

AMENDED IN SENATE SEPTEMBER 7, 2007

AMENDED IN SENATE AUGUST 1, 2007

AMENDED IN SENATE JUNE 21, 2007

AMENDED IN ASSEMBLY JUNE 1, 2007

AMENDED IN ASSEMBLY APRIL 19, 2007

AMENDED IN ASSEMBLY APRIL 16, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 1130**

**Introduced by Assembly Member Laird**

February 23, 2007

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An act to amend Sections 25270.2, 25270.3, 25270.6, 25270.8, 25270.12, 25270.13, 25404, 25404.1.1, 25404.5, and 25503.4 of, to add Section 25270.4.5 to, to repeal Sections 25270.1, 25270.7, and 25270.10 of, to repeal and add Sections 25270, 25270.4, 25270.5, and 25270.9 of, and to repeal, add, and repeal Section 25270.11 of, the Health and Safety Code, relating to aboveground storage tanks.

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 (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 agencies (UPAs) 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, if the UPA makes a certain determination, 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, with an exception, accompanied by a fee established by the UPA.

The board and the regional board would be authorized 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 Waste Discharge Permit Fund, for expenditure by the board, upon appropriation by the Legislature, to assist the regional boards and other public agencies in cleaning up or abating the effects

of waste on water and other specified purposes. The bill would require the deposited money to be separately accounted for.

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 authorize the expenditure of a portion of the moneys in the Environmental Protection Trust Fund, upon appropriation by the Legislature, in an amount determined by the Secretary for 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 requirements of the act. The bill would allocate all remaining funds to the UPAs for expenditure to implement the act, but limit to 80% or less the allocation to a UPA in advance of actual expenditure by the UPA. Any funds remaining in the training account established by the secretary, or in the Environmental Protection Trust Fund, as of June 1, 2011, would be authorized to be expended by the UPAs to implement the act, upon appropriation by the Legislature. 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.

The bill would also make conforming changes.

(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) This bill would also incorporate additional changes in Section 25404 of the Health and Safety Code proposed by AB 558, to be operative only if AB 558 and this bill are both enacted and become effective on or before January 1, 2008, and this bill is enacted last.*

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

- 1 SECTION 1. Section 25270 of the Health and Safety Code is
- 2 repealed.
- 3 SEC. 2. Section 25270 is added to the Health and Safety Code,
- 4 to read:

1 25270. This chapter shall be known and may be cited as the  
2 Aboveground Petroleum Storage Act.

3 SEC. 3. Section 25270.1 of the Health and Safety Code is  
4 repealed.

5 SEC. 4. Section 25270.2 of the Health and Safety Code is  
6 amended to read:

7 25270.2. For purposes of this chapter, the following definitions  
8 apply:

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

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

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

19 (3) An aboveground oil production tank that is subject to Section  
20 3106 of the Public Resources Code.

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

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

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

33 (5) A tank regulated as an underground storage tank under  
34 Chapter 6.7 (commencing with Section 25280) and Chapter 16  
35 (commencing with Section 2610) of Division 3 of Title 23 of the  
36 California Code of Regulations.

37 (6) Any transportation-related tank facility, subject to the  
38 authority and control of the United States Department of  
39 Transportation, as defined in the Memorandum of Understanding  
40 between the Secretary of Transportation and the Administrator of

1 the United States Environmental Protection Agency, dated  
2 November 24, 1971, set forth in Appendix A to Part 112  
3 (commencing with Section 112.1) of Subchapter D of Chapter I  
4 of Title 40 of the Code of Federal Regulations.

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

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

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

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

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

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

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

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

34 (f) “Person” means an individual, trust, firm, joint stock  
35 company, corporation, including a government corporation,  
36 partnership, limited liability company, or association. “Person”  
37 also includes any city, county, district, the University of California,  
38 the California State University, the state, any department or agency  
39 thereof, and the United States, to the extent authorized by federal  
40 law.

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

4 (h) "Regional board" means a California regional water quality  
5 control board.

6 (i) "Release" means any spilling, leaking, pumping, pouring,  
7 emitting, emptying, discharging, escaping, leaching, or disposing  
8 into the environment.

9 (j) "Secretary" means the Secretary for Environmental  
10 Protection.

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

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

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

- 22 (1) The pipe is within the dike or containment area.
- 23 (2) The pipe is between the containment area and the first flange  
24 or valve outside the containment area.
- 25 (3) The pipe is connected to the first flange or valve on the  
26 exterior of the tank, if state or federal law does not require a  
27 containment area.

28 SEC. 5. Section 25270.3 of the Health and Safety Code is  
29 amended to read:

30 25270.3. A tank facility is subject to this chapter if the tank  
31 facility is subject to the oil pollution prevention regulations  
32 specified in Part 112 (commencing with Section 112.1) of  
33 Subchapter D of Chapter I of Title 40 of the Code of Federal  
34 Regulations or the tank facility has a storage capacity of 1,320  
35 gallons or more of petroleum.

36 SEC. 6. Section 25270.4 of the Health and Safety Code is  
37 repealed.

38 SEC. 7. Section 25270.4 is added to the Health and Safety  
39 Code, to read:

1 25270.4. This chapter shall be implemented by the Unified  
2 Program Agency. If there is no UPA, the agency authorized  
3 pursuant to subdivision (f) of Section 25404.3 shall be deemed to  
4 be the UPA for purposes of this chapter and shall implement this  
5 chapter.

