

AMENDED IN ASSEMBLY APRIL 19, 2007

AMENDED IN ASSEMBLY APRIL 16, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1130

Introduced by Assembly Member Laird

February 23, 2007

An act to amend Sections ~~25270~~, 25270.2, 25270.3, 25270.6, 25270.8, 25270.12, 25270.13, 25404, and 25404.5 of, to add Section 25270.4.5 to, to repeal Sections ~~25270.7~~ 25270.1, 25270.7, and 25270.10 of, ~~and~~ to repeal and add Sections 25270, 25270.4, 25270.5, ~~25270.9, and~~ ~~25270.11 of and~~ 25270.9 of, *and to repeal, add, and repeal Section 25270.11 of*, the Health and Safety Code, relating to aboveground storage tanks, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1130, as amended, Laird. Aboveground storage tanks.

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

The Aboveground Petroleum Storage Act defines, for purposes of the act, a “storage tank” as any aboveground tank or container used for the storage of petroleum, except as specified. Existing law requires the State Water Resources Control Board and the California regional water quality control boards to administer the act with regard to a tank facility that is subject to specified federal regulations and requires a certified

unified program agency to enforce the requirements of the act regarding a spill prevention control and countermeasure plan. Existing law imposes specified inspection and monitoring requirements upon the board and the regional boards with regard to these tanks and requires a tank facility owner or operator to file a storage statement with the board. Existing law establishes the Environmental Protection Trust Fund in the State Treasury and provides that the money in the fund is available for expenditure by the board, upon appropriation by the Legislature, for specified purposes.

This bill would instead require the unified program agency (UPA) to implement that act, and would make conforming changes.

The bill would define the term “aboveground storage tank” and would revise the types of storage tanks subject to the act. A storage tank at a tank facility subject to specified federal regulations would be required to prepare a spill prevention control and countermeasure plan and a tank facility located on a farm, nursery, logging site, or construction site that is less than a specified capacity would be required to be subject to inspections and secondary containment requirements.

The bill would require the UPA to inspect, at least once every 3 years, each storage tank within its jurisdiction that has a storage capacity of 10,000 gallons or more of petroleum, except as specified. The owner or operator of a tank facility would be required to file an annual tank facility statement with the local agency, accompanied by a fee established by the UPA.

The board, the regional board, and the UPA would be required to oversee the cleanup or abatement efforts, or to cause cleanup or abatement efforts, with regard to a release from a storage tank at a tank facility.

Any expenses recovered by the board or a regional board in overseeing, or contracting for, a cleanup or abatement would be required to be deposited in the State Water Pollution Cleanup and Abatement Account, for expenditure by the board, as specified, thereby making an appropriation.

The bill would impose a state-mandated local program by imposing new duties upon local agencies with regard to the regulation of aboveground storage tanks.

The bill would appropriate a portion of the money in the Environmental Protection Trust Fund, as of January 1, 2008, in an amount determined by the Secretary of Environmental Protection in consultation with the UPAs to a training account established and

maintained by the secretary to be used for purposes of training UPA personnel in the bill's requirements of this chapter, and would appropriate all remaining funds to the UPAs to implement the bill's requirements, thereby making an appropriation. *Any funds remaining in the training account established by the secretary, as of June 1, 2011, would be appropriated to the UPAs to implement the bill's requirements, thereby making an appropriation. The Environmental Protection Trust Fund and the training account would be inoperative as of July 1, 2011, and would be repealed as of January 1, 2012.*

(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.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: yes.

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

1 ~~SECTION 1. Section 25270 of the Health and Safety Code is~~
2 ~~amended to read:~~
3 ~~25270. The Legislature finds and declares all of the following:~~
4 ~~(a) There are 4,500 or more aboveground tanks in the state that~~
5 ~~hold a variety of dangerous substances that may pose serious threats~~
6 ~~to the environment and the public.~~
7 ~~(b) Aboveground storage tanks have been found to leak and~~
8 ~~spill into the ground and water, causing major contamination~~
9 ~~problems. In one event alone, in Martinez, California, during April~~
10 ~~1988, an estimated 400,000 gallons of crude oil were spilled into~~
11 ~~sensitive marshes, Suisun Bay, and the Bay Delta Estuary, causing~~
12 ~~major damage to the ecosystem in the area.~~
13 ~~(c) Among the causes for environmental damage resulting from~~
14 ~~aboveground tanks are leaks and spills from tanks due to advanced~~
15 ~~age, defects in design or installation, human error, and equipment~~
16 ~~failure.~~
17 ~~(d) While there exists a statewide program for determining the~~
18 ~~amount and type of hazardous substances being stored in~~
19 ~~underground tanks, there does not exist a similar program to~~
20 ~~commence to address the problems posed by aboveground tanks.~~

