

**CALIFORNIA HEALTH & SAFETY CODE  
CHAPTERS 6.75 & 6.76**

**STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF FINANCIAL ASSISTANCE  
PETROLEUM UNDERGROUND STORAGE  
TANK CLEANUP FUND**

**JANUARY 2024**

## Table of Contents

JANUARY 2024 .....1  
 Table of Contents .....2

**CALIFORNIA HEALTH AND SAFETY CODE DIVISION 20 CHAPTER 6.75  
 PETROLEUM UNDERGROUND STORAGE TANK CLEANUP .....6**

**ARTICLE 1. FINDINGS AND DECLARATIONS .....6**  
 § 25299.10. Title of chapter; legislative findings and declarations .....6

**ARTICLE 2. DEFINITIONS .....7**  
 § 25299.11. Construction of chapter .....7  
 § 25299.11.5. Adjudicative proceeding .....7  
 § 25299.12. Bodily injury .....7  
 § 25299.13. Claim .....7  
 § 25299.14. Corrective action .....7  
 § 25299.15. Environmental impairment liability insurance .....7  
 § 25299.16. Federal act .....7  
 § 25299.17. Fund .....8  
 § 25299.18. MTBE .....8  
 § 25299.19. Occurrence .....8  
 § 25299.20. Operator .....8  
 § 25299.21. Owner .....8  
 § 25299.22. Petroleum .....8  
 § 25299.23. Property damage .....8  
 § 25299.23.1. Site .....8  
 § 25299.24. Tank, underground storage tank, underground tank system and tank  
 system .....9  
 § 25299.25. Other definitions .....9

**ARTICLE 3. FINANCIAL RESPONSIBILITY .....9**  
 § 25299.30. Compliance with financial responsibility provisions .....9  
 § 25299.31. Evidence of financial responsibility; demonstration of compliance .....9  
 § 25299.32. Level of financial responsibility; periodic increases in minimum level .....9  
 § 25299.33. Establishment of evidence by means specified in federal act; submission .....10  
 § 25299.34. Guarantor’s liability; limitations; definition .....10

**ARTICLE 4. CORRECTIVE ACTION .....11**  
 § 25299.36. Corrective action by regional board or local agency; oral contracts .....11

§ 25299.38. Compliance with applicable regulations; workplan for corrective actions; appeal and review..... 11

§ 25299.39.2. Notice to holders of active letters of commitment that are over five years old; review of case history; closure of tank case; petition for review..... 12

§ 25299.39.3. Access to property ..... 13

**ARTICLE 5. FEES..... 13**

§ 25299.40. Storage fees do not constitute tax ..... 13

§ 25299.41. Storage fees; amount; payment..... 14

§ 25299.42. Regulations; collection and deposit of fees..... 14

§ 25299.43. Storage fee for petroleum placed in underground storage tank; fee increase; payment to California Department of Tax and Fee Administration; regulations ..... 14

**ARTICLE 6. UNDERGROUND STORAGE TANK CLEANUP FUND..... 15**

§ 25299.50. Underground storage tank cleanup fund; deposits; reallocation of funds ..... 15

§ 25299.50.2. Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Subaccount; transfer of funds to account; use of funds at sites meeting certain conditions; grant applications filed prior and subsequent to January 2015 ..... 16

§ 25299.50.3. Creation of School District Account in the Underground Storage Tank Cleanup Fund; transfer and expenditure of funds; annual report; effect on district priority; waiver of permit requirements ..... 17

§ 25299.50.5. Reversion of funds upon repeal of § 25299.50.3 ..... 18

§ 25299.50.6. Site Cleanup Subaccount; creation; deposits and disbursements; grants; Attorney General investigations ..... 18

§ 25299.50.7. Expedited Claim Account; creation; deposits and disbursements; expedited claim pilot project; annual report ..... 20

§ 25299.51. Expenditure of moneys in the fund ..... 21

§ 25299.51.2. Independent program audit and fiscal audit required; scope of audit..... 22

§ 25299.51.3. Cost-effectiveness and feasibility study; report..... 22

§ 25299.51.4. Analysis of ranking criteria for payment of claims by board ..... 22

§ 25299.52. Award of claims; priority ranking list; lawsuit by or against fund ..... 23

§ 25299.53. Corrective action by regional board or local agency; notice; submission of estimated costs; approval; reimbursement; recovery from owner or operator ..... 24

§ 25299.54. Applications to board for satisfaction of claims; eligibility restrictions; liability for corrective action costs; insufficient funds; reimbursement of claimant ..... 25

§ 25299.55. Forms and procedures for claims filed ..... 28

§ 25299.56. Board determinations of an applicant’s eligibility for claim for costs; procedures ..... 28

§ 25299.57. Maximum payment of costs by board allowed; reimbursement; prepayment; required findings; letter of commitment; partial payment; multiple bids..... 29

§ 25299.58. Reimbursement of costs by board; limitations; required findings for payment of claim; third party compensation ..... 35

§ 25299.59. Limitation on amount of payment on claims..... 38

§ 25299.60. Claims exceeding total money in fund; restrictions on payments..... 38

§ 25299.61. Gross negligence or intentional or reckless acts of claimant; nonpayment of claims .....39

§ 25299.62. Time limit for payment of claims; reimbursement for carrying costs when funding unavailable.....39

§ 25299.63. Other remedies; exhaustion of administrative remedies .....39

**ARTICLE 6.5. PERFORMANCE-BASED CONTRACT .....39**

§ 25299.64. Definitions; payment of performance-based contracts .....39

§ 25299.65. Bids; eligible sites .....40

§ 25299.66. Other provisions of law .....41

**ARTICLE 7. COST RECOVERY, ENFORCEMENT, AND ADMINISTRATION.....41**

§ 25299.70. Recovery of costs; extent of liability; civil action; deposit of recovery; lien.....41

§ 25299.71. Permanent disqualification from eligibility due to criminal or civil liability .....42

§ 25299.72. Joining of parties to action .....42

§ 25299.73. Strict liability; standard .....42

§ 25299.74. Effect of indemnification, hold harmless, or similar agreements; entry of judgment; subrogation of claimants’ rights by state .....43

§ 25299.75. Effect of chapter on parties’ obligations or liabilities under other state or federal laws.....43

§ 25299.76. Violations; civil penalty.....43

§ 25299.77. Adoption of regulations; emergency regulations .....43

§ 25299.78. Agency or board authority to inspect underground storage tank areas; owner or operator duty to furnish information .....44

§ 25299.79. Cost recovery.....45

§ 25299.80. Civil liability for misrepresentations; enforcement and punishment.....45

§ 25299.80.5. False statements, material misrepresentations, or false certifications; criminal liability; punishment .....46

§ 25299.80.6. Review after imposition of civil liability .....46

**ARTICLE 9. SUNSET PROVISION.....46**

§ 25299.81. Duration of chapter; exceptions; effect on certain rights and obligations; posting and updating of information on board’s Web site .....46

§ 25299.82. Board action to facilitate the phase out of the Underground Storage Tank Cleanup Fund Program .....47

**ARTICLE 11. COMMINGLED PLUME ACCOUNT .....48**

§ 25299.90. Legislative findings and declarations .....48

§ 25299.91. Definitions .....48

§ 25299.92. Funding.....48

§ 25299.93. Joint claims for reimbursement; corrective action costs; third-party reimbursement.....48

§ 25299.94. Payment by board; corrective action costs and third-party compensation claims .....49

§ 25299.95. Duplicative claims; application of section.....50  
 § 25299.96. Priority for payment.....51

**ARTICLE 12. DRINKING WATER WELL PROTECTION.....51**

§ 25299.97. GIS mapping system; GIS Mapping and Data Management Advisory Committee; pilot projects; definitions .....51

**CALIFORNIA HEALTH AND SAFETY CODE DIVISION 20 CHAPTER 6.76 LOANS FOR REPLACING, REMOVING, OR UPGRADING UNDERGROUND STORAGE TANKS .....53**

§ 25299.100. Definitions .....53  
 § 25299.101. Loan program to assist small businesses; use of funds; grant program .....53  
 § 25299.102. Loan eligibility requirements .....53  
 § 25299.103. Contents of loan application; failure to obtain permit .....54  
 § 25299.104. Minimum loan amount; term of loans; use of funds; effect of repeal of chapter; loan fees .....54  
 § 25299.105. Availability of grant funds to applicants; eligibility requirements; use of funds.....55  
 § 25299.106. Contents of grant application .....56  
 § 25299.107. Minimum grant amount; use of funds.....57  
 § 25299.108. Emergency regulations for immediate preservation of public peace, health and safety, and general welfare; repeal of regulations .....57  
 § 25299.109. Creation of the Petroleum Underground Storage Tank Financing Account; moneys to be deposited in account; use of account funds; availability of funds; interest.....58  
 § 25299.110. Defraying costs of administering loan program; board actions .....58  
 § 25299.111. Reversion of moneys in Petroleum Underground Storage Tank Financing Account to the Underground Storage Tank Cleanup Fund .....58  
 § 25299.112. Authorized representative of local agency or board; request for information on grants or loans issued; violation; action by Attorney General; civil liability; remedies .....59  
 § 25299.113. Misrepresentation related to grant or loan; action by Attorney General; civil liability; complaint to licensing board; remedies .....60  
 § 25299.113.1. False statement; material misrepresentation, or false certification in support of grant or loan; action by Attorney General; criminal penalty; fine; remedies; complaint to licensing board.....60  
 § 25299.113.2. Action by Executive Director; review by board .....61  
 § 25299.114. Service in exempt positions; transfer to the board .....61  
 § 25299.115. Effect of repeals on obligations to pay filed claims .....61  
 § 25299.116. Recipients of expired grants .....61  
 § 25299.117. Repeal of chapter; termination of rights, obligations, or authorities .....61

**CALIFORNIA HEALTH AND SAFETY CODE  
DIVISION 20  
CHAPTER 6.75  
PETROLEUM UNDERGROUND STORAGE TANK CLEANUP**

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**ARTICLE 1. FINDINGS AND DECLARATIONS**

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**§ 25299.10. Title of chapter; legislative findings and declarations**

(a) This chapter shall be known, and may be cited, as the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989.

(b) The Legislature hereby finds and declares all of the following:

(1) In order to help ensure an efficient petroleum underground storage tank cleanup program that adequately protects public health and safety and the environment and provides for the rapid distribution of cleanup funds that will assist the state's recovery, it is in the best interest of the public that the board devote maximum effort to the expedited processing and payment of all claims filed pursuant to Sections 25299.57 and 25299.58.

(2) It is estimated that approximately 90 percent of the underground storage tanks in the state contain petroleum and the remaining 10 percent of the tanks contain various chemical constituents.

(3) Although the exact extent of the problem is unknown, it is thought that a significant number of the underground storage tanks containing petroleum in the state may be leaking.

(4) In recent years, owners or operators of underground storage tanks have been unable to obtain affordable environmental impairment liability insurance coverage to pay for corrective action or the obtainable coverage has been outside their financial means.

(5) There are long-term threats to public health and water quality if a comprehensive, uniform, and efficient corrective action program is not established.

(6) It is in the best interest of the health and safety of the people of the state to establish a fund to pay for corrective action where coverage is not available.

(7) A uniform, comprehensive, and efficient program establishing financial responsibility and corrective action requirements for leaking underground storage tanks containing petroleum will enable private commercial insurers to expand the availability and affordability of insurance coverage.

(8) An efficient program of establishing corrective action requirements and funds or insurance coverage should encourage corrective action to be taken in the first instance by the owner or operator of the leaking underground storage tank containing petroleum.

(9) Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code provides for regulation of underground storage tanks and allows underground storage tanks to be regulated pursuant to a state program, in lieu of a federal program, in states which are authorized to implement these provisions.

(10) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to Chapter 6.7 (commencing with Section 25280), to authorize the state to implement the provisions of Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the

United States Code, including any acts amending or supplementing Subchapter IX and any federal regulations and guidelines adopted pursuant to Subchapter IX.

(11) It is in the public interest for the state to provide financial assistance to small businesses and farms which have limited financial resources, to ensure timely compliance with the law governing underground storage tanks, and to ensure the adequate protection of groundwater.

(12) Nothing in this chapter shall be construed as waiving any immunity provided the state or its departments and agencies by the United States Constitution.

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## **ARTICLE 2. DEFINITIONS**

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### **§ 25299.11. Construction of chapter**

Unless the context indicates otherwise, the definitions in this article govern the construction of this chapter.

#### **§ 25299.11.5. Adjudicative proceeding**

“Adjudicative proceeding” has the same meaning as defined in Section 11405.20 of the Government Code.

#### **§ 25299.12. Bodily injury**

“Bodily injury” has the same meaning as used in Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code and the regulations adopted pursuant thereto.

#### **§ 25299.13. Claim**

“Claim” means a submittal to the fund for the reimbursement of costs incurred due to an occurrence. A claim consists of several documents, including, but not limited to, the fund application, reimbursement requests, and verification documents.

#### **§ 25299.14. Corrective action**

“Corrective action” includes, but is not limited to, evaluation and investigation of an unauthorized release, initial corrective actions measures, as specified in the federal act, and any actions necessary to investigate and remedy any residual effects remaining after the initial corrective action. Except as provided in the federal act, “corrective action” does not include actions to repair or replace an underground storage tank or its associated equipment.

#### **§ 25299.15. Environmental impairment liability insurance**

“Environmental impairment liability insurance” means liability insurance against liability for bodily injury, as defined in Section 25299.12, and for property damage, as defined in Section 25299.23, arising from an occurrence, as defined in Section 25299.19.

#### **§ 25299.16. Federal act**

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

**§ 25299.17. Fund**

“Fund” means the Underground Storage Tank Cleanup Fund created pursuant to Section 25299.50.

**§ 25299.18. MTBE**

“MTBE” means methyl tertiary-butyl ether.

**§ 25299.19. Occurrence**

“Occurrence” means an accident, including continuous or repeated exposure to conditions, which results in an unauthorized release of petroleum from an underground storage tank. Unauthorized releases at the same site which require only a single site investigation shall be considered as one occurrence. An unauthorized release subsequent to a previous unauthorized release at the same site shall only be considered a separate occurrence if an initial site investigation has been completed for the prior unauthorized release.

**§ 25299.20. Operator**

“Operator” means any person in control of, or having responsibility for, the daily operation of an underground storage tank containing petroleum. “Operator” includes any city, county, or district, or any agency or department thereof, but does not include the state or any agency or department thereof, or the federal government.

**§ 25299.21. Owner**

“Owner” means the owner of an underground storage tank containing petroleum. “Owner” includes any city, county, or district, or any agency or department thereof, but does not include the state or any agency or department thereof, or the federal government.

**§ 25299.22. Petroleum**

“Petroleum” means crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure, which means at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

**§ 25299.23. Property damage**

“Property damage” has the same meaning as used in Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code and the regulations adopted pursuant thereto.

**§ 25299.23.1. Site**

(a) “Site” means the parcel of real property at which an underground storage tank is located.

(b) If underground storage tanks are located at adjacent parcels of real property, the adjacent parcels together constitute one site if both of the following apply:

(1) The underground storage tanks are, or have been, operated by the same person.

(2) The adjacent parcels are under common ownership or control.

(c) Notwithstanding subdivision (a), the board may consider a parcel of real property as consisting of multiple sites, corresponding to the number of distinct underground storage tank operations at the parcel, if the board makes both of the following findings:

- (1) There is more than one underground storage tank located at the parcel.
- (2) Each separately operated underground storage tank or group of underground storage tanks is not, and has not been, operated by a person who is operating or has operated another underground storage tank at the same parcel.

**§ 25299.24. Tank, underground storage tank, underground tank system and tank system**

“Tank,” “underground storage tank,” “underground tank system,” and “tank system” have the same meaning as defined in Chapter 6.7 (commencing with Section 25280), except as follows:

- (a) These terms mean only those tanks that contain only petroleum or, consistent with the federal act, a mixture of petroleum with de minimis quantities of other regulated substances.
- (b) These terms include all of the following components that are connected either directly or indirectly to the tank:
  - (1) Spill containment structures that are substantially or totally beneath the surface of the ground.
  - (2) Those portions of vent lines, vapor recovery lines, and fill pipes that are beneath the surface of the ground.

**§ 25299.25. Other definitions**

For purposes of this chapter, “board,” “regional board,” “local agency,” “person,” “unauthorized release,” and “facility” shall have the same meanings as defined in Section 25281. Any other term used in this chapter which is not defined by this article has the same meaning as defined in Section 25281.

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**ARTICLE 3. FINANCIAL RESPONSIBILITY**

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**§ 25299.30. Compliance with financial responsibility provisions**

Every owner and operator shall comply with Section 25299.31 at the time prescribed in the federal act for the establishment and maintaining of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage arising from operating an underground storage tank, or when the tank is first filled, for use, with petroleum.

**§ 25299.31. Evidence of financial responsibility; demonstration of compliance**

- (a) Every owner and operator shall establish and maintain evidence of financial responsibility, as provided in this article, for taking corrective action and compensating third parties for bodily injury and property damage arising from operating an underground storage tank.
- (b) If the owner and the operator are separate persons, either the owner or the operator shall demonstrate compliance with subdivision (a).
- (c) An owner may comply with this article by entering into an agreement with the operator of the tank requiring the operator to demonstrate compliance with subdivision (a). However, both the owner and the operator are in violation of subdivision (a) if evidence of financial responsibility is not established and maintained in accordance with this article.

**§ 25299.32. Level of financial responsibility; periodic increases in minimum level**

- (a) Except as provided in subdivision (f), a claimant who meets any of the following requirements may use the fund to establish and maintain evidence of financial responsibility.

(1) A claimant who meets the qualifications of paragraph (1) of subdivision (b) of Section 25299.52 shall be deemed in compliance with Section 25299.31 if the claimant is eligible for reimbursement from the fund pursuant to Section 25299.54, subdivision (d) of Section 25299.57, and subdivision (b) of Section 25299.58.

(2) If a claimant meets the qualifications of paragraph (2) or (3) of subdivision (b) of Section 25299.52, the level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be at least five thousand dollars (\$5,000) for each occurrence and at least five thousand dollars (\$5,000) annual aggregate coverage for taking corrective action.

