

STATE WATER RESOURCES CONTROL BOARD MEETING
RESOLUTION NO. 94-105

AMENDING OF REGULATIONS GOVERNING
THE PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND
TO BE CODIFIED IN CHAPTER 18 OF DIVISION 3 OF TITLE 23 OF THE
CALIFORNIA CODE OF REGULATIONS (23 CCR SECTIONS 2803-2814.3)

WHEREAS:

1. Chapter 6.75 of the Health and Safety Code (H&SC) was added to the Code by Chapter 1443 of the Statutes of 1989 and amended by Chapter 1366 of the Statutes of 1990 (SB 299 as amended by SB 2004, Keene).
2. Section 25299.54 Chapter 6.75 of the H&SC was amended by Assembly Bill 3188 (Chapter 1220, Statutes of 1992) to clarify the legislative intent for residential tank owners to be eligible for funding.
3. Section 25299.52 Chapter 6.75 of the H&SC was amended by Assembly Bill 1061 (Chapter 432, Statutes of 1993) to include, in the second ranking, a city, county, district, or nonprofit organization that has total annual revenues of less than \$7 million, and would include in the third ranking, a city, county, district, or nonprofit organization that employs fewer than 500 full-time and part-time employees.
4. Section 25299.52 Chapter 6.75 of the H&SC was amended by Assembly Bill 1061 (Chapter 432, Statutes of 1993) to require the SWRCB to adopt a priority ranking list for awarding claims at least annually, rather than at least twice annually.
5. Section 25299.57 Chapter 6.75 of the H&SC was amended by Assembly Bill 1061 (Chapter 432, Statutes of 1993) to enable claimants to request the SWRCB to grant a waiver of the eligibility criteria for complying with the permit requirements as established by the original statutes.
6. Section 25299.77 of Chapter 6.75 of the H&SC further authorizes the SWRCB to adopt these amended regulations as emergency regulations.

THEREFORE BE IT RESOLVED THAT:

The State Water Resources Control Board hereby adopts the proposed amendments to Chapter 18, Division 3, Title 23 of the California Code of Regulations, the Petroleum Underground Storage Tank Cleanup Fund, as emergency regulations pursuant to the H&SC Section 25299.77 to implement interpret and make specific Chapter 6.75 of the H&SC.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 17, 1994.



Maureen Marché
Administrative Assistant to the Board

**State of California
State Water Resources Control Board**

**UNDERGROUND STORAGE TANK CLEANUP FUND
REGULATIONS
Proposed Amendments**

**CALIFORNIA CODE OF REGULATIONS
TITLE 23 WATERS
DIVISION 3 WATER RESOURCES CONTROL BOARD
CHAPTER 18**

**CALIFORNIA CODE OF REGULATIONS
TITLE 23 WATERS
DIVISION 3 WATER RESOURCES CONTROL BOARD
CHAPTER 18 PETROLEUM UNDERGROUND STORAGE TANK
CLEANUP FUND REGULATIONS**

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ARTICLE 1. GENERAL PROVISIONS

2803. Applicability

- (a) The regulations in this Chapter implement portions of Division 20, Chapter 6.75, of the California Health and Safety Code, commencing at Section 25299.10. Except as otherwise specifically provided, this Chapter applies to owners and operators of underground storage tanks as defined by Section 25281(x) of the California Health and Safety Code which contain or have contained petroleum ~~as defined under the Federal Act.~~
- (b) This Chapter also applies in part to owners of "residential tanks" as this term is defined in Section 2804 of Article 2 of this Chapter.
- (c) This Chapter also establishes financial responsibility requirements for certain owners and operators (Article 3).
- (d) This Chapter also ~~implements the Barry Keene Underground Storage Tank Cleanup Trust Fund~~ ~~establishes an Underground Storage Tank Cleanup Fund Program~~ and the process which helps eligible owners or operators pay for corrective action and third party compensation claim costs that result from an unauthorized release of petroleum from an underground storage tank (Article 4).
- (e) This Chapter also establishes a process for appeal of staff action to the Board (Article 5).

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.10 and 25299.11, Health and Safety Code

ARTICLE 2. DEFINITION OF TERMS

2804. Definitions

Unless the context clearly requires otherwise, the terms used in this Chapter shall have the following meanings:

"Accident" means an unintentional and unexpected event or happening.

"Annual aggregate amount" means the total amount of financial responsibility that is required to cover all unauthorized releases that might occur in one year.

"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 reimbursement claim application was filed. With respect to nonprofit organizations, this term means the total annual revenues, including all affiliates, 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 reimbursement claim application was filed.

"Board" means the State Water Resources Control Board.

"Bodily injury" means physical injury, sickness, disease, including death, sustained by any person as a proximate result of an unauthorized release from an underground storage tank.

"Certification" means a written statement signed by a claimant attesting to the accuracy and completeness of the facts contained in the written statement.

"CFR" means the Code of Federal Regulations.

"Chief financial officer" means the person who normally prepares, verifies or certifies financial information on behalf of an owner or operator. The term means the owner or operator of the underground storage tank if no other individual is designated as the chief financial officer.

"Claimant" means an owner or operator who files a claim against the Fund.

"Corrective action" means any activity necessary to investigate and analyze the effects of an unauthorized release; propose a cost-effective plan to adequately protect human health, safety, and the environment and to restore or protect current and potential

beneficial uses of water; and implement and evaluate the effectiveness of the activity(ies). Corrective action does not include any of the following activities:

- (a) Detection, confirmation, or reporting of the unauthorized release; or,
- (b) Repair, upgrade, replacement or removal of an underground storage tank or its associated equipment.

"Designated representative" means any person that provides financing for corrective action or third party compensation claim costs. The term includes the state, any department or agency thereof, or the federal government. **The term also includes any person designated by the Board as its representative.**

"Division" means the State Water Resources Control Board, Division of Clean Water Programs, or any other Division of the board authorized to administer the Fund.

"Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. This term also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

"Facility" means any one, or combination of, underground storage tanks used by a **single business entity** or person at a single location or site.

"Federal Act" means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United State Code, as added by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), as it may subsequently be amended or supplemented, and the regulations adopted pursuant thereto. The Federal Act is incorporated herein by reference.