1 ~~(e) The ability to reduce the incidence and damage from~~
2 ~~hazardous spills and leaks depends upon preventive steps taken~~
3 ~~by industry and monitoring agencies.~~

4 ~~(f) The health of California's people, wildlife, fish, and~~
5 ~~vegetation depend upon a clean environment.~~

6 ~~(g) It is necessary to protect the state's people and natural~~
7 ~~resources by maintaining a program of inspecting aboveground~~
8 ~~petroleum storage tanks that pose a serious threat to the~~
9 ~~environment.~~

10 *SECTION 1. Section 25270 of the Health and Safety Code is*
11 *repealed.*

12 ~~25270. The Legislature finds and declares all of the following:~~

13 ~~(a) There are 65,000 or more aboveground tanks in the state~~
14 ~~which hold a variety of dangerous substances which may pose~~
15 ~~minor to very serious threats to the environment and the public.~~

16 ~~(b) Aboveground storage tanks have been found to leak and~~
17 ~~spill into the ground and water, causing major contamination~~
18 ~~problems. In one event alone, in Martinez, California, during April~~
19 ~~1988, an estimated 400,000 gallons of crude oil were spilled into~~
20 ~~sensitive marshes, Suisun Bay, and the Bay Delta Estuary, causing~~
21 ~~major damage to the ecosystem in the area.~~

22 ~~(c) Among the causes for environmental damage resulting from~~
23 ~~aboveground tanks are leaks and spills from tanks due to advanced~~
24 ~~age, defects in design or installation, human error, and equipment~~
25 ~~failure.~~

26 ~~(d) While there exists a statewide program for determining the~~
27 ~~amount and type of hazardous substances being stored in~~
28 ~~underground tanks, there does not exist a similar program to~~
29 ~~commence to address the problems posed by aboveground tanks.~~

30 ~~(e) The ability to reduce the incidence and damage from~~
31 ~~hazardous spills and leaks depends upon preventive steps taken~~
32 ~~by industry and monitoring agencies. The federal government,~~
33 ~~which has traditionally monitored aboveground tank installations,~~
34 ~~is presently experiencing a severe budget and personnel shortage~~
35 ~~devoted to the function of inspecting aboveground tanks.~~

36 ~~(f) The health of California's people, wildlife, fish, and~~
37 ~~vegetation depend upon a clean environment.~~

38 ~~(g) It is necessary to protect the state's people and natural~~
39 ~~resources by establishing a program of inspecting aboveground~~
40 ~~petroleum storage tanks.~~

1 *SEC. 2. Section 25270 is added to the Health and Safety Code,*
2 *to read:*

3 25270. This chapter shall be known and may be cited as the
4 Aboveground Petroleum Storage Act.

5 *SEC. 3. Section 25270.1 of the Health and Safety Code is*
6 *repealed.*

7 ~~25270.1. This chapter shall be known and may be cited as the~~
8 ~~Aboveground Petroleum Storage Act.~~

9 ~~SEC. 2.~~

10 *SEC. 4. Section 25270.2 of the Health and Safety Code is*
11 *amended to read:*

12 25270.2. For purposes of this chapter, the following definitions
13 apply:

14 (a) “Aboveground storage tank” or “storage tank” means a tank
15 that has the capacity to store 55 gallons or more of petroleum and
16 that is substantially or totally above the surface of the ground.
17 “Aboveground storage tank” does not include any of the following:

18 (1) A pressure vessel or boiler that is subject to Part 6
19 (commencing with Section 7620) of Division 5 of the Labor Code.

20 (2) A tank containing hazardous waste, as defined in subdivision
21 (g) of Section 25316, if the Department of Toxic Substances
22 Control has issued the person owning or operating the tank a
23 hazardous waste facilities permit for the storage tank.

24 (3) An aboveground oil production tank that is subject to Section
25 3106 of the Public Resources Code.

26 (4) Oil-filled electrical equipment, including, but not limited
27 to, transformers, circuit breakers, or capacitors, if the oil-filled
28 electrical equipment meets either of the following conditions:

29 (A) The equipment contains less than 10,000 gallons of dielectric
30 fluid.

31 (B) The equipment contains 10,000 gallons or more of dielectric
32 fluid with PCB levels less than 50 parts per million, appropriate
33 containment or diversionary structures or equipment are employed
34 to prevent discharged oil from reaching a navigable water course,
35 and the electrical equipment is visually inspected in accordance
36 with the usual routine maintenance procedures of the owner or
37 operator.

38 (5) A tank regulated as an underground storage tank under
39 Chapter 6.7 (commencing with Section 25280) and Chapter 16

1 (commencing with Section 2610) of Division 3 of Title 23 of the
2 California Code of Regulations.