6 SEC. 8. Section 25270.4.5 is added to the Health and Safety  
7 Code, to read:

8 25270.4.5. (a) Except as provided in subdivision (b), each  
9 owner or operator of a storage tank at a tank facility subject to this  
10 chapter shall prepare a spill prevention control and countermeasure  
11 plan prepared in accordance with Part 112 (commencing with  
12 Section 112.1) of Subchapter D of Chapter I of Title 40 of the  
13 Code of Federal Regulations. Each owner or operator specified in  
14 this subdivision shall conduct periodic inspections of the storage  
15 tank to assure compliance with Section 112 (commencing with  
16 Section 112.1) of Subchapter D of Chapter I of Title 40 of the  
17 Code of Federal Regulations. In implementing the spill prevention  
18 control and countermeasure plan, each owner or operator specified  
19 in this subdivision shall fully comply with the latest version of the  
20 regulations contained in Part 112 (commencing with Section 112.1)  
21 of Subchapter D of Chapter I of Title 40 of the Code of Federal  
22 Regulations.

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

29 (1) Conduct a daily visual inspection of any storage tank storing  
30 petroleum.

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

33 (3) If the UPA determines installation of secondary containment  
34 is necessary for the protection of the waters of the state, install a  
35 secondary means of containment for each tank or group of tanks  
36 where the secondary containment will, at a minimum, contain the  
37 entire contents of the largest tank protected by the secondary  
38 containment plus precipitation.

39 SEC. 9. Section 25270.5 of the Health and Safety Code is  
40 repealed.

1 SEC. 10. Section 25270.5 is added to the Health and Safety  
2 Code, to read:

3 25270.5. (a) Except as provided in subdivision (b), at least  
4 once every three years, the UPA shall inspect each storage tank  
5 or a representative sampling of the storage tanks at each tank  
6 facility that has a storage capacity of 10,000 gallons or more of  
7 petroleum. The purpose of the inspection shall be to determine  
8 whether the owner or operator is in compliance with the spill  
9 prevention control and countermeasure plan requirements of this  
10 chapter.

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

13 (c) An inspection conducted pursuant to this section does not  
14 require the oversight of a professional engineer. The person  
15 conducting the inspection shall meet both of the following  
16 requirements:

17 (1) Complete an aboveground storage tank training program,  
18 which shall be established by the secretary.

19 (2) Satisfactorily pass an examination developed by the secretary  
20 on the spill prevention control and countermeasure plan provisions  
21 and safety requirements for aboveground storage tank inspections.

22 SEC. 11. Section 25270.6 of the Health and Safety Code is  
23 amended to read:

24 25270.6. (a) (1) On or before January 1, 2009, and on or  
25 before January 1 annually thereafter, each owner or operator of a  
26 tank facility subject to this chapter shall file with the UPA a tank  
27 facility statement that shall identify the name and address of the  
28 tank facility, a contact person for the tank facility, the total storage  
29 capacity of the tank facility, and the location, size, age, and  
30 contents of each storage tank that exceeds 10,000 gallons in  
31 capacity and that holds a substance containing at least 5 percent  
32 of petroleum. A copy of a statement submitted previously pursuant  
33 to this section may be submitted in lieu of a new tank facility  
34 statement if no new or used storage tanks have been added to the  
35 facility or if no significant modifications have been made. For  
36 purposes of this section, a significant modification includes, but  
37 is not limited to, altering existing storage tanks or changing spill  
38 prevention or containment methods.

39 (2) Notwithstanding paragraph (1), an owner or operator of a  
40 tank facility that submits a business plan, as defined in subdivision

1 (e) of Section 25501, to the UPA, and that complies with Sections  
2 25503.5, 25505, and 25510, satisfies the requirement in paragraph  
3 (1) to file a tank facility statement.

4 (b) Each year, commencing in calendar year 2010, each owner  
5 or operator of a tank facility who is subject to the requirements of  
6 subdivision (a) shall pay a fee to the UPA, on or before a date  
7 specified by the UPA. The governing body of the UPA shall  
8 establish a fee, as part of the single fee system implemented  
9 pursuant to Section 25404.5, at a level sufficient to pay the  
10 necessary and reasonable costs incurred by the UPA in  
11 administering this chapter, including, but not limited to,  
12 inspections, enforcement, and administrative costs. The UPA shall  
13 also implement the fee accountability program established pursuant  
14 to subdivision (c) of Section 25404.5 and the regulations adopted  
15 to implement that program. The UPA may provide for a waiver  
16 of these fees when a state or local government agency submits a  
17 tank facility statement.

18 SEC. 12. Section 25270.7 of the Health and Safety Code is  
19 repealed.

20 SEC. 13. Section 25270.8 of the Health and Safety Code is  
21 amended to read:

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

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

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

34 25270.9. (a) The board and the regional board may oversee  
35 cleanup or abatement efforts, or cause cleanup or abatement efforts,  
36 of a release from a storage tank at a tank facility.

37 (b) The reasonable expenses of the board and the regional board  
38 incurred in overseeing, or contracting for, cleanup or abatement  
39 efforts that result from a release at a tank facility is a charge against  
40 the owner or operator of the tank facility. Expenses reimbursable

1 to a public agency under this section are a debt of the tank facility  
2 owner or operator, and shall be collected in the same manner as  
3 in the case of an obligation under a contract, express or implied.