"Financial responsibility" means the applicable state and federal financial responsibility requirements for petroleum underground storage tanks. These requirements are established by:

- (a) Title 40 CFR, Part 280, Subpart H, commencing with Section 280.90;
- (b) Section 25292.2 of Chapter 6.7 of the California Health and Safety Code;
- (c) Article 3 of Chapter 6.75 of the California Health and Safety Code commencing with Section 25299.30; and
- (d) Article 3 of this Chapter.

~~"Force account" means use by a local governmental entity of its own forces to accomplish work.~~

"Fund" means the Underground Storage Tank Cleanup Fund created pursuant to Section 25299.50 of the California Health and Safety Code.

~~"General purpose revenues" 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.~~

"Gross negligence" means any act or failure to act by the owner or operator, its employees, agents, or any other person under the owner's or operator's supervision or control, in reckless disregard of the consequences, which causes or allows an unauthorized release from an underground storage tank to occur or to continue.

"Heating oil" means petroleum as defined in 40 CFR, Part 280, Federal Register, Volume 53, Number 185, page 37117, namely: No.1, No.2, No.4-light, No.4-heavy, No.5-light, No.5-heavy, and No.6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils.

"Initiation of corrective action" means actual commencement of corrective action work by or under the authority of an owner or operator.

"Local agency" means the department, office, or other agency of a county or city designated pursuant to Section 25283 of Chapter 6.7 of the California Health and Safety Code.

~~"Nonprofit organization" means a nonprofit public benefit organization incorporated pursuant to Part 2 (commencing with Section 511) of Division 2 of Title 1 of the Corporations Code.~~

"Occurrence" means an accident which results in an unauthorized release of petroleum from an underground storage tank. Unauthorized releases caused by several sources but 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 site investigation and corrective action, exclusive of verification monitoring, have been completed for the prior unauthorized release.

"Operator" means any person in control of, or having responsibility for the daily operation of an underground storage tank containing petroleum. The term 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.

"Owner" means the owner of an underground storage tank containing petroleum. The term 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. The term includes any person who has legal title to an underground storage tank and any owner of real property who is a de facto owner of an underground storage tank located on such property.

"Permit" means a written authorization issued under Chapter 6.7 of the California Health and Safety Code and includes but is not limited to the permit required pursuant to Section 25284 for an owner or operator to operate an underground storage tank.

"Person" means an individual, trust, firm, joint stock company, corporation, or other entity, including a government corporation, partnership, or association. The term includes any city, county or district, or any agency or department thereof but does not include the state, any department or agency thereof, or the federal government.

"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.

"Petroleum marketing facilities" means all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with underground storage tanks as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Property damage" means loss, injury, or deterioration to a third party's real or personal property which is caused by an unauthorized release of petroleum from an underground storage tank.

"Regional Board" means a California Regional Water Quality Control Board.

"Regulatory agency" means the Board, a Regional Board, or any local, state, or federal agency which has responsibility or authority for regulating underground storage tanks or which has responsibility for cleanup or overseeing cleanup of unauthorized releases from underground storage tanks.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils. The term does not include releases which are clearly attributable to spills and overfills occurring as a result of filling or emptying of a tank.

"Residence" means real property which is improved with an owner occupied single family dwelling or duplex.

"Residential tank" means an underground storage tank which meets all of the following conditions:

- (a) The tank is located ~~at the residence of a person or persons on property zoned only for residential use used exclusively for residential purposes at the time of discovery of the unauthorized release,~~ or the tank is located at the residence of a person or persons, has a capacity of 1,100 gallons or less, and been exclusively used since January 1, 1985, to store home heating oil for consumptive use on the premises where stored; and
- (b) The property where the tank is or has been located since January 1, 1985, was not used for agricultural purposes on or after January 1, 1985; and
- (c) The tank is not located on a farm and primarily used to store motor vehicle fuel for agricultural purposes or for resale; and
- (d) The tank has not been used for agricultural purposes or to store petroleum for resale since January 1, 1985.

"Small business" means a business which complies with all of the following conditions ~~at the time of application to the Fund. For a business that is no longer in operation, the business must have met the conditions at the time the business was last operated:~~

- (a) The principal office is located in California;
- (b) The officers of the business, ~~or owners if not a corporation,~~ are domiciled in California;
- (c) The business is independently owned and operated;
- (d) The business is not dominant in its field of operation; and
- (e) Gross revenues from the business do not exceed the limits established by Section 1896 of Title 2 of the California Code of Regulations.

"SWEEPS" means the Statewide Environmental Evaluation and Planning System administered by the California Association of Environmental Health Administrators.

"Tangible net worth" means the tangible assets that remain after deducting liabilities. Such assets do not include intangibles such as good will and rights in patents or royalties.

"Third party" means a person other than the owner of the real property, or the owner or operator of the underground storage tank, which is the subject of a claim. The term does not include tenants or landlords of the site.

"Third party compensation claim" means a claim for reimbursement from the Fund as a result of payment or incurrence of a court-approved settlement, a final judgment other than a default judgement, or an arbitration award by a court-appointed arbitrator as a result of proceedings in accordance with the California Code of Civil Procedure commencing with Section 1280, imposing liability upon an owner or operator for bodily injury or property damage to a third party as a result of an unauthorized release of petroleum from an underground storage tank.

"Unauthorized release" means any reportable unauthorized release of petroleum from an underground storage tank, unless the release is authorized by the Board or a Regional Board pursuant to Division 7 (commencing with Section 13000) of the California Water Code.