3 (6) Any transportation-related tank facility, subject to the
4 authority and control of the United States Department of
5 Transportation, as defined in the Memorandum of Understanding
6 between the Secretary of Transportation and the Administrator of
7 the United States Environmental Protection Agency, dated
8 November 24, 1971, set forth in Appendix A to Part 112
9 (commencing with Section 112.1) of Subchapter D of Chapter I
10 of Title 40 of the Code of Federal Regulations.

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

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

16 (2) “Participating Agency” or “PA” means an agency that has
17 a written agreement with the CUPA pursuant to subdivision (d)
18 of Section 25404.3, and is approved by the secretary, to implement
19 and enforce the unified program element specified in paragraph
20 (2) of subdivision (c) of Section 25404, in accordance with Sections
21 25404.1 and 25404.2.

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

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

33 (C) This paragraph shall not be construed to limit the authority
34 or responsibility granted to the board and the regional boards by
35 this chapter.

36 (d) “Operator” means the person responsible for the overall
37 operation of a tank facility.

38 (e) “Owner” means the person who owns the tank facility or
39 part of the tank facility.

1 (f) "Person" means an individual, trust, firm, joint stock
2 company, corporation, including a government corporation,
3 partnership, limited liability company, or association. "Person"
4 also includes any city, county, district, the University of California,
5 the California State University, the state, any department or agency
6 thereof, and the United States, to the extent authorized by federal
7 law.

8 (g) "Petroleum" means crude oil, or any fraction thereof, which
9 is liquid at 60 degrees Fahrenheit temperature and 14.7 pounds
10 per square inch absolute pressure.

11 (h) "Regional board" means a California regional water quality
12 control board.

13 (i) "Release" means any spilling, leaking, pumping, pouring,
14 emitting, emptying, discharging, escaping, leaching, or disposing
15 into the environment.

16 (j) "Secretary" means the Secretary for Environmental
17 Protection.

18 (k) "Storage" or "store" means the containment, handling, or
19 treatment of petroleum, for any period of time, including on a
20 temporary basis.

21 (l) "Storage capacity" means the aggregate capacity of all
22 aboveground tanks at a tank facility.

23 (m) "Tank facility" means any one, or combination of,
24 aboveground storage tanks, including any piping that is integral
25 to the tank, that contains petroleum and that is used by a single
26 business entity at a single location or site. For purposes of this
27 chapter, a pipe is integrally related to an aboveground storage tank
28 if the pipe is connected to the tank and meets any of the following:

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

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

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

35 ~~SEC. 3.~~

36 *SEC. 5.* Section 25270.3 of the Health and Safety Code is
37 amended to read:

38 25270.3. A tank facility is subject to this chapter if
39 the tank facility is subject to the oil pollution prevention
40 regulations specified in Part 112 (commencing with Section 112.1)

1 of Subchapter D of Chapter I of Title 40 of the Code of Federal
2 Regulations or the tank facility has a storage capacity of 1,320
3 gallons or more of petroleum.

4 ~~SEC. 4.~~

5 *SEC. 6.* Section 25270.4 of the Health and Safety Code is
6 repealed.

7 ~~SEC. 5.~~

8 *SEC. 7.* Section 25270.4 is added to the Health and Safety
9 Code, to read:

10 25270.4. This chapter shall be implemented by the Unified
11 Program Agency. If there is no UPA, the agency authorized
12 pursuant to subdivision (f) of Section 25404.3 shall be deemed to
13 be the UPA for purposes of this chapter and shall implement this
14 chapter.

15 ~~SEC. 6.~~

16 *SEC. 8.* Section 25270.4.5 is added to the Health and Safety
17 Code, to read:

18 25270.4.5. (a) Except as provided in subdivision (b), each
19 owner or operator of a storage tank at a tank facility subject to this
20 chapter shall prepare a spill prevention control and countermeasure
21 plan prepared in accordance with Part 112 (commencing with
22 Section 112.1) of Subchapter D of Chapter I of Title 40 of the
23 Code of Federal Regulations. Each owner or operator specified in
24 this subdivision shall conduct periodic inspections of the storage
25 tank to assure compliance with Section 112 (commencing with
26 Section 112.1) of Subchapter D of Chapter I of Title 40 of the
27 Code of Federal Regulations. In implementing the spill prevention
28 control and countermeasure plan, each owner or operator specified
29 in this subdivision shall fully comply with the latest version of the
30 regulations contained in Part 112 (commencing with Section 112.1)
31 of Subchapter D of Chapter I of Title 40 of the Code of Federal
32 Regulations.

33 (b) A tank facility located on a farm, nursery, logging site, or
34 construction site is not subject to subdivision (a) if no storage tank
35 at the location exceeds 20,000 gallons and the cumulative storage
36 capacity of the tank facility does not exceed 100,000 gallons. The
37 owner or operator of a tank facility exempt pursuant to this
38 subdivision shall take the following actions:

39 (1) Conduct a daily visual inspection of any storage tank storing
40 petroleum.

