous Substance Cleanup
6 Bond Act of 1984.

7 25385.1. For purposes of this article, and for purposes
8 of Section 16722 of the Government Code as applied to
9 this article, the following definitions apply:

10 (a) “Board” means the Department of Toxic
11 Substances Control.

12 (b) “Committee” means the Hazardous Substance
13 Cleanup Committee created pursuant to Section 25385.4.

14 (c) “Director” means the Director of Toxic Substances
15 Control.

16 (d) “Fund” means the Hazardous Substance Cleanup
17 Fund created pursuant to Section 25385.3.

18 (e) “Orphan site” means a site with a release or
19 threatened release of a hazardous substance with no
20 reasonably identifiable responsible parties.

21 (f) “Orphan share” means those costs of removal or
22 remedial action at sites with a release or threatened
23 release of hazardous substances, which costs are in excess
24 of amounts included in a cleanup agreement.

25 (g) “Responsible party” means a person who is, or may
26 be, responsible or liable for carrying out, or paying for the
27 costs of, a removal or remedial action.

28 (h) “Trust fund” means the Superfund Bond Trust
29 Fund.

30 25385.2. The State General Obligation Bond Law
31 (Chapter 4 (commencing with Section 16720) of Part 3 of
32 Division 4 of Title 2 of the Government Code) is adopted
33 for the purpose of the issuance, sale, and repayment of,
34 and otherwise providing with respect to, the bonds
35 authorized to be issued pursuant to this article, and the
36 provisions of that law are included in this article as though
37 set out in full in this article, except that, notwithstanding
38 anything in the State General Obligation Bond Law, the
39 maximum maturity of bonds shall not exceed 30 years
40 from the date of the bonds, or from the date of each



1 respective series. The maturity of each respective series
2 shall be calculated from the date of the series.

3 25385.3. (a) The Hazardous Substance Cleanup
4 Fund is hereby created in the State Treasury. The
5 proceeds of bonds issued and sold pursuant to this article
6 shall be deposited in the fund, and the money in the fund
7 may be expended only for the purposes specified in this
8 article and, pursuant to appropriation by the Legislature,
9 in the manner specified in this section.

10 (b) Except when the Legislature appropriates money
11 from the fund for specified removal or remedial actions
12 in a bill other than the Budget Act, it is the intention of
13 the Legislature that all proposed appropriations for
14 activities conducted pursuant to this article be included
15 in a section of the Budget Act for each fiscal year for
16 consideration by the Legislature and that this section be
17 captioned “Hazardous Substance Cleanup Bond Act
18 Program.” Any appropriation of money from the fund is
19 subject to all the limitations contained in the bill making
20 the appropriation and to all fiscal procedures specified by
21 statute concerning the expenditure of state funds.

22 (c) In issuing bonds pursuant to this article, the
23 committee shall, to the extent possible, pay the principal
24 of, and interest on, the bonds from the sources specified
25 in subdivisions (a) to (f), inclusive, of Section 25385.9. The
26 General Fund shall be reimbursed from these sources for
27 any transfers made to the Hazardous Substance Clearing
28 Account from the General Fund to make the principal
29 and interest payments. In determining the amount the
30 General Fund is to be reimbursed for any transfer, the
31 committee shall also include interest on the transfer at a
32 rate equal to the bond rate on the transfer from the date
33 of transfer to the date of reimbursement.

34 25385.4. The Hazardous Substance Cleanup
35 Committee, which is hereby created, shall consist of the
36 Governor, the Director of Finance, the Treasurer, the
37 Controller, and the Secretary for Environmental
38 Protection.

39 25385.5. The committee may create a debt or debts,
40 liability or liabilities, of the State of California, in the



1 aggregate of one hundred million dollars (\$100,000,000),
2 in the manner provided in this article. The debt or debts,
3 liability or liabilities, shall be created for the purpose of
4 providing moneys, for deposit in the fund, for the
5 purposes specified in Section 25385.6.

6 25385.6. (a) The moneys in the Hazardous Substance
7 Cleanup Fund may be used, upon appropriation by the
8 Legislature, for the purposes specified in this section.

9 (b) The board may expend moneys in the fund, upon
10 the authorization of the committee, for all of the
11 following purposes:

12 (1) To provide the state share of a removal or remedial
13 action pursuant to Section 104(c)(3) of the federal act (42
14 U.S.C. Sec. 9604(c)(3)) if the site is the subject of a final
15 remedial action plan issued pursuant to Section 25356.1.

16 (2) To pay all costs of a removal or remedial action
17 incurred by the state, or by any local agency with the
18 approval of the director, in response to a release or
19 threatened release of a hazardous substance at a site
20 which is listed in the priority ranking of sites pursuant to
21 Section 25356 and is the subject of a final remedial action
22 plan issued pursuant to Section 25356.1, to the extent that
23 the costs are not paid by responsible parties or are
24 reimbursed by the federal act.

25 (3) To pay for site characterization of a release of
26 hazardous substances, even if a remedial action plan has
27 not been prepared, approved, adopted, or made final for
28 that site.

29 25385.7. (a) All bonds authorized by this article,
30 which are sold and delivered as provided in this article,
31 constitute valid and legally binding general obligations of
32 the State of California, and the full faith and credit of the
33 State of California are hereby pledged for the punctual
34 payment of both principal and interest thereon.

35 (b) There shall be collected annually, in the same
36 manner and at the same time as other state revenue is
37 collected, that sum, in addition to the ordinary revenues
38 of the state, which is required to pay the principal of, and
39 interest on, the bonds as provided in this article, and all
40 officers charged by law with any duty in regard to the



1 collection of the revenue shall perform each and every
2 act which is necessary to collect this additional sum.