"Underground storage tank" means any one or combination of tanks, including pipes connected thereto, which is used for the storage of petroleum and which is substantially or totally beneath the surface of the ground. "Underground storage tank" does not include any of the following: structures specifically exempted under Section 2621 of Title 23, Chapter 16 of the California Code of Regulations. Currently exempted structures are:

- (a) A tank with a capacity of 1,100 gallons or less which is located on a farm and which stores motor vehicle fuel used primarily for agricultural purposes and not for resale;
- (b) A tank which is located on a farm or at the residence of a person which has a capacity of 1,100 gallons or less, and which stores home heating oil for consumptive use on the premises where stored;
- (c) Structures such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits, sumps and lagoons. Sumps which are a part of a monitoring system required under the

California Health and Safety Code, Section 25291 or Section 25292 and sumps or other structures defined as underground storage tanks under the Federal Act are not exempt by this section;

- (d) ~~A tank holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices. A hydraulic lift tank which holds hydraulic fluid to operate lifts, elevators, and other similar equipment with a capacity of less than 110 gallons;~~
- (e) A liquified petroleum gas tank which contains normal butane, isobutane, propane, or butylene (including isomers) or mixtures composed predominantly thereof in liquid or gaseous state having a vapor pressure in excess of 40 pounds per square inch absolute at a temperature of 100 degrees of Fahrenheit;
- (f) A liquid asphalt tank which contains steam refined asphalts;
- (g) A septic tank designed and used to receive and process biological waste and sewage;
- (h) A wastewater treatment tank except a tank which is part of an underground storage tank system;
- (i) Storm water or wastewater collection systems; ~~Tanks and catch basins designed for storm water collection;~~
- (j) ~~Tanks containing radioactive material such as spent fuel pools, radioactive waste storage tanks, and similar tanks that are regulated under the Atomic Energy Act of 1954 (42 USC 2011); by other federal, state or local agencies such as: spent fuel pools, radioactive waste storage tanks, and similar tanks;~~
- (k) An emergency containment tank kept emptied to receive accidental spills and approved for such use by the appropriate local agency;
- (l) Drums located in basements or vaults which contain 55 gallons or less of material;
- (m) Underground storage tanks containing hazardous wastes as defined in Section 25316 of the California Health and Safety Code;
- (n) A flow-through process tank;

- (o) If exempted by Section 25283.5 of Chapter 6.7 of the California Health and Safety Code, a storage tank situated in an underground area such as a basement, vault, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25281, 25299.11-25299.25, 25299.37, 25299.52, 25299.54(e)(1) and (2), 25299.55, 25299.57(e), 25299.58, Health and Safety Code and 40 CFR Section 280.12

ARTICLE 3. FINANCIAL RESPONSIBILITY REQUIREMENTS

2805. Applicability

- (a) This Article applies to all owners and operators of underground storage tanks containing petroleum who, pursuant to the Federal Act, are required to demonstrate financial responsibility to take corrective action and compensate third parties for bodily injury and property damage caused by accidental releases of petroleum. Owners and operators who are not required to demonstrate financial responsibility by the Federal Act are not subject to the requirements of this Article.
- (b) Current federal financial responsibility requirements are contained in 40 CFR Part 280 regulations which are incorporated herein by reference.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.30 and 25299.77, Health and Safety Code

2806. General Responsibility to Meet Federal Requirements

- (a) All owners and operators subject to this Article are required to demonstrate financial responsibility in the amounts and at the times required by the Federal Act. When owners and operators are no longer required to demonstrate financial responsibility by the Federal Act, they are no longer required to demonstrate financial responsibility by this Article.
- (b) An owner or operator is no longer required to demonstrate financial responsibility or maintain evidence thereof for any underground storage tank which has been permanently closed or, if corrective action is required, after the corrective action has been completed and the tank has been permanently closed in accordance with the applicable provisions of Section 25298 of Chapter 6.7 of the California Health and Safety Code and Article 7, Chapter 16, Division 3, Title 23, California Code of Regulations and applicable local requirements.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.30 and 25299.77, Health and Safety Code

2806.1. Current Federal Compliance Dates

(a) Owners and operators must comply with federal financial responsibility requirements by the date or dates specified in the Federal Act. Currently the applicable federal compliance dates are:

- (1) January 24, 1989 for all petroleum marketing firms owning 1,000 or more underground storage tanks and all other underground storage tank owners who report a tangible net worth of \$20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration;
- (2) October 26, 1989 for all petroleum marketing firms owning 100-999 underground storage tanks;
- (3) April 26, 1991 for all petroleum marketing firms owning 13-99 underground storage tanks at more than one facility; and
- (4) ~~December 31, 1993~~ ~~October 26, 1994~~ for all petroleum underground storage tank owners or operators not described in paragraphs (1)-(3) of this Section, excluding local governmental entities.

~~(5) February 18, 1994 for local governmental entities.~~

~~(6) December 31, 1994 for federally recognized Indian tribes that own underground storage tanks on Indian lands if those tanks comply with all current technical requirements, such as leak detection requirements.~~

~~(b) Federal and state agencies are not subject to financial responsibility. (b) Local governmental entities are not currently subject to a federal compliance date. Such entities who own or operate an underground storage tank shall comply with federal financial responsibility requirements by any date established by the Federal Act.~~

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.30 and 25299.77, Health and Safety Code

2807. Required Financial Responsibility Amounts

Owners and operators must demonstrate financial responsibility in the amounts required by the Federal Act. Currently the federally required minimum amounts are:

- (a) \$1 million per occurrence for owners and operators of underground storage tanks either located at a petroleum marketing facility or which handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; or
- (b) \$500,000 per occurrence for all owners and operators not included in the preceding paragraph; and
- (c) \$1 million annual aggregate coverage for owners and operators of 1 to 100 underground storage tanks; or
- (d) \$2 million annual aggregate coverage for owners and operators of 101 or more underground storage tanks.
- (e) The amounts of assurance required under this section exclude legal defense cost.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.30, 25299.32 and 25299.77, Health and Safety Code

2808. Demonstration of Financial Responsibility Through Compliance with Federal Requirements

Owners and operators may fulfill federal financial responsibility requirements in the manner and through the mechanisms authorized by the Federal Act. Owners and operators who choose to fulfill financial responsibility requirements in this manner must meet all applicable conditions and requirements, and are subject to all applicable provisions contained, in the Federal Act.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.30 and 25299.77, Health and Safety Code

2808.1. Use of Fund to Meet Financial Responsibility Requirements

- (a) As an alternative to, or in conjunction with, demonstration of financial responsibility in the manner and through use of the mechanisms authorized by the Federal Act, an owner or operator may demonstrate financial responsibility of up to \$1 million through use of the Fund. In order to use the Fund as a basis for demonstration of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage, an owner or operator must at all times:

- (1) Demonstrate financial responsibility of at least \$10,000 per occurrence and \$10,000 annual aggregate coverage exclusive of the Fund. If waiver granted pursuant to Section 2811 (a)(2)(B), demonstrate financial responsibility of at least \$20,000 per occurrence and \$20,000 annual aggregate coverage exclusive of the Fund;
 - (2) Demonstrate financial responsibility for any required amount above \$1 million exclusive of the Fund for those owners and operators required to comply with the provisions of Section 2807(d); and
 - (3) Maintain eligibility to participate in the Fund.
- (b) The Board reserves the right to increase the minimum levels of financial responsibility specified in subsection (a)(1) of this Section after public hearing upon a determination that such an increase is appropriate for protection of the public and that private insurance to cover such increase is available and affordable.
- (c) An owner or operator may demonstrate the financial responsibility required by subsections (a)(1) and (2) of this Section through use of any of the mechanisms authorized by the Federal Act, or through use of any mechanism specified and approved by the Board. Owners and operators who choose to fulfill financial responsibility requirements in this manner must meet all applicable conditions and requirements, and are subject to all applicable provisions, indicated in the Federal Act.
- (d) As an alternate to the mechanisms indicated in subsection (c) of this Section, an owner or operator may demonstrate compliance with applicable financial responsibility requirements by demonstration of a tangible net worth of ten times the required minimum applicable annual aggregate coverage required under or pursuant to subsections (a)(1) or (b) of this Section. The tangible net worth amount must be calculated on the basis of current market value of tangible assets and must reflect the tangible net worth of the owner or operator as of the close of the latest completed fiscal year used by the owner or operator. In order to utilize the alternative specified in this subsection:
- (1) The chief financial officer or the owner or operator must sign, under penalty of perjury, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer for [insert: business name, business address and correspondence address of the owner or operator]. This letter is in support of the use of the Underground Storage Tank Cleanup Fund to demonstrate financial responsibility for taking corrective action and/or compensating third parties for bodily injury and property damage caused by an unauthorized release of petroleum in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate coverage.

Underground storage tanks at the following facilities are assured by this letter: [insert: the name and address of each facility where tanks for which financial responsibility is being demonstrated are located].

1. Amount of annual aggregate coverage being assured by this letter.....\$ _____
2. Total tangible assets.....\$ _____
3. ~~Total liabilities.....\$ _____~~
(if any of the amount on line 2 is included in total liabilities, you may deduct that amount from this line and add that amount to line 4)
4. Tangible net worth (subtract line 3 from line 2. Line 4 must be at least 10 times line 1).....\$ _____

I hereby certify that the wording of this letter is identical to the wording specified in subsection 2808.1 (d)(1), Chapter 18, Division 3, Title 23 of the California Code of Regulations.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed at [insert: place of execution] on [insert: date].

[Signature]

[Name]

[Title]

- (2) The letter must be signed by the date on which the owner or operator commences use of the alternative allowed by this subsection and it must be renewed within 150 calendar days after the close of each subsequent

fiscal year so long as the owner or operator continues to use this alternative to demonstrate financial responsibility.

- (e) If an owner or operator using the alternative provided by subsection (d) of this Section no longer meets applicable tangible net worth requirements based on the net worth of the owner or operator as of the close of the latest completed fiscal year used by the owner or operator, the owner or operator must demonstrate the required financial responsibility by an acceptable alternate mechanism within 150 calendar days of the close of such fiscal year.
- (f) The Division or any local or regulatory agency may require reports of financial condition at any time from an owner or operator. If the Division or a local or regulatory agency finds, on the basis of such reports or other information, that the owner or operator no longer meets the applicable tangible net worth requirements, the owner or operator must demonstrate the required financial responsibility by an acceptable mechanism within 30 calendar days after notification of such finding.
- (g) If an owner or operator subject to the requirements of subsections (e) and (f) of this Section cannot demonstrate the required financial responsibility called for by these subsections within the time frames stated therein, the owner or operator must notify the Division and any appropriate local regulatory agencies within 10 calendar days after expiration of the time frames indicated in subsections (e) and (f).

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.31, 25299.32, 25299.33, 25299.58(d) and 25299.77, Health and Safety Code

2808.2. Demonstration of Compliance with Financial Responsibility Requirements by Owners and Operators

If the owner and operator are separate persons, either the owner or operator shall demonstrate compliance with financial responsibility requirements. However, both are responsible to assure that applicable financial responsibility requirements are established and maintained at all times.

Authority: Section 25299.77, Health and Safety Code

Reference: Section 25299.31, Health and Safety Code

2808.3. Fund Coverage

- (a) An owner or operator using the Fund to demonstrate financial responsibility shall be liable for all costs of corrective action or third party compensation pending reimbursement from the Fund.
- (b) An owner or operator using the Fund to demonstrate financial responsibility is liable for payment of the first \$10,000 in corrective action or third party compensation costs. ~~If waiver granted pursuant to Section 2811 (a)(2)(B), an owner or operator using the Fund to demonstrate financial responsibility is liable for payment of the first \$20,000 in corrective action or third party compensation costs.~~
- (c) Provided that an owner or operator is in compliance with applicable financial responsibility requirements and meets all requirements for payment from the Fund, and subject to the availability of funds, the Fund will reimburse the owner or operator for the reasonable and necessary cost of corrective action and third party compensation costs incurred by the owner or operator above \$10,000 up to an amount not to exceed \$990,000 for each occurrence.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.32(a), 25299.57(a) and (d), 25299.58, 25299.59(e) and 25299.77, Health and Safety Code

2809. Reporting by Owner or Operator

- (a) An owner or operator shall notify the appropriate local agency, in writing, of initial compliance with the financial requirements of this Article within 45 calendar days of the ~~effective date of this Chapter or within 45 calendar days of~~ the appropriate compliance date specified in Section 2806. The owner or operator shall also notify the appropriate local agency of compliance with financial responsibility when applying for an initial permit to operate a new underground storage tank containing petroleum. Thereafter, at time of permit renewal, the owner or operator shall notify the appropriate local agency of continued compliance with the requirements of this Article.
- (b) An owner or operator must submit a copy of the financial responsibility mechanism or mechanisms being used by the owner or operator, and otherwise document current compliance with financial responsibility requirements, upon request of the appropriate regulatory agency or local agency under any of the following conditions:

- (1) Within 30 calendar days after the owner or operator identifies an unauthorized release of petroleum which is required to be reported under Article 5, Chapter 16, Division 3, Title 23, California Code of Regulations; or
- (2) As required by the Federal Act.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.31, 25299.33 and 25299.77, Health and Safety Code

2809.1. Recordkeeping

- (a) Owners and operators must maintain evidence of all mechanisms used to demonstrate financial responsibility in accordance with the provisions of this Article until the provisions of this Article no longer require such maintenance. Such evidence must be maintained at the underground storage tank site or sites or the owner or operator's place of business.
- (b) Evidence of all mechanisms used, other than a chief financial officer's letter utilized pursuant to subsection (d) of Section 2808.1, shall be maintained in accordance with the requirements of the Federal Act. A copy of any chief financial officer's letter used pursuant to subsection 2808.1(d) must be maintained on file at the underground storage tank site(s) or the owner or operator's place of business within 5 calendar days after execution of the letter. The copy of such letter shall be maintained so long as the owner or operator continues to use the letter to demonstrate financial responsibility.
- (c) An owner or operator using a mechanism allowed by this Article must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Owner or operator] hereby certifies that it is in compliance with the requirements of Section 2807, Article 3, Chapter 18, Division 3, Title 23, California Code of Regulations.

The mechanisms used to demonstrate financial responsibility as required by Section 2807 are as follows:

[List the facility and address, each type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of

coverage, and whether the mechanism covers taking corrective action and/or compensating third parties for bodily injury and property damage]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

The owner or operator must update this certification whenever the mechanisms used to demonstrate financial responsibility change.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.31(a), 25299.33 and 25299.77, Health and Safety Code

2809.2. Additional Financial Information

The Division or an appropriate regulatory or local agency may require an owner or operator to submit evidence of financial responsibility or other information relevant to compliance with this Article at any time.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.31(a), 25299.33 and 25299.77, Health and Safety Code

ARTICLE 4. THE FUND

2810. Types of Claims Permitted

- (a) The following types of claims against the Fund may be submitted:
- (1) A claim for reimbursement of corrective action costs incurred for work performed after January 1, 1988;
 - (2) A claim for reimbursement of amounts awarded in third party compensation;
 - (3) A claim for pre-approval of estimated corrective action costs to be incurred by the claimant;
 - (4) Any combination of the foregoing claims.
- (b) Only one claim per cost may be submitted. Joint claims may be submitted by multiple owners and operators. When joint claims are submitted, the Priority Class for the joint claim shall be based on the lowest priority appropriate for any claimant.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.51(f) and (i), 25299.54(a), 25299.55(c),
25299.57(a),(b),(c) and 25299.58(a)(2), Health and Safety Code

2810.1. Eligible Claimants

- (a) Only a current or former owner or operator of an underground storage tank or a residential tank may file a claim against the Fund. Only the following owners and operators may file claims:
- (1) A current owner or operator of an underground storage tank for which a permit is required under Section 25284 of the California Health and Safety Code; or
 - (2) Any owner or operator of an underground storage tank for which a permit is or was required under Section 25284 of the California Health and Safety Code who undertook or undertakes corrective action after January 1, 1988, pursuant to a local agency order, directive, or notification of cleanup responsibility, or pursuant to waste discharge requirements or other orders issued pursuant to Division 7 (commencing

with Section 13000) of the California Water Code, provided, however, that if such owner or operator knew of the unauthorized release of petroleum which is the subject of the claim prior to January 1, 1988, and failed to initiate corrective action on or before June 30, 1988, such owner or operator may not file a claim against the Fund; or

- (3) A current owner or operator of a residential tank; or
 - (4) Any owner or operator of a residential tank who undertook or undertakes corrective action after January 1, 1988, provided, however, that if such owner or operator knew of the unauthorized release of petroleum which is the subject of the claim prior to January 1, 1988, and failed to initiate corrective action on or before June 30, 1988, such owner or operator may not file a claim against the Fund.
 - (5) An owner or operator as described in subsections (1) through (4) of this Section who is liable for or has paid compensation to a third party. In order to file a third party compensation claim, the owner or operator must be or have been eligible to file a claim for corrective action costs for the site involved and the judgment, award or settlement involved must have been entered or approved after January 1, 1988.
 - (6) ~~An owner or operator~~ A person who has paid or will pay for the costs claimed.
- (b) Purchasers of real property or persons who otherwise acquire real property, on which an underground storage tank is situated may not file a claim against the Fund if:
- (1) The purchaser or acquirer knew or in the exercise of reasonable diligence would have discovered that an underground storage tank was located on the real property being acquired; and
 - (2) Any party from whom the real property was acquired would not have been eligible for reimbursement from the Fund.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.24, 25299.37(a),(b),(c), 25299.51(f) and (i), 25299.52(b)(1), 25299.54(a),(c),(e)(1) and (2), 25299.57(a), (d)(2) and (3), 25299.58(a) and (b)(2)-(4), Health and Safety Code

(C) Claimants granted a waiver pursuant to subparagraph (B) shall obtain a level of financial responsibility pursuant to Section 25299.32 of the California Health and Safety Code of at least \$20,000. The Board may waive the requirements of this subparagraph if the claimant can demonstrate that the conditions specified in clauses (i) through (iii), of subparagraph (B) were satisfied prior to the causing of any contamination. That demonstration may be made through a certification issued by the permitting agency based on site and tank tests at the time of permit application, or in any other manner acceptable to the Board.