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

3 (3) Install a secondary means of containment for the entire
4 contents of the largest storage tank at the tank facility, plus
5 sufficient space for precipitation, if the UPA determines this
6 installation is necessary for the protection of the waters of the state.

7 ~~SEC. 7.~~

8 *SEC. 9.* Section 25270.5 of the Health and Safety Code is
9 repealed.

10 ~~SEC. 8.~~

11 *SEC. 10.* Section 25270.5 is added to the Health and Safety
12 Code, to read:

13 25270.5. (a) Except as provided in subdivision (b), at least
14 once every three years, the UPA shall inspect each storage tank
15 or a representative sampling of the storage tanks at each tank
16 facility that has a storage capacity of 10,000 gallons or more of
17 petroleum. The purpose of the inspection shall be to determine
18 whether the owner or operator is in compliance with the spill
19 prevention control and countermeasure plan requirements of this
20 chapter.

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

23 (c) An inspection conducted pursuant to this section does not
24 require the oversight of a professional engineer.

25 ~~SEC. 9.~~

26 *SEC. 11.* Section 25270.6 of the Health and Safety Code is
27 amended to read:

28 25270.6. (a) On or before January 1, 2009, and on or before
29 January 1 annually thereafter, each owner or operator of a tank
30 facility subject to this chapter shall file with the UPA a tank facility
31 statement that shall identify the name and address of the tank
32 facility, a contact person for the tank facility, the total storage
33 capacity of the tank facility, and the location, size, age, and
34 contents of each storage tank that exceeds 10,000 gallons in
35 capacity and that holds a substance containing at least 5 percent
36 of petroleum. A copy of a statement submitted previously pursuant
37 to this section may be submitted in lieu of a new tank facility
38 statement if no new or used storage tanks have been added to the
39 facility or if no significant modifications have been made. For
40 purposes of this section, a significant modification includes, but

1 is not limited to, altering existing storage tanks or changing spill
2 prevention or containment methods.

3 (b) On or before January 1, 2010, and on or before January 1
4 of each year thereafter, each owner or operator of a tank facility
5 who is required to submit a tank facility statement pursuant to
6 subdivision (a) shall pay a fee to the UPA. The governing body of
7 the UPA shall establish a fee, as part of the single fee system
8 implemented pursuant to Section 25404.5, at a level sufficient to
9 pay the necessary and reasonable costs incurred by the UPA in
10 administering this chapter, including but not limited to, inspections,
11 enforcement, and administrative costs. The UPA may provide for
12 a waiver of these fees when a state or local government agency
13 submits a tank facility statement.

14 ~~SEC. 10.~~

15 *SEC. 12.* Section 25270.7 of the Health and Safety Code is
16 repealed.

17 ~~SEC. 11.~~

18 *SEC. 13.* Section 25270.8 of the Health and Safety Code is
19 amended to read:

20 25270.8. Each owner or operator of a tank facility shall
21 immediately, upon discovery, notify the Office of Emergency
22 Services and the UPA using the appropriate 24-hour emergency
23 number or the 911 number, as established by the UPA, or by the
24 governing body of the UPA, of the occurrence of a spill or other
25 release of one barrel (42 gallons) or more of petroleum that is
26 required to be reported pursuant to subdivision (a) of Section 13272
27 of the Water Code.

28 ~~SEC. 12.~~

29 *SEC. 14.* Section 25270.9 of the Health and Safety Code is
30 repealed.

31 ~~SEC. 13.~~

32 *SEC. 15.* Section 25270.9 is added to the Health and Safety
33 Code, to read:

34 25270.9. (a) The board, the regional board, and the UPA shall
35 oversee cleanup or abatement efforts, or cause cleanup or
36 abatement efforts, of a release from a storage tank at a tank facility.
37 The UPA may refer the oversight or cleanup of a release from a
38 storage tank at a tank facility to a regional board for action, if
39 appropriate, pursuant to Division 7 (commencing with Section
40 13000) of the Water Code.

(b) The reasonable expenses of the board, the regional board, and the UPA incurred in overseeing, or contracting for, a cleanup or abatement that results from a release at a tank facility is a charge against the owner or operator of the tank facility. Expenses reimbursed to a public agency under this section are a debt of the tank facility owner or operator, and shall be collected in the same manner as in the case of an express or implied obligation under contract.

(c) Notwithstanding Article 3 (commencing with Section 13440) of Division 7 of the Water Code, the expenses recovered by the board or a regional board pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account and may be expended by the board in accordance with Section 13441 of the Water Code.

(d) The expenses recovered by the UPA pursuant to this section shall be deposited in an account maintained by the UPA for the purposes of carrying out this chapter.