3 25385.8. (a) The Superfund Bond Trust Fund is
4 hereby created in the State Treasury. All interest earned
5 on funds in the state account, and other funds transferred
6 to the trust fund by the Legislature or the department,
7 shall be deposited in the trust fund, which is a sinking
8 fund to ensure the payment of principal of, and interest
9 on, the debt incurred pursuant to Section 25385.5. All
10 interest earned on money in the fund shall be deposited
11 in the trust fund. The funds in the trust fund shall be
12 invested by the Treasurer. The committee shall
13 administer the trust fund so that there are sufficient funds
14 in the trust fund to make the necessary principal and
15 interest payments on bonds issued and shall transfer
16 funds from the trust fund for this purpose to the
17 Hazardous Substance Clearing Account.

18 (b) There shall be transferred annually the sum of five
19 million dollars (\$5,000,000) from the state account to the
20 trust fund.

21 (c) The unobligated balance in the state account shall
22 be transferred by the department to the trust fund on
23 December 31 of each year. For purposes of this section,
24 “unobligated balance” means that amount, which shall
25 not be less than zero, determined by the department, in
26 the year-end financial statement submitted to the
27 Controller, to be the total of all unencumbered funds on
28 June 30 of that calendar year, less the total of all of the
29 following:

30 (1) Any fund in the reserve account for emergencies
31 established by Section 25354.

32 (2) Any remaining principal of the loan authorized by
33 Section 25332.

34 (3) Any interest due on any remaining principal of the
35 loan authorized by Section 25332.

36 (4) Any funds paid as taxes for the following fiscal year.

37 (5) Any funds received from the federal government
38 pursuant to the federal act.



1 (6) Any interest accruing from funds deposited in the
2 subaccount for site operation and maintenance
3 established by Section 25330.5.

4 (7) Any funds received from responsible parties for
5 remedial and removal action, except to the extent those
6 funds are necessary to reimburse the state account for
7 funds previously expended therefrom.

8 (8) Any funds deposited into a sinking fund to ensure
9 the repayment of principal on, and interest of, bonds
10 pursuant to Section 25385.9.

11 (d) The amendment of this section by Chapter 531 of
12 the Statutes of 1990 does not constitute a change in, but
13 is declaratory of, the existing law.

14 25385.9. Notwithstanding any other provision of law,
15 the board shall pay the principal of, and interest on, the
16 bonds from the Hazardous Substance Clearing Account,
17 using the following sources, in the following order of
18 priority:

19 (a) Money derived from the premium and the accrued
20 interest on bonds which are sold.

21 (b) Recoveries from responsible parties of costs
22 incurred for removal or remedial actions at sites listed
23 pursuant to Section 25356, insofar as the removal or
24 remedial action expenditures were paid from proceeds
25 from bonds issued pursuant to this article.

26 (c) Funds received pursuant to the federal act which
27 are designated to be used for removal or remedial actions
28 paid for by proceeds from bonds issued pursuant to this
29 article.

30 (d) Any money transferred from the state account.

31 (e) Any money transferred from the trust fund.

32 (f) Any money derived from any other source, as
33 provided by law.

34 (g) The General Fund.

35 25386. Notwithstanding Section 25386.5, the money
36 deposited in the fund is available for transfer to the
37 General Fund if money was deposited in the fund
38 pursuant to any provision of law requiring repayments to
39 the state for assistance financed by the proceeds of the
40 bonds issued pursuant to this article. When transferred to



1 the General Fund, that money shall be applied as a
2 reimbursement to the General Fund for the principal and
3 interest payments on the bonds which have been paid
4 from the General Fund.

5 25386.1. There is hereby appropriated from the
6 General Fund in the State Treasury, for the purpose of
7 this article, an amount equal to the sum of all of the
8 following:

9 (a) The sum, annually, which will be necessary to pay
10 the principal of, and the interest on, the bonds issued and
11 sold pursuant to this article, as the principal and interest
12 become due and payable.

13 (b) The sum which is necessary to carry out Section
14 25386.2, which sum is appropriated without regard to
15 fiscal years, notwithstanding Section 13340 of the
16 Government Code.

17 25386.2. For the purpose of carrying out this article,
18 the Director of Finance may, by executive order,
19 authorize the withdrawal from the General Fund of
20 amounts not to exceed the amount of the unsold bonds
21 which the committee has, by resolution, authorized to be
22 sold for the purpose of carrying out this article. Any
23 amounts withdrawn shall be deposited in the fund and
24 shall be disbursed by the board in accordance with this
25 article. Any moneys made available pursuant to this
26 section shall be returned to the General Fund from
27 moneys received from the sale of bonds sold for the
28 purpose of carrying out this article.

29 25386.25. Notwithstanding any other provision of this
30 bond act, or of the State General Obligation Bond Law
31 (Chapter 4 (commencing with Section 16720) of Part 3 of
32 Division 4 of Title 2 of the Government Code), if the
33 Treasurer sells bonds pursuant to this bond act that
34 include a bond counsel opinion to the effect that the
35 interest on the bonds is excluded from gross income for
36 federal tax purposes under designated conditions, the
37 Treasurer may maintain separate accounts for the bond
38 proceeds invested and the investment earnings on those
39 proceeds, and may use or direct the use of those proceeds
40 or earnings to pay any rebate, penalty, or other payment



1 required under federal law, or take any other action with
2 respect to the investment and use of those bond proceeds,
3 as may be required or desirable under federal law in
4 order to maintain the tax-exempt status of those bonds
5 and to obtain any other advantage under federal law on
6 behalf of the funds of this state.

7 25386.3. Upon the request of the board, and
8 supported by a statement of the proposed actions to be
9 taken pursuant to Section 25385.6, the committee shall
10 determine whether it is necessary or desirable to issue any
11 bonds authorized pursuant to this article in order to take
12 these actions, and if so, the amount of bonds which should
13 be issued and sold. Successive issues of bonds may be
14 authorized and sold to take these actions progressively,
15 and it is not necessary that all of the bonds authorized by
16 this article to be issued are sold at any one time.

17 25386.4. The committee may authorize the Treasurer
18 to sell all, or any part of, the bonds authorized under this
19 article at the time or times as may be fixed by the
20 Treasurer.

21 25386.5. Except as provided in subdivision (c) of
22 Section 25385.3 and Section 25386, all proceeds from the
23 sale of bonds, except those derived from premiums and
24 accrued interest, are available for the purposes specified
25 in Section 25385.6, but are not available for transfer to the
26 General Fund to pay the principal of, and interest on, the
27 bonds.