- (3) The claimant is in compliance with any applicable financial responsibility requirements contained in Article 3 of this Chapter; and
 - (4) The claimant took corrective action in accordance with any applicable provisions of Chapter 6.7 (commencing with Section 25280) of the California Health and Safety Code and the Federal Act; and
 - (5) Any corrective action taken was consistent with any applicable oral or written local agency or regulatory agency orders, directives, approvals or notifications of cleanup responsibility, and consistent with any applicable waste discharge requirements or other oral or written orders or directives issued or given pursuant to Division 7 (commencing with Section 13000) of the California Water Code, any applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of said Water Code, and any applicable water quality control plans adopted pursuant to Section 13170 and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of said Water Code. If an oral order, directive, notification or approval is relied upon, the claimant shall provide a written statement from the appropriate local or regulatory agency certifying that the necessary order, directive, notification or approval was issued or given, or shall provide such other verification that the necessary order, directive, notification or approval was issued or given as may be acceptable to the Division.
- (b) With respect to corrective action costs incurred after ~~December 2, 1991~~ the effective date of these regulations, an owner or operator of an underground storage tank or a residential tank for which a permit is required under Section 25284 of the California Health and Safety Code shall be entitled to reimbursement for such costs only if the conditions of ~~subsections (a)(1) through (5)~~ subsection (a)(1), (3) and (4) of this Section are met and:

- (1) The claimant meets the requirements of subsection (a) (2) of this Section with respect to any tank involved in the claim which was installed prior to January 1, 1990; or
 - (2) The claimant obtained or applied for any and all permits required of the claimant pursuant to Chapter 6.7 of the California Health and Safety Code in accordance with the requirements of Chapter 6.7 with respect to any tank involved in the claim which was installed after January 1, 1990; and
 - (3) The claimant is in compliance with applicable corrective action requirements established pursuant to Article 4 (commencing with Section 25299.36) of Chapter 6.75 of the California Health and Safety Code including the implementing regulations in Article 11, Chapter 16, Division 3, Title 23, California Code of Regulations; and
 - (4) The claimant is required or permitted to undertake corrective action pursuant to an oral or written local agency order, directive, notification or approval issued or given pursuant to Section 25299.37 of the California Health and Safety Code or pursuant to a cleanup and abatement order or other oral or written directive issued or given by the Board or a Regional Board pursuant to Division 7 (commencing with Section 13000) of the California Water Code, and the claimant is in compliance with the requirements of any such orders or directives. If an oral order, directive, notification or approval is relied upon, the claimant shall provide a written statement from the appropriate local or regulatory agency certifying that the necessary order, directive, notification or approval was issued or given, or shall provide such other verification that the necessary order, directive, notification or approval was issued or given as may be acceptable to the Division.
- (c) With respect to corrective action costs incurred after ~~December 2, 1991~~ the effective date of these regulations, an owner or operator of a residential tank for which a permit is not required under Section 25284 of the California Health and Safety Code is entitled to reimbursement for corrective action costs only if the conditions set forth in subsections (a)(1)-(5) of this Section are met.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.24, 25299.37(a), (b) and (c), 25299.54(a),(b),(d) and (e), 25299.57(a) and (d)(1),(2),(3), 25299.58(b)(1),(3) and (4) and 25299.77, Health and Safety Code

2811.1. Claim Priority Classes

- (a) Each acceptable claim will be assigned to one of the following Priority Classes:
- (1) Class A--Claims by owners of residential tanks ~~as defined in Section 2804. In order to qualify for Priority Class A on the basis of zoning or use of the property as a residence, the property involved must have been zoned only for residential use or used as a residence at the time when the unauthorized release was discovered.~~
 - (2) Class B--Claims by owners and operators of underground storage tanks who meet the definition of a small business, ~~and cities, counties, districts, and nonprofit organizations that have total annual revenues of less than \$7,000,000.~~
 - (3) Class C--Claims by owners and operators of underground storage tanks where the owner or operator owns or operates a business which employs fewer than 500 full-time and part-time employees, is independently owned and operated, which is not dominant in its field of operation, and where the principal office is located in California, and all of the officers of the business are domiciled in California, ~~and for claims by cities, counties, districts, and nonprofit organizations that have less than 500 full-time and part-time employees.~~
 - (4) Class D--All other claims.
- (b) For purposes of assignment to a Priority Class, where the operator and the owner of a tank at the time of discovery of an unauthorized release are different persons, or where an operator and the current owner of a tank are different persons, and where such operator and owner would be eligible to submit a claim to the Fund for costs paid or incurred by such operator or owner, a claim submitted by either shall be treated as if a joint claim by both had been submitted as provided by Section 2810(b) of these regulations unless the claimant can demonstrate to the satisfaction of the Division that such treatment would be inconsistent with the priority scheme mandated by Section 25299.52(b) of the California Health and Safety Code.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.52(a) and (b) and 25299.54(e)(1) and (2), Health and Safety Code

2811.2. Claim Requirements - Claims For Reimbursement of Corrective Action Costs

Claims seeking reimbursement for corrective action costs which have been paid or incurred by the claimant shall contain the following information and include or be accompanied by the following documentation and certifications:

- (a) The name of the claimant, a correspondence address, a telephone number or numbers where the claimant can be contacted during normal business hours, and a federal tax identification number or social security number;
- (b) If a joint claim is submitted by multiple owners and operators, the name, correspondence address, telephone number or numbers, tax identification number or social security number for each owner and operator making claim against the Fund and the dates during which each owner or operator owned or operated the tank or tanks which are the subject of the claim;
- (c) If claimant has designated a representative as a co-payee for payment from the Fund, the name, address, and telephone number for the co-payee;
- (d) The street address or a description of the physical location where the tank or tanks from which the unauthorized release occurred is or was located, and a site map drawn to scale which includes a north arrow and distances relative to the nearest public roads;
- (e) The state identification number (SWEEPS number), if assigned by the local agency or the State Board, identifying the facility, any identification number assigned by a local agency, and the underground storage tank storage fee account number assigned by the California Board of Equalization if applicable;
- (f) A brief description of the background of the claim, so far as known to the claimant, including such particulars as:
 - (1) If the claimant files as an owner, the date on which the site involved was acquired by the claimant, the person or persons from whom the site was acquired and if the site has been sold, the date of sale and the person or persons who acquired the site;
 - (2) If the claimant files as an operator, the date on which the claimant first became an operator, the dates during which the claimant

operated the tank or tanks involved, the person or persons who owned such tank or tanks during such periods, including their last known correspondence address and telephone number, the name and address of the current owner of the tank or tanks involved, and the Priority Class which would be appropriate for the current owner if such owner were to file a claim against the Fund.