(3) If a claimant meets the qualifications of paragraph (4) of subdivision (b) of Section 25299.52, the level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be at least ten thousand dollars (\$10,000) for each occurrence, and at least ten thousand dollars (\$10,000) annual aggregate coverage for taking corrective action.

(b) The level of financial responsibility required to be obtained pursuant to Section 25299.31 for each occurrence for bodily injury and property damage shall be in the amount specified by the board in the regulations adopted pursuant to Section 25299.77.

(c) The level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be in the amount specified by the board for annual aggregate coverage for both corrective action and bodily injury and property damage.

(d) The board may periodically increase the minimum level of financial responsibility specified in subdivision (a) if the board determines that private insurance is available and affordable.

(e) The changes made to this section by Chapter 1191 of the Statutes of 1994 shall apply to all claimants with claims, or portions of claims, for corrective action at sites that have not been completed and for which reimbursement by the fund has not been fully paid by the board.

(f) (1) On and after January 1, 2035, an owner or operator of a tank for which a permit that is issued pursuant to Section 25284 is in effect shall not use the fund as a mechanism to demonstrate compliance with the financial responsibility requirements of Sections 25292.2 and 25299.31 and with the federal act.

(2) On or before December 31, 2034, an owner or operator who previously used the fund as a mechanism to demonstrate compliance with financial responsibility requirements shall submit, to the local agency that issued the permit for the operation of the tank pursuant to Section 25284, evidence of the alternative financial responsibility mechanism that will be used on and after January 1, 2035, to comply with Sections 25292.2 and 25299.31 and with the federal act.

### **§ 25299.33. Establishment of evidence by means specified in federal act; submission**

(a) An owner and operator subject to Section 25299.30 may establish evidence of financial responsibility pursuant to this article by any one or more of the means specified in the federal act.

(b) An owner or operator shall submit evidence of financial responsibility on a prepared form to the local agency which has issued a permit for the operation of the tank pursuant to Section 25284.

### **§ 25299.34. Guarantor's liability; limitations; definition**

(a) The total liability of any guarantor under this chapter is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator pursuant to this article. This section does not limit any other state or federal statutory,

contractual, or common-law liability of a guarantor to its owner or operator, including, but not limited to, the liability of the guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim.

(b) For the purposes of this section, "guarantor" means any person, including the insurance fund or the fund, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to Section 25299.31.

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## **ARTICLE 4. CORRECTIVE ACTION**

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### **§ 25299.36. Corrective action by regional board or local agency; oral contracts**

The board, a regional board, or a local agency may undertake or contract for corrective action in response to an unauthorized release from an underground storage tank that is subject to this chapter, pursuant to subdivision (f) of Section 25296.10 or if a situation exists that requires prompt action by the board, a regional board, or local agency to protect human health or the environment. At the request of the board or a regional board, the Department of General Services may enter into a contract on behalf of the board or a regional board and acting as the agent of the board or a regional board. Notwithstanding any other provision of law, if a situation requires prompt action by the board or a regional board to protect human health or the environment, the board or a regional board may enter into oral contracts for this work, and the contracts, whether written or oral, may include provisions for equipment rental and, in addition, the furnishing of labor and materials necessary to accomplish the work. These contracts for corrective action by the board or a regional board are exempt from approval by the Department of General Services if the situation requires prompt action to protect human health or the environment.

### **§ 25299.38. Compliance with applicable regulations; workplan for corrective actions; appeal and review**

(a) The local agency, the board, or the regional board shall advise and work with the owner, operator, or other responsible party on the opportunity to seek preapproval of corrective action costs pursuant to Section 2811.4 of Title 23 of the California Code of Regulations or any successor regulation. Regional board staff and local agency staff shall work with the responsible party and fund staff to obtain preapproval for the responsible party. The fund staff shall grant or deny a request for preapproval within 30 calendar days after the date a request is received. If fund staff denies a request for preapproval or fails to act within 30 calendar days after receiving the request, an owner, operator, or other responsible party who has prepared a work plan that has been reviewed and accepted pursuant to paragraph (3) of subdivision (c) of Section 25296.10, and is denied preapproval of corrective action costs for one or more of the actions required by the work plan, may petition the board for review of the request for preapproval. The board shall review the petition pursuant to Section 25299.56, and for that purpose the petition for review of a request for preapproval of corrective action costs shall be reviewed by the board in the same manner as a petition for review of an unpaid claim.

(b) If the board receives a petition for review pursuant to subdivision (a), the board shall review the request for preapproval and grant or deny the request pursuant to this subdivision and subdivision (c). The board shall deny the request for preapproval if the board makes one of the following findings:

(1) The petitioner is not eligible to file a claim pursuant to Article 6 (commencing with Section 25299.50).

(2) The petitioner failed to submit one or more of the documents required by the regulations adopted by the board governing preapproval.

(3) The petitioner failed to obtain three bids or estimates for corrective action costs and, under the circumstances pertaining to the corrective action, there is no valid reason to waive the three-bid requirement pursuant to the regulations adopted by the board.

(c) If the board does not deny the request for preapproval pursuant to subdivision (b), the board shall grant the request for preapproval. However, the board may modify the request by denying preapproval of corrective action costs or reducing the preapproval amount of those costs for any action required by the work plan, if the board finds that the fund staff has demonstrated either of the following:

(1) The amount of corrective action reimbursement requested for the action is not reasonable. In determining if the fund staff has demonstrated that the amount of reimbursement requested for an action is not reasonable, the board shall use, when available, recent experience with bids or estimates for similar actions.

(2) The action required in the work plan is, in all likelihood, not necessary for the corrective action to comply with the requirements of subdivisions (a) and (b) of Section 25296.10 and the corrective action regulations adopted pursuant to Section 25299.3.

**§ 25299.39.2. Notice to holders of active letters of commitment that are over five years old; review of case history; closure of tank case; petition for review**

(a) (1) The manager responsible for the fund shall notify tank owners or operators who have an active letter of commitment that has been in an active status for five years or more and shall review the case history of their tank case on an annual basis unless otherwise notified by the tank owner or operator within 30 days of the notification.

(A) If the manager determines that closure of the tank case is appropriate based upon that review, the manager shall provide a review summary report to the applicable regional board and local agency summarizing the reasons for this determination and shall provide the applicable regional board and local agency with an opportunity for comment on the review summary report.

(B) If the manager determines that closure of the tank case is appropriate, the manager, with approval of the tank owner or operator, may make a recommendation to the board for closure.

(C) The board may close any tank case or require the closure of any tank case where an unauthorized release has occurred if the board determines that corrective action at the site is in compliance with all of the requirements of subdivisions (a) and (b) of Section 25296.10 and the corrective action regulations adopted pursuant to Section 25299.3.

(D) Before closing or requiring closure of an underground storage tank case, the board shall provide an opportunity for reviewing and providing responses to the manager's recommendation to the applicable regional board and local agency, and to the water replenishment district, municipal water district, county water district, or special act district with groundwater management authority if the underground storage tank case is located in the jurisdiction of that district.

(2) Except as provided in paragraph (3), if the manager recommends closing a tank case pursuant to paragraph (1), the board shall limit reimbursement of subsequently incurred corrective action costs, including costs for groundwater monitoring, to ten thousand dollars (\$10,000) per year.

(3) The board may allow reimbursement of corrective action costs in excess of the ten thousand dollar (\$10,000) limit specified in paragraph (2) if the board determines that corrective action costs related to the closure will exceed this amount, or that additional corrective action is necessary to meet the requirements specified in subdivisions (a) and (b) of Section 25296.10.

(4) After the manager provides a review summary report to the applicable regional board and local agency in accordance with subparagraph (A) of paragraph (1), the regional board or local agency shall not issue a corrective action directive or enforce an existing corrective action directive for the tank case until the board issues a decision on the closure of the tank case, unless one of the following applies:

(A) The regional board or local agency demonstrates to the satisfaction of the manager that there is an imminent threat to human health, safety, or the environment.

(B) The regional board or local agency demonstrates to the satisfaction of the manager that other site-specific needs warrant additional directives during the period that the board is considering case closure

(C) After considering responses to the review summary report and other relevant information, the manager determines that case closure is not appropriate.

(D) The regional board or local agency closes the tank case but the directives are necessary to carry out case-closure activities.

(b) An aggrieved person may, not later than 30 days from the date of final action by the board, pursuant to subparagraph (C) of paragraph (1) of subdivision (a), file with the superior court a petition for writ of mandate for review of the decision. If the aggrieved person does not file a petition for writ of mandate within the time provided by this subdivision, a board decision shall not be subject to review by any court. Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this subdivision. For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall uphold the decision if the decision is based upon substantial evidence in light of the whole record.

(c) The authority provided under this section does not limit a person's ability to petition the board for review under any other state law.

### **§ 25299.39.3. Access to property**

The board, a regional board, or local agency shall be permitted reasonable access to property owned or possessed by an owner, operator, or responsible party as necessary to perform corrective action pursuant to Section 25299.36. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting public health or safety, or the environment, the board, a regional board, or local agency may enter the property without consent or the issuance of a warrant.

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## **ARTICLE 5. FEES**

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### **§ 25299.40. Storage fees do not constitute tax**

The Legislature hereby declares that the storage fees imposed by this article do not constitute a tax and are not collected for purposes of increasing state revenues pursuant to Section 3 of Article XIII A of the California Constitution.

**§ 25299.41. Storage fees; amount; payment**

For the purpose of implementing this chapter, every owner of an underground storage tank for which a permit is required pursuant to Section 25284 shall pay a storage fee of six mills (\$0.006) for each gallon of petroleum placed in an underground storage tank that the person owns. The fee imposed pursuant to this section shall be paid to the California Department of Tax and Fee Administration pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

**§ 25299.42. Regulations; collection and deposit of fees**

(a) The State Board of Equalization may adopt regulations to carry out Section 25299.41, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

(b) The State Board of Equalization shall collect the fee imposed by this article commencing on the first day of the first calendar quarter which begins more than 90 days after the effective date of the act adding this article.

(c) The State Board of Equalization shall deposit all fees collected pursuant to this article in the fund.

**§ 25299.43. Storage fee for petroleum placed in underground storage tank; fee increase; payment to California Department of Tax and Fee Administration; regulations**

(a) To implement the changes to this chapter made by Chapter 1191 of the Statutes of 1994, and consistent with Section 25299.40, effective January 1, 1995, every owner subject to Section 25299.41 shall pay a storage fee of one mill (\$0.001) for each gallon of petroleum placed in an underground storage tank that the person owns, in addition to the fee required by Section 25299.41.

(b) On and after January 1, 1996, the storage fee imposed under subdivision (a) shall be increased by two mills (\$0.002) for each gallon of petroleum placed in an underground storage tank.

(c) On and after January 1, 1997, the storage fee increased under subdivision (b) shall be increased by an additional three mills (\$0.003) for each gallon of petroleum placed in an underground storage tank.

(d) On and after January 1, 2005, the storage fee increased under subdivision (c) shall be increased by an additional one mill (\$0.001) for each gallon of petroleum placed in an underground storage tank.

(e) On and after January 1, 2006, the storage fee increased under subdivision (d) shall be increased by an additional one mill (\$0.001) for each gallon of petroleum placed in an underground storage tank.

(f) On and after January 1, 2010, the storage fee increased under subdivision (e) shall be increased by an additional six mills (\$0.006) for each gallon of petroleum placed in an underground storage tank. The increase provided for in this subdivision shall be effective until January 1, 2014, at which time, the fee shall revert back to the fee pursuant to subdivision (e).

(g) (1) On and after the first day of the first calendar quarter commencing more than 90 days after the effective date of the act adding this paragraph, the storage fee increased under subdivision (e) shall be increased by an additional six mills (\$0.006) for each gallon of petroleum placed in an underground storage tank. The increase provided for in this subdivision shall be

effective until January 1, 2036, at which time the increase provided for in this section shall not be operative.

(2) Three mills (\$0.003) of the six mills (\$0.006) for each gallon of petroleum placed in an underground storage tank collected pursuant to this subdivision shall be available for expenditure by the board only for purposes provided in subdivision (o) of Section 25299.51.

(3) The board shall annually provide an informational presentation at a board meeting, with the opportunity for public comment, before determining how the funds collected pursuant to this subdivision will be allocated among the purposes provided in subdivision (o) of Section 25299.51.

(h) The fee imposed under this section shall be paid to the California Department of Tax and Fee Administration under Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code in the same manner as, and consistent with, the fees imposed under Section 25299.41.

(i) The California Department of Tax and Fee Administration shall amend the regulations adopted under Section 25299.41 to carry out this section.

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## **ARTICLE 6. UNDERGROUND STORAGE TANK CLEANUP FUND**

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### **§ 25299.50. Underground storage tank cleanup fund; deposits; reallocation of funds**

(a) The Underground Storage Tank Cleanup Fund is hereby created in the State Treasury. The money in the fund may be expended by the board, upon appropriation by the Legislature, for purposes of this chapter. From time to time, the board may modify existing accounts or create accounts in the fund or other funds administered by the board, which the board determines are appropriate or necessary for proper administration of this chapter.

(b) All of the following amounts shall be deposited in the fund:

(1) Money appropriated by the Legislature for deposit in the fund.

(2) The fees, interest, and penalties collected pursuant to Article 5 (commencing with Section 25299.40).

(3) Notwithstanding Section 16475 of the Government Code, any interest earned upon the money deposited in the fund.

(4) Any money recovered by the fund pursuant to Section 25299.70.

(5) Any civil or criminal penalties collected by the board or regional board pursuant to Section 25299.76, 25299.78, 25299.80, or 25299.80.5.

(6) Money recovered as compensation for expenditures associated with investigations or enforcement pursuant to subdivision (j) or (n) of Section 25299.51.

(7) Money recovered to correct a previously overpaid expenditure issued pursuant to this chapter.

(c) Notwithstanding subdivision (a), any funds appropriated by the Legislature in the annual Budget Act for payment of a claim for the costs of a corrective action in response to an unauthorized release, that are encumbered for expenditure for a corrective action pursuant to a letter of credit issued by the board pursuant to subdivision (e) of Section 25299.57, but are subsequently not expended for that corrective action claim, may be reallocated by the board for payment of other claims for corrective action pursuant to Section 25299.57.

**§ 25299.50.2. Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Subaccount; transfer of funds to account; use of funds at sites meeting certain conditions; grant applications filed prior and subsequent to January 2015**

(a) The Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund is hereby established in the State Treasury.

(b) (1) Except as provided in paragraph (2), the sum of ten million dollars (\$10,000,000) is hereby transferred, for each of the 2008–09, 2009–10, and 2010–11 fiscal years, from the Underground Storage Tank Cleanup Fund to the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund.

(2) Available federal moneys may be deposited in the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund. The amount transferred pursuant to paragraph (1) in a fiscal year shall be reduced by the amount of federal moneys deposited in the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund in that fiscal year.

(c) The board may expend the moneys in the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund, upon appropriation by the Legislature, for the costs of response actions to remediate the harm caused by petroleum contamination at a site that meets all of the following conditions:

(1) The petroleum contamination is the principal source of contamination at the site.

(2) The source of the petroleum contamination is, or was, an underground storage tank.

(3) A financially responsible party has not been identified to pay for remediation at the site.

(4) If the expenditure includes federal moneys deposited in the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund, the expenditure at the site is consistent with all applicable requirements for expenditure of the federal moneys.

(d) Any funds in the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund that are not expended in the 2009–10, 2010–11, or 2011–12 fiscal years shall remain in the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund until they are encumbered.

(e) Notwithstanding Section 16304.1 of the Government Code, a disbursement in liquidation of an encumbrance may be made before or during the four years following the last day the appropriation is available for encumbrance.

(f) (1) If the board determines that an applicant who filed a grant application on or before December 31, 2014, is eligible for a grant pursuant to this section, the board shall not issue more than one million five hundred thousand dollars (\$1,500,000) in grants from the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund for the occurrence for which the applicant applied.

(2) If the board determines that an applicant who filed a grant application after December 31, 2014, is eligible for a grant pursuant to this section, the board may not issue more than one million dollars (\$1,000,000) in grants from the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund for the occurrence for which the applicant applied.

(3) The board shall include the amount of any grants awarded by the board from the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Subaccount pursuant to former Section 25299.50.2, as that section read on December 31, 2007, toward the total amount available per occurrence for grants awarded from the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund pursuant to this section.

**§ 25299.50.3. Creation of School District Account in the Underground Storage Tank Cleanup Fund; transfer and expenditure of funds; annual report; effect on district priority; waiver of permit requirements**

(a) For purposes of this section, “school district” has the same meaning as set forth in Section 80 of the Education Code, and includes a county office of education.

(b) The School District Account is hereby created in the fund, for expenditure by the board to pay a claim filed by a district that is a school district and has a priority based on paragraph (2), (3), or (4) of subdivision (b) of Section 25299.52. Notwithstanding Section 25299.52, in the 2009–10, 2010–11, and 2011–12 fiscal years, the board shall pay a claim filed by a district that is a school district and has a priority based on paragraph (4) of subdivision (b) of Section 25299.52 only from funds appropriated from the School District Account.

(c) (1) The sum of ten million dollars (\$10,000,000) per year shall be transferred, in the 2009–10, 2010–11, and 2011–12 fiscal years, from the fund to the School District Account, for expenditure, upon appropriation by the Legislature for the payment of claims filed by a district that is a school district with a priority based on paragraph (2), (3), or (4) of subdivision (b) of Section 25299.52. The ten million dollars (\$10,000,000) shall be transferred to the School District Account before allocating the remaining available funds to each priority ranking in paragraphs (1), (2), (3), and (4) of subdivision (b) of Section 25299.52.

(2) The board shall consult with the Department of Toxic Substances Control in allocating the funds transferred to the School District Account.