28

29 Article 7.8. Orphan Share Reimbursement Trust Fund

30

31 25390. For purposes of this article, the following
32 definitions shall apply:

33 (a) “Fund” means the Orphan Share Reimbursement
34 Trust Fund established pursuant to Section 25390.3.

35 (b) “Orphan share” means the share of liability for the
36 costs of response action that is attributable to the
37 activities of persons who are defunct or insolvent, as
38 determined pursuant to Section 25390.5.

39 25390.1. The Legislature finds and declares all of the
40 following:



1 (a) This article, which establishes an Orphan Share
2 Reimbursement Trust Fund, operates in conjunction
3 with the federal liability scheme under the federal act as
4 in effect on July 1, 1998, for the recovery of response costs
5 expended by government agencies.

6 (b) Under federal liability, at sites where there are
7 insolvent or defunct parties that cannot contribute to the
8 cost of cleanup, viable responsible parties pay the share
9 of liability for that cleanup that may be attributable to
10 insolvent and defunct parties.

11 (c) The Orphan Share Reimbursement Trust Fund is
12 created to mitigate the payment of an insolvent or
13 defunct party's liability share by viable responsible
14 parties, to the extent money in the fund is available, and
15 to encourage responsible parties to quickly and
16 efficiently remediate contamination.

17 25390.2. (a) This article does not prohibit, and is not
18 intended to prohibit, the department, the regional board,
19 or the Attorney General from pursuing any existing legal,
20 equitable, or administrative remedies, pursuant to
21 federal or state law, against any potentially responsible
22 party.

23 (b) No liability or obligation is imposed upon the state
24 pursuant to this article, and the state shall not incur a
25 liability or obligation beyond the payment of claims
26 pursuant to this article, to the extent that money is
27 available and has been allocated by the administrator
28 under subdivision (c) of Section 25390.4. No legal action
29 may be brought against the Orphan Share
30 Reimbursement Trust Fund in its own name.

31 25390.3. (a) The Orphan Share Reimbursement
32 Trust Fund is hereby created in the State Treasury. An
33 administrator of the fund shall be appointed by the
34 Governor and subject to confirmation by the Senate.

35 (b) The administrator of the fund may expend the
36 money deposited in the fund as provided in this article,
37 upon appropriation by the Legislature. The
38 administrator of the fund shall act in a fiduciary capacity,
39 shall prudently administer the fund, and shall protect the
40 fund from any unreasonable or unjustified claims,



1 including any unreasonable or unjustified determinations
2 of the orphan share percentage.

3 (c) Except as provided in subdivision (d) and
4 subdivision (b) of Section 25358.7.2, the administrator of
5 the fund may expend the money in the fund for all of the
6 following purposes:

7 (1) To pay claims for reimbursement of all, or any part
8 of, the orphan share at a site paid by the responsible party
9 filed pursuant to Section 25390.4.

10 (2) For the costs of implementing this article.

11 (3) To pay the reasonable costs of the department and
12 the regional board for performance of its duties under this
13 article, including, but not limited to, its participation in
14 the orphan share determination process set forth in
15 Section 25390.5, unless those costs are paid by a potentially
16 responsible party under an agreement specified in
17 paragraph (3) of subdivision (a) of Section 25390.4. The
18 expenditures from the fund for purposes of this
19 paragraph shall not exceed 5 percent of the total amount
20 appropriated from the fund in the annual Budget Act for
21 purposes of this subdivision for that fiscal year.

22 (4) To pay the portion of costs attributable to the
23 orphan share incurred by the department and the
24 regional boards to oversee actions of potentially
25 responsible parties, unless those costs are paid by a
26 potentially responsible party under an agreement
27 specified in paragraph (3) of subdivision (a) of Section
28 25390.4.

29 (d) If an appropriation from the General Fund is made
30 to the fund in any fiscal year and an amount greater than
31 five million dollars (\$5,000,000) in unexpended funds,
32 beyond any amount approved by the administrator of the
33 fund to pay claims pursuant to this article from that
34 General Fund appropriation, remain in the fund at the
35 end of that fiscal year, and if the department determines
36 that additional funding for orphan sites beyond that
37 appropriated from the Toxic Substances Control Account
38 is required for the next fiscal year, the administrator may
39 expend the amount in excess of five million dollars
40 (\$5,000,000) from the General Fund appropriation to pay



1 for response costs incurred by the department or the
2 regional boards under this chapter at sites listed pursuant
3 to Section 25356 where no viable responsible parties exist.

4 25390.4. (a) A potentially responsible party may file
5 a claim pursuant to paragraph (1) of subdivision (c) of
6 Section 25390.3 only if all of the following apply:

7 (1) The site is listed pursuant to Section 25356.

8 (2) The department or the regional board has
9 approved a final remedy for the site under Section
10 25356.1.

11 (3) The department and the potentially responsible
12 party have entered into a written, enforceable cleanup
13 agreement or order embodied in a consent order issued
14 pursuant to Section 25355.5 or 25358.3, or the regional
15 board and the potentially responsible party have entered
16 into a written, enforceable cleanup agreement or order
17 that provides for the completion of all response actions
18 necessary at the site, conducted pursuant to this chapter
19 and under the oversight and at the direction of the
20 department or the regional board. The agreement shall
21 provide for the payment by the potentially responsible
22 party of the department's or the regional board's
23 ~~oversight~~ response costs.

24 (4) The potentially responsible party demonstrates,
25 and the department or the regional board finds, that the
26 potentially responsible party has and will have sufficient
27 financial resources to complete all required response
28 actions.

29 (5) The potentially responsible party is in compliance
30 with the agreement provided in paragraph (3), and with
31 any other applicable order or agreement pertaining to
32 the potentially responsible party's obligations with
33 respect to the site.

34 (6) The potentially responsible party has prepared
35 and provided the information required under subdivision
36 (b) of Section 25390.5.