4 (c) Expenses recovered by the board or a regional board pursuant  
5 to this section shall be deposited into the Waste Discharge Permit  
6 Fund. These moneys shall be separately accounted for, and shall  
7 be expended by the board, upon appropriation by the Legislature,  
8 to assist regional boards and other public agencies with authority  
9 to clean up waste or abate the effects of the waste, in cleaning up  
10 or abating the effects of the waste on waters of the state, or for the  
11 purposes authorized in Section 13443.

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

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

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

18 25270.11. (a) All moneys in the Environmental Protection  
19 Trust Fund may be expended, upon appropriation by the  
20 Legislature, in the following manner:

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

25 (2) All remaining funds in the Environmental Protection Trust  
26 Fund, shall be allocated to the UPAs, in accordance with a formula  
27 and process determined by the secretary in consultation with the  
28 UPAs. The UPAs shall expend those funds for the purpose of  
29 implementing this chapter. Eighty percent or less of each UPA's  
30 allocation may be distributed to the UPA in advance of actual  
31 expenditure by the UPA.

32 (b) All moneys remaining in the training account established  
33 pursuant to paragraph (1) of subdivision (a), as of June 1, 2011,  
34 may be expended pursuant to paragraph (2) of subdivision (a),  
35 upon appropriation by the Legislature.

36 (c) All moneys remaining in the Environmental Protection Trust  
37 Fund that have not been expended, as of June 1, 2011, shall be  
38 expended pursuant to paragraph (2) of subdivision (a), upon  
39 appropriation by the Legislature.

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

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

7 25270.12. (a) Any owner or operator of a tank facility who  
8 fails to prepare a spill prevention control and countermeasure plan  
9 in compliance with subdivision (a) of Section 25270.4.5, to file a  
10 tank facility statement pursuant to subdivision (a) of Section  
11 25270.6, to submit the fee required by subdivision (b) of Section  
12 25270.6, to report spills as required by Section 25270.8, or  
13 otherwise to comply with the requirements of this chapter, is  
14 subject to a civil penalty of not more than five thousand dollars  
15 (\$5,000) for each day on which the violation continues. If the  
16 owner or operator commits a second or subsequent violation, a  
17 civil penalty of not more than ten thousand dollars (\$10,000) for  
18 each day on which the violation continues may be imposed.

19 (b) (1) The civil penalties provided by this section may be  
20 assessed and recovered in a civil action brought by the city attorney  
21 or district attorney on behalf of the UPA.

22 (2) Fifty percent of all penalties assessed and recovered in a  
23 civil action brought on behalf of a UPA pursuant to this subdivision  
24 shall be deposited into a unified program account established by  
25 the UPA for the purpose of carrying out the functions of the unified  
26 program and 50 percent shall be paid to the office of the city  
27 attorney or district attorney, whoever brought that action.

28 (c) (1) The civil penalties provided in this section may be  
29 assessed and recovered in a civil action brought by the Attorney  
30 General on behalf of the board or a regional board, or on behalf  
31 of the people of the State of California.

32 (2) All penalties assessed and recovered in a civil action brought  
33 pursuant to this subdivision shall be deposited in the Waste  
34 Discharge Permit Fund. These moneys shall be separately  
35 accounted for, and shall be expended by the board, upon  
36 appropriation by the Legislature, to assist regional boards and other  
37 public agencies with authority to clean up waste or abate the effects  
38 of the waste, in cleaning up or abating the effects of the waste on  
39 waters of the state, or for the purposes authorized in Section 13443.

1 (d) The city attorney, district attorney, or the Attorney General  
2 may seek to enjoin, in any court of competent jurisdiction, any  
3 person believed to be in violation of this chapter.

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

6 SEC. 20. Section 25270.13 of the Health and Safety Code is  
7 amended to read:

8 25270.13. (a) This chapter does not preempt local storage tank  
9 ordinances, in effect as of August 16, 1989, that meet or exceed  
10 the standards prescribed by this chapter.

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

15 SEC. 21. Section 25404 of the Health and Safety Code is  
16 amended to read:

17 25404. (a) For purposes of this chapter, the following terms  
18 shall have the following meanings:

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

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

28 (C) “Unified Program Agency” or “UPA” means the CUPA, or  
29 its participating agencies to the extent each PA has been designated  
30 by the CUPA, pursuant to a written agreement, to implement or  
31 enforce a particular unified program element specified in  
32 subdivision (c). The UPAs have the responsibility and authority  
33 to implement and enforce the requirements listed in subdivision  
34 (c), and the regulations adopted to implement the requirements  
35 listed in subdivision (c), to the extent provided by Chapter 6.5  
36 (commencing with Section 25100), Chapter 6.67 (commencing  
37 with Section 25270), Chapter 6.7 (commencing with Section  
38 25280), Chapter 6.95 (commencing with Section 25500), and  
39 Sections 25404.1 and 25404.2. After a CUPA has been certified  
40 by the secretary, the unified program agencies and the state

1 agencies carrying out responsibilities under this chapter shall be  
2 the only agencies authorized to enforce the requirements listed in  
3 subdivision (c) within the jurisdiction of the CUPA.

4 (2) “Department” means the Department of Toxic Substances  
5 Control.

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

13 (A) A violation that results in injury to persons or property, or  
14 that presents a significant threat to human health or the  
15 environment.

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

17 (C) A violation that is a chronic violation, or that is committed  
18 by a recalcitrant violator. In determining whether a violation is  
19 chronic or a violator is recalcitrant, the UPA shall consider whether  
20 there is evidence indicating that the violator has engaged in a  
21 pattern of neglect or disregard with respect to applicable regulatory  
22 requirements.