(3) The board shall pay claims from a school district with a priority based on paragraph (4) of subdivision (b) of Section 25299.52 from the School District Account in the order of the date of the filing of the claim application to the fund. In each of the fiscal years identified in subdivision (b), if the board estimates that money will be available in the School District Account after the board has allocated funding for all submitted claims from school districts with a priority based on paragraph (4) of subdivision (b) of Section 25299.52, School District Account funds may be used to fund school district claims with a priority based on paragraph (2) or (3) of subdivision (b) of Section 25299.52.

(d) (1) Funds in the School District Account that are not expended in a fiscal year shall remain in the School District Account. Funds remaining in the School District Account on January 1, 2036, shall be transferred to the fund.

(2) Notwithstanding Section 16304.1 of the Government Code, the board shall encumber the funds appropriated pursuant to this section within three years of the appropriation and the board may make a disbursement in liquidation of an encumbrance before or during the three years following the last day the appropriation is available for encumbrance.

(e) The board shall include in its annual report information on the expenditure of the funds transferred to the School District Account, as well as the amount of all claims filed by districts that are school districts and the amount of reimbursements made to districts that are school districts from the fund, in its annual report, and shall, in consultation with the Department of Toxic Substances Control, estimate the amount of funds needed to reimburse anticipated future claims by districts that are school districts. The board shall provide a copy of this report to the State Allocation Board and the State Department of Education.

(f) This section does not affect the priority of a district that is a school district and has a priority based on paragraph (2) or (3) of subdivision (b) of Section 25299.52.

(g) The board shall waive the requirements of paragraph (4) of subdivision (d) of Section 25299.57 for a claim that is reimbursed from the School District Account pursuant to this

section if the superintendent of the school district receiving the reimbursement certifies to the board that petroleum was not delivered on or after January 1, 2003, to the tank that is the subject of the claim or that the tank was removed before January 1, 2003.

(h) This section shall remain in effect only until January 1, 2036, and as of that date is repealed.

#### **§ 25299.50.5. Reversion of funds upon repeal of § 25299.50.3**

Upon the repeal of Section 25299.50.3, all moneys in the School District Account and all moneys due that account shall revert to, and accrue to the benefit of, the Underground Storage Tank Cleanup Fund in the State Treasury.

#### **§ 25299.50.6. Site Cleanup Subaccount; creation; deposits and disbursements; grants; Attorney General investigations**

(a) The Site Cleanup Subaccount is hereby established in the State Treasury. Moneys shall be deposited in the subaccount pursuant to subdivision (m) of Section 25299.51.

(b) The board may expend the funds in the Site Cleanup Subaccount, upon appropriation by the Legislature, for the following purposes:

(1) To pay for reasonable and necessary expenditures that the board, the department, a regional board, a local agency, or a water replenishment district incurs to investigate the source of surface or groundwater contamination.

(2)(A) To pay for reasonable and necessary expenditures to remediate the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination incurred by any of the following:

(i) The board.

(ii) The department.

(iii) A regional board.

(iv) A local agency.

(v) A water replenishment district, under the direction of the board, a regional board, a local agency, or another appropriate regulatory agency with authority over surface or groundwater cleanup oversight.

(B) The board shall consider the following factors when approving expenditures for specific locations:

(i) The degree to which human health, safety, and the environment are threatened by contamination at the location.

(ii) Whether the location is located in a small or financially disadvantaged community.

(iii) The cost and potential environmental benefit of the investigation or cleanup.

(iv) Whether there are other potential sources of funding for the investigation or cleanup.

(v) Any other information the board identifies as necessary for consideration.

(3) To issue grants pursuant to this section for the reasonable and necessary costs of actions to remediate the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination at a location if both of the following conditions are met:

(A) The board, the department, a regional board, local agency, unified program agency, or a local officer requires the responsible parties to undertake or contract for investigation or cleanup pursuant to an oral or written order, directive, notification, or approval issued pursuant to Section 25187, 25187.1, 25296.10, 78870, 79055, or 101480, or any section of the Water Code.

The board may waive this requirement if the board finds that it is infeasible for an order to be issued before initiation of remediation.

(B) No responsible party has sufficient financial resources to pay for the required response actions.

(4) For payments to the Attorney General by the board pursuant to subdivision (g).

(c) At least annually, the board shall review grant applications and adopt a list of applicants to be awarded grants pursuant to paragraph (3) of subdivision (b). In addition to the conditions specified in paragraph (3) of subdivision (b), the board shall consider all of the following factors when awarding grants:

(1) The degree to which human health, safety, and the environment are threatened by surface water or groundwater contamination at the location.

(2) Whether the location is located in a small or financially disadvantaged community.

(3) The cost and potential environmental benefit of the investigation or cleanup.

(4) Whether there are other potential sources of funding for the investigation or cleanup.

(5) Any other information the board identifies as necessary for consideration.

(d) (1) The board shall specify the information that shall be included in a grant application, consistent with this section, including, but not limited to, a provision requiring the applicant to make a sworn verification of the information in the application to the best of the applicant's knowledge.

(2) The board may adopt procedures to implement this section.

(3) The board shall post any procedures or information requirements adopted pursuant to this section on its internet website.

(e) (1) The recipient of grant moneys shall expend those funds only for the reasonable costs necessary to protect human health, safety, and the environment, incurred on or after September 25, 2014.

(2) The board shall not issue a grant for any costs for which the applicant has been, or will be, paid by another source.

(3) The board may terminate a grant and may bar the applicant from receiving any future grants from the Site Cleanup Subaccount if the board finds that the applicant has made a misrepresentation or false claim.

(f) (1) Any funds in the Site Cleanup Subaccount that are not expended in a fiscal year shall remain in the subaccount until they are encumbered.

(2) Notwithstanding Section 16304.1 of the Government Code, the board shall encumber the funds appropriated pursuant to this section within three years of the appropriation and the board may make a disbursement in liquidation of an encumbrance before or during the three years following the last day the appropriation is available for encumbrance.

(3) Notwithstanding Section 16475 of the Government Code, any interest earned upon the money in the Site Cleanup Subaccount shall be deposited in the Site Cleanup Subaccount.

(g) The Attorney General may recover the actual, reasonable costs of investigation or cleanup undertaken pursuant to this section in a civil action, upon request from the board, from any responsible party. All money recovered by the Attorney General pursuant to this section shall be deposited in the Site Cleanup Subaccount.

(h) For purposes of this section, the following definitions apply:

(1) "Local officer" has the meaning provided for in Section 101480.

(2) "Unified program agency" has the meaning provided for in Section 25404.

(3) “Water replenishment district” has the meaning provided for in Section 60012 of the Water Code.

**§ 25299.50.7. Expedited Claim Account; creation; deposits and disbursements; expedited claim pilot project; annual report**

(a) The Expedited Claim Account is hereby created in the fund for expenditure by the board to pay claims that have been selected to participate in the pilot project established by this section.

(b) The sum of one hundred million dollars (\$100,000,000) shall be transferred in the 2015–16 fiscal year from the fund to the Expedited Claim Account for expenditure, upon appropriation by the Legislature, for the payment of claims pursuant to this section. Claims shall be paid from the Expedited Claim Account until moneys in the account are exhausted.

(c) Funds in the Expedited Claim Account that are not expended in a fiscal year shall remain in the Expedited Claim Account. Funds remaining in the Expedited Claim Account on January 1, 2036, shall be transferred to the fund.

(d) The board shall, with stakeholder input, establish the Expedited Claim Pilot Project to reduce the overall cost for site cleanup and the time to reach closure by increasing coordination with the responsible party, consultant, regulator, and the fund, and by using multiyear budgets.

(1) The board shall, with stakeholder input, investigate potential methods for reducing the overall cost for site cleanup and the time to reach closure including, but not limited to, establishment of multiyear funding for claims, increased collaboration between fund staff, regulatory staff, and claimants and their contractors, establishment of project milestones and cost estimates, and establishment of reimbursement submission schedules.

(2) The board shall solicit fund claims from all priority rankings for participation in the pilot project to implement potential improvement methods. The board shall select a limited number of claims to participate in the pilot project.

(3) The board shall develop criteria for the selection of claims to participate in the pilot project and, at a minimum, shall consider the threat to human health, safety, or the environment caused by contamination at the site that is the subject of the claim, the priority ranking assigned to the claim pursuant to Section 25299.52, and the progress of cleanup at the site that is the subject of the claim.

(4) The development of criteria and procedures pursuant to this subdivision shall not be considered as regulations subject to, and shall be exempt from, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) The board shall include in its annual report information on the expenditure of funds transferred to the Expedited Claim Account, as well as the amount of all claims filed by claimants participating in the Expedited Claim Pilot Project and the amount of reimbursements made to claimants in the pilot project.

(f) On or before January 1, 2018, the board shall prepare a report analyzing the effectiveness and efficiency of the Expedited Claim Pilot Project in expediting the funding of claims and completion of site cleanups. The board, in consultation with stakeholders, shall work to develop metrics to forecast long-term demand on the fund and shall include this information in the report. This report shall be posted on the board’s internet website, and updated periodically.

(g) This section shall remain in effect only until January 1, 2036, and as of that date is repealed.

**§ 25299.51. Expenditure of moneys in the fund**

The board may expend the moneys in fund for all of the following purposes:

(a) In addition to the purposes specified in subdivisions (c), (d), and (e), for the costs of implementing this chapter and for implementing Section 25296.10 for a tank that is subject to this chapter.

(b) To pay for the administrative costs of the California Department of Tax and Fee Administration in collecting the fee imposed by Article 5 (commencing with Section 25299.40).

(c) To pay for the reasonable and necessary costs of corrective action pursuant to Section 25299.36, up to one million dollars (\$1,000,000) per occurrence. The Legislature may appropriate the money in the fund for expenditure by the board, without regard to fiscal year, for prompt action in response to any unauthorized release.

(d) To pay for the costs of an agreement for the abatement of, and oversight of the abatement of, an unauthorized release of hazardous substances from underground storage tanks by a local agency, as authorized by Section 25297.1 or by any other law, except that, for the purpose of expenditure of these funds, only underground storage tanks shall be the subject of the agreement.

(e) To pay for the costs of cleanup and oversight of unauthorized releases at abandoned tank sites. The board shall not expend more than 25 percent of the total amount of money collected and deposited in the fund annually for purposes of this subdivision and subdivision (h).

(f) To pay claims pursuant to Section 25299.57.

(g) To pay, upon order of the Controller, for refunds pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

(h) To pay for the reasonable and necessary costs of corrective action pursuant to subdivision (f) of Section 25296.10, in response to an unauthorized release from an underground storage tank subject to this chapter.

(i) To pay claims pursuant to Section 25299.58.

(j) To pay for expenditures by the board associated with discovering violations of, and enforcing, or assisting in the enforcement of, the requirements of Chapter 6.7 (commencing with Section 25280) with regard to petroleum underground storage tanks.

(k) For transfer to the Petroleum Underground Storage Tank Financing Account, for purposes of Chapter 6.76 (commencing with Section 25299.100).

(l) Upon repeal of Chapter 6.76 (commencing with Section 25299.100), to pay for expenditures authorized by subdivision (b) of Section 25299.117, as that section reads as of December 31, 2035, immediately preceding its repeal.

(m) For transfer to the Site Cleanup Subaccount to pay for expenditures by the board pursuant to Section 25299.50.6, including costs for regulatory oversight of sites funded pursuant to that section.

(n) To pay for reasonable and necessary expenditures by the board associated with discovering violations of and enforcing, or assisting in the enforcement of, the requirements of this chapter, including actions relating to the submission of false information to the fund.

(o) (1) For transfer to the School District Account to pay for expenditures by the board pursuant to Section 25299.50.3 or for transfer pursuant to subdivision (k) or (m).

(2) This subdivision shall apply only to the moneys collected pursuant to paragraph (2) of subdivision (g) of Section 25299.43.

**§ 25299.51.2. Independent program audit and fiscal audit required; scope of audit**

(a) On or before December 31, 2019, and at least once every five years thereafter, the board shall commission an independent program audit and a fiscal audit of the fund by an independent auditor.

(b) Within 90 days of the completion of the independent program audit or fiscal audit of the fund, the board shall post the results of the program audit or fiscal audit on the board's Internet Web site.

(c) The audit shall include a review of projected expenses and revenue for the five years subsequent to the date of the audit and shall include proposals for the appropriate amount of the fee under Section 25299.43 for that five-year period. When establishing and analyzing those proposals, the auditor may consult with appropriate agencies, including the board, the State Energy Resources Conservation and Development Commission, the State Board of Equalization, and any other entity that may provide information or analysis pertinent to implementing this subdivision.

**§ 25299.51.3. Cost-effectiveness and feasibility study; report**

(a) The board shall conduct a study to determine the cost-effectiveness and the feasibility of issuing bonds to satisfy the obligations against the fund existing on the effective date of this section. The proceeds from the bonds would be used to expedite the payment of active claims and those claims on the priority list awaiting reimbursement. At a minimum, the study shall include participants from the board, the Department of Finance, the Treasurer's office, the California Infrastructure and Economic Development Bank, and fund stakeholders, including claimant and industry representatives.

(b) The board shall, on or before March 1, 2018, post a report of the study conducted pursuant to this section on the board's Internet Web site.

**§ 25299.51.4. Analysis of ranking criteria for payment of claims by board**

(a) On or before June 1, 2016, the board shall conduct an analysis of whether the ranking criteria for the payment of claims pursuant to Sections 25299.57 and 25299.58, with regard to owners and operators of tanks that are small businesses, as specified in subparagraph (A) of paragraph (2) of subdivision (b) of Section 25299.52, should be revised to better achieve the goal of ranking claims based on the claimant's ability to pay for cleanup. The board shall consider, but is not limited to consideration of, all of the following factors in its analysis:

(1) Whether single location revenues or other factors should be considered rather than aggregate affiliate income.

(2) Whether gallons of fuel throughput should be considered rather than aggregate affiliate income.

(3) Whether other factors should be considered to ensure equitable qualification under subparagraph (A) of paragraph (2) of subdivision (b) of Section 25299.52.

(b) The board shall consult with stakeholders of the Underground Storage Tank Cleanup Fund, including claimant and industry representatives, when preparing the analysis required by this section.

(c) The board shall coordinate with the State Board of Equalization and the State Energy Resources Conservation and Development Commission to obtain data collected by these agencies that would be relevant to the conduct of the analysis required by this section.

(d) Within 90 days after completing the analysis required by this section, the board shall post the results on the board's Internet Web site.

**§ 25299.52. Award of claims; priority ranking list; lawsuit by or against fund**

(a) The board shall adopt a priority ranking list at least annually for awarding claims pursuant to Section 25299.57 or 25299.58. Any owner or operator eligible for payment of a claim pursuant to Section 25299.54 shall file an application with the board within a reasonable period, to be determined by the board, prior to adoption of the priority ranking list.

(b) Except as provided in subdivision (c), in awarding claims pursuant to Section 25299.57 or 25299.58, the board shall pay claims in accordance with the following order of priority:

(1) Owners of tanks who are eligible to file a claim pursuant to subdivision (e) of Section 25299.54.

(2) Owners and operators of tanks that are either of the following:

(A) An owner or operator of a tank that is a small business, by meeting the requirements of subdivision (d) of Section 14837 of the Government Code. An owner or operator that meets that definition of small business, but who is domiciled or has its principal office outside of the state, shall be classified in this category if the owner or operator otherwise meets the requirements of subdivision (d) of Section 14837 of the Government Code with regard to the number of employees and the total annual revenues received.

(B) An owner or operator that is a city, county, district, or nonprofit organization that receives total annual revenues of not more than seven million dollars (\$7,000,000). In determining the amount of a nonprofit organization's annual revenues, the board shall calculate only those revenues directly attributable to the particular site at which the tank or tanks for which the claim is submitted are located.

(3) Owners or operators of tanks that are either of the following:

(A) The owner or operator owns and operates a business that employs fewer than 500 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation.

(B) The owner or operator is a city, county, district, or nonprofit organization that employs fewer than 500

full-time and part-time employees. In determining the number of employees employed by a nonprofit organization, the board shall calculate only those employees employed at the particular site at which a tank for which the claim is being submitted is located.

(4) All other tank owners and operators.

(c) (1) In any year in which the board is not otherwise authorized to award at least 15 percent of the total amount of funds committed for that year to tank owners or operators in those categories set forth in paragraph (3) or (4) of subdivision (b) due to the priority ranking list award limitations set forth in subdivision (b), the board shall allocate between 14 and 16 percent of the total amount of funds committed for that year to each category that is not otherwise entitled to at least that level of committed funding for that year.

(2) If the total amount of claims outstanding in one or more of the priority categories specified in paragraph (3) or (4) of subdivision (b) is less than 15 percent of the total amount annually appropriated from the fund for the purpose of awarding claims, the board shall reserve for making claims in that category only the amount that is necessary to satisfy the outstanding claims in that category.

(d) The board shall give priority to a claim that is filed before September 24, 1993, by a city, county, or district that is eligible for payment pursuant to Section 25299.54 in the following manner:

(1) The board shall determine whether the priority category specified for a city, county, or district pursuant to subparagraph (B) of paragraph (2), or pursuant to subparagraph (B) of paragraph (3), of subdivision (b) requires that the priority ranking of the claim be changed.

(2) If the priority ranking of the claim is changed and the claim is placed into either the priority category specified in subparagraph (B) of paragraph (2), or specified in subparagraph (B) of paragraph (3), of subdivision (b), the board shall pay all other claims that were assigned to that priority category prior to January 1, 2000, before paying the claim of the city, county, or district.

(e) The board may, to carry out the intent specified in paragraph (1) of subdivision (b) of Section 25299.10 and to expedite the processing and awarding of claims pursuant to Sections 25299.57 and 25299.58, implement the contracting procedures required by Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, as may be necessary, to alleviate the claims processing and award backlog. If, at the conclusion of any fiscal year, 25 percent or more of the funds appropriated annually for awards to claimants during that year have not actually been obligated by the board, the board shall, at its next regularly scheduled meeting, determine, in a public hearing, whether, given the circumstances of the awards backlog, it is appropriate to implement those contracting procedures for some, or all, of the claims filed with the board.

(f) For purposes of this section, the following definitions shall apply:

(1) "Nonprofit organization" means a nonprofit public benefit organization incorporated pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code.