37 (7) The claim for reimbursement is for the costs
38 incurred for response actions that were subject to the
39 oversight and approval of the department or the regional
40 board.



1 (b) The administrator of the fund shall prescribe
2 appropriate application forms and procedures for claims
3 filed pursuant to paragraph (1) of subdivision (c) of
4 Section 25390.3 that shall include all of the following:

5 (1) Requirements that the claimant provide, at a
6 minimum, all of the following documentation:

7 (A) A sworn verification of the claim to the best of the
8 information known to the claimant or within the
9 claimant's possession or control.

10 (B) All records and information pertaining to the site
11 and relevant to the ownership, operation, or control of
12 the site, or to the ownership, possession, generation,
13 treatment, transportation, storage or disposal of a
14 hazardous substance, pollutant, or contaminant at or in
15 connection with the site, within the possession or control
16 of the claimant, including, but not limited to, the
17 information specified in subdivision (b) of Section
18 25358.1.

19 (C) Certification of all response costs that have been,
20 or will be, incurred at the site by the potentially
21 responsible party, and an estimate of the total cost of
22 completion of the approved final remedy at the site.

23 (2) Procedures specifying that claims shall be filed
24 only at the two following specific time periods during the
25 performance of a response action:

26 (A) After the final remedy is selected under Section
27 25356.1.

28 (B) After the department or the regional board
29 determines that the response action is complete. The
30 department or the regional board shall not include
31 operation and maintenance activities in determining
32 whether the response action is complete under this
33 subparagraph.

34 (c) The administrator of the fund shall annually, on a
35 fiscal year basis, pay claims for reimbursement from the
36 fund filed by potentially responsible parties under
37 paragraph (1) of subdivision (c) of Section 25390.3, in
38 accordance with the following procedures:

1 (1) Claims for funds available during each fiscal year
2 shall be filed with the administrator by July 30 of that
3 fiscal year.

4 (2) For sites with multiple responsible parties, all
5 potentially responsible parties that have entered into the
6 cleanup agreement specified in paragraph (3) of
7 subdivision (a) of Section 25390.4 shall file a single claim.

8 (3) (A) The administrator shall allocate the money
9 available in the fund for the fiscal year among the claims
10 filed by the July 30 deadline. The allocation shall be based
11 on the determination of the orphan share percentage at
12 the facility under the process set forth in Section 25390.5,
13 the long-term financial stability and short-term resources
14 available in the fund, and the administrator's fiduciary
15 duty with respect to the fund. Except as provided in
16 subparagraph (B), the administrator shall pay claims for
17 funds in the order in which they are received.

18 (B) Notwithstanding subparagraph (A), if an
19 appropriation from the General Fund is made to the fund
20 in any fiscal year, the administrator may alter the order
21 of payment of claims required by subparagraph (A) by
22 using funds appropriated from the General Fund to pay
23 claims based on the threat to public health or the
24 environment posed by a site or the need to improve
25 economic and environmental conditions in redeveloping
26 communities.

27 (4) The total amount allocated to any one site shall not
28 exceed 10 percent of the total amount available each fiscal
29 year in the fund. If, due to this limit or to the
30 unavailability of funds, a claimant receives only partial or
31 no reimbursement of the orphan share paid to be paid by
32 that claimant, the claim shall be paid in the following
33 fiscal year and shall be given priority over all claims filed
34 after the claim was initially received, subject to the
35 discretion of the administrator set forth in paragraph (3).

36 (5) The administrator's proposed allocation shall be
37 subject to public review and comment for 30 days.

38 (d) The state and the fund have no obligation to
39 provide full reimbursement to a claimant. The fund shall
40 be allocated at the discretion of the administrator, subject



1 to the requirements of this article. In enacting this article,
2 the Legislature intends that claimants be reimbursed
3 only to the extent that money is available in the fund and
4 is allocated to the claimant by the administrator.

5 25390.5. For the purposes of this article, the orphan
6 share shall be determined in the following manner:

7 (a) The orphan share shall be expressed as a
8 percentage in multiples of five, up to, and, including, but
9 not greater than, 75 percent.

10 (b) The potentially responsible party filing a claim for
11 reimbursement of the orphan share shall provide the
12 administrator of the fund with a written potentially
13 responsible party search report that shall include a list of
14 all potentially responsible parties identified for the site,
15 the factual and legal basis for identifying those parties,
16 and a proposed orphan share percentage. The potentially
17 responsible party shall also provide the administrator
18 with the factual documentation necessary to support the
19 proposed orphan share percentage.

20 (c) Upon receipt of the information required by
21 subdivision (a), the administrator of the fund shall invite
22 all identified potentially responsible parties and the
23 department and the regional board to submit any
24 additional information relating to the proposed orphan
25 share percentage or to the list of identified potentially
26 responsible parties.

27 (d) The administrator of the fund, in consultation with
28 the department or the regional board, shall determine a
29 final orphan share percentage based on the volume,
30 toxicity, and difficulty of removal of the contaminants
31 contributed to the site by the party or parties responsible
32 for the orphan share. The administrator shall determine
33 the orphan share timely and efficiently and is not
34 required to precisely determine all relevant factors, as
35 long as the determination is generally equitable. In
36 addition, the administrator may consider the results of
37 any apportionment or allocation conducted by voluntary
38 arbitration or mediation or by a civil action filed by a
39 potentially responsible party, or any other



1 apportionment or allocation decision that is helpful when
2 determining the orphan share percentage.

3 (e) A potentially responsible party shall not assert, and
4 the administrator of the fund shall not determine, that the
5 orphan share percentage includes the share of liability
6 attributable to a potentially responsible party's acts that
7 occurred before January 1, 1982, unless that share of
8 responsibility is attributable to a person who is defunct or
9 insolvent.

10 (f) In determining the orphan share percentage under
11 this section, the administrator of the fund may perform
12 any of the activities authorized in subdivisions (b) and (c)
13 of Section 25358.1.