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

25 (E) A violation that enables the violator to benefit economically  
26 from the noncompliance, either by reduced costs or competitive  
27 advantage.

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

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

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

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

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

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

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

23 (c) The unified program shall consolidate the administration of  
24 the following requirements, and shall, to the maximum extent  
25 feasible within statutory constraints, ensure the coordination and  
26 consistency of any regulations adopted pursuant to those  
27 requirements:

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

32 (i) Hazardous waste generators, persons operating pursuant to  
33 a permit-by-rule, conditional authorization, or conditional  
34 exemption, pursuant to Chapter 6.5 (commencing with Section  
35 25100) or the regulations adopted by the department.

36 (ii) Persons managing perchlorate materials.

37 (iii) Persons subject to Article 10.1 (commencing with Section  
38 25211) of Chapter 6.5.

39 (B) The unified program shall not include the requirements of  
40 paragraph (3) of subdivision (c) of Section 25200.3, the

1 requirements of Sections 25200.10 and 25200.14, and the authority  
2 to issue an order under Sections 25187 and 25187.1, with regard  
3 to those portions of a unified program facility that are subject to  
4 one of the following:

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

7 (ii) An order issued by the department pursuant to Chapter 6.8  
8 (commencing with Section 25300) or Chapter 6.85 (commencing  
9 with Section 25396).

10 (iii) A remedial action plan approved pursuant to Chapter 6.8  
11 (commencing with Section 25300) or Chapter 6.85 (commencing  
12 with Section 25396).

13 (iv) A cleanup and abatement order issued by a California  
14 regional water quality control board pursuant to Section 13304 of  
15 the Water Code, to the extent that the cleanup and abatement order  
16 addresses the requirements of the applicable section or sections  
17 listed in this subparagraph.

18 (v) Corrective action required under subsection (u) of Section  
19 6924 of Title 42 of the United States Code or subsection (h) of  
20 Section 6928 of Title 42 of the United States Code.

21 (vi) An environmental assessment pursuant to Section 25200.14  
22 or a corrective action pursuant to Section 25200.10 or paragraph  
23 (3) of subdivision (c) of Section 25200.3, that is being overseen  
24 by the department.

25 (C) The unified program shall not include the requirements of  
26 Chapter 6.5 (commencing with Section 25100), and the regulations  
27 adopted by the department pursuant thereto, applicable to persons  
28 operating transportable treatment units, except that any required  
29 notice regarding transportable treatment units shall also be provided  
30 to the CUPAs.

31 (2) The requirements of Chapter 6.67 (commencing with Section  
32 25270) concerning aboveground storage tanks.

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

37 (B) The unified program may not include the responsibilities  
38 assigned to the State Water Resources Control Board pursuant to  
39 Section 25297.1.

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

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

6 (5) The requirements of Article 2 (commencing with Section  
7 25531) of Chapter 6.95, concerning the accidental release  
8 prevention program.

9 (6) The requirements of subdivisions (b) and (c) of Section  
10 80.103 of the Uniform Fire Code, as adopted by the State Fire  
11 Marshal pursuant to Section 13143.9 concerning hazardous material  
12 management plans and inventories.

13 (d) To the maximum extent feasible within statutory constraints,  
14 the secretary shall consolidate, coordinate, and make consistent  
15 these requirements of the unified program with other requirements  
16 imposed by other federal, state, regional, or local agencies upon  
17 facilities regulated by the unified program.

18 (e) (1) The secretary shall establish standards applicable to  
19 CUPAs, participating agencies, state agencies, and businesses  
20 specifying the data to be collected and submitted by unified  
21 program agencies in administering the programs listed in  
22 subdivision (c). Those standards shall incorporate any standard  
23 developed under Section 25503.3.

24 (2) The secretary shall establish an electronic geographic  
25 information management system capable of receiving all data  
26 collected by the unified program agencies pursuant to this  
27 subdivision and Section 25504.1. The secretary shall make all  
28 nonconfidential data available on the Internet.

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

32 (B) The secretary, or one or more of the boards, departments,  
33 or offices within the California Environmental Protection Agency,  
34 shall seek available federal funding for purposes of implementing  
35 this subdivision.

36 (4) Once the statewide database is established, the secretary  
37 shall work with the CUPAs to develop a phased-in schedule for  
38 the electronic collection and submittal of information to be included  
39 in the statewide database, giving first priority to information  
40 relating to those chemicals determined by the secretary to be of

1 greatest concern. The secretary, in making this determination shall  
2 consult with the CUPAs, the Office of Emergency Services, the  
3 State Fire Marshal, and the boards, departments, and offices within  
4 the California Environmental Protection Agency. The information  
5 initially included in the statewide database shall include, but is not  
6 limited to, the hazardous materials inventory information required  
7 to be submitted pursuant to Section 25504.1 for perchlorate  
8 materials.

9 *SEC. 21.5. Section 25404 of the Health and Safety Code is*  
10 *amended to read:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (6) “Unified program facility permit” means a permit issued  
36 pursuant to this chapter. For the purposes of this chapter, a unified  
37 program facility permit encompasses the permitting requirements  
38 of Section 25284, and any permit or authorization requirements  
39 under any local ordinance or regulation relating to the generation  
40 or handling of hazardous waste or hazardous materials, but does

1 not encompass the permitting requirements of a local ordinance  
2 that incorporates provisions of the Uniform Fire Code or the  
3 Uniform Building Code.