- (3) The capacity of the tank or tanks involved and the substance or substances which have been stored therein to the best of the claimant's knowledge;
 - (4) The date on which the claimant first learned of the unauthorized release;
 - (5) The date on which any corrective action was initiated and the current status of any corrective action in progress;
 - (6) If corrective action on the site is complete, the date on which such action was completed; and
 - (7) A brief description of the corrective action which was undertaken.
- (g) A statement of the Priority Class sought by the claimant together with a brief statement describing the justification for assignment to such Priority Class;
- (h) A statement of total amount of costs for which reimbursement is sought;
- (i) A certification that all corrective action costs claimed were incurred for work performed after January 1, 1988;
- (j) If the claim is for costs incurred prior to ~~December 2, 1991~~ the effective date of these regulations, certifications that:
- (1) The claimant is an owner or operator who is entitled to submit a claim against the Fund;
 - (2) There was an unauthorized release of petroleum for which a claim is permissible under Chapter 6.75, Division 20, of the California Health and Safety Code;
 - (3) The claimant had obtained any permit or permits required of the claimant pursuant to Chapter 6.7, Division 20, of the California

Health and Safety Code, or had filed a substantially complete application for such permit or permits not later than January 1, 1990. If the claimant cannot certify, and the claim was filed prior to January 1, 1994, the claimant shall include a brief statement of the facts and circumstances which are relied upon by the claimant to demonstrate that obtaining a required permit was beyond the reasonable control of the claimant or that it would be unreasonable or inequitable to require the claimant to have filed an application for such a permit by January 1, 1990. If the claimant cannot so certify, and the claim was filed on or after January 1, 1994, the claimant shall request the Board waive the requirement as a condition for eligibility pursuant to Section 2811 (a)(2)(B).

- (4) The claimant is in compliance with any applicable financial responsibility requirements contained in Article 3 of this Chapter;
 - (5) Any corrective action taken was in accordance with Chapter 6.7 and the Federal Act;
 - (6) Any corrective action taken was consistent with any applicable oral or written local agency or regulatory agency orders, directives, approvals, or notifications of cleanup responsibility, and consistent with any applicable waste discharge requirements or other oral or written orders or directives issued or given pursuant to Division 7 (commencing with Section 13000) of the California Water Code, any applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of said Water Code, and any applicable water quality control plans adopted pursuant to Section 13170 and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of said Water Code. If an oral order, directive, notification, or approval is relied upon, the claimant shall provide a written statement from the appropriate local or regulatory agency certifying that the necessary order, directive, notification or approval was issued or given, or shall provide such other verification that the necessary order, directive, notification or approval was issued or given as may be acceptable to the Division.
- (k) If the claim is for costs incurred after December 2, 1991 the effective date of these regulations, and the claimant is an owner or operator of an underground storage tank or a residential tank for which a permit is required under Section 25284 of the California Health and Safety Code,

certifications that the conditions set forth in subsections (j)(1)-(4) of this Section have been met and that:

- (1) The claimant is in compliance with any applicable corrective action requirements established pursuant to Article 4 (commencing with Section 25299.36) of Chapter 6.75 of the California Health and Safety Code including the implementing regulations in Article 11, Chapter 16, Division 3, Title 23, California Code of Regulations; and
 - (2) The claimant is or has been required or permitted to undertake corrective action pursuant to an oral or written local agency order, directive, notification or approval issued or given pursuant to Section 25299.37 of the California Health and Safety Code or pursuant to a cleanup and abatement order or other oral or written directive issued or given by the Board or a Regional Board pursuant to Division 7 (commencing with Section 13000) of the California Water Code, and the claimant is in compliance with the requirements of any such orders or directives. If an oral order, directive, notification or approval is relied upon, the claimant shall provide a written statement from the appropriate local or regulatory agency certifying that the necessary order, directive, notification or approval was issued or given, or shall provide such other verification that the necessary order, directive, notification or approval was issued or given as may be acceptable to the Division.
- (l) If the claim is for costs incurred after ~~December 2, 1991~~ the effective date of these regulations, and the claimant is the owner or operator of a residential tank for which a permit is not required under Section 25284 of the California Health and Safety Code, certifications that the conditions of subsections (j)(1)(6) of this Section have been met.
 - (m) An agreement by the claimant that the Board may conduct an audit of any claim honored by the Board and that the claimant will reimburse the State for any disallowance of costs occasioned by such audit, and an agreement that all records pertaining to the claim will be retained for a period of at least three years after final payment on the claim and will be made available to the Board, or any designated representative thereof, upon request. The three years shall be extended until the completion of any audit in progress.
 - (n) Such other information as may be reasonably required by the Division to conduct a preliminary investigation on the apparent eligibility, reimbursable amount due, or appropriate Priority Class of the claim.

Authority: Section 25299.77, Health and Safety Code
Reference: Sections 25299.24, 25299.37(a), (b) and (e), 25299.52(a) and (b), 25299.54(a)-(e), 25299.55(a)-(c), 25299.57(a), (b), (d) and (f), 25299.58(b)(1), (3) and (4), 25299.59(f) and 25299.77, Health and Safety Code

2811.3. Claim Requirements; Third Party Compensation Claims

- (a) Claims seeking reimbursement of third party compensation costs shall contain the information and include or be accompanied by the documentation, certifications and agreements required by Section 2811.2, shall contain a certification by the claimant that the claimant is entitled to reimbursement from the Fund, and shall be accompanied by a certified or verified copy of the judgment, court-approved settlement, or arbitration award for which reimbursement is sought.
- (b) Other information may be reasonably required by the Division to determine eligibility of third party compensation claims.

Authority: Section 25299.77, Health and Safety Code
Reference: Sections 25299.24, 25299.37(a), (b) and (e), 25299.52(a) and (b), 25299.54(a)-(d), 25299.55(a)-(c), 25299.57(a), (b), (d) and (f), 25299.58, 25299.59(f) and 25299.77, Health and Safety Code

2811.4. Claim Requirements; Claims for Pre-Approval of Corrective Action Costs

- (a) Where a claim seeks pre-approval of corrective action costs, the work involved and the costs associated therewith shall be divided into the following Phases as defined in Article 11, Chapter 16, Division 3, Title 23, California Code of Regulations:
 - (1) Phase 1--Preliminary Site Assessment Phase;
 - (2) Phase 2--Soil and Water Investigation Phase;
 - (3) Phase 3--Corrective Action Plan Implementation Phase; and
 - (4) Phase 4--Verification Monitoring Phase.