(2) "Annual revenue," with respect to public entities, means the total annual general purpose revenues, excluding all restricted revenues over which the governing agency has no discretion, as reported in the Annual Report of Financial Transactions submitted to the Controller, for the latest fiscal year ending prior to the date the fund application was filed.

(3) "Annual revenue," with respect to nonprofit organizations, means the total annual revenues, as shown in an annual fiscal report filed with the Registry of Charitable Trusts of state and federal tax records, based on the latest fiscal year ending prior to the date the fund application was filed.

(4) "General purpose revenues," as used in paragraph (2), means revenues consisting of all of the following: secured and unsecured revenues; less than countywide funds, secured and unsecured; prior year secured and unsecured penalties and delinquent taxes; sales and use taxes; transportation taxes (nontransit); property transfer taxes; transient lodging taxes; timber yield taxes; aircraft taxes; franchise taxes; fines, forfeitures, and penalties; revenues from use of money and property; motor vehicle in-lieu taxes; trailer coach in-lieu taxes; homeowner property tax relief; open-space tax relief; and cigarette taxes.

### **§ 25299.53. Corrective action by regional board or local agency; notice; submission of estimated costs; approval; reimbursement; recovery from owner or operator**

(a) A regional board or a local agency taking, or contracting for, corrective action pursuant to subdivision (f) of Section 25296.10 in response to an unauthorized release from an underground storage tank subject to this chapter shall, before commencing the corrective action, take both of the following actions:

(1) The regional board or local agency shall notify the board of the planned corrective action. If an owner, operator, or other responsible party is taking the corrective action in accordance with Section 25296.10, the regional board or local agency shall not initiate a corrective action pursuant to this chapter or Chapter 6.7 (commencing with Section 25280).

(2) If an owner, operator, or other responsible party is not taking or has not taken the action specified in paragraph (1), the regional board or local agency shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate. The regional board or local agency shall obtain approval of the corrective action and the cost estimate before taking, or contracting for, any corrective action.

(b) If the board approves the request of the regional board or local agency made pursuant to paragraph (2) of subdivision (a), the board shall, after making the determination specified in subdivision (c), pay for the costs of corrective action performed by a regional board, local agency, or qualified contractor.

(c) The board shall not make any payment pursuant to subdivision (b) unless the board determines that the owner, operator, or other responsible party of the tank has failed or refused to comply with a final order for corrective action issued pursuant to Section 25296.10 with respect to the unauthorized release of petroleum from the tank.

(d) Upon making any payment to a regional board or local agency pursuant to subdivision (b), the board shall recover the amount of payment pursuant to Section 25299.70.

**§ 25299.54. Applications to board for satisfaction of claims; eligibility restrictions; liability for corrective action costs; insufficient funds; reimbursement of claimant**

(a) Except as provided in subdivisions (b), (c), (d), (e), (g), and (h), an owner or operator, required to perform corrective action pursuant to Section 25296.10, or an owner or operator who, as of January 1, 1988, is required to perform corrective action, who has initiated this action in accordance with Division 7 (commencing with Section 13000) of the Water Code, who is undertaking corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, or Chapter 6.7 (commencing with Section 25280), may apply to the board for satisfaction of a claim filed pursuant to this article.

(b) A person who has failed to comply with Article 3 (commencing with Section 25299.30) is ineligible to file a claim pursuant to this section.

(c) An owner or operator of an underground storage tank containing petroleum is ineligible to file a claim pursuant to this section if the person meets both of the following conditions:

(1) The person knew, before January 1, 1988, of the unauthorized release of petroleum which is the subject of the claim.

(2) The person did not initiate, on or before June 30, 1988, any corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code concerning the release, or the person did not, on or before June 30, 1988, initiate corrective action in accordance with Chapter 6.7 (commencing with Section 25280) or the person did not initiate action on or before June 30, 1988, to come into compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code concerning the release.

(d) An owner or operator who violates Section 25296.10 or a corrective action order, directive, notification, or approval order issued pursuant to this chapter, Chapter 6.7 (commencing with Section 25280) of this code, or Division 7 (commencing with Section 13000)

of the Water Code, is liable for a corrective action cost that results from the owner's or operator's violation and is ineligible to file a claim pursuant to this section.

(e) Notwithstanding this chapter, a person who owns a tank located underground that is used to store petroleum may apply to the board for satisfaction of a claim, and the board may pay the claim pursuant to Section 25299.57 without making the finding specified in paragraph (3) of subdivision (d) of Section 25299.57 if all of the following apply:

(1) The tank meets one of the following requirements:

(A) The tank is located at the residence of a person on property used exclusively for residential purposes at the time of discovery of the unauthorized release of petroleum.

(B) The tank owner demonstrates that the tank is located on property that, on and after January 1, 1985, is not used for agricultural purposes, the tank is of a type specified in subparagraph (B) of paragraph (1) of subdivision (y) of Section 25281, and the petroleum in the tank is used solely for the purposes specified in subparagraph (B) of paragraph (1) of subdivision (y) of Section 25281 on and after January 1, 1985.

(2) The tank is not a tank described in subparagraph (A) of paragraph (1) of subdivision (y) of Section 25281 and the tank is not used on or after January 1, 1985, for the purposes specified in that subparagraph.

(3) The claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280), or the claimant is not subject to the requirements of those provisions.

(f) Whenever the board has authorized the prepayment of a claim pursuant to Section 25299.57, and the amount of money available in the fund is insufficient to pay the claim, the owner or operator shall remain obligated to undertake the corrective action in accordance with Section 25296.10.

(g) The board shall not reimburse a claimant for any eligible costs for which the claimant has been, or will be, compensated by another person. This subdivision does not affect reimbursement of a claimant from the fund under either of the following circumstances:

(1) The claimant has a written contract, other than an insurance contract, with another person that requires the claimant to reimburse the person for payments the person has provided the claimant pending receipt of reimbursement from the fund.

(2) An insurer has made payments on behalf of the claimant pursuant to an insurance contract and either of the following applies:

(A) The insurance contract explicitly coordinates insurance benefits with the fund and requires the claimant to do both of the following:

(i) Maintain the claimant's eligibility for reimbursement of costs pursuant to this chapter by complying with all applicable eligibility requirements.

(ii) Reimburse the insurer for costs paid by the insurer pending reimbursement of those costs by the fund.

(B) The claimant received a letter of commitment prior to June 30, 1999, for the occurrence and the claimant is required to reimburse the insurer for any costs paid by the insurer pending reimbursement of those costs by the fund.

(h) (1) Except as provided in paragraph (2), a person who purchases or otherwise acquires real property on which an underground storage tank or tank specified in subdivision (e) is situated shall not be reimbursed by the board for a cost attributable to an occurrence that commenced prior to the acquisition of the real property if both of the following conditions apply:

(A) The purchaser or acquirer knew, or in the exercise of reasonable diligence would have discovered, that an underground storage tank or tank specified in subdivision (e) was located on the real property being acquired.

(B) A person who owned the site or owned or operated an underground storage tank or tank specified in subdivision (e) at the site during or after the occurrence and prior to acquisition by the purchaser or acquirer would not have been eligible for reimbursement from the fund.

(2) Notwithstanding paragraph (1), if the claim is filed on or after January 1, 2003, the board may reimburse the eligible costs claimed by a person who purchases or otherwise acquires real property on which an underground storage tank or tank specified in subdivision (e) is situated, if all of the following conditions apply:

(A) The claimant is the owner or operator of the underground storage tank or tank specified in subdivision (e) that had an occurrence that commenced prior to the owner's acquisition of the real property.

(B) The claimant satisfies all eligibility requirements, other than those specified in paragraph (1).

(C) The claimant is not an affiliate of a person whose act or omission caused or would cause ineligibility for the fund.

(3) If the board reimburses a claim pursuant to paragraph (2), a person specified in subparagraph (B) of paragraph (1), other than a person who is ineligible for reimbursement from the fund solely because the property was acquired from another person who was ineligible for reimbursement from the fund, shall be liable for the amount paid from the fund. The Attorney General, upon request of the board, shall bring a civil action to recover the liability imposed under this paragraph. All money recovered by the Attorney General under this paragraph shall be deposited in the fund.

(4) The liability established pursuant to paragraph (3) does not limit or supersede liability under any other provision of state or federal law, including common law.

(5) For purposes of this subdivision, the following definitions shall apply:

(A) "Affiliate" means a person who has one or more of the following relationships with another person:

- (i) Familial relationship.
- (ii) Fiduciary relationship.
- (iii) A relationship of direct or indirect control or shared interests.

(B) Affiliates include, but are not limited to, any of the following:

- (i) Parent corporation and subsidiary.
- (ii) Subsidiaries that are owned by the same parent corporation.
- (iii) Business entities involved in a reorganization, as defined in Section 181 of the Corporations Code.
- (iv) Corporate officer and corporation.
- (v) Shareholder that owns a controlling block of voting stock and the corporation.
- (vi) Partner and the partnership.
- (vii) Member and a limited liability company.
- (viii) Franchiser and franchisee.
- (ix) Settlor, trustee, and beneficiary of a trust.
- (x) Debtor and bankruptcy trustee or debtor-in-possession.
- (xi) Principal and agent.

(C) "Familial relationship" means relationships between family members, including, and limited to, a spouse, child, stepchild, parent, grandparent, grandchild, brother, sister, stepbrother, stepsister, stepmother, stepfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, and, if related by blood, uncle, aunt, niece, or nephew.

(D) "Purchases or otherwise acquires real property" means the acquisition of fee title ownership or the acquisition of the lessee's interest in a ground lease of real property on which one or more underground storage tanks are located if the lease has an initial original term, including unilateral extension or renewal rights, of not less than 35 years.

(i) The Legislature finds and declares that the changes made to subparagraph (A) of paragraph (1) of subdivision (e) by Chapter 1290 of the Statutes of 1992 are declaratory of existing law.

(j) The Legislature finds and declares that the amendment of subdivisions (a) and (g) by Chapter 328 of the Statutes of 1999 is declaratory of existing law.

#### **§ 25299.55. Forms and procedures for claims filed**

The board shall prescribe appropriate forms and procedures for claims filed pursuant to Section 25299.54 that shall include, at a minimum, all of the following:

(a) A provision requiring the claimant to make a sworn verification of the claim to the best of the claimant's knowledge.

(b) A full description, supported by appropriate evidence from government agencies, of the unauthorized release of petroleum into the environment from an underground storage tank claimed to be the subject of the third-party judgment specified in Section 25299.58 or the corrective action performed pursuant to Section 25296.10.

(c) Certification by the claimant of all costs that have been, or will be, incurred in undertaking corrective action after January 1, 1988.

#### **§ 25299.56. Board determinations of an applicant's eligibility for claim for costs; procedures**

(a) The board shall determine an applicant's eligibility for a claim for corrective action costs or third-party compensation costs pursuant to Section 25299.57 or 25299.58 and notify the applicant of that determination within 60 days from the date of the receipt of the fund application. The board may classify the claimant's application pursuant to Section 25299.52 after that 60-day period. If the board sends an applicant a determination of eligibility pursuant to this subdivision, the board shall not revoke that determination of eligibility, unless the application contained fraudulent information or a misrepresentation. However, the board may suspend making a reimbursement for a claim until the claimant corrects any deficiencies that are the basis for the suspension. Reinstatement of reimbursement shall occur when funds are available and that reinstatement shall be made ahead of any new letters of commitment issued as of the date of reinstatement.

(b) A claimant may request review of any determination of eligibility or disapproval of reimbursement. The review shall be conducted and a decision rendered within 30 days from the date of receipt of the request.

(c) A claimant may file a petition for review, in writing, with the board with regard to any determination or disapproval that is unresolved to the satisfaction of the claimant upon expiration of the 30-day period specified in subdivision (b) and the board shall take final action on the petition within 90 days of the board's receipt of a complete petition for review, except that

if the board initiates an adjudicative proceeding on the petition, the board shall take final action within 270 days of the board's receipt of a complete petition for review.

(d) Final action on a petition taken by the board is a final agency action for the purposes of judicial review of a board decision.

(e) A claimant may, not later than 30 days from the date of final action by the board pursuant to subdivision (c), file with the superior court a petition for writ of mandate for review of the decision. If the claimant does not file a petition for writ of mandate within the time provided by this subdivision, a board decision shall not be subject to review by the court. Section 1094.5 of the Code of Civil Procedure shall govern the proceeding for a petition filed pursuant to this subdivision. For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall uphold the decision if the decision is based upon substantial evidence in light of the whole record.

(f) Except as specified in subdivision (g), the procedures in Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and in Section 11513 of, the Government Code apply to any adjudicative proceedings conducted by the board pursuant to this article.

(g) (1) Notwithstanding subdivision (f), Sections 801, 802, 803, 804, and 805 of the Evidence Code apply to any adjudicative proceeding conducted by the board pursuant to this article.

(2) This section is not a limitation on the authority of the board to authorize the use of the procedure provided in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

**§ 25299.57. Maximum payment of costs by board allowed; reimbursement; prepayment; required findings; letter of commitment; partial payment; multiple bids**

(a) (1) If the board makes the determination specified in subdivision (d) for a claim filed on or before December 31, 2014, the board may only pay for the costs of a corrective action that exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million five hundred thousand dollars (\$1,500,000) for each occurrence.

(2) If the board makes the determination specified in subdivision (d) for a claim filed on or after January 1, 2015, the board may only pay for the costs of a corrective action that exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million dollars (\$1,000,000) for each occurrence.

(3) In the case of an owner or operator who, as of January 1, 1988, was required to perform corrective action, who initiated that corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), and who is undertaking the corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), the owner or operator may apply to the board for satisfaction of a claim filed pursuant to this article.

(4) The board shall notify claimants applying for satisfaction of claims from the fund of eligibility for reimbursement in a prompt and timely manner and that a letter of credit or commitment that will obligate funds for reimbursement shall follow the notice of eligibility as soon thereafter as possible.

(b) (1) For claims eligible for reimbursement pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the actual cost of corrective action to the board, which shall either approve or disapprove the costs incurred as reasonable and necessary. At least 15 days before

the board proposes to disapprove the reimbursement of corrective action costs that have been incurred on the grounds that the costs were unreasonable or unnecessary, the board shall issue a notice advising the claimant and the lead agency of the proposed disallowance, to allow review and comment.

(2) The board shall not reject any actual costs of corrective action in a claim solely on the basis that the invoices submitted fail to sufficiently detail the actual costs incurred, if all of the following apply:

(A) Auxiliary documentation is provided that documents to the board's satisfaction that the invoice is for necessary corrective action work.

(B) The costs of corrective action work in the claim are reasonably commensurate with similar corrective action work performed during the same time period covered by the invoice for which reimbursement is sought.

(C) The invoices include a brief description of the work performed, the date that the work was performed, the vendor, and the amount.

(c) (1) For claims eligible for prepayment pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate.

(2) If the claim is for reimbursement of costs incurred pursuant to a performance-based contract, Article 6.5 (commencing with Section 25299.64) shall apply to that claim.

(d) Except as provided in subdivision (j), a claim specified in subdivision (a) may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant is required to undertake or contract for corrective action pursuant to Section 25296.10, under the federal act, or under Section 6973 of Title 42 of the United States Code, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code.

(3) The claimant has complied with Section 25299.31.

(4) (A) Except as provided in subparagraphs (B), (C), and (F), the claimant has complied with the permit requirements of Chapter 6.7 (commencing with Section 25280). A claimant shall obtain a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim when the claimant becomes subject to subdivision (a) of Section 25284 or when the applicable local agency begins issuing permits pursuant to subdivision (a) of Section 25284, whichever occurs later. For the purpose of this subparagraph, a claimant shall demonstrate compliance with the permit requirements of Chapter 6.7 (commencing with Section 25280) by submitting copies of the required permits. If copies of the required permits are unavailable, the claimant may certify that the claimant obtained the required permits but no longer has copies of them and provide any other documentation tending to show that the claimant obtained the required permits, including, but not limited to, approved permit applications, records of payment of permit fees, and inspection reports. In determining whether a claimant has complied with the permit requirements of Chapter 6.7 (commencing with Section 25280), the board shall consider all available documentation, including any documentation available from the applicable local agency regarding the claimant's compliance with the permit requirements of Chapter 6.7 (commencing with Section 25280).

(B) A claimant who acquires real property on which an underground storage tank is situated and, despite the exercise of reasonable diligence, was unaware of the existence of the

underground storage tank when the real property was acquired, has obtained a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim within a reasonable period, not to exceed one year, from when the claimant should have become aware of the existence of the underground storage tank, or when the applicable local agency began issuing permits pursuant to Section 25284, whichever occurs later.

(C) All claimants who file their claim on or after January 1, 2008, and who do not obtain a permit required by subdivision (a) of Section 25284 in accordance with subparagraph (A) or (B) may seek a waiver of the requirement to obtain a permit. The board shall waive the provisions of subparagraphs (A) and (B) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement, and upon becoming aware of the permit requirement, the claimant complies with either subdivision (a) of Section 25284 or Section 25298 and the regulations adopted to implement those sections within a reasonable period, not to exceed one year, from when the claimant became aware of the permit requirement.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) of this chapter and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(D) (i) A claimant exempted pursuant to subparagraph (C) and who has complied, on or before December 22, 1998, either with subdivision (a) of Section 25284 or Section 25298 and the regulations adopted to implement those sections, shall obtain a level of financial responsibility twice as great as the amount that the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32, but not less than ten thousand dollars (\$10,000). All other claimants exempted pursuant to subparagraph (C) shall obtain a level of financial responsibility that is four times as great as the amount that the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32, but not less than twenty thousand dollars (\$20,000).

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (C) were satisfied prior to the causing of any contamination. That demonstration may be made through a certification issued by the permitting agency based on a site evaluation and tank tests at the time of permit application or in any other manner acceptable to the board.