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

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

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

26 (i) Hazardous waste generators, persons operating pursuant to  
27 a permit-by-rule, conditional authorization, or conditional  
28 exemption, pursuant to Chapter 6.5 (commencing with Section  
29 25100) or the regulations adopted by the department.

30 (ii) Persons managing perchlorate materials.

31 (iii) Persons subject to Article 10.1 (commencing with Section  
32 25211) of Chapter 6.5.

33 (B) The unified program shall not include the requirements of  
34 paragraph (3) of subdivision (c) of Section 25200.3, the  
35 requirements of Sections 25200.10 and 25200.14, and the authority  
36 to issue an order under Sections 25187 and 25187.1, with regard  
37 to those portions of a unified program facility that are subject to  
38 one of the following:

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

1 (ii) An order issued by the department pursuant to Chapter 6.8  
2 (commencing with Section 25300) or Chapter 6.85 (commencing  
3 with Section 25396).

4 (iii) A remedial action plan approved pursuant to Chapter 6.8  
5 (commencing with Section 25300) or Chapter 6.85 (commencing  
6 with Section 25396).

7 (iv) A cleanup and abatement order issued by a California  
8 regional water quality control board pursuant to Section 13304 of  
9 the Water Code, to the extent that the cleanup and abatement order  
10 addresses the requirements of the applicable section or sections  
11 listed in this subparagraph.

12 (v) Corrective action required under subsection (u) of Section  
13 6924 of Title 42 of the United States Code or subsection (h) of  
14 Section 6928 of Title 42 of the United States Code.

15 (vi) An environmental assessment pursuant to Section 25200.14  
16 or a corrective action pursuant to Section 25200.10 or paragraph  
17 (3) of subdivision (c) of Section 25200.3, that is being overseen  
18 by the department.

19 (C) The unified program shall not include the requirements of  
20 Chapter 6.5 (commencing with Section 25100), and the regulations  
21 adopted by the department pursuant thereto, applicable to persons  
22 operating transportable treatment units, except that any required  
23 notice regarding transportable treatment units shall also be provided  
24 to the CUPAs.

25 ~~(2) The requirement of subdivision (c) of Section 25270.5 for~~  
26 ~~owners and operators of aboveground storage tanks to prepare a~~  
27 ~~spill prevention control and countermeasure plan.~~

28 *(2) The requirements of Chapter 6.67 (commencing with Section*  
29 *25270) concerning aboveground storage tanks.*

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

34 (B) The unified program may not include the responsibilities  
35 assigned to the State Water Resources Control Board pursuant to  
36 Section 25297.1.

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

1 (4) The requirements of Article 1 (commencing with Section  
2 25500) of Chapter 6.95 concerning hazardous material release  
3 response plans and inventories.

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

7 (6) The requirements of subdivisions (b) and (c) of Section  
8 80.103 of the Uniform Fire Code, as adopted by the State Fire  
9 Marshal pursuant to Section 13143.9 concerning hazardous material  
10 management plans and inventories.

11 (d) To the maximum extent feasible within statutory constraints,  
12 the secretary shall consolidate, coordinate, and make consistent  
13 these requirements of the unified program with other requirements  
14 imposed by other federal, state, regional, or local agencies upon  
15 facilities regulated by the unified program.

16 (e) (1) The secretary shall establish standards applicable to  
17 CUPAs, participating agencies, state agencies, and businesses  
18 specifying the data to be collected and submitted by unified  
19 program agencies in administering the programs listed in  
20 subdivision (c). Those standards shall incorporate any standard  
21 developed under Section 25503.3.

22 (2) (A) The secretary shall establish an electronic geographic  
23 information management system capable of receiving all data  
24 collected by the unified program agencies pursuant to this  
25 subdivision and Section 25504.1. The secretary shall make all  
26 nonconfidential data available on the Internet *to the maximum*  
27 *extent feasible within the constraints of federal and state statutes,*  
28 *and consistent with Chapter 3.5 (commencing with Section 6250)*  
29 *of Division 7 of Title 1 of the Government Code.*

30 (B) *For the hazardous materials inventory information required*  
31 *to be submitted pursuant to Section 25509, any claims by a business*  
32 *that the information is a trade secret as that term is defined in*  
33 *Section 6254.7 of the Government Code and Section 1060 of the*  
34 *Evidence Code shall be handled in accordance with the provisions*  
35 *of Section 25511.*

36 (3) (A) ~~As funding becomes available~~ *To the extent funding is*  
37 *available by January 1, 2010,* the secretary shall establish,  
38 consistent with paragraph (2), and thereafter maintain, a statewide  
39 database.

1 (B) The secretary, or one or more of the boards, departments,  
2 or offices within the California Environmental Protection Agency,  
3 shall seek available federal funding for purposes of implementing  
4 this subdivision.