14 (g) The administrator of the fund shall issue all orphan
15 share percentage determinations in writing, with
16 notification to all appropriate parties. The decision of the
17 administrator with respect to either apportionment or
18 payment of claims is a final agency action for the purposes
19 of judicial review of the decision by any party to the
20 proceedings resulting in the decision; however, judicial
21 review of the administrator's decision is limited to a
22 showing of fraud by a party submitting information under
23 this subdivision. The administrator shall be represented
24 by the Attorney General in any action brought under this
25 article.

26 25390.6. (a) Any costs paid from the fund pursuant to
27 paragraphs (1) and (4) of subdivision (c) of Section
28 25390.3 shall be recoverable by the Attorney General, at
29 the request of the administrator of the fund, from any
30 liable person or persons who have not entered into, or are
31 not in compliance with, a written cleanup agreement
32 entered into pursuant to paragraph (3) of subdivision (a)
33 of Section 25390.4 that provides for the completion of all
34 response actions necessary at the site under the oversight
35 and at the direction of the department or the regional
36 board.

37 (b) Any potentially responsible party who withholds
38 information required to be submitted under this section,
39 or who submits false information, is subject to a civil
40 penalty of up to twenty-five thousand dollars (\$25,000)



1 for each piece of information withheld or for each piece
2 of false information submitted.

3 25390.7. A claim for reimbursement under paragraph
4 (1) of subdivision (c) of Section 25390.3 shall not be filed
5 for any of the following:

6 (a) Sites listed on the National Priorities List pursuant
7 to the federal act (42 U.S.C. Sec. 9605(a)(8)(B)).

8 (b) Sites remediated pursuant to Chapter 6.85
9 (commencing with Section 25396).

10 (c) Sites, or portions of sites, for which the potentially
11 responsible party has agreed to take all response action
12 required by the department or the regional board at the
13 site, and that agreement is embodied in a written,
14 enforceable settlement agreement, including, but not
15 limited to, a judicial consent decree, entered into prior to
16 January 1, 1999.

17 (d) Sites, or portions of sites, that have been fully
18 remediated for which the department or the regional
19 board has determined that the response action is
20 complete prior to January 1, 1999. The department or the
21 regional board shall not include operation and
22 maintenance activities in determining whether the
23 response action is complete under this section.

24 25390.8. (a) Any costs incurred and payable from the
25 fund by the administrator pursuant to this article shall
26 constitute a claim and lien upon the real property owned
27 by a responsible party which is subject to, or affected by,
28 a response action. A lien established by this subdivision
29 shall have all of the following properties:

30 (1) The lien shall not exceed the increase in fair
31 market value of the site attributable to the response
32 action at the time of a subsequent sale or other disposition
33 of the site.

34 (2) The lien shall attach regardless of whether the
35 responsible party property owner is solvent.

36 (3) The lien shall arise at the time costs to the fund are
37 first incurred by the administrator.

38 (4) The lien shall be subject to the notice and hearing
39 procedures that due process of the law requires.



1 (b) Neither the administrator of the fund nor the fund
2 shall be considered a responsible party for a hazardous
3 substance release site because a claim and lien is imposed
4 pursuant to this section.

5 (c) The lien imposed by this section shall have the
6 force and effect of, and the priority of, a judgment lien
7 upon its recordation in the county in which the property
8 subject to the lien is located. The lien shall contain the
9 legal description of the property, the assessor's parcel
10 number, and the name of the owner of record, as shown
11 on the latest equalized assessment roll. The lien shall also
12 contain a legal description of the property that is the site
13 of the hazardous substance release, the assessor's parcel
14 number for that property, and the name of the owner of
15 record, as shown on the latest equalized assessment roll,
16 of that property.

17 (d) All funds recovered pursuant to this subdivision
18 shall be deposited in the fund.

19 25390.9. (a) This article shall become operative on
20 the operative date of a statute that does either, or both,
21 of the following:

22 (1) Appropriates funds to the fund to implement this
23 article.

24 (2) Establishes a revenue source for the fund.

25 (b) Notwithstanding subdivision (a), the operation of
26 this article shall be suspended during any fiscal year in
27 which both no funds are appropriated to the fund to
28 implement this article and no revenue source for the fund
29 is operative.

30

31 Article 8. Private Site Management

32

33 25395.1. As used in this article, the following terms
34 have the following meaning:

35 (a) "Private site manager" means an individual who is
36 registered as a class II environmental assessor pursuant to
37 Section 25570.3.

38 (b) "Private site management team" means a group
39 coordinated by a private site manager, which may consist
40 of any or all of the following persons:



1 (1) A person holding a four-year bachelor of science
2 degree from an accredited college or university who has
3 done significant work in biological, chemical, physical,
4 environmental or soil geology, hydrology, hydrogeology,
5 environmental health, environmental engineering,
6 toxicology, industrial hygiene, or a related field.

7 (2) An environmental engineer holding a four-year
8 bachelor of science in engineering degree from an
9 accredited college or university.

10 (3) An engineer registered in the State of California.

11 (4) A geologist registered in the State of California.

12 (5) A certified hydrogeologist registered in the State
13 of California.

14 (6) A certified engineering geologist registered in the
15 State of California.

16 (7) A geophysicist registered in the State of California.

17 (8) An industrial hygienist or safety engineer
18 registered in the State of California.

19 (9) A process engineer holding a four-year bachelor of
20 science degree in engineering from an accredited college
21 or university.

22 (10) A petroleum engineer holding a four-year
23 bachelor of science degree in engineering from an
24 accredited college or university.

25 (11) The necessary technical support personnel and
26 equipment operators, as determined by the private site
27 manager.

28 (c) "Project proponent" means any person who
29 applies to the department for approval to conduct the
30 response to a release or threatened release of hazardous
31 substances pursuant to this article.

32 (d) "Independent," as used in subdivision (b) of
33 Section 25395.3, means that the private site manager or
34 the members of the private site management team meet
35 all of the following requirements:

36 (1) The site manager or team member is not an
37 employee of the project proponent, a known responsible
38 party, or a prospective buyer of the site property.

39 (2) The site manager or team member is not a general
40 partner, or a limited partner, with any project proponent,



1 known responsible party, or prospective buyer of the site
2 property.