(E) All claimants who file a claim before January 1, 2008, and who are not eligible for a waiver of the permit requirements pursuant to applicable statutes or regulations in effect on the date of the filing of the claim may resubmit a new claim pursuant to subparagraph (C) on or after January 1, 2008. The board shall rank all claims resubmitted pursuant to subparagraph (C) lower than all claims filed before January 1, 2008, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(F) The board shall waive the provisions of subparagraph (A) as a condition for payment from the fund for a claimant who filed a claim on or after January 1, 2008, and before July 1, 2009, but is not eligible for a waiver of the permit requirement pursuant to the regulations adopted by the board in effect on the date of the filing of the claim, and who did not obtain or apply for a permit required by subdivision (a) of Section 25284, if the board finds all of the following:

(i) The claim is filed pursuant to paragraph (2) of subdivision (h) of Section 25299.54 and the claim otherwise satisfies the eligibility requirements of that paragraph.

(ii) The claimant became the owner or de facto owner of an underground storage tank prior to December 22, 1998.

(iii) The claimant did not, and does not, operate the underground storage tank.

(iv) Within three years after becoming the owner or de facto owner of the underground storage tank but not after December 22, 1998, the claimant caused the underground storage tank to be removed and closed in accordance with applicable law, and commenced no later than December 22, 1998, to perform corrective action pursuant to Section 25296.10 of this code or pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(G) The board shall rank all claims submitted pursuant to subparagraph (F) in their respective priority classes specified in subdivision (b) of Section 25299.52 in the order in which the claims are received by the board, but subsequent to any claim filed on a previous date in each of those priority classes.

(H) For purposes of clauses (ii) and (iv) of subparagraph (F), "de facto owner of an underground storage tank" means a person who purchases or otherwise acquires real property, as defined in subparagraph (D) of paragraph (5) of subdivision (h) of Section 25299.54, and has actual possession of, and control over, an underground storage tank that has been abandoned by its previous owner.

(5) The board has approved either the costs incurred for the corrective action pursuant to subdivision (b) or the estimated costs for corrective action pursuant to subdivision (c).

(6) (A) The claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code, for the underground storage tank that is the subject of the claim.

(B) The board may accept a claimant's statement certifying to the best of the claimant's knowledge that payment was made to the State Board of Equalization to demonstrate satisfaction of the requirements of subparagraph (A) if both of the following apply:

(1) Records maintained by the State Board of Equalization show that fees and, if applicable, interest and penalties, have been paid by the claimant for the period corresponding to the claimant's ownership or operation of the tank that is the subject of the claim.

(2) The State Board of Equalization and the claimant are not able to document that the payments received by the State Board of Equalization were or were not specifically related to the tank that is the subject of the claim.

(e) The board shall provide the claimant, whose cost estimate has been approved, a letter of commitment authorizing payment of the costs from the fund.

(f) The claimant may submit a request for partial payment to cover the costs of corrective action performed in stages, as approved by the board.

(g) (1) A claimant who submits a claim for payment to the board shall submit multiple bids for prospective costs as prescribed in regulations adopted by the board pursuant to Section 25299.77.

(2) A claimant who submits a claim to the board for the payment of professional engineering and geologic work shall submit multiple proposals and fee estimates, as required by the regulations adopted by the board pursuant to Section 25299.77. The claimant's selection of the provider of these services is not required to be based on the lowest estimated fee, if the fee estimate conforms with the range of acceptable costs established by the board.

(3) A claimant who submits a claim for payment to the board for remediation construction contracting work shall submit multiple bids, as required in the regulations adopted by the board pursuant to Section 25299.77.

(4) Paragraphs (1), (2), and (3) do not apply to a tank owned or operated by a public agency if the prospective costs are for private professional services within the meaning of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and those services are procured in accordance with the requirements of that chapter.

(h) The board shall provide, upon the request of a claimant, assistance to the claimant in the selection of contractors retained by the claimant to conduct reimbursable work related to corrective actions. The board shall develop a summary of expected costs for common corrective actions. This summary of expected costs may be used by claimants as a guide in the selection and supervision of consultants and contractors.

(i) (1) To the extent funding is available, the board shall pay, within 60 days from the date of receipt of an invoice of expenditures, all costs specified in the work plan developed pursuant to Section 25296.10, and all costs that are otherwise necessary to comply with an order issued by a local, state, or federal agency.

(2) If corrective action costs, third-party compensation costs, or regulatory technical assistance costs submitted by a claimant are approved for reimbursement by the board but funding is not available for payment to the claimant at the time of approval, the board shall reimburse carrying costs incurred by the claimant after November 7, 2008, but before June 30, 2010, subject to all of the following limitations:

(A) The reimbursement for carrying costs shall not exceed the carrying costs actually incurred by the claimant from the date the corrective action costs, third-party compensation costs, or regulatory technical assistance costs are approved for payment by the board until the date that a check for the reimbursement request is issued by the Controller.

(B) The reimbursement for carrying costs shall not exceed an amount equivalent to a maximum annual percentage rate of 7 percent as applied to the amount approved for reimbursement and for the period calculated pursuant to subparagraph (A).

(C) The board shall not reimburse carrying costs that amount to less than one hundred dollars (\$100) per reimbursement request.

(D) The board shall not reimburse carrying costs that exceed 9 percent of the total amount of costs approved for the reimbursement to which the carrying costs apply.

(E) A claimant may submit a request for reimbursement of carrying costs after receipt of fund reimbursement for the corrective action costs, third-party compensation costs, or regulatory technical assistance costs to which the carrying costs apply. Additional carrying costs associated with a reimbursement request for carrying costs submitted pursuant to this paragraph are not eligible for payment.

(F) This paragraph does not apply to tank owners or operators that are not described in paragraph (1), (2), or (3) of subdivision (b) of Section 25299.52.

(3) For the purposes of paragraph (2), "carrying cost" means the interest expense incurred by a claimant to acquire money to pay costs approved for reimbursement by the board but for which reimbursement is delayed because funds are unavailable.

(j) (1) The board shall pay a claim of not more than five thousand dollars (\$5,000) per occurrence for regulatory technical assistance to an owner or operator who is otherwise eligible for reimbursement under this chapter, except that reasonable and necessary regulatory

technical assistance costs associated with the electronic submission of documents to the fund using an electronic data system approved by the board shall not be subject to this limit.

(2) For the purposes of this subdivision, regulatory technical assistance is limited to assistance from a person, other than the claimant, in the preparation and submission of a claim to the fund. Regulatory technical assistance does not include assistance in connection with proceedings under Section 25296.40, 25299.39.2, or 25299.56 or any action in court.

(k) (1) Notwithstanding any other provision of this section, the board shall pay a claim pursuant to paragraph (2) or (3) for the costs of corrective action to a person who owns property on which is located a release from a petroleum underground storage tank that has been removed, if the site has been the subject of a completed corrective action, and for which additional corrective action is required because of additionally discovered contamination from the previous release.

(2) (A) The board shall pay a claim pursuant to this paragraph if the person who carried out the earlier and completed corrective action was eligible for, and applied for, reimbursement pursuant to subdivision (b).

(B) Reimbursement for additional corrective action shall be available only to the extent that the amount of reimbursement for the earlier corrective action did not exceed the amount of reimbursement authorized by subdivision (a).

(C) Reimbursement to a claimant on a reopened site pursuant to this paragraph shall occur when funds are available, and the reimbursement commitment shall be made ahead of any new letters of commitment to be issued, as of the date of the reopening of the claim, if funding has occurred on the original claim.

(D) If funding has not occurred on the original claim, funding shall occur at the time it would have occurred under the original claim.

(3) (A) The board may reimburse a claim pursuant to this paragraph if all of the following conditions are satisfied:

(i) The person who carried out the earlier and completed corrective action did not apply for reimbursement pursuant to subdivision (b).

(ii) The person who owns the property is required to perform corrective action because of additionally discovered contamination.

(iii) The person who owns the property is the owner or operator of an underground storage tank located on the property at the time of application to the fund.

(iv) The person who owns the property is in compliance with the requirements to pay the fee pursuant to Article 5 (commencing with Section 25299.40).

(v) The person who owns the property is in compliance with the requirements to obtain a permit pursuant to Chapter 6.7 (commencing with Section 25280).

(B) The board shall assign the person submitting a claim pursuant to this paragraph a priority ranking consistent with the categories described in Section 25299.52.

(C) The board shall limit reimbursement for a claim pursuant to this paragraph to the amounts described in Section 25299.59 and for the incurred corrective action costs that are necessary and reasonable.

(4) For purposes of this subdivision, a corrective action is completed when the local agency or regional board with jurisdiction over the site or the board issues a closure letter pursuant to subdivision (g) of Section 25296.10.

(l) (1) Except as provided in subdivision (m), claims for reimbursement of corrective action costs that are received by the board more than 365 days after the date of issuance of a closure

letter issued pursuant to subdivision (g) of Section 25296.10 or after the issuance or activation of a letter of commitment, whichever occurs later, shall not be reimbursed unless either of the following applies:

(A) Claims for corrective action costs are submitted to the board pursuant to subdivision (k).

(B) The board finds that submission within the time period specified in this paragraph was beyond the claimant's reasonable control, ongoing work is required for closure that will result in submission of claims beyond that time period, or that under the circumstances of the particular case, it would be unreasonable or inequitable to impose the time period specified in this paragraph.

(2) This section does not limit or abrogate the rights of a claimant in disputing reimbursement determinations or suspension of claims.

(3) For cases that have been issued a closure letter pursuant to subdivision (g) of Section 25296.10 prior to January 1, 2012, the board shall notify claimants of the 365-day filing deadline specified in paragraph (1) on or before March 31, 2012, or upon issuance of a letter of commitment, whichever occurs later.

(m) (1) The board shall not reimburse a claim for reimbursement of a corrective action cost that is received by the board more than two years after the date the cost was incurred or more than two years after the date of the issuance or activation of a letter of commitment, whichever occurs later, except under one or both of the following conditions:

(A) The board may reimburse a claim for a cost incurred before January 1, 2015, by a claimant that has an active letter of commitment on January 1, 2015, that was received by the board on or before December 31, 2015, or within two years of the date the cost was incurred, whichever occurs later.

(B) The executive director finds that submission within the time period specified in this subdivision was beyond the claimant's reasonable control or that, under the circumstances of the particular case, it would be unreasonable or inequitable to impose the time period specified in this subdivision.

(2) For the purposes of this subdivision, a cost is incurred on the date that the task to be paid for is completed.

### **§ 25299.58. Reimbursement of costs by board; limitations; required findings for payment of claim; third party compensation**

(a) Except as provided in subdivision (d), if the board makes the determination specified in subdivision (b), the board may reimburse only those costs that are related to the compensation of third parties for bodily injury and property damages and that exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million dollars (\$1,000,000) for each occurrence.

(b) A claim may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant has been ordered to pay a settlement or final judgment for third-party bodily injury or property damage arising from operating an underground storage tank.

(3) The claimant has complied with Section 25299.31.

(4) (A) Except as provided in subparagraphs (B) and (C), the claimant has complied with the permit requirements of Chapter 6.7 (commencing with Section 25280). A claimant shall obtain a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the

subject of the claim when the claimant becomes subject to subdivision (a) of Section 25284 or when the applicable local agency begins issuing permits pursuant to subdivision (a) of Section 25284, whichever occurs later. For the purpose of this subparagraph, a claimant shall demonstrate compliance with the permit requirements of Chapter 6.7 (commencing with Section 25280) by submitting copies of the required permits. If copies of the required permits are unavailable, the claimant may certify that the claimant obtained the required permits but no longer has copies of them and provide any other documentation tending to show that the claimant obtained the required permits, including, but not limited to, approved permit applications, records of payment of permit fees, and inspection reports. In determining whether a claimant has complied with the permit requirements of Chapter 6.7 (commencing with Section 25280), the board shall consider all available documentation, including any documentation available from the applicable local agency regarding the claimant's compliance with the permit requirements of Chapter 6.7 (commencing with Section 25280).

(B) A claimant who acquires real property on which an underground storage tank is situated and, despite the exercise of reasonable diligence, was unaware of the existence of the underground storage tank when the real property was acquired, has obtained a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim within a reasonable period, not to exceed one year, from when the claimant should have become aware of the existence of the underground storage tank, or when the applicable local agency began issuing permits pursuant to Section 25284, whichever occurs later.

(C) All claimants who file their claim on or after January 1, 2008, and who do not obtain a permit required by subdivision (a) of Section 25284 in accordance with subparagraph (A) or (B) may seek a waiver of the requirement to obtain a permit. The board shall waive the provisions of subparagraphs (A) and (B) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement, and upon becoming aware of the permit requirement, the claimant complies with subdivision (a) of Section 25284 or Section 25298 and the regulations adopted to implement those sections within a reasonable period, not to exceed one year, from when the claimant became aware of the permit requirement.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) of this chapter and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(D) (i) A claimant who is exempted pursuant to subparagraph (C) and who has complied, on or before December 22, 1998, with subdivision (a) of Section 25284 or Section 25298 and the regulations adopted to implement those sections, shall obtain a level of financial responsibility in an amount twice as great as the amount that the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32, but in no event less than ten thousand dollars (\$10,000). All other claimants exempted pursuant to subparagraph (C) shall obtain a level of financial responsibility that is four times as great as the amount that the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32, but in no event less than twenty thousand dollars (\$20,000).

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (C) were satisfied prior to any contamination having been caused. The demonstration may be made through a certification issued by the permitting agency based on a site evaluation and tank tests at the time of permit application or in any other manner as may be acceptable to the board.

(E) All claimants who file a claim before January 1, 2008, and who are not eligible for a waiver of the permit requirements pursuant to applicable statutes or regulations in effect on the date of the filing of the claim may resubmit a new claim pursuant to subparagraph (C) on or after January 1, 2008. The board shall rank all claims resubmitted pursuant to subparagraph (C) lower than all claims filed before January 1, 2008, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(5) The claimant is required to undertake or contract for corrective action pursuant to Section 25296.10, under the federal act, or under Section 6973 of Title 42 of the United States Code, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280).

(6) (A) The claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) of this chapter and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(B) The board may accept a claimant's statement certifying to the best of the claimant's knowledge that payment was made to the State Board of Equalization to demonstrate satisfaction of the requirements of subparagraph (A) if both of the following apply:

(1) Records maintained by the State Board of Equalization show that fees and, if applicable, interest and penalties, have been paid by the claimant for the period corresponding to the claimant's ownership or operation of the tank that is the subject of the claim.

(2) The State Board of Equalization and the claimant are not able to document that the payments received by the State Board of Equalization were or were not specifically related to the tank that is the subject of the claim.

(c) A claimant may be reimbursed by the fund for compensation of third parties for only the following:

(1) Medical expenses.

(2) Actual lost wages or business income.

(3) Actual expenses for remedial action to remedy the effects of damage to the property of the third party caused by the unauthorized release of petroleum from an underground storage tank.

(4) The fair market value of the property rendered permanently unsuitable for use by the unauthorized release of petroleum from an underground storage tank.

(d) The board shall pay a claim submitted by a person eligible to submit a claim pursuant to subdivision (e) of Section 25299.54 for the costs related to the compensation of third parties for bodily injury and property damages that exceed the level of financial responsibility required to be obtained pursuant to paragraph (2) of subdivision (a) of Section 25299.32, but not more than one million dollars (\$1,000,000) for each occurrence.

**§ 25299.59. Limitation on amount of payment on claims**

(a) If the board has paid out of the fund for any costs of corrective action, the board shall not pay any other claim out of the fund for the same costs.

(b) (1) Notwithstanding Sections 25299.57 and 25299.58, for a claim filed on or before December 31, 2014, the board shall not reimburse or authorize prepayment of any claim in an aggregate amount exceeding one million five hundred thousand dollars (\$1,500,000), less the minimum level of financial responsibility specified in Section 25299.32, for a claim arising from the same event or occurrence. If a claim exceeds one million dollars (\$1,000,000) for an occurrence, the board may only reimburse costs submitted pursuant to Section 25299.57 for those costs in excess of one million dollars (\$1,000,000).

(2) If a claim is filed on or after January 1, 2015, the board shall not reimburse or authorize prepayment of the claim in an aggregate amount exceeding one million dollars (\$1,000,000), less the minimum level of financial responsibility specified in Section 25299.32, for a claim arising from the same event or occurrence.

(c) The board may conduct an audit of any corrective action claim honored pursuant to this chapter. The claimant shall reimburse the state for any costs disallowed in the audit. A claimant shall preserve, and make available, upon request of the board or the board's designee, all records pertaining to the corrective action claim for a period of three years after the final payment is made to the claimant.

**§ 25299.60. Claims exceeding total money in fund; restrictions on payments**

(a) The board shall not pay any claims against or presented to the fund pursuant to this article if the claim exceeds the total money in the fund at any one time. The board shall pay these claims only when additional money is collected, appropriated, or otherwise added to the fund. If the total claims outstanding at any time exceed the current balance of the fund, the board shall pay these claims in full to the extent authorized pursuant to this article.

(b) Any claim filed against the fund pursuant to this article may be paid only out of the fund. This chapter does not authorize the payment by the state of any additional amount with respect to any claim out of any source other than the fund.

(c) (1) Except as provided in paragraph (2), notwithstanding this article, the board shall not pay out any claims pursuant to this article to a claimant if the total amount paid to the claimant is greater than 5 percent of the total amount annually appropriated by the Legislature from the fund for purposes of paying claims pursuant to this article. For purposes of determining the total amount paid to a claimant for purposes of this section, the board shall include any payments made to any person or entity which has a relationship with the claimant specified in subsection (b) of Section 267 of Title 26 of the United States Code.

(2) The board may exempt a claim from the requirements of paragraph (1) if the board determines all of the following:

(A) The exemption would provide for an equitable and timely use of available fund moneys.

(B) The exemption would help to ensure an efficient petroleum underground storage tank cleanup program that adequately protects public health and safety and the environment.

(C) All claims subject to the exemption are awarded in accordance with the priority rankings established pursuant to Section 25299.52.

**§ 25299.61. Gross negligence or intentional or reckless acts of claimant; nonpayment of claims**

The board shall not pay any claims against or presented to the fund pursuant to this article if the claims are in connection with an unauthorized release of petroleum into the environment from an underground storage tank resulting from the gross negligence or the intentional or reckless acts of the claimant.