5 (4) Once the statewide database is established, the secretary  
6 shall work with the CUPAs to develop a phased-in schedule for  
7 the electronic collection and submittal of information to be included  
8 in the statewide database, giving first priority to information  
9 relating to those chemicals determined by the secretary to be of  
10 greatest concern. The secretary, in making this determination shall  
11 consult with the CUPAs, the Office of Emergency Services, the  
12 State Fire Marshal, and the boards, departments, and offices within  
13 the California Environmental Protection Agency. The information  
14 initially included in the statewide database shall include, but is not  
15 limited to, the hazardous materials inventory information required  
16 to be submitted pursuant to Section 25504.1 for perchlorate  
17 materials *and Section 25509 for all hazardous materials.*

18 (5) *Using information required to be submitted pursuant to*  
19 *Section 25509 that is part of the statewide database, within six*  
20 *months of the establishment of the statewide database pursuant to*  
21 *subparagraph (A) of paragraph (3), the department shall develop*  
22 *and post on its Internet Web site baseline hazardous materials use*  
23 *information, and shall update that information at least annually.*  
24 *The department shall develop its hazardous materials use baseline*  
25 *information in consultation with the Office of Environmental Health*  
26 *Hazard Assessment consistent with the environmental protection*  
27 *indicators developed pursuant to Chapter 4 (commencing with*  
28 *Section 71080) of Part 2 of Division 34 of the Public Resources*  
29 *Code.*

30 SEC. 22. Section 25404.1.1 of the Health and Safety Code is  
31 amended to read:

32 25404.1.1. (a) If the unified program agency determines that  
33 a person has committed, or is committing, a violation of any law,  
34 regulation, permit, information request, order, variance, or other  
35 requirement that the UPA is authorized to enforce or implement  
36 pursuant to this chapter, the UPA may issue an administrative  
37 enforcement order requiring that the violation be corrected and  
38 imposing an administrative penalty, in accordance with the  
39 following:

1 (1) Except as provided in paragraph (5), if the order is for a  
2 violation of Chapter 6.5 (commencing with Section 25100), the  
3 violator shall be subject to the applicable administrative penalties  
4 provided by that chapter.

5 (2) If the order is for a violation of Chapter 6.7 (commencing  
6 with Section 25280), the violator shall be subject to the applicable  
7 civil penalties provided in subdivisions (a), (b), (c), and (e) of  
8 Section 25299.

9 (3) If the order is for a violation of Article 1 (commencing with  
10 Section 25500) of Chapter 6.95, the violator shall be subject to a  
11 penalty that is consistent with the administrative penalties imposed  
12 pursuant to Section 25514.5.

13 (4) If the order is for a violation of Article 2 (commencing with  
14 Section 25531) of Chapter 6.95, the violator shall be subject to a  
15 penalty that is consistent with the administrative penalties imposed  
16 pursuant to Section 25540 or 25540.5.

17 (5) If the order is for a violation of Section 25270.4.5, the  
18 violator shall be liable for a penalty of not more than five thousand  
19 dollars (\$5,000) for each day on which the violation continues. If  
20 the violator commits a second or subsequent violation, a penalty  
21 of not more than ten thousand dollars (\$10,000) for each day on  
22 which the violation continues may be imposed.

23 (b) In establishing a penalty amount and ordering that the  
24 violation be corrected pursuant to this section, the UPA shall take  
25 into consideration the nature, circumstances, extent, and gravity  
26 of the violation, the violator's past and present efforts to prevent,  
27 abate, or clean up conditions posing a threat to the public health  
28 or safety or the environment, the violator's ability to pay the  
29 penalty, and the deterrent effect that the imposition of the penalty  
30 would have on both the violator and the regulated community.

31 (c) Any order issued pursuant to this section shall be served by  
32 personal service or certified mail and shall inform the person served  
33 of the right to a hearing. If the UPA issues an order pursuant to  
34 this section, the order shall state whether the hearing procedure  
35 specified in paragraph (2) of subdivision (e) may be requested by  
36 the person receiving the order.

37 (d) Any person served with an order pursuant to this section  
38 who has been unable to resolve any violation with the UPA, may  
39 within 15 days after service of the order, request a hearing pursuant  
40 to subdivision (e) by filing with the UPA a notice of defense. The

1 notice shall be filed with the office that issued the order. A notice  
2 of defense shall be deemed filed within the 15-day period provided  
3 by this subdivision if it is postmarked within that 15-day period.  
4 If no notice of defense is filed within the time limits provided by  
5 this subdivision, the order shall become final.

6 (e) Except as provided in subparagraph (B) of paragraph (2), a  
7 person requesting a hearing on an order issued by the UPA under  
8 this section may select the hearing officer specified in either  
9 paragraph (1) or (2) in the notice of defense filed with the UPA  
10 pursuant to subdivision (d). If a notice of defense is filed but no  
11 hearing officer is selected, the UPA may select the hearing officer.  
12 Within 90 days of receipt of the notice of defense by the UPA, the  
13 hearing shall be scheduled using one of the following:

14 (1) An administrative law judge of the Office of Administrative  
15 Hearings of the Department of General Services, who shall conduct  
16 the hearing in accordance with Chapter 4.5 (commencing with  
17 Section 11400) of Part 1 of Division 3 of Title 2 of the Government  
18 Code, and the UPA shall have all the authority granted to an agency  
19 by those provisions.

20 (2) (A) A hearing officer designated by the UPA, who shall  
21 conduct the hearing in accordance with Chapter 4.5 (commencing  
22 with Section 11400) of Part 1 of Division 3 of Title 2 of the  
23 Government Code, and the UPA shall have all the authority granted  
24 to an agency by those provisions. When a hearing is conducted by  
25 a UPA hearing officer pursuant to this paragraph, the UPA shall  
26 issue a decision within 60 days after the hearing is conducted. Each  
27 hearing officer designated by a UPA shall meet the requirements  
28 of Section 11425.30 of the Government Code and any other  
29 applicable restriction.

30 (B) A UPA, or a person requesting a hearing on an order issued  
31 by a UPA may select the hearing process specified in this paragraph  
32 in a notice of defense filed pursuant to subdivision (d) only if the  
33 UPA has, as of the date the order is issued pursuant to subdivision  
34 (c), selected a designated hearing officer and established a program  
35 for conducting a hearing in accordance with this paragraph.