~~SEC. 14.~~

SEC. 16. Section 25270.10 of the Health and Safety Code is repealed.

~~SEC. 15.~~

SEC. 17. Section 25270.11 of the Health and Safety Code is repealed.

~~SEC. 16.~~

SEC. 18. Section 25270.11 is added to the Health and Safety Code, to read:

25270.11. (a) All money remaining in the Environmental Protection Trust Fund as of January 1, 2008, is hereby appropriated for expenditure in the following manner:

(a)

(1) A portion of the funds, in an amount determined by the secretary in consultation with the UPAs, to a training account established and maintained by the secretary, to be used for purposes of training UPA personnel in the requirements of this chapter.

(b)

(2) All remaining funds in the Environmental Protection Trust Fund, shall be allocated to the UPAs, in accordance with a formula and process determined by the secretary in consultation with the UPAs. The UPAs shall expend those funds for the purpose of implementing this chapter.

1 (b) *All moneys remaining in the training account established*
2 *pursuant to paragraph (1) of subdivision (a), as of June 1, 2011,*
3 *shall be allocated pursuant to paragraph (2) of subdivision (a).*

4 (c) *This section shall become inoperative on July 1, 2011, and,*
5 *as of January 1, 2012, is repealed, unless a later enacted statute,*
6 *that becomes operative on or before January 1, 2012, deletes or*
7 *extends the dates on which it becomes inoperative and is repealed.*

8 ~~SEC. 17:~~

9 SEC. 19. Section 25270.12 of the Health and Safety Code is
10 amended to read:

11 25270.12. (a) Any owner or operator of a tank facility who
12 *fails to prepare a spill prevention control and countermeasure*
13 *plan in compliance with subdivision (a) of Section 25270.4.5, to*
14 *file a tank facility statement pursuant to subdivision (a) of Section*
15 *25270.6, to submit the fee required by subdivision (b) of Section*
16 *25270.6, to report spills as required by Section 25270.8, or*
17 *otherwise to comply with the requirements of this chapter, is*
18 *subject to a civil penalty of not more than five thousand dollars*
19 *(\$5,000) for each day on which the violation continues. If the*
20 *owner or operator commits a second or subsequent violation, a*
21 *civil penalty of not more than ten thousand dollars (\$10,000) for*
22 *each day on which the violation continues may be imposed.*

23 (b) (1) *The civil penalties provided by this section may be*
24 *assessed and recovered in a civil action brought by the board, the*
25 *regional board, city attorney, district attorney, or the Attorney*
26 *General; city attorney or district attorney on behalf of the UPA.*

27 ~~(1)~~

28 (2) *Fifty percent of all penalties assessed and recovered in a*
29 *civil action brought on behalf of a UPA pursuant to this subdivision*
30 *shall be deposited into a unified program account established by*
31 *the UPA for the purpose of carrying out the functions of the unified*
32 *program and 50 percent shall be paid to the office of the city*
33 *attorney, district attorney, or Attorney General or district attorney,*
34 *whoever brought that action.*

35 (c) (1) *The civil penalties provided in this section may be*
36 *assessed and recovered in a civil action brought by the Attorney*
37 *General on behalf of the board or a regional board, or on behalf*
38 *of the people of the State of California.*

39 (2) *All penalties assessed and recovered in a civil action brought*
40 *by or for the board or a regional board pursuant to this section*

1 *pursuant to this subdivision* shall be deposited in the State Water
2 Pollution Cleanup and Abatement Account for expenditure by the
3 board in accordance with Section 13441 of the Water Code.

4 ~~(e)~~

5 ~~(d)~~ The ~~board, the regional board,~~ city attorney, district attorney,
6 or the Attorney General may seek to enjoin, in any court of
7 competent jurisdiction, any person believed to be in violation of
8 this chapter.

9 ~~(d)~~

10 (e) The penalties specified in this section are in addition to any
11 other penalties provided by law.

12 ~~SEC. 18.~~

13 *SEC. 20.* Section 25270.13 of the Health and Safety Code is
14 amended to read:

15 25270.13. (a) This chapter does not preempt local storage tank
16 ordinances, in effect as of August 16, 1989, that meet or exceed
17 the standards prescribed by this chapter.

18 (b) This chapter does not preempt the authority granted to the
19 board and the regional boards under the Porter Cologne Water
20 Quality Control Act (Division 7 (commencing with Section 13000)
21 of the Water Code).