3 (3) The site manager or team member is not a
4 shareholder in the project proponent entity, known
5 responsible party, or a prospective buyer of the site
6 property.

7 (4) The site manager or team member does not
8 receive any source of income from the project proponent,
9 known responsible party, or a prospective buyer of the
10 site property, other than the payment of fees for
11 professional services.

12 (5) The site manager or team member does not
13 accept, or agree to accept, any payment that is in any way
14 contingent upon the completion of a response action of
15 the site as a private site management project.

16 25395.2. A private site manager may conduct
17 investigations of potential hazardous substance release
18 sites using preliminary endangerment assessment
19 procedures approved by the department. If, upon
20 completion of an investigation, a private site manager
21 determines that because a significant release of
22 hazardous substances has not occurred, site conditions do
23 not require any further investigation or remedial action,
24 the private site manager may submit a report to the
25 department certifying that no further action is required
26 at the site. Unless the department issues a written notice
27 of disagreement to the private site manager within 60
28 days from the date of receipt of the report, the
29 department shall be deemed to be in agreement with the
30 report and shall designate the site as a site which requires
31 no further action. The department may subsequently
32 change that site designation status upon receipt and
33 confirmation of evidence that the physical environment
34 of the site conditions differ from the findings of a report
35 submitted by a private site manager. The department
36 shall not designate a site under this section as a site that
37 requires no further action if the release of hazardous
38 substances has caused, or threatens to cause, discharges to
39 waters of the state.



1 25395.3. If, upon completion of a site investigation, a
2 private site manager or the department determines that
3 a significant release of a hazardous substance has
4 occurred, or is likely to have occurred, a project
5 proponent may submit an application to the department
6 requesting that a response action be conducted under
7 private site management pursuant to this article. The
8 application for a response action shall include both of the
9 following:

10 (a) Where a site investigation was conducted by a
11 private site manager, the private site manager shall
12 provide the department with a report of the site findings
13 based on the investigation. In all cases, the application
14 shall set forth reasons why the site is appropriate for a
15 private response action and management based on the
16 information available at the time that the application is
17 submitted to the department. Sites shall be deemed
18 appropriate for private site management if all the
19 following conditions exist:

20 (1) There is a substantial likelihood that no further
21 significant environmental damage or exposure to humans
22 will occur as the response action is implemented.

23 (2) The site is not adjacent to residential property, as
24 defined in Section 1675 of the Civil Code, or a school, day
25 care center for children, or a hospital.

26 (3) The site is not, or is not being used as, residential
27 property, as defined in Section 1675 of the Civil Code, or
28 a school, day care center for children, or a hospital.

29 (4) Releases of hazardous substances at the site did not
30 result in discharges to groundwater.

31 (5) An enforceable agreement that specifies how
32 response action will be conducted is not applicable to the
33 site.

34 (b) The name and a statement of qualifications of any
35 private site manager proposed for the site. The proposed
36 private site manager shall be independent of the project
37 proponent, all known responsible parties, and
38 prospective buyers of the site property.

39 25395.4. (a) If the department approves an
40 application for private site management, a private site



1 management team shall be designated to perform the
2 activities authorized by this article. The professional staff
3 of the private site management team shall be comprised,
4 at a minimum, of persons with qualifications and levels of
5 experience which shall be specified by the department
6 based upon the conditions at the site which require
7 response action.

8 (b) At least one member of the proposed team shall
9 have demonstrable experience or training in public
10 participation, risk communication, and community
11 involvement, except that the member shall not be
12 required to be a registered or certified professional. Each
13 member of the proposed team shall be independent of
14 the project proponent, known responsible parties, and
15 prospective buyers of the site property.

16 (c) If, at any time, the documented physical conditions
17 at the site change or physical conditions previously
18 unknown to the department are identified, the
19 department may rescind approval of the proposed
20 project or may require the private site management team
21 to include additional professional staff members with
22 expertise appropriate to the physical conditions at the
23 site. The addition of new professional level team
24 members proposed by the private site manager shall be
25 approved by the department, but the department shall
26 not unreasonably withhold that approval.

27 25395.5. (a) If the private site management team
28 determines that the response action will include a
29 removal or remedial action, the approved private site
30 management team shall prepare a draft removal action
31 work plan or remedial action plan. The draft removal
32 action work plan or remedial action plan may be
33 prepared without oversight by the department, but shall
34 be prepared in accordance with all of the requirements
35 of this chapter, or Chapter 6.85 (commencing with
36 Section 25396) in the case of sites selected pursuant to
37 Section 25396.6, and other applicable regulations and
38 guidance documents adopted or issued by the
39 department.



1 (b) The private site management team shall submit
2 the draft removal action work plan or remedial action
3 plan to the department for approval, and the department
4 shall approve or reject the work plan or remedial action
5 plan within 60 days from the date of submittal by a private
6 site manager. If a plan is rejected, the department shall
7 identify the principal reasons for the rejection, and shall
8 describe the actions needed to adequately address
9 deficiencies in the plan.

10 25395.6. (a) The private site management team shall,
11 in the case of sites selected pursuant to Section 25396.6,
12 prepare a remedial design for the implementation of the
13 response action that is selected in the final remedial
14 action plan that is prepared and approved in accordance
15 with the requirements of this chapter, or Chapter 6.85
16 (commencing with Section 25396), and applicable
17 regulations and guidance documents adopted or issued
18 by the department. The remedial design may be
19 prepared by the private site management team without
20 oversight by the department, and shall be submitted to
21 the department for approval.

22 (b) The department shall approve or reject a final
23 remedial design within 60 days from the date of submittal
24 by a private site management team. If a design is rejected,
25 the department shall identify the principal reasons for the
26 rejection, and shall describe the actions needed to
27 adequately address deficiencies in the design.

28 25395.7. The private site management team shall
29 implement the response action set forth in the approved
30 final removal action work plan or remedial action plan
31 and remedial design. The implementation of the
32 response action may be conducted without oversight by
33 the department.