36 (f) The hearing decision issued pursuant to paragraph (2) of  
37 subdivision (e) shall be effective and final upon issuance by the  
38 UPA. A copy of the decision shall be served by personal service  
39 or by certified mail upon the party served with the order, or their  
40 representative, if any.

1 (g) Any provision of an order issued under this section, except  
2 the imposition of an administrative penalty, shall take effect upon  
3 issuance by the UPA if the UPA finds that the violation or  
4 violations of law associated with that provision may pose an  
5 imminent and substantial endangerment to the public health or  
6 safety or the environment. A request for a hearing shall not stay  
7 the effect of that provision of the order pending a hearing decision.  
8 However, if the UPA determines that any or all provisions of the  
9 order are so related that the public health or safety or the  
10 environment can be protected only by immediate compliance with  
11 the order as a whole, the order as a whole, except the imposition  
12 of an administrative penalty, shall take effect upon issuance by  
13 the UPA. A request for a hearing shall not stay the effect of the  
14 order as a whole pending a hearing decision.

15 (h) A decision issued pursuant to paragraph (2) of subdivision  
16 (e) may be reviewed by a court pursuant to Section 11523 of the  
17 Government Code. In all proceedings pursuant to this section, the  
18 court shall uphold the decision of the UPA if the decision is based  
19 upon substantial evidence in the record as a whole. The filing of  
20 a petition for writ of mandate shall not stay any action required  
21 pursuant to this chapter or the accrual of any penalties assessed  
22 pursuant to this chapter. This subdivision does not prohibit the  
23 court from granting any appropriate relief within its jurisdiction.

24 (i) All administrative penalties collected from actions brought  
25 by a UPA pursuant to this section shall be paid to the UPA that  
26 imposed the penalty, and shall be deposited into a special account  
27 that shall be expended to fund the activities of the UPA in enforcing  
28 this chapter.

29 (j) The UPA shall consult with the district attorney, county  
30 counsel, or city attorney on the development of policies to be  
31 followed in exercising the authority delegated pursuant to this  
32 section as it relates to the authority of the UPA to issue orders.

33 (k) (1) A unified program agency may suspend or revoke any  
34 unified program facility permit, or an element of a unified program  
35 facility permit, for not paying the permit fee or a fine or penalty  
36 associated with the permit in accordance with the procedures  
37 specified in this subdivision.

38 (2) If a permittee does not comply with a written notice from  
39 the unified program agency to the permittee to make the payments  
40 specified in paragraph (1) by the required date provided in the

1 notice, the unified program agency may suspend or revoke the  
2 permit or permit element. If the permit or permit element is  
3 suspended or revoked, the permittee shall immediately discontinue  
4 operating that facility or function of the facility to which the permit  
5 element applies until the permit is reinstated or reissued.

6 (3) A permittee may request a hearing to appeal the suspension  
7 or revocation of a permit or element of a permit pursuant to this  
8 subdivision by requesting a hearing using the procedures provided  
9 in subdivision (d).

10 (l) This section does not do any of the following:

11 (1) Otherwise affect the authority of a UPA to take any other  
12 action authorized by any other provision of law, except the UPA  
13 shall not require a person to pay a penalty pursuant to this section  
14 and pursuant to a local ordinance for the same violation.

15 (2) Restrict the power of a city attorney, district attorney, county  
16 counsel, or the Attorney General to bring, in the name of the people  
17 of California, any criminal proceeding otherwise authorized by  
18 law.

19 (3) Prevent the UPA from cooperating with, or participating in,  
20 a proceeding specified in paragraph (2).

21 SEC. 23. Section 25404.5 of the Health and Safety Code is  
22 amended to read:

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

38 (2) (A) The governing body of the local certified unified  
39 program agency shall establish the amount to be paid by each  
40 person regulated by the unified program under the single fee system

1 at a level sufficient to pay the necessary and reasonable costs  
2 incurred by the certified unified program agency and by any  
3 participating agency pursuant to the requirements of subparagraph  
4 (E) of paragraph (1) of subdivision (d) of Section 25404.3.

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

7 (3) The fee system may also be designed to recover the  
8 necessary and reasonable costs incurred by the certified unified  
9 program agency, or a participating agency pursuant to the  
10 requirements of subparagraph (E) of paragraph (1) of subdivision  
11 (d) of Section 25404.3, in administering provisions other than  
12 those specified in subdivision (c) of Section 25404, if the  
13 implementation and enforcement of those provisions has been  
14 incorporated as part of the unified program by the certified unified  
15 program agency pursuant to subdivision (b) of Section 25404.2,  
16 and if the single fee system replaces any fees levied as of January  
17 1, 1994, to fund the implementation of those additional provisions.

18 (4) The amount to be paid by a person regulated by the unified  
19 program may be adjusted to account for the differing costs of  
20 administering the unified program with respect to that person's  
21 regulated activities.

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

1 created in the General Fund and which may be expended, upon  
2 appropriation by the Legislature, by state agencies for the purposes  
3 of implementing this chapter.

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

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

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

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

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

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

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

39 (B) The application for certification, including the information  
40 required by subparagraph (A), is determined by the secretary to

1 be complete, on or before April 30, 1996. The secretary, for good  
2 cause, may grant an extension of that deadline of up to 90 days.

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

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

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

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

23 (A) The county meets all of the criteria specified in paragraph  
24 (1).