22 ~~SEC. 19.~~

23 *SEC. 21.* Section 25404 of the Health and Safety Code is
24 amended to read:

25 25404. (a) For purposes of this chapter, the following terms
26 shall have the following meanings:

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

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

36 (C) “Unified Program Agency” or “UPA” means the CUPA, or
37 its participating agencies to the extent each PA has been designated
38 by the CUPA, pursuant to a written agreement, to implement or
39 enforce a particular unified program element specified in
40 subdivision (c). The UPAs have the responsibility and authority

1 to implement and enforce the requirements listed in subdivision
2 (c), and the regulations adopted to implement the requirements
3 listed in subdivision (c), to the extent provided by Chapter 6.5
4 (commencing with Section 25100), Chapter 6.67 (commencing
5 with Section 25270), Chapter 6.7 (commencing with Section
6 25280), Chapter 6.95 (commencing with Section 25500), and
7 Sections 25404.1 and 25404.2. After a CUPA has been certified
8 by the secretary, the unified program agencies and the state
9 agencies carrying out responsibilities under this chapter shall be
10 the only agencies authorized to enforce the requirements listed in
11 subdivision (c) within the jurisdiction of the CUPA.

12 (2) "Department" means the Department of Toxic Substances
13 Control.

14 (3) "Minor violation" means the failure of a person to comply
15 with any requirement or condition of any applicable law,
16 regulation, permit, information request, order, variance, or other
17 requirement, whether procedural or substantive, of the unified
18 program that the UPA is authorized to implement or enforce
19 pursuant to this chapter, and that does not otherwise include any
20 of the following:

21 (A) A violation that results in injury to persons or property, or
22 that presents a significant threat to human health or the
23 environment.

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

25 (C) A violation that is a chronic violation, or that is committed
26 by a recalcitrant violator. In determining whether a violation is
27 chronic or a violator is recalcitrant, the UPA shall consider whether
28 there is evidence indicating that the violator has engaged in a
29 pattern of neglect or disregard with respect to applicable regulatory
30 requirements.

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

33 (E) A violation that enables the violator to benefit economically
34 from the noncompliance, either by reduced costs or competitive
35 advantage.

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

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

39 (H) A violation that hinders the ability of the UPA to determine
40 compliance with any other applicable local, state, or federal rule,

1 regulation, information request, order, variance, permit, or other
2 requirement.

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

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

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

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

30 (c) The unified program shall consolidate the administration of
31 the following requirements, and shall, to the maximum extent
32 feasible within statutory constraints, ensure the coordination and
33 consistency of any regulations adopted pursuant to those
34 requirements:

35 (1) (A) Except as provided in subparagraphs (B) and (C), the
36 requirements of Chapter 6.5 (commencing with Section 25100),
37 and the regulations adopted by the department pursuant thereto,
38 are applicable to all of the following:

39 (i) Hazardous waste generators, persons operating pursuant to
40 a permit-by-rule, conditional authorization, or conditional

1 exemption, pursuant to Chapter 6.5 (commencing with Section
2 25100) or the regulations adopted by the department.

3 (ii) Persons managing perchlorate materials.

4 (iii) Persons subject to Article 10.1 (commencing with Section
5 25211) of Chapter 6.5.

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

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

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

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

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

25 (v) Corrective action required under subsection (u) of Section
26 6924 of Title 42 of the United States Code or subsection (h) of
27 Section 6928 of Title 42 of the United States Code.

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

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

38 (2) The requirements of Chapter 6.67 (commencing with Section
39 25270) concerning aboveground storage tanks.

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

5 (B) The unified program may not include the responsibilities
6 assigned to the State Water Resources Control Board pursuant to
7 Section 25297.1.

8 (C) The unified program may not include the corrective action
9 requirements of Sections 25296.10 to 25296.40, inclusive.

10 (4) The requirements of Article 1 (commencing with Section
11 25500) of Chapter 6.95 concerning hazardous material release
12 response plans and inventories.

13 (5) The requirements of Article 2 (commencing with Section
14 25531) of Chapter 6.95, concerning the accidental release
15 prevention program.

16 (6) The requirements of subdivisions (b) and (c) of Section
17 80.103 of the Uniform Fire Code, as adopted by the State Fire
18 Marshal pursuant to Section 13143.9 concerning hazardous material
19 management plans and inventories.

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

25 (e) (1) The secretary shall establish standards applicable to
26 CUPAs, participating agencies, state agencies, and businesses
27 specifying the data to be collected and submitted by unified
28 program agencies in administering the programs listed in
29 subdivision (c). Those standards shall incorporate any standard
30 developed under Section 25503.3.

31 (2) The secretary shall establish an electronic geographic
32 information management system capable of receiving all data
33 collected by the unified program agencies pursuant to this
34 subdivision and Section 25504.1. The secretary shall make all
35 nonconfidential data available on the Internet.

36 (3) (A) As funding becomes available, the secretary shall
37 establish, consistent with paragraph (2), and thereafter maintain,
38 a statewide database.

39 (B) The secretary, or one or more of the boards, departments,
40 or offices within the California Environmental Protection Agency,

1 shall seek available federal funding for purposes of implementing
2 this subdivision.