34 25395.8. (a) Upon completion of a response action,
35 the private site manager shall file a request for a
36 certificate of completion from the department. The
37 request for a certificate of completion submitted by a
38 private site manager shall include all of the information
39 required by the department, and, at a minimum, shall
40 include all of the following additional information:



1 (1) A summary of all response action taken.

2 (2) All sample results for a certified laboratory
3 confirming that the site has been fully remediated as
4 required by the final removal action work plan or
5 remedial action plan and in accordance with the remedial
6 design approved by the department.

7 (b) In addition, the department may require submittal
8 of any or all of the following documentation:

9 (1) A north-south and east-west cross section of the site
10 geology, that is signed by a geologist, geophysicist,
11 engineering geologist, or hydrogeologist who is
12 registered in the State of California, and that evaluates
13 the hydrogeologic conditions of the site.

14 (2) Horizontal and vertical surveys of all wells, caps,
15 and facilities that are required by the final removal action
16 work plan or final remedial action plan approved by the
17 department.

18 (3) As-built drawings of any physical construction that
19 is required by the removal action work plan or remedial
20 action plan approved by the department, and that is
21 signed by an engineer registered in the State of
22 California.

23 (4) Copies of land use controls that are required by the
24 removal action work plan or remedial action plan
25 approved by the department, and that have been
26 recorded by the county recorder in the county in which
27 the site is located.

28 (5) A plan for the implementation of any operation
29 and maintenance measures that are required by the final
30 removal action work plan or remedial action plan
31 approved by the department.

32 (c) The department shall review the request for a
33 certificate of completion, and shall approve or reject a
34 request for certificate of completion within 30 days from
35 the date of submittal by the private site manager. If a
36 request is rejected, the department shall identify the
37 principal reasons for the rejection and describe the
38 actions needed to amend the application to adequately
39 address the deficiencies that are identified by the
40 department.



1 (d) If the department approves the request for a
2 certificate of completion, it shall prepare a certification
3 which shall include a certificate of completion,
4 requirements for ongoing reporting and operation and
5 maintenance, and a description of applicable land use
6 controls of a site. The certification shall be provided to the
7 project proponent, all known responsible parties, owners
8 of properties located adjacent to the site, and shall be
9 made available to the public.

10 25395.9. No designated officer or employee of the
11 California Environmental Protection Agency or its
12 constituent boards, departments, or offices shall serve as
13 a private site manager or member of a private site
14 management team for the first 12 months following the
15 termination of the officer's or employee's appointment or
16 employment with the agency, constituent board,
17 department, or office.

18 25395.10. (a) The private site manager and each
19 member of a private site management team shall sign and
20 certify all work performed by, and or directed by, that
21 person.

22 (b) The private site manager and each member of the
23 professional staff of the private site management team
24 shall have appropriate insurance as required by the
25 department.

26 25395.11. Except as otherwise specified in this article,
27 all the requirements of this chapter, or Chapter 6.85
28 (commencing with Section 25396) in the case of sites
29 selected pursuant to Section 25396.6, and any other
30 applicable regulation and guidance document or manual
31 adopted or issued by the department, shall apply to sites
32 approved for private site management. The
33 requirements of Division 13 (commencing with Section
34 21000) of the Public Resources Code shall apply to
35 response actions conducted pursuant to this article in the
36 same manner, and to the same extent, that the
37 requirements apply to response actions otherwise
38 conducted pursuant to this chapter or Chapter 6.85
39 (commencing with Section 25396). If, at any time, the
40 department finds that a private site manager or a private



1 site management team is not in compliance with the
2 requirements of this chapter or Chapter 6.85
3 (commencing with Section 25396), the department may,
4 pursuant to this article, withdraw its approval for the
5 conduct of a response action on the site.

6 25395.12. (a) The department shall conduct audits of
7 a minimum of 25 percent of the sites where a private site
8 manager or private site management team has
9 conducted a site investigation or response action without
10 oversight by the department, except with respect to cases
11 where oversight is otherwise required under this article,
12 and where the department has issued a certificate of
13 completion.

14 (b) A private site manager and any member of a
15 private site management team shall provide an
16 authorized representative of the department with
17 complete access, at any reasonable hour of the day, to all
18 technical data, reports, records, environmental samples,
19 photographs, maps, and files that are materially related
20 to a response action conducted pursuant to this article.

21 (c) In any case where the department's audit finds
22 that the performance of a private site manager or a
23 member of a private site management team fails to meet
24 the minimum standards of performance adopted
25 pursuant to Section 25395.15, the department shall send
26 the results of the audit to the Office of Environmental
27 Health Hazard Assessment.

28 25395.13. (a) Any private site manager or member of
29 a private site management team who commits any of the
30 following acts shall be punished, upon conviction, by a
31 fine of not less than two thousand dollars (\$2,000) or by
32 imprisonment in the county jail for not more than one
33 year, or both that fine and imprisonment, if the private
34 site manager or any member of a private site
35 management team does any of the following:

36 (1) Knowingly makes any materially false or
37 inaccurate statement in any application, record, report,
38 certification, plan, design, or statement that the private
39 site manager or the private site management team
40 submits to the department.



1 (2) Knowingly makes any materially false or
2 inaccurate statement in any record, report, plan, file, log,
3 or register that the private site management team keeps,
4 or is required to keep, pursuant to any law.

5 (3) Knowingly and materially falsifies, tampers with,
6 alters, destroys, or disturbs any mechanism, recovery, or
7 control system, or any monitoring device or method that
8 the private site manager or the private site management
9 team maintains, or that is required to be maintained
10 pursuant to any law, regulation, or order for the
11 protection of the public health and safety or the
12 environment.

13 (4) Knowingly allows or orders any of the private site
14 manager's or the private site management team's
15 employees, agents, or contractors to do any of the actions
16 specified in paragraphs (1) to (3), inclusive.