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

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

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

38 (e) The secretary shall review all of the requests for a waiver  
39 of the surcharge made pursuant to subdivision (d) simultaneously,  
40 so as to adequately assess the cumulative impact of granting the

1 requested waivers on businesses in those counties that have not  
 2 applied, or do not qualify, for a waiver, and shall grant or deny all  
 3 requests for a waiver of the surcharge within 30 days from the date  
 4 that the secretary certifies all counties applying, and qualifying,  
 5 for a waiver. If the secretary finds that the grant of a waiver of the  
 6 surcharge for all counties applying and qualifying for the waiver  
 7 will impose a significant economic burden on businesses in one  
 8 or more other counties, the secretary shall take either of the  
 9 following actions:

- 10 (1) Deny all of the applications for a waiver of the surcharge.
- 11 (2) Approve only a portion of the waiver requests for counties  
 12 meeting the criteria set forth in subdivision (d), to the extent that  
 13 the approved waivers, when taken as a whole, meet the condition  
 14 specified in subparagraph (D) of paragraph (2) of subdivision (d).  
 15 In determining which of the counties' waiver requests to grant,  
 16 the secretary shall consider all of the following factors:
  - 17 (A) The relative degree to which the assessment of the surcharge  
 18 will impose a significant economic burden on most businesses  
 19 within each county applying and qualifying for a waiver.
  - 20 (B) The relative degree to which the combined dollar amount  
 21 of the surcharge and the single fee system to be assessed, pursuant  
 22 to subdivision (a), by each county applying and qualifying for a  
 23 waiver exceeds the combined dollar amount of all existing fees  
 24 that are replaced by the single fee system for most businesses  
 25 within the county.
  - 26 (C) The relative extent to which each county applying and  
 27 qualifying for a waiver has incorporated, or will incorporate, upon  
 28 certification, additional programs pursuant to subdivision (d) of  
 29 Section 25404.2, into the unified program within the county's  
 30 jurisdiction.
  - 31 (f) The secretary may, at any time, terminate a county's waiver  
 32 of the surcharge granted pursuant to subdivisions (d) and (e) if the  
 33 secretary determines that the criteria specified in subdivision (d)  
 34 for the grant of a waiver are no longer met.
- 35 SEC. 24. Section 25503.4 of the Health and Safety Code is  
 36 amended to read:
  - 37 25503.4. (a) The office shall adopt a format that allows  
 38 persons subject to two or more of the following requirements to  
 39 meet those requirements in one document:
    - 40 (1) The business plan required by this chapter.

- 1 (2) The risk management plan required by Section 25534.
- 2 (3) The contingency plan required by Division 4.5 (commencing  
3 with Section 66001) of Title 22 of the California Code of  
4 Regulations and by Part 262 (commencing with Section 262.10),  
5 Part 264 (commencing with Section 264.1), or Part 265  
6 (commencing with Section 265.1) of Title 40 of the Code of  
7 Federal Regulations.
- 8 (4) The spill prevention control and countermeasure plan  
9 required by Section 25270.4.5 and by Part 112 (commencing with  
10 Section 112.1) or by Part 300 (commencing with Section 300.1)  
11 of Title 40 of the Code of Federal Regulations.
- 12 (5) Any accident or spill prevention plan or response plan  
13 required by Chapter 6.7 (commencing with Section 25280) or by  
14 regulations adopted pursuant to that chapter or required by an  
15 underground storage tank ordinance adopted by a city or county.
- 16 (6) The interim marine facility oil spill contingency plan  
17 required by Section 8670.29 of the Government Code and the  
18 marine facility oil spill contingency plan required by Section  
19 8670.31 of the Government Code.
- 20 (b) The format required by subdivision (a) shall be organized  
21 as follows:
  - 22 (1) A central element that will enable persons using the format  
23 to report information and data common to all of the requirements  
24 described in subdivision (a).
  - 25 (2) Appendices that will contain the additional information  
26 unique to each individual requirement described in subdivision  
27 (a).
  - 28 (c) The office shall adopt the format required by subdivision  
29 (a) in consultation with administering agencies and the Information  
30 Management Subcommittee of the Chemical Emergency Planning  
31 and Response Commission and in cooperation with the State Water  
32 Resources Control Board, the Department of Fish and Game, and  
33 the department. The adoption of the format is not subject to Chapter  
34 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
35 Title 2 of the Government Code and shall be completed by January  
36 1, 1995. To the extent feasible, and within the limits of budgetary  
37 constraints, the office, the State Water Resources Control Board,  
38 the Department of Fish and Game, and the department shall  
39 convene workshops and other public meetings to obtain public  
40 assistance on the development of the format.

1 SEC. 25. No reimbursement is required by this act pursuant to  
2 Section 6 of Article XIII B of the California Constitution because  
3 a local agency or school district has the authority to levy service  
4 charges, fees, or assessments sufficient to pay for the program or  
5 level of service mandated by this act, within the meaning of Section  
6 17556 of the Government Code.

7 *SEC. 26. Section 21.5 of this bill incorporates amendments to*  
8 *Section 25404 of the Health and Safety Code proposed by both*  
9 *this bill and AB 558. It shall only become operative if (1) both bills*  
10 *are enacted and become effective on or before January 1, 2008,*  
11 *(2) each bill amends Section 25404 of the Health and Safety Code,*  
12 *and (3) this bill is enacted after AB 558, in which case Section 21*  
13 *of this bill shall not become operative.*