3 (4) Once the statewide database is established, the secretary
4 shall work with the CUPAs to develop a phased-in schedule for
5 the electronic collection and submittal of information to be included
6 in the statewide database, giving first priority to information
7 relating to those chemicals determined by the secretary to be of
8 greatest concern. The secretary, in making this determination shall
9 consult with the CUPAs, the Office of Emergency Services, the
10 State Fire Marshal, and the boards, departments, and offices within
11 the California Environmental Protection Agency. The information
12 initially included in the statewide database shall include, but is not
13 limited to, the hazardous materials inventory information required
14 to be submitted pursuant to Section 25504.1 for perchlorate
15 materials.

16 ~~SEC. 20.~~

17 *SEC. 22.* Section 25404.5 of the Health and Safety Code is
18 amended to read:

19 25404.5. (a) (1) Each certified unified program agency shall
20 institute a single fee system, which shall replace the fees levied
21 pursuant to Sections 25201.14 and 25205.14, except for
22 transportable treatment units permitted under Section 25200.2,
23 and which shall also replace any fees levied by a local agency
24 pursuant to Sections 25143.10, 25270.6, 25287, 25513, and
25 25535.5, or any other fee levied by a local agency specifically to
26 fund the implementation of the provisions specified in subdivision
27 (c) of Section 25404. Notwithstanding Sections 25143.10, 25270.6,
28 25201.14, 25205.14, 25287, 25513, and 25535.5, a person who
29 complies with the certified unified program agency's "single fee
30 system" fee shall not be required to pay any fee levied pursuant
31 to those sections, except for transportable treatment units permitted
32 under Section 25200.2.

33 (2) (A) The governing body of the local certified unified
34 program agency shall establish the amount to be paid by each
35 person regulated by the unified program under the single fee system
36 at a level sufficient to pay the necessary and reasonable costs
37 incurred by the certified unified program agency and by any
38 participating agency pursuant to the requirements of subparagraph
39 (E) of paragraph (1) of subdivision (d) of Section 25404.3.

1 (B) The secretary shall establish the amount to be paid when
2 the unified program agency is a state agency.

3 (3) The fee system may also be designed to recover the
4 necessary and reasonable costs incurred by the certified unified
5 program agency, or a participating agency pursuant to the
6 requirements of subparagraph (E) of paragraph (1) of subdivision
7 (d) of Section 25404.3, in administering provisions other than
8 those specified in subdivision (c) of Section 25404, if the
9 implementation and enforcement of those provisions has been
10 incorporated as part of the unified program by the certified unified
11 program agency pursuant to subdivision (b) of Section 25404.2,
12 and if the single fee system replaces any fees levied as of January
13 1, 1994, to fund the implementation of those additional provisions.

14 (4) The amount to be paid by a person regulated by the unified
15 program may be adjusted to account for the differing costs of
16 administering the unified program with respect to that person's
17 regulated activities.

18 (b) (1) Except as provided in subdivision (d), the single fee
19 system instituted by each certified unified program agency shall
20 include an assessment on each person regulated by the unified
21 program of a surcharge, the amount of which shall be determined
22 by the secretary annually, to cover the necessary and reasonable
23 costs of the state agencies in carrying out their responsibilities
24 under this chapter. The secretary may adjust the amount of the
25 surcharge to be collected by different certified unified program
26 agencies to reflect the different costs incurred by the state agencies
27 in supervising the implementation of the unified program in
28 different jurisdictions, and in supervising the implementation of
29 the unified program in those jurisdictions for which the secretary
30 has waived the assessment of the surcharge pursuant to subdivision
31 (d). The certified unified program agency may itemize the amount
32 of the surcharge on any bill, invoice, or return that the agency
33 sends to a person regulated by the unified program. Each certified
34 unified program agency shall transmit all surcharge revenues
35 collected to the secretary on a quarterly basis. The surcharge shall
36 be deposited in the Unified Program Account, which is hereby
37 created in the General Fund and which may be expended, upon
38 appropriation by the Legislature, by state agencies for the purposes
39 of implementing this chapter.

(2) On or before January 10, 2001, the secretary shall report to the Legislature on whether the number of persons subject to regulation by the unified program in any county is insufficient to support the reasonable and necessary cost of operating the unified program using only the revenues from the fee. The secretary's report shall consider whether the surcharge required by subdivision (a) should include an assessment to be used to supplement the funding of unified program agencies that have a limited number of entities regulated under the unified program.

(c) Each certified unified program agency and the secretary shall, before the institution of the single fee system and the assessment of the surcharge, implement a fee accountability program designed to encourage more efficient and cost-effective operation of the program for which the single fee and surcharge are assessed. The fee accountability programs shall include those elements of the requirements of the plan adopted pursuant to former Section 25206, as it read on January 1, 1995, that the secretary determines are appropriate.