**§ 25299.62. Time limit for payment of claims; reimbursement for carrying costs when funding unavailable**

If funding is available, all reimbursement requests that are approved shall be forwarded to the Controller within 10 days from the date of approval, for payment by the Controller. If a reimbursement request is approved but not forwarded to the Controller because funding is unavailable at the time of approval, the claimant may seek reimbursement for carrying costs actually incurred for the approved amount pursuant to paragraph (2) of subdivision (i) of Section 25299.57.

**§ 25299.63. Other remedies; exhaustion of administrative remedies**

This article does not require any person to pursue a claim against the board pursuant to this article before seeking any other remedy. This section does not affect the requirement for exhaustion of administrative remedies before obtaining judicial review of any action of the board on a claim or petition for closure of a tank case.

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**ARTICLE 6.5. PERFORMANCE-BASED CONTRACT**

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**§ 25299.64. Definitions; payment of performance-based contracts**

(a) For purposes of this article, the following definitions shall apply:

(1) "Baseline concentration" means the initial concentration of a constituent of concern prior to conducting corrective action pursuant to a performance-based contract.

(2) "Constituent of concern" means the chemical element, compound, or grouping, including, but not limited to, total petroleum hydrocarbons, as in gasoline, that is present in the soil or groundwater and subject to corrective action.

(3) "Performance-based contract" means a written agreement approved by the board between a claimant and an appropriately licensed contractor, where the contractor agrees for a fixed price to take corrective action to reduce the concentrations of designated constituents of concern to specified concentrations.

(4) "Remediation milestone" means that a specified reduction in the concentrations of constituents of concern from baseline concentrations has been attained through corrective action. The reduction is expressed as a percentage of the total reduction required by the performance-based contract.

(b) The board may pay a claim pursuant to Section 25299.57 to reimburse the cost of a performance-based contract if the board approves the contract as being consistent with this article.

(c) A performance-based contract includes, but is not limited to, the total fixed price contract amount, designated constituents of concern, baseline concentrations, and if appropriate, a

payment schedule indicating the amount to be paid when specified remediation milestones are attained.

(d) The board shall make payments based upon the reduction in the concentrations of designated constituents of concern to specified concentrations. If corrective action is estimated to take six months or more to achieve these concentrations and the remediation technology proposed is a pump-and-treat or other type of mechanical remediation technology, the board may pay a portion of the fixed price based on the attainment of specified remediation milestones or other performance parameters, in the following manner:

(1) The first payment shall include the amount of incurred capital costs upon successful installation and startup of the mechanical remediation system.

(2) The second payment shall be an amount equal to the agreed upon percent of the total contract price when the 25 percent remediation milestone is attained.

(3) The third payment shall be equal to an agreed upon percent of the total contract price when the 50 percent remediation milestone is attained.

(4) The fourth payment shall be equal to an agreed upon percent of the total contract price when the 75 percent remediation milestone is attained.

(5) The fifth payment shall be equal to an agreed upon percent of the total contract price when the 100 percent remediation milestone is attained.

(6) The final payment shall be the amount of the remaining contract price that shall be paid when the 100 percent remediation milestone has been maintained for one year following cessation of all active remediation.

#### **§ 25299.65. Bids; eligible sites**

(a) The claimant shall submit multiple bids for a performance-based contract in accordance with paragraph (1) of subdivision (g) of Section 25299.57 and any regulations adopted by the board to implement that section.

(b) To assist claimants in soliciting bids for performance-based contract projects, the board shall advertise bid solicitations for these projects through the board's Web site. The board shall be the receiving address for the bids, and shall offer other assistance, upon request, in accordance with the regulations adopted pursuant to this chapter. The bids shall be sealed prior to submittal to the board. This subdivision does not prevent the board from approving a performance-based contract covering multisite cleanups, if the board determines that economies of scale will assist claimants in soliciting bids or reducing overall costs.

(c) The sites for which the board may consider approving a performance-based contract include, but are not limited to, all of the following:

(1) A site that had an unauthorized release reported to the board, the regional board, or local agency five or more years ago and active remediation has not begun.

(2) A site where corrective action has been implemented for two or more years pursuant to a corrective action plan that was approved by the board, the regional board, or local agency, but that corrective action has not been effective in reducing the concentrations of the constituents of concern to the satisfaction of that board or agency.

(3) A site where corrective action costs are expected to exceed the maximum fund reimbursement amount prior to case closure.

(4) A site where the board, the regional board, or local agency has recently determined that an unauthorized release has occurred that has the potential to impact nearby receptors or otherwise cause significant impact to the waters of the state.

(5) A site where an unauthorized release of MTBE, as defined in paragraph (2) of subdivision (a) of Section 25299.97, has occurred and corrective action has not been initiated or satisfactorily conducted, as determined by the board, the regional board, or local agency, or according to any regulations adopted pursuant to Section 25296.30.

(6) A site where the board, the regional board, or local agency has determined that corrective action other than ongoing monitoring of groundwater is more likely to reduce the concentrations of constituents of concern sooner and at a lower cost.

(d) This article does not preclude a claimant from requesting board approval of a performance-based contract to conduct corrective action at the claimant's site.

#### **§ 25299.66. Other provisions of law**

This article does not limit or abridge the powers and duties granted to the board, the regional board, or local agency pursuant to any other provision of law.

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### **ARTICLE 7. COST RECOVERY, ENFORCEMENT, AND ADMINISTRATION**

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#### **§ 25299.70. Recovery of costs; extent of liability; civil action; deposit of recovery; lien**

(a) The board may recover any costs incurred and payable from the fund pursuant to subdivisions (c), (e), (h), and (n) of Section 25299.51 from the owner or operator of the underground storage tank which released the petroleum and which is the subject of those costs or from any other responsible party.

(b) The liability of an owner or operator shall be the full and total costs specified in subdivision (a) if the owner or operator has not complied with the requirements of Article 3 (commencing with Section 25299.30) or has violated Section 25296.10 or any corrective action order, directive, notification, or approval order issued pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), or Division 7 (commencing with Section 13000) of the Water Code. The liability of a responsible party who is not an owner or operator shall be the full and total costs specified in subdivision (a).

(c) The amount of costs determined pursuant to this section shall be recoverable in a civil action. This section does not deprive a party of any defense the party may have.

(d) All money recovered by the board pursuant to this section shall be deposited in the fund.

(e) The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, if the notice identifies the property on which the condition was abated, the amount of the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien shall have the same force, effect, and priority as a judgment lien, except that it attaches only to the property posted and described in the notice of lien, and shall continue for 10 years from the time of the recording of the notice, unless sooner released or otherwise discharged. Not later than 45 days from the date of receipt of a notice of lien, the owner may petition the court for an order releasing the property from the lien or reducing the amount of the lien. In that court action, the governmental agency that incurred the cleanup costs shall establish that the costs were reasonable and necessary. The lien may be foreclosed by an action brought by the board for a money judgment.

**§ 25299.71. Permanent disqualification from eligibility due to criminal or civil liability**

(a) (1) Except as provided in subdivisions (b) and (c), if a person is convicted under Section 25299.80.5 or is found to be civilly liable under Section 25299.78 or 25299.80, the executive director of the board may permanently disqualify that person from receiving any moneys from the fund. If the executive director of the board determines that the disqualified person is a contractor or consultant, a claimant shall not submit invoices to the fund for any work performed or directed by that person.

(2) For purposes of this section, “contractor or consultant” means a person whose professional services are engaged to perform work that is the subject of a claim specified in paragraph (2) of subdivision (d) of Section 25299.57.

(b) If the person convicted under Section 25299.80.5 or found to be civilly liable under Section 25299.78 or 25299.80 is a claimant, the executive director of the board may permanently disqualify the claimant from further participation in the fund, with respect to only the fund claims that are the subject of that conviction under Section 25299.80.5 or that civil liability under Section 25299.78 or 25299.80, and only if the executive director makes a finding that the alleged violation is knowing, willful, or intentional.

(c) If the person convicted under Section 25299.80.5 or found to be civilly liable under Section 25299.78 or 25299.80 is a contractor or consultant, the executive director of the board may permanently disqualify the contractor or consultant from further participation in the fund, including participation in corrective action for fund claims that are not the subject of that conviction under Section 25299.80.5 or civil liability under Section 25299.78 or 25299.80, only if the executive director makes one of the following findings:

(1) The alleged violation is knowing, willful, or intentional.

(2) The contractor or consultant received a material economic benefit from the action that caused the violation.

(3) The alleged violation is chronic or the contractor or consultant is a recalcitrant violator, as determined pursuant to subdivision (g) of Section 13399 of the Water Code.

(d) In addition to the requirements of subdivisions (b) and (c), in determining the extent to which a person, including, but not limited to, a claimant, contractor, or consultant, convicted under Section 25299.80.5 or found to be civilly liable under Section 25299.78 or 25299.80 may be disqualified from receiving any money from the fund, including the extent to which the person may be reimbursed for pending or future claims from the fund, the executive director of the board, or the court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation, the person’s ability to pay, any prior history of misrepresentations by the person to the board, or local agency, any economic benefits or savings that resulted or would have resulted from the false statement, and any other matters as justice may require.

**§ 25299.72. Joining of parties to action**

Upon motion and sufficient showing by any party, the court shall join to the action any person who may be liable for costs or expenditures of the type recoverable pursuant to this article.

**§ 25299.73. Strict liability; standard**

The standard of liability for any costs of corrective action recoverable pursuant to this chapter is strict liability.

**§ 25299.74. Effect of indemnification, hold harmless, or similar agreements; entry of judgment; subrogation of claimants' rights by state**

(a) No indemnification, hold harmless, conveyance, or similar agreement shall be effective to preclude any liability for costs recoverable under this article. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs under this chapter.

(b) The entry of judgment against any party to the action does not bar any future action by the fund against any person who is later discovered to be potentially liable for costs paid from the fund.

(c) Payment of any claim by the fund pursuant to this chapter shall be subject to the state acquiring by subrogation the rights of the claimant to recover those costs of corrective action for which it has compensated the claimant from the person responsible or liable for the unauthorized release.

**§ 25299.75. Effect of chapter on parties' obligations or liabilities under other state or federal laws**

(a) Except as provided in Sections 25299.70, 25299.72, and 25299.73, this chapter does not affect or modify the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from an unauthorized release of petroleum or for corrective action or the costs of corrective action.

(b) This chapter shall not be construed as authorizing recovery for costs of corrective action resulting from any release authorized or permitted pursuant to state or federal law.

**§ 25299.76. Violations; civil penalty**

(a) Any person who violates any requirement of Article 3 (commencing with Section 25299.30) or Article 4 (commencing with Section 25299.36) is liable for a civil penalty of not more than ten thousand dollars (\$10,000) for each underground storage tank for each day of violation.

(b) The state or a local agency may bring an action in superior court to impose the civil penalty specified in subdivision (a).

(c) The board or a regional board may impose the civil penalty specified in subdivision (a) pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(d) In determining the amount of any liability imposed under this section, the superior court, the board, or the regional board shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, the economic benefits or savings, if any, resulting from the violations, and other matters as justice may require.

(e) Remedies under this section are in addition to, and do not supersede or limit, any other civil or criminal remedies, except that no civil penalties shall be recovered under this section for violations for which a civil penalty is recovered pursuant to Section 13268 or 13350 of the Water Code.

**§ 25299.77. Adoption of regulations; emergency regulations**

(a) The board shall adopt regulations to implement this chapter. In adopting these regulations, the board shall ensure that the regulations are consistent with this chapter,

Chapter 6.7 (commencing with Section 25280), and the requirements for state programs implementing the federal act.

(b) The adoption of any regulations pursuant to this section that are filed with the Office of Administrative Law on or before January 1, 1995, shall be deemed to be an emergency necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulation adopted by the board pursuant to this subdivision shall not be repealed by the Office of Administrative Law, and shall remain in effect until revised by the board.

**§ 25299.78. Agency or board authority to inspect underground storage tank areas; owner or operator duty to furnish information**

(a) To carry out the purposes of this chapter, any authorized representative of the local agency, regional board, or board shall have the authority specified in Section 25185, with respect to any place where underground storage tanks are located, and in Section 25185.5, with respect to any real property which is within 2,000 feet of any place where underground storage tanks are located.

(b) A person shall furnish, under penalty of perjury, any information on fees imposed pursuant to Article 5 (commencing with Section 25299.40), financial responsibility, unauthorized releases, corrective actions, response actions, costs related to grants issued under this chapter, or requests for reimbursement pursuant to a claim or grant issued under this chapter as the local agency, regional board, or board may require.

(c) A person who fails or refuses to furnish information under subdivision (b) or furnishes false information to the fund is subject, in accordance with the requirements of subdivision (d), to civil liability of not more than ten thousand dollars (\$10,000) for each violation of this subdivision.

(d) (1) Except as provided in subdivision (2), a claimant shall not be liable under subdivision (c) unless one of the following is established by the court, if the action is brought pursuant to subdivision (e), or the executive director, if the action is brought pursuant to subdivision (f):

(A) The alleged violation is knowing, willful, or intentional.

(B) The claimant received a material economic benefit from the action which caused the alleged violation.

(C) The alleged violation is chronic or that the claimant is a recalcitrant violator, as determined pursuant to subdivision (g) of Section 13399 of the Water Code.

(2) If a claimant is in violation of subdivision (c), but does not meet any of the conditions specified in paragraph (1), the claimant may be held liable only if the board or an authorized representative of the board issues a notice to comply pursuant to Chapter 5.8 (commencing with Section 13399) of Division 7 of the Water Code before an action is taken pursuant to subdivision (e) or (f).

(e) The Attorney General, upon request of the board, shall bring an action in superior court to impose the civil liability specified in subdivision (c).

(f) The executive director of the board may impose the civil liability specified in subdivision (c) administratively in the same manner as the executive director of the board is authorized to impose civil liability pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(g) In determining the amount of any civil liability imposed under this section, the executive director of the board, or the court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the false statement or refusal or failure to furnish information, the person's ability to pay, any prior history by the person of misrepresentations to or noncooperation with the board or local agency, any economic benefits or savings that resulted or would have resulted from the false statement or refusal or failure to furnish information, and other matters as justice may require.

(h) Remedies under this section are in addition to, and do not supersede or limit, any other civil, administrative, or criminal remedies.

(i) All funds collected pursuant to this section shall be deposited into the fund.

### **§ 25299.79. Cost recovery**

The costs specified in subdivision (d) of Section 25299.51 are not recoverable pursuant to this article.

### **§ 25299.80. Civil liability for misrepresentations; enforcement and punishment**

(a) A person who makes a misrepresentation in any claim, including, but not limited to, a record, report, certification, application, invoice, form, or other document that is submitted to the fund relating to a claim, is subject to civil liability of not more than five hundred thousand dollars (\$500,000) for each violation of this subdivision.

(b) Except as provided in subdivision (d), the Attorney General, upon request of the state board, shall bring an action in superior court to impose the civil liability specified in subdivision (a).

(c) Except as provided in subdivision (d), the executive director of the board may impose the civil liability specified in subdivision (a) administratively in the same manner as the executive director of the board is authorized to impose civil liability pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(d) If the violation by a claimant of subdivision (a) is not knowing, willful, or intentional, the board or an authorized representative shall first issue a notice to comply pursuant to Chapter 5.8 (commencing with Section 13399) of Division 7 of the Water Code before an action may be taken pursuant to subdivision (b) or (c).

(e) In determining the amount of civil liability imposed under this section, the executive director of the board, or the court, as the case may be, shall take into account the nature, circumstance, extent, and gravity of the violation, the person's ability to pay, any prior history of misrepresentations by the person to the board or local agency, any economic benefits or savings that resulted or would have resulted from the false statement, and other matters as justice may require.

(f) Remedies under this section are in addition to, and do not supersede or limit, any other civil, administrative, or criminal remedies.

(g) All money collected pursuant to this section shall be deposited into the fund.

(h) The board shall file a complaint with any applicable licensing board against any person licensed or otherwise regulated by that licensing board who is found to be liable under this section.

**§ 25299.80.5. False statements, material misrepresentations, or false certifications; criminal liability; punishment**

(a) A person who knowingly makes or causes to be made any false statement, material misrepresentation, or false certification in support of any claim under this chapter, including, but not limited to, in an application, record, report, certification, plan, invoice, form, or other document that is submitted, filed, or required to be maintained under this chapter for purposes of a claim, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment in a county jail for not more than one year, or in the state prison for 16 months, two years, or three years, or by both that fine and imprisonment.

(b) The Attorney General, upon request of the board, may bring an action in superior court to impose the criminal penalty specified in subdivision (a).

(c) Remedies under this section are in addition to, and do not supersede or limit, any other civil or criminal remedies.

(d) All funds collected pursuant to this section shall be deposited into the fund.

(e) The board shall file a complaint with any applicable licensing board against any person licensed or otherwise regulated by that licensing board who is convicted under this section.

**§ 25299.80.6. Review after imposition of civil liability**

An action by the executive director to impose civil liability under this chapter is subject to review by the board in the same manner as provided for the review by the State Water Resources Control Board of actions of a regional board under Section 13320 of the Water Code.

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**ARTICLE 9. SUNSET PROVISION**

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**§ 25299.81. Duration of chapter; exceptions; effect on certain rights and obligations; posting and updating of information on board's Web site**

(a) Except as provided in subdivisions (b) and (c), this chapter shall remain in effect only until January 1, 2036, and as of that date is repealed.

(b) Notwithstanding subdivision (a), this section, Article 1 (commencing with Section 25299.10), Article 2 (commencing with Section 25299.11), and Article 4 (commencing with Section 25299.36) shall not be repealed and shall remain in effect on January 1, 2036.

(c) The repeal of certain portions of this chapter does not terminate any of the following rights, obligations, or authorities, or any provision necessary to carry out these rights and obligations:

(1) The filing and payment of claims against the fund, including the costs specified in subdivisions (c), (e), and (h) of Section 25299.51, claims filed under Section 25299.50.3 and claims for commingled plumes, as specified in Article 11 (commencing with Section 25299.90), until the moneys in the fund are exhausted. Upon exhaustion of the fund, any remaining claims shall be invalid.