17 (b) Any private site manager or member of a site
18 private management team who knowingly, or with
19 reckless disregard for the risk, treats, handles, transports,
20 disposes of, or stores any hazardous substance in a manner
21 that causes any unreasonable risk of fire, explosion,
22 serious injury, or death, is guilty of a public offense and
23 shall, upon conviction, be punished by a fine of not less
24 than five thousand dollars (\$5,000) nor more than two
25 hundred fifty thousand dollars (\$250,000) for each day of
26 a violation, by imprisonment in the county jail for not
27 more than one year, by imprisonment in the state prison
28 for 16, 24, or 36 months, or by both that fine and
29 imprisonment.

30 (c) Any private site manager or member of a private
31 site management team who knowingly, at the time the
32 manager or member takes any of the actions specified in
33 subdivision (b), places another person in imminent
34 danger of death or serious bodily injury, is guilty of a
35 public offense and shall, upon conviction, be punished by
36 a fine of not less than five thousand dollars (\$5,000) or
37 more than two hundred fifty thousand dollars (\$250,000)
38 for each day of the violation.

39 (d) Each day that a violation of subdivision (a) occurs,
40 or continues to occur, shall be considered a separate



1 offense. A fine imposed pursuant to subdivision (a) shall
2 not exceed, in the aggregate, twenty-five thousand
3 dollars (\$25,000), and the term of imprisonment shall not
4 exceed, in the aggregate, one year.

5 (e) Notwithstanding any other provision of law, all
6 penalties collected pursuant to this section shall be
7 transferred to the department for deposit in the trust
8 fund for expenditure by the department, upon
9 appropriation by the Legislature, to administer and
10 enforce this article.

11 25395.14. The project proponent for a site subject to
12 response action pursuant to this article shall fully
13 reimburse the department for all reasonable costs
14 incurred by the department, including those costs
15 associated with the department's involvement in the
16 investigation, remediation, certification, and audit
17 process at that site. Any of the reasonable costs that are
18 incurred by the department which relate to the specific
19 project costs, and that are not reimbursed by the project
20 proponent shall be recovered from the responsible
21 parties pursuant to Section 25360.

22 25395.15. The department shall, in consultation with
23 the Office of Environmental Health Hazard Assessment,
24 adopt minimum standards of performance that shall
25 apply to the activities and conduct of private site
26 managers and members of private site management
27 teams that conduct response actions pursuant to this
28 article. The standards shall be consistent with the
29 requirements of this article and with generally accepted
30 professional standards that apply to persons who engage
31 in the types of work that are required to conduct
32 hazardous substance release response actions pursuant to
33 this chapter. The minimum standards of performance
34 shall be adopted as expeditiously as possible, but not later
35 than six months from the date that the department first
36 begins accepting applications pursuant to Section
37 25395.3.

38 SEC. 3. (a) Notwithstanding the repeal of Chapter
39 6.8 (commencing with Section 25300) of Division 20 of the
40 Health and Safety Code by operation of Section 25395 of



1 the Health and Safety Code, as that section read on
2 December 31, 1998, or by Section 1 of this act, any action
3 taken pursuant to that chapter by any city, county, or city
4 and county, the Department of Toxic Substances Control,
5 a California regional water quality control board, or any
6 other state or local agency, shall remain in effect on and
7 after January 1, 1999, and be subject to Chapter 6.8
8 (commencing with Section 25300) of Division 20 of the
9 Health and Safety Code, as added by Section 2 of this act.

10 (b) The repeal of portions of Chapter 6.8
11 (commencing with Section 25300) of Division 20 of the
12 Health and Safety Code, by operation of Section 25395 of
13 the Health and Safety Code, as that section read on
14 December 31, 1998, and the repeal and reenactment of
15 Chapter 6.8 (commencing with Section 25300) of
16 Division 20 of the Health and Safety Code by Sections 1
17 and 2 of this act shall not terminate, affect, or modify any
18 proceeding, order, or agreement issued or entered into
19 by any city, county, or city and county, the Department
20 of Toxic Substances Control, a California regional water
21 quality control board, or any other state or local agency,
22 or any rights or obligations arising out of any bond issue,
23 pursuant to those provisions, and notwithstanding the
24 effective date of this act, the provisions of Chapter 6.8
25 (commencing with Section 25300) of Division 20 of the
26 Health and Safety Code, as added by Section 2 of this act,
27 shall apply retroactively, on and after January 1, 1999, to
28 those proceedings, orders, agreements, or bonds.

29 (c) *Funds expended by the Department of Toxic*
30 *Substances Control to pay the costs of carrying out actions*
31 *to remove hazardous substances from sites of illegal drug*
32 *laboratories during the period from January 1, 1999, until*
33 *the effective date of this act, shall be paid from the*
34 *appropriation made by Item 3960-001-0065 of the Budget*
35 *Act of 1998. The amount of any expenditures made by the*
36 *department from Item 3960-001-0001 of the Budget Act*
37 *of 1998 for removal actions at illegal drug laboratory sites*
38 *during the period from January 1, 1999, until the effective*
39 *date of this act, shall be transferred from Item*
40 *3960-001-0001 of the Budget Act of 1998 to Item*



1 3960-001-0065 of the Budget Act of 1998 to pay the costs
2 of those removal actions following the submission of a
3 notice by the Department of Toxic Substances Control,
4 and approval by the Department of Finance pursuant to
5 Section 27.00 of the Budget Act of 1998. As the result of
6 this transfer, the department shall not have expended any
7 funds appropriated by Item 3960-001-0001 for the
8 purposes specified in this subdivision.

9 SEC. 4. No reimbursement is required by this act
10 pursuant to Section 6 of Article XIII B of the California
11 Constitution because the only costs that may be incurred
12 by a local agency or school district will be incurred
13 because this act creates a new crime or infraction,
14 eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section
16 17556 of the Government Code, or changes the definition
17 of a crime within the meaning of Section 6 of Article
18 XIII B of the California Constitution.

19 SEC. 5. This act is an urgency statute necessary for the
20 immediate preservation of the public peace, health, or
21 safety within the meaning of Article IV of the
22 Constitution and shall go into immediate effect. The facts
23 constituting the necessity are:

24 In order to continue the state's Hazardous Substance
25 Cleanup Program thereby protecting public health and
26 safety and the environment, it is necessary that this act
27 take effect immediately.