(d) The secretary may waive the requirement for a county to assess a surcharge pursuant to subdivision (b), if both of the following conditions apply:

(1) The county meets all of the following conditions:

(A) The county submits an application to the secretary for certification on or before January 1, 1996, that incorporates all of the requirements of this chapter, and includes the county's request for a waiver of the surcharge, and contains documentation that demonstrates, to the satisfaction of the secretary, both of the following:

(i) That the assessment of the surcharge will impose a significant economic burden on most businesses within the county.

(ii) That the combined dollar amount of the surcharge and the single fee system to be assessed by the county pursuant to subdivision (a) exceeds the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(B) The application for certification, including the information required by subparagraph (A), is determined by the secretary to be complete, on or before April 30, 1996. The secretary, for good cause, may grant an extension of that deadline of up to 90 days.

1 (C) The county is certified by the secretary on or before
2 December 31, 1996.

3 (D) On or before January 1, 1994, the county completed the
4 consolidation of the administration of the hazardous waste
5 generator program, the hazardous materials release response plans
6 and inventories program, and the underground storage tank
7 program, referenced in paragraphs (1), (3), and (4) of subdivision
8 (c) of Section 25404, into a single program within the county's
9 jurisdiction.

10 (E) The county demonstrates that it will consolidate the
11 administration of all programs specified in subdivision (c) of
12 Section 25404, and that it will also consolidate the administration
13 of at least one additional program that regulates hazardous waste,
14 hazardous substances, or hazardous materials, as specified in
15 subdivision (d) of Section 25404.2, other than the programs
16 specified in subdivision (c) of Section 25404, into a single program
17 to be administered by a single agency in the county's jurisdiction
18 at the time that the county's certification by the secretary becomes
19 effective.

20 (2) The secretary makes all of the following findings:

21 (A) The county meets all of the criteria specified in paragraph
22 (1).

23 (B) The assessment of the surcharge would impose a significant
24 economic burden on most businesses within the county.

25 (C) The combined dollar amount of the surcharge and the single
26 fee system to be assessed by the county pursuant to subdivision
27 (a) would exceed the combined dollar amount of all existing fees
28 that are replaced by the single fee system for most businesses
29 within the county.

30 (D) The waiver of the surcharge for those counties applying for
31 and qualifying for a waiver, and the resulting increase in the
32 surcharge for other counties, would not, when considered
33 cumulatively, impose a significant economic burden on businesses
34 in any other county that does not apply for, or does not meet the
35 criteria for, a waiver of the surcharge.

36 (e) The secretary shall review all of the requests for a waiver
37 of the surcharge made pursuant to subdivision (d) simultaneously,
38 so as to adequately assess the cumulative impact of granting the
39 requested waivers on businesses in those counties that have not
40 applied, or do not qualify, for a waiver, and shall grant or deny all

1 requests for a waiver of the surcharge within 30 days from the date
2 that the secretary certifies all counties applying, and qualifying,
3 for a waiver. If the secretary finds that the grant of a waiver of the
4 surcharge for all counties applying and qualifying for the waiver
5 will impose a significant economic burden on businesses in one
6 or more other counties, the secretary shall take either of the
7 following actions:

8 (1) Deny all of the applications for a waiver of the surcharge.

9 (2) Approve only a portion of the waiver requests for counties
10 meeting the criteria set forth in subdivision (d), to the extent that
11 the approved waivers, when taken as a whole, meet the condition
12 specified in subparagraph (D) of paragraph (2) of subdivision (d).
13 In determining which of the counties' waiver requests to grant,
14 the secretary shall consider all of the following factors:

15 (A) The relative degree to which the assessment of the surcharge
16 will impose a significant economic burden on most businesses
17 within each county applying and qualifying for a waiver.

18 (B) The relative degree to which the combined dollar amount
19 of the surcharge and the single fee system to be assessed, pursuant
20 to subdivision (a), by each county applying and qualifying for a
21 waiver exceeds the combined dollar amount of all existing fees
22 that are replaced by the single fee system for most businesses
23 within the county.

24 (C) The relative extent to which each county applying and
25 qualifying for a waiver has incorporated, or will incorporate, upon
26 certification, additional programs pursuant to subdivision (d) of
27 Section 25404.2, into the unified program within the county's
28 jurisdiction.

29 (f) The secretary may, at any time, terminate a county's waiver
30 of the surcharge granted pursuant to subdivisions (d) and (e) if the
31 secretary determines that the criteria specified in subdivision (d)
32 for the grant of a waiver are no longer met.

33 ~~SEC. 21.~~

34 *SEC. 23.* No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 a local agency or school district has the authority to levy service
37 charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

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