(2) The repayment of loans, outstanding as of January 1, 2036, due and payable to the board.

(3) The recovery of moneys reimbursed to a claimant to which the claimant is not entitled, or the resolution of any cost recovery action.

(4) The collection of unpaid fees by the California Department of Tax and Fee Administration pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and

Taxation Code that are imposed pursuant to Article 5 (commencing with Section 25299.40), as that article read on December 31, 2035, or have become due before January 1, 2036, including any interest or penalties that accrue before, on, or after January 1, 2036, associated with those unpaid fees, for deposit into the fund.

(5) (A) The filing of an application for funds from, and the making of payments from, the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund pursuant to Section 25299.50.2, any action for the recovery of moneys paid pursuant to Section 25299.50.2 to which the recipient is not entitled, and the resolution of that cost recovery action.

(B) Upon liquidation of funds in the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund, the obligation to make a payment from the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund is terminated.

(6) (A) The payment of loans and grants, consistent with the terms of agreements that were effective prior to January 1, 2036, from the fund, pursuant to this chapter or the Petroleum Underground Storage Tank Financing Account pursuant to Chapter 6.76 (commencing with Section 25299.100). Upon exhaustion of the fund, any remaining claims for payment of grants or loans shall be invalid.

(B) The amount of money disbursed for grants and loans pursuant to Chapter 6.76 (commencing with Section 25299.100) shall not exceed the sum of the following:

(i) The amount that reverts to the fund pursuant to Section 25299.111.

(ii) Amounts recovered through the repayment of loans granted pursuant to Chapter 6.76 (commencing with Section 25299.100).

(iii) The resolution of any cost recovery action filed prior to January 1, 2036, or the initiation of an action or other collection process to recover defaulted loan moneys due to the board or to recover money paid to a grant or loan recipient pursuant to Chapter 6.76 (commencing with Section 25299.100) to which the recipient is not entitled.

(7) (A) The imposition and collection of civil liability pursuant to Article 7 (commencing with Section 25299.70), as that article read on December 31, 2035.

(B) Subparagraph (A) shall not be construed as extending or modifying any applicable statute of limitations.

(d) The board shall continuously post and update on its internet website, but at a minimum, annually on or before September 30, information that describes the status of the fund and shall make recommendations, when appropriate, to improve the efficiency of the program.

### **§ 25299.82. Board action to facilitate the phase out of the Underground Storage Tank Cleanup Fund Program**

To ensure that the phase out of the fund program, as provided in Section 25299.81, is achieved in an orderly manner that enables owners and operators to maintain continuous coverage for financial responsibility obligations required by Sections 25292.2 and 25299.31 and the federal act, the board shall take the following actions:

(a) The board shall not accept claim applications submitted to the fund pursuant to Section 25299.57 or 25299.58 after January 1, 2035, unless the board finds that the unauthorized release that is the subject of the claim was discovered before January 1, 2035, and the submission of a claim application by that date was beyond the claimant's reasonable control.

(b) The board shall not accept requests for reimbursements submitted to the fund pursuant to Section 25299.57 or 25299.58 after July 1, 2035.

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**ARTICLE 11. COMMINGLED PLUME ACCOUNT**

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**§ 25299.90. Legislative findings and declarations**

The Legislature hereby finds and declares all of the following:

(a) Commingled plumes of petroleum contaminated groundwater involve serious water quality impacts.

(b) Unauthorized releases from underground storage tanks are a major source of commingled plumes of petroleum contaminated groundwater.

(c) Unless corrective action is performed in a coordinated manner, remedial action of commingled plumes may be ineffective.

(d) Disagreement over shared liability among parties responsible for underground storage tank leaks which contributed to commingled plumes may result in substantial expenditures for legal costs and the expense of necessary cleanup.

(e) Reimbursing claimants jointly will result in more efficient cleanups, lower total corrective action costs, and reduced legal costs for commingled plumes.

**§ 25299.91. Definitions**

As used in this article, the following terms have the following meaning:

(a) "Commingled plume" means the condition that exists when groundwater contaminated with petroleum from two or more discrete unauthorized releases have mixed or encroached upon one another to the extent that the corrective action performed on one plume will necessarily affect the other. A commingled plume does not include either of the following:

(1) Contaminated groundwater plumes resulting from unauthorized releases or discharges from a single site.

(2) Soil contamination, unless it can be demonstrated that the contaminated soil is an immediate threat to groundwater.

(b) "Contributing site" means a site on which an unauthorized release or discharge of waste has occurred or is occurring and has impacted or threatens to impact groundwater.

**§ 25299.92. Funding**

A sum not to exceed ten million dollars (\$10,000,000) from Item 3940-001-0439 of Section 2.00 of the Budget Act of 1996 (Ch. 162, Stats. 1996) shall be available for expenditure for the 1996-97 fiscal year for the purposes of this article. In subsequent fiscal years, it is the intent of the Legislature that an appropriation be made in the annual Budget Act to carry out this article.

**§ 25299.93. Joint claims for reimbursement; corrective action costs; third-party reimbursement**

(a) A joint claim may be submitted for reimbursement of corrective action costs for a commingled plume if all of the following conditions are met:

(1) Each person named in the joint claim is an owner, operator, or other responsible party ordered to perform corrective action or remedial action pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), or Division 7 (commencing with Section 13000) of the Water Code.

(2) After performing a soil and water investigation in accordance with Article 11 (commencing with Section 2720) of Chapter 16 of Division 3 of Title 23 of the California Code of Regulations, the joint claimants demonstrate to the satisfaction of the local or regulatory agency and the board that a commingled plume exists and that every identified unauthorized release or discharge has contributed substantially to the commingled plume.

(3) At least 85 percent of the commingled plume is comprised of petroleum contamination resulting from an unauthorized release from a tank whose owner or operator is eligible for payment of a claim pursuant to Section 25299.54.

(4) At least two contributing sites involve an unauthorized release.

(5) The joint claimants have coordinated corrective action as soon as practicable.

(6) The joint claimants agree to seek preapproval of corrective action costs in accordance with subdivision (c) of Section 25299.57.

(7) The joint claimants have entered into a written agreement that provides for a coordinated corrective action plan. The written agreement shall require the joint claimants to do the following:

(A) Appoint one of the joint claimants to represent the joint claimants for purposes of interacting with the local or regulatory agency and the board.

(B) Permit the joint claimants reasonable access to contributing sites as necessary to perform corrective action.

(C) Identify any corrective action costs incurred at contributing sites and assess if any of those costs may be eligible for reimbursement under this chapter.

(D) Estimate responsibility among the joint claimants and provide a formula or method for apportioning costs that are not eligible for reimbursement under this chapter or which exceed the limitations prescribed in Section 25299.94.

(E) Identify all money or other compensation received by any joint claimant which is related to contamination at any contributing site or the commingled groundwater plume.

(b) A joint claim may be submitted for reimbursement of third parties as provided in Section 25299.58 subject to both of the following conditions:

(1) The conditions set forth in subdivision (a) are satisfied.

(2) An owner or operator named in the joint claim is liable for a third-party compensation claim.

#### **§ 25299.94. Payment by board; corrective action costs and third-party compensation claims**

(a) (1) The board may pay the cost of corrective actions and third-party compensation claims that are submitted as part of a joint claim filed on or before December 31, 2014, and that exceed the amount specified in subdivision (b), but do not exceed an amount equal to one million five hundred thousand dollars (\$1,500,000) per occurrence, for which an owner or operator named in the joint claim is eligible for reimbursement under this chapter.

(2) If a claim from a contributing site exceeds one million dollars (\$1,000,000) for an occurrence, the board may only reimburse costs submitted pursuant to Section 25299.57 for those costs in excess of one million dollars (\$1,000,000).

(3) If a joint claim is filed on or after January 1, 2015, the board may pay the cost of corrective actions and third-party compensation claims that are submitted as part of a joint claim and that exceed the amount specified in subdivision (b), but do not exceed an amount equal to one

million dollars (\$1,000,000) per occurrence, for which an owner or operator named in the joint claim is eligible for reimbursement under this chapter.

(b) For each joint claim, the board may only pay for the costs of corrective action and third-party compensation claims that exceed the aggregate of the levels of financial responsibility required pursuant to Section 25299.32 for each owner or operator named in the joint claim.

(c) The costs of corrective action determined eligible for reimbursement shall be paid before third-party compensation claims.

(d) Except as provided in paragraph (1) of subdivision (e), reimbursement for costs of corrective action is limited to costs incurred by the joint claimants after executing an agreement under paragraph (7) of subdivision (a) of Section 25299.93.

(e) Both of the following costs of corrective action incurred at a contributing site may be reimbursed in accordance with subdivision (f):

(1) Costs incurred by an owner or operator before executing an agreement described in paragraph (7) of subdivision (a) of Section 25299.93.

(2) Costs relating to unauthorized releases that do not contribute to the commingled plume, but which are included in the occurrence which is the subject of the joint claim.

(f) An owner or operator may seek reimbursement of costs described in subdivision (e) by doing either of the following:

(1) Including a payment request for those corrective action costs with the claim filed under this article.

(2) Filing a claim or maintaining an existing claim under Article 6 (commencing with Section 25299.50).

(g) Any reimbursement received pursuant to subdivision (f) and any amount excluded from the payment based on the amount of financial responsibility required to be maintained shall be applied toward the limitations prescribed in subdivision (a).

(h) The board shall not reimburse a claimant or joint claimant for any eligible costs for which the claimant or joint claimant has been, or will be, compensated by another party.

#### **§ 25299.95. Duplicative claims; application of section**

(a) An owner or operator named in a joint claim filed under this article may not file or maintain a claim under Article 6 (commencing with Section 25299.50) for the same occurrence.

(b) When a joint claim under this article has been approved, the board shall remove any claims filed under

Article 6 (commencing with Section 25299.50) by an owner or operator named in the approved claim.

(c) If an owner or operator withdraws from a claim filed under this article, the owner or operator may submit or resubmit a claim pursuant to Article 6 (commencing with Section 25299.50).

(d) Any claims filed pursuant to subdivision (c) shall be assigned to a priority class pursuant to Section 25299.52 and ranked in accordance with the procedures contained in regulations adopted by the board pursuant to Section 25299.77.

(e) This section does not apply to a claim filed for a separate occurrence at a contributing site or a claim authorized pursuant to paragraph (2) of subdivision (f) of Section 25299.94.

**§ 25299.96. Priority for payment**

The priority for payment of a joint claim submitted under this article shall be based on the date on which the board receives a complete application. For purposes of this section, an application shall not be considered complete until the applicable local agency or other regulatory agency confirms the existence of a commingled plume and the joint claimant submits an agreement which complies with paragraph (7) of subdivision (a) of Section 25299.93.

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**ARTICLE 12. DRINKING WATER WELL PROTECTION**

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**§ 25299.97. GIS mapping system; GIS Mapping and Data Management Advisory Committee; pilot projects; definitions**

(a) For the purposes of this article, the following definitions shall apply:

(1) "Public drinking water well" means a wellhead that provides drinking water to a public water system, as that term is defined in Section 116275, that is regulated by the State Department of Health Services and that is subject to Section 116455.

(2) "MTBE" means methyl tertiary-butyl ether.

(3) "GIS mapping system" means a geographic information system that collects, stores, retrieves, analyzes, and displays environmental geographic data in a data base that is accessible to the public.

(4) "Motor vehicle fuel" includes gasoline, natural gasoline, blends of gasoline and alcohol or gasoline and oxygenates and any inflammable liquid, by whatever name the liquid may be known or sold, which is used or usable for propelling motor vehicles operated by the explosion type engine. It does not include kerosine, liquefied petroleum gas, or natural gas, in liquid or gaseous form.

(5) "Oxygenated motor vehicle fuel" is motor vehicle fuel, as defined in paragraph (4), that meets the federal definition for "Oxygenated Fuel" as defined in Section 7545(m) of Title 42 of the United States Code.

(6) "Oxygenate" means an organic compound containing oxygen that has been approved by the United States Environmental Protection Agency as a gasoline additive to meet the requirements for an "oxygenated fuel" pursuant to Section 7545 of Title 42 of the United States Code.

(b) The State Water Resources Control Board shall upgrade the data base created by Section 25299.39.1. This upgrade shall include the establishment of a statewide GIS mapping system as described in this section only upon an appropriation by the Legislature for this purpose.

(c) (1) For purposes of subdivision (b), the board shall create a GIS Mapping and Data Management Advisory Committee. The committee shall give the board advice on location standards, protocols, metadata, and the appropriate data to expand the data base to create a cost-effective GIS mapping system that will provide the appropriate information to allow agencies to better protect public drinking water wells and, if feasible, nearby aquifers that are reasonably expected to be used as drinking water, from contamination by motor vehicle fuel from underground storage tanks and intrastate and interstate pipelines that are regulated by the State Fire Marshal pursuant to the California Pipeline Safety Act of 1981, Chapter 5.5 (commencing with Section 51010.5) of Part 1 of Division 1 of Title 5 of the Government Code.

(2) The advisory committee shall include, at a minimum, members from appropriate state and local agencies, affected industry and business, the water agencies that provide drinking water in Santa Monica, the water agencies that provide drinking water in the Santa Clara Valley, nonprofit environmental groups dedicated to the conservation and preservation of natural resources, and underground storage tank owners.

(d) (1) The board shall create two pilot projects, the Santa Monica Groundwater Pilot Project and the Santa Clara Valley Groundwater Pilot Project, which shall terminate on July 1, 1999.

(2) The board shall create the pilot projects with the advice of the advisory committee so as to expedite and prioritize the upgrading of the data base for those regions of the state where groundwater provides, or would be called on in an emergency to provide, a significant portion of the region's drinking water.

(3) The board shall use the pilot projects to define and assess the parameters of the data base, identify data needs, develop opportunities to electronically link data bases and electronic submission of information, offer access to the public via the Internet, streamline existing processes, and work out the details for data management and a GIS mapping system as described in this article.

(4) The pilot projects shall study appropriate modification to public water systems and response times.

(e) To upgrade the data base as required by this section, the board, in consultation with the advisory committee, shall do all of the following:

(1) Coordinate with the Department of Water Resources and the State Department of Health Services to obtain the location of existing drinking water wells and appropriate water resource and quality data to meet the requirements of this article.

(2) Coordinate with local agencies authorized to implement this chapter to obtain the location of all underground storage tanks that store motor vehicle fuel that are within 1,000 feet of a public drinking water well.

(3) Coordinate with local agencies authorized to implement this chapter to add the location of all known releases of motor vehicle fuel from underground storage tanks that are within 1,000 feet of a drinking water well.

(4) Coordinate with the State Fire Marshal to add the location and leak history of all pipelines or segments of pipelines that transport motor vehicle fuel and that are regulated by the State Fire Marshal pursuant to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code that are within 1,000 feet of an existing public drinking water well.

(f) The board may expend up to four hundred thousand dollars (\$400,000) from the Underground Storage Tank Cleanup Fund for the purposes set forth in Section 25299.36 to fund the GIS mapping system projects referred to in this section.

**CALIFORNIA HEALTH AND SAFETY CODE****DIVISION 20****CHAPTER 6.76****LOANS FOR REPLACING, REMOVING, OR UPGRADING UNDERGROUND STORAGE TANKS****§ 25299.100. Definitions**

For purposes of this chapter, the following definitions apply:

(a) "Board" means the State Water Resources Control Board.

(b) "Loan applicant" means a small business that applies to the board for a loan pursuant to this chapter.

(c) "Grant applicant" means a small business that applies to the board for a grant pursuant to this chapter.

(d) "Tank" means an underground storage tank, as defined in Section 25281, used for the purpose of storing petroleum, as defined in Section 25299.22. "Tank" also includes under-dispenser containment systems, spill containment systems, enhanced monitoring and control systems, and vapor recovery systems and dispensers connected to the underground piping and the underground storage tank.

(e) "Project tanks" means tanks that would be upgraded, replaced, or removed with loan or grant funds. "Project tanks" also includes tanks that are upgraded to comply with the Enhanced Vapor Recovery Phase II regulations.

(f) Terms defined in Section 25281 and used in this chapter, if not defined in this section, including, but not limited to, "facility," "local agency," "owner," and "operator," have the same meanings as specified in Section 25281.

**§ 25299.101. Loan program to assist small businesses; use of funds; grant program**

(a) The board shall conduct a loan program pursuant to this chapter, to assist small businesses in upgrading, replacing, or removing project tanks to comply with Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations.

(b) The board shall also conduct a grant program, pursuant to this chapter, to assist small businesses to upgrade, remove, or replace project tanks to comply with Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations.

**§ 25299.102. Loan eligibility requirements**

The board shall make loan funds available only to loan applicants that meet all of the following eligibility requirements:

(a) The loan applicant is a small business, either as defined in Section 632 of Title 15 of the United States Code, and in the federal regulations adopted to implement that section, as specified in Part 121 (commencing with Section 121.101) of Chapter 1 of Title 13 of the Code of Federal Regulations, or employs fewer than 500 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation. In either case, the principal office of the small business shall be domiciled in the state, and the officers of the small business shall be domiciled in the state. The board shall give priority to awarding loans to small businesses that meet the definition of small business specified in subdivision (d) of Section 14837 of the Government Code.

(b) The loan applicant owns or operates project tanks.

(c) The loan applicant demonstrates the ability to repay the loan, and the availability of adequate collateral to secure the loan.

(d) All tanks, except for project tanks, owned or operated by the loan applicant are in compliance with Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations.

(e) The project tanks are in compliance, or will be in compliance after the completion of the project, with Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations.

(f) The loan applicant is in compliance with the financial responsibility requirements specified in Sections 25292.2 and 25299.31 and with Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as it may be amended, or supplemented, and the regulations adopted pursuant to that subchapter.

### **§ 25299.103. Contents of loan application; failure to obtain permit**

A complete loan application shall include all of the following:

(a) Evidence that the applicant is a small business, as described in subdivision (a) of Section 25299.102.

(b) Evidence that the applicant owns or operates the project tanks.

(c) An environmental audit, environmental site assessment, or other documentation acceptable to the board that assesses environmental compliance and risks at the facility.

(d) Financial and legal documents necessary to demonstrate the applicant's ability to repay and provide collateral for the loan. The board shall develop a standard list of documents required of all applicants, and may also request from individual applicants additional financial and legal documents not provided on this list.

(e) Evidence that all tanks, except for project tanks, owned or operated by the loan applicant are in compliance with Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations.

(f) Evidence that the project tanks are in compliance, or will be in compliance after the completion of the project, with Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations.

(g) An explanation of the reasons why the work is necessary in order for the project tanks to be in compliance with, or remain in compliance with, Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations.

(h) A detailed cost estimate of all of the tasks that are required to complete the project for which the applicant is requesting loan funds, including those tasks that are not eligible for loan funds and all tasks being paid for using other sources of funds.

(i) Any other information that the board determines to be necessary to include in an application form.

### **§ 25299.104. Minimum loan amount; term of loans; use of funds; effect of repeal of chapter; loan fees**

(a) The minimum amount that the board may loan an applicant is ten thousand dollars (\$10,000), and the maximum amount that the board may loan an applicant is seven hundred fifty thousand dollars (\$750,000).

(b) The term of the loan shall be for a maximum of 20 years if secured by real property, and for 10 years if not secured by real property. The interest rate for loans shall be set at the rate equal to one-half of the most recent general obligation bond rate obtained by the office of the Treasurer at the time of the loan commitment.

(c) Loan funds may be used to finance up to 100 percent of the costs necessary to upgrade, remove, or replace project tanks, to comply with Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations.

(d) The board may charge a loan fee to loan applicants of up to 2 percent of the requested loan amount. The loan fee shall be deposited in the Petroleum Underground Storage Tank Financing Account.

(e) The inoperation or repeal of this chapter pursuant to Section 25299.117 shall not extinguish a loan obligation and shall not impair the deed of trust or other collateral made pursuant to this chapter or the authority of the state to pursue appropriate action for collection.

(f) Notwithstanding Section 16304.1 of the Government Code, the board shall encumber the funds appropriated pursuant to Section 25299.109 for purposes of this section within three years of the appropriation and the board may make a disbursement in liquidation of an encumbrance before or during the three years following the last day the appropriation is available for encumbrance.

#### **§ 25299.105. Availability of grant funds to applicants; eligibility requirements; use of funds**

(a) The board shall make grant funds available from the Petroleum Underground Storage Tank Financing Account to eligible grant applicants who meet all of the following eligibility requirements:

(1) The grant applicant is a small business, pursuant to the following requirements:

(A) The grant applicant meets the conditions for a small business concern, as defined in Section 632 of Title 15 of the United States Code, and in the federal regulations adopted to implement that section, as specified in Part 121 (commencing with Section 121.101) of Chapter I of Title 13 of the Code of Federal Regulations.

(B) The grant applicant employs fewer than 20 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation.

(2) The principal office of the grant applicant is domiciled in the state and the officers of the grant applicant are domiciled in the state.

(3) All tanks, except for project tanks, owned or operated by the grant applicant are in compliance with Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations.

(4)(A) The facility where the project tanks are located has sold at retail less than 1,500,000 gallons of gasoline annually for each of the two years preceding the submission of the grant application. Except as provided in subparagraph (B), the number of gallons sold shall be based upon taxable sales figures provided to the California Department of Tax and Fee Administration for that facility.

(B) The board may rely on other documentation where taxable sales figures provided to the California Department of Tax and Fee Administration are unavailable because the facility was not in operation for any part of the two years or the grant applicant did not own or operate the underground storage tanks at the facility for any part of the two years.

(5) Except as provided in subdivision (b), the facility meets either of the following:

(A) The project tanks are in compliance with Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations.

(B) All of the following requirements are met:

(i) The project tanks will be in compliance with Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations after the completion of the project.

(ii) The grant applicant submitted the grant application no more than 180 days after the applicable regulatory agency notified the grant applicant that the project tanks are not in compliance with Chapter 6.7 (commencing with Section 25280), Section 41954, or any implementing regulation.

(iii) The project tanks are not currently red tagged by the local agency pursuant to Section 25292.3.

(iv) The facility, at the time of application, is not subject to any enforcement action seeking to impose administrative civil liability, civil liability, or criminal liability pursuant to this chapter, or a regulation adopted pursuant to this chapter, unless the underlying violations that are the subject of that enforcement action have been corrected.

(6) Except as provided in subdivision (b), the facility where the project tanks are located is, or was during any part of the two years preceding the submission of the grant application, legally in the business of retailing motor vehicle fuel.

(b) The board may grant a waiver from requirements of paragraphs (5) and (6) of subdivision (a) if the board finds all of the following:

(1) The grant applicant owns or operates the project tanks.

(2) The project tanks will be removed and will not be replaced with new tanks.

(3) The grant applicant does not meet the requirements to obtain a loan pursuant to this chapter.

(c) Grant funds may only be used to pay the costs necessary to upgrade, remove, or replace project tanks to comply with Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations.

#### **§ 25299.106. Contents of grant application**

A complete grant application shall include all of the following information:

(a) Evidence that the grant applicant is a small business, as described in subdivision (a) of Section 25299.102.

(b) Evidence that the principal office of the grant applicant is domiciled in the state and the officers of the grant applicant are domiciled in the state.

(c) Evidence that all tanks, except for project tanks, owned or operated by the grant applicant are in compliance with Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations.

(d) Except as provided in subdivision (f), evidence that the project tanks are in compliance with Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations, or that the grant applicant meets all of the requirements in subparagraph (B) of paragraph (5) of subdivision (a) of Section 25299.105.

(e) Except as provided in subdivision (f), evidence that the facility where the project tanks are located is, or was during any part of the two years preceding the submission of the grant application, legally in the business of retailing motor vehicle fuel.

(f) A grant applicant that does not meet the requirements of subdivision (d) or (e), or both, shall instead provide evidence that the grant applicant meets all of the requirements for a waiver pursuant to subdivision (b) of Section 25299.105.

(g) An explanation of the actions the grant applicant is required to take to comply with the requirements of Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations.

(h) A detailed cost estimate of all of the actions that are required to complete the project for which the grant applicant is requesting grant funds, including those tasks that are not eligible for grant funds and all tasks being paid for using other sources of funds.

(i) Any other information that the board determines to be necessary to include in an application form.

#### **§ 25299.107. Minimum grant amount; use of funds**

(a) Except as provided in subdivision (e), the minimum amount that the board may grant an applicant is three thousand dollars (\$3,000), and the maximum amount that the board may grant an applicant is seventy thousand dollars (\$70,000).

(b) Grant funds may be used to finance up to 100 percent of the costs necessary to upgrade, remove, or replace project tanks to comply with Chapter 6.7 (commencing with Section 25280), Section 41954, and implementing regulations.

(c) If the board received the applicant's grant application on or before April 1, 2009, grant funds may be used to reimburse up to 100 percent of the costs that the applicant incurred after the board received the grant application to comply with the Enhanced Vapor Recovery Phase II regulations.

(d) Except as provided in subdivision (e), a person or entity is not eligible to receive more than seventy thousand dollars (\$70,000) in grant funds pursuant to this chapter.

(e) (1) Notwithstanding subdivisions (a) and (d), if the project tanks are located at a fueling station that is available for public use and there is no other fueling station available for public use within a radius of 15 miles from the fueling station, the board may make a grant in the maximum amount of one hundred forty thousand dollars (\$140,000) to assist the grant applicant to remove and replace tanks that are required to be permanently closed pursuant to Section 25292.05.

(2) Any grant issued pursuant to paragraph (1) shall not be included in the maximum amount that a person or entity may receive in grant funds pursuant to subdivision (d).

#### **§ 25299.108. Emergency regulations for immediate preservation of public peace, health and safety, and general welfare; repeal of regulations**

The board shall adopt regulations necessary to implement and make specific this chapter as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date unless the board complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 pursuant to subdivision (e) of Section 11346.1 of the Government Code.

**§ 25299.109. Creation of the Petroleum Underground Storage Tank Financing Account; moneys to be deposited in account; use of account funds; availability of funds; interest**

(a) The Petroleum Underground Storage Tank Financing Account is hereby created in the State Treasury. All of the following moneys shall be deposited in the Petroleum Underground Storage Tank Financing Account:

- (1) Federal, state, and local funds transferred for deposit in the account.
- (2) Repayments of loans and interest and late fees on loans issued pursuant to this chapter.
- (3) Repayments of loans and interest and late fees on loans issued pursuant to former Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code, as that chapter existed on December 31, 2003.
- (4) Moneys collected pursuant to Section 25299.110 and subdivision (d) of Section 25299.104.
- (5) Repayments of loan and grant moneys paid to a loan or grant applicant to which the applicant is not entitled.
- (6) Notwithstanding Section 16305.7 of the Government Code, all interest earned upon moneys that are deposited in the account.
- (7) All unexpended moneys in a subaccount of the account that is consolidated into the account by the act adding this paragraph.
- (8) All unexpended moneys in the Petroleum Financing Collection Account established pursuant to Section 25299.110, as added by Section 1 of Chapter 624 of the Statutes of 2004.

(b) Upon appropriation by the Legislature, funds in the account shall be used by the board to make loans and grants, service loans, recover defaulted loan moneys due, protect the state's position as a lender creditor, and administer this chapter.

(c) The board shall annually make available not more than 25 percent of the available funds from the account for the purposes of providing grants pursuant to this chapter.

(d) Eight million dollars (\$8,000,000) is hereby transferred from the portion of the fees collected pursuant to subdivisions (a) to (e), inclusive, of Section 25299.43 in the Underground Storage Tank Cleanup Fund, to the Petroleum Underground Storage Tank Financing Account, and is hereby appropriated for the purposes of making grants and loans pursuant to this chapter and administering this chapter.

**§ 25299.110. Defraying costs of administering loan program; board actions**

To defray the costs of the board in administering the loan program created pursuant to this chapter, the board may do all of the following:

- (a) Impose reasonable charges on all applications and impose the loan fee specified in subdivision (d) of Section 25299.104.
- (b) Recover collection costs from the borrower or other party.
- (c) Earn income on any asset recovered pursuant to a loan default.

**§ 25299.111. Reversion of moneys in Petroleum Underground Storage Tank Financing Account to the Underground Storage Tank Cleanup Fund**

If this chapter is repealed pursuant to Section 25299.117, then following the day on which the authority ceases to exist, all moneys in the Petroleum Underground Storage Tank Financing

Account and all moneys due that account shall revert to, and accrue to the benefit of, the Underground Storage Tank Cleanup Fund in the State Treasury.

**§ 25299.112. Authorized representative of local agency or board; request for information on grants or loans issued; violation; action by Attorney General; civil liability; remedies**

(a) To carry out the purposes of this chapter, an authorized representative of the local agency or board shall have the authority specified in Section 25185, with respect to any place where project tanks are or have been located, and in Section 25185.5, with respect to any real property that is within 2,000 feet of any place where project tanks are or have been located.

(b) A person shall furnish, under penalty of perjury, any information on grants or loans issued, or applied for, under this chapter, or requested for disbursement of funds pursuant to a grant or loan issued under this chapter that the local agency or board may require.

(c) A person who fails or refuses to furnish information pursuant to subdivision (b) or furnishes false information required or requested in connection with a grant or loan issued under this chapter is subject, in accordance with the requirements of subdivision (d) or (e), as applicable, to civil liability of not more than ten thousand dollars (\$10,000) for each violation of this subdivision.

(d) (1) Except as provided in paragraph (2), a person shall not be liable pursuant to subdivision (c) unless one of the following is established by the court, if the action is brought pursuant to subdivision (e), or by the executive director of the board, if the action is brought pursuant to subdivision (f):

(A) The alleged violation is knowing, willful, or intentional.

(B) The person received a material economic benefit from the action that caused the alleged violation.

(C) The alleged violation is chronic or that person is a recalcitrant violator, as determined pursuant to subdivision (g) of Section 13399 of the Water Code.

(2) If a person is in violation of subdivision (c), but does not meet any of the conditions specified in paragraph (1), the person may be held liable only if the board or an authorized representative of the board issues a notice to comply pursuant to Chapter 5.8 (commencing with Section 13399) of Division 7 of the Water Code before an action is taken pursuant to subdivision (e) or (f).

(e) The Attorney General, upon request of the board, shall bring an action in superior court to impose the civil liability specified in subdivision (c).

(f) The executive director of the board may impose the civil liability specified in subdivision (c) administratively in the same manner as the executive director of the board is authorized to impose civil liability pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(g) In determining the amount of any civil liability imposed pursuant to this section, the executive director of the board, or the court shall take into account the nature, circumstances, extent, and gravity of the false statement or refusal or failure to furnish information, the person's ability to pay, any prior history by the person of misrepresentations to or noncooperation with the board or local agency, any economic benefits or savings that resulted or would have resulted from the false statement or refusal or failure to furnish information, and other matters as justice may require.

(h) Remedies under this section are in addition to, and do not supersede or limit, any other civil, administrative, or criminal remedies.

(i) A penalty collected pursuant to this section shall be deposited in the Petroleum Underground Storage Tank Financing Account.

**§ 25299.113. Misrepresentation related to grant or loan; action by Attorney General; civil liability; complaint to licensing board; remedies**

(a) A person who makes a misrepresentation in a document relating to a grant or loan issued under this chapter, including, but not limited to, a record, report, certification, application, invoice, form, or other document that is submitted to the board is subject to civil liability of not more than five hundred thousand dollars (\$500,000) for each violation of this subdivision.

(b) Except as provided in subdivision (d), the Attorney General, upon request of the state board, shall bring an action in superior court to impose the civil liability specified in subdivision (a).

(c) Except as provided in subdivision (d), the executive director of the board may impose the civil liability specified in subdivision (a) administratively in the same manner as the executive director of the board is authorized to impose civil liability pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(d) If a violation of subdivision (a) by a person is not knowing, willful, or intentional, the board or an authorized representative of the board, before an action may be taken pursuant to subdivision (b) or (c), shall issue a notice to comply pursuant to Chapter 5.8 (commencing with Section 13399) of Division 7 of the Water Code.

(e) In determining the amount of civil liability imposed pursuant to this section, the executive director of the board, or the court, as the case may be, shall take into account the nature, circumstance, extent, and gravity of the violation, the person's ability to pay, any prior history of misrepresentations by the person to the board or local agency, any economic benefits or savings that resulted or would have resulted from the false statement, and other matters as justice may require.

(f) Remedies under this section are in addition to, and do not supersede or limit, any other civil, administrative, or criminal remedies.

(g) A penalty collected pursuant to this section shall be deposited in the Petroleum Underground Storage Tank Financing Account.

(h) The board shall file a complaint with any applicable licensing board against any person licensed or otherwise regulated by that licensing board who is found to be liable under this section.

**§ 25299.113.1. False statement; material misrepresentation, or false certification in support of grant or loan; action by Attorney General; criminal penalty; fine; remedies; complaint to licensing board**

(a) A person who knowingly makes or causes to be made a false statement, material misrepresentation, or false certification in support of a grant or loan under this chapter, including, but not limited to, in an application, record, report, certification, plan, invoice, form, or other document that is submitted, filed, or required to be maintained under this chapter for purposes of a grant or loan, shall, upon conviction, be punished by a fine of not more than ten

thousand dollars (\$10,000), or by imprisonment in a county jail for not more than one year, or in the state prison for 16 months, two years, or three years, or by both that fine and imprisonment.

(b) The Attorney General, upon request of the board, may bring an action in superior court to impose the criminal penalty specified in subdivision (a).

(c) Remedies under this section are in addition to, and do not supersede or limit, any other civil or criminal remedies.

(d) A fine collected pursuant to this section shall be deposited in the Petroleum Underground Storage Tank Financing Account.

(e) The board shall file a complaint with any applicable licensing board against any person licensed or otherwise regulated by that licensing board who is convicted under this section.

#### **§ 25299.113.2. Action by Executive Director; review by board**

An action by the executive director to impose civil liability under this chapter is subject to review by the board in the same manner as provided for the review by the board of actions of a regional board under Section 13320 of the Water Code.

#### **§ 25299.114. Service in exempt positions; transfer to the board**

All persons serving in an exempt position engaged in the performance of a function described in former Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code as repealed by Chapter 229 of the Statutes of 2003 or the administration of the program described in that chapter shall be transferred to the board subject to approval by the Department of Finance. This transfer shall not affect the status, positions, and rights of these persons. Section 19050.9 of the Government Code shall apply to the transfer of persons serving in state civil service who are engaged in the performance of a function or the administration of that chapter.

#### **§ 25299.115. Effect of repeals on obligations to pay filed claims**

The repeal of former Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code by Chapter 229 of the Statutes of 2003 shall not be construed to terminate any obligation to pay claims filed, repay loans outstanding, or resolve any cost recovery action filed on or before January 1, 2004.

#### **§ 25299.116. Recipients of expired grants**

A recipient of a grant that was awarded pursuant to former Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code, as that chapter existed on December 31, 2003, and that expired after December 31, 2003, may receive grant funds from the Petroleum Underground Storage Tank Financing Account consistent with the terms of the grant, for one year following enactment of this chapter, notwithstanding expiration of the grant.

#### **§ 25299.117. Repeal of chapter; termination of rights, obligations, or authorities**

(a) Except as provided in subdivision (b), this chapter shall remain in effect only until January 1, 2036, and as of that date is repealed.

(b) Notwithstanding subdivision (a), the repeal of this chapter does not terminate any of the following rights, obligations, authorities, or any provision necessary to carry out these rights, obligations, and authority:

(1) The repayment of loans due and payable to the board.

(2) The resolution of any cost recovery action or the initiation of an action or other collection process to recover defaulted loan moneys due to the board or to recover grant moneys paid but to which the grantee is not entitled.

(3) The resolution of an action taken pursuant to Section 25299.112, 25299.113, or 25299.113.1, or the initiation of one of those actions.