- (b) A pre-approval claim submitted for future estimated corrective action costs may cover the balance of any uncompleted Phase of corrective action plus the subsequent Phase.
- (c) Upon completion of the Phase for which a claimant has pre-approval, the claimant may submit an amended claim which includes an estimate of the costs to be incurred for completion of work in any subsequent Phase.
- (d) A claimant seeking pre-approval of corrective action costs may include reimbursement costs in that same claim for any corrective action which has been completed by the claimant at the time of filing the claim.
- (e) All claims filed pursuant to this Section shall comply with the requirements of Section 2811.2 of this Article, provided, however, that information, documentation, and certifications supplied in connection with a claim ~~for a prior Phase of work~~ which are still correct need not be repeated or duplicated. The three year retention period ~~for retaining all records pertaining to the claim~~ runs from the date of final payment on the last Phase of work reimbursed from the Fund.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.24, 25299.37(a), (b) and (e), 25299.52(a) and (b), 25299.54(a)-(e), 25299.55(a)-(c), 25299.57(a)-(d) and (f), 25299.58(b)(1), (3) and (4), 25299.59(f) and 25299.77, Health and Safety Code

2812. General Procedures for Reimbursement

- (a) Claims judged to be eligible and fundable will be issued an agreement to reimburse or a letter of credit or commitment which will obligate funds.
- (b) After being issued an agreement to reimburse or a letter of credit or commitment, the claimant may submit a request for reimbursement of funds for eligible costs incurred to date.
- (c) Reimbursement requests can be submitted on an on-going basis for eligible costs provided that the requests are not for less than \$10,000 and not more frequent than monthly except for final payment.
- (d) Owners and operators may designate a representative as a co-payee for payments from the Fund. In such cases, payments from the Fund will be issued jointly to the respective owner or operator and the designated representative.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.55 and 25299.77, Health and Safety Code

2812.1. Compliance with Laws; Bid Requirements; Reimbursement Limits

- (a) Claimants must follow applicable state laws and regulations in procuring consultants and contractor services and must ensure that such services are obtained from qualified firms at a reasonable price.
- (b) ~~After the effective date of this Chapter, except for work which will be performed by local governmental entities by force account,~~ Claimants must obtain at least three ~~written competitive bids~~ for corrective action work not contracted for prior to ~~December 2, 1991 the effective date of this Chapter.~~ This requirement does not apply to the first \$10,000 of eligible corrective action costs expended by a claimant for each occurrence ~~This requirement does not apply where the claimant is a public agency and the 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 the services are procured in accordance with the requirements of that Chapter.~~
- (c) Where bids are required, submission of the bids is not required at the time of initial filing of a claim. However, final approval for any work for which bids are required will not normally be given until the estimated cost of the work involved is supported by at least three bids. Where bids are required, final approval may be given where less than three bids are provided upon a finding by the Division that the requirement for three bids is unnecessary, unreasonable, or impossible to comply with under the circumstances pertaining to a particular claim. Local governmental entities shall comply with applicable public contract requirements including the requirements of Chapter 10, Division 5, Title 1 of the California Government Code (commencing with Section 4525) and Part 3, Division 2 of the California Public Contract Code (commencing with Section 20100).
- (d) Where bids are required, reimbursement from the Fund will be limited to the amount represented by the lowest bid submitted for the work involved unless the claimant submits justification for rejection of the low bid. Where there are increased costs or changes to the work covered by the low bid, an amended claim may be submitted upon completion of the work involved. The amended claim must adequately justify any costs in excess of the low bid.

- (e) In order to be reimbursable from the Fund, the corrective action work undertaken must be acceptable to the appropriate local or regulatory agency.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.57(c) and (f) and 22299.77, Health and Safety Code

2812.2. Allowable Reimbursable Costs

- (a) Only reasonable and necessary corrective action and third party compensation claim costs shall be reimbursable from the Fund. Regulatory agency or local agency oversight costs of corrective action work is an allowable cost.
- (b) Only corrective action and third party compensation claim costs incurred by or on behalf of a claimant shall be reimbursable from the Fund. No claimant shall be entitled to double payment on account of any corrective action or third party compensation claim cost. Where a claimant receives reimbursement on account of any cost from the Fund and also receives reimbursement on account of such cost from another source, the claimant shall remit to the Fund an amount equal to the sum disbursed from the Fund on account of such cost. Where corrective action or third party compensation claim costs are advanced to the claimant, or incurred on behalf of the claimant, under circumstances where the claimant is obligated to repay such advances from any reimbursement received from the Fund, the claimant shall not be considered to have received double payment on account of such costs so long as Fund reimbursements are paid over to the person making such an advance and so long as the claimant does not benefit, directly or indirectly, from such payover.
- (c) Court approved settlements will be carefully reviewed to assure that any costs awarded are reasonable and eligible.
- (d) Where a claim is made for corrective action costs, in addition to any unreasonable or unnecessary costs, the following types of costs are ineligible for reimbursement from the Fund:
 - (1) Attorney fees or other legal costs;
 - (2) Interest or any finance charge;
 - (3) Any cost associated with removal, repair, retrofit, or installation of an underground storage tank or its associated equipment;

- (4) Any cost associated with supervision of corrective action by a claimant unless licensed to perform corrective action work;
- (5) The cost of soil density tests that are not directly related to the corrective action which is the subject of the claim;
- (6) The cost of environmental audits or pre-purchase agreements unless performed as part of corrective action;
- (7) The cost of testing for non-hydrocarbon contamination that is not associated with corrective action for the specific claim involved;
- (8) The cost of abandonment of wells not directly impacted by the unauthorized release and not installed or used for corrective action purposes;
- (9) The cost of blacktop or concrete replacement or repair not directly associated with corrective action;
- (10) The cost of demolition or repair of buildings, except when it can be demonstrated to the Division's satisfaction to be necessary to implement the most cost effective corrective action option;
- (11) The cost of repairs, remodels, or reconstruction of buildings or other improvements;
- (12)(11) The cost of monitoring devices to detect hydrocarbon contamination in soil, the vadose zone, or water to the extent that they are not used for corrective action;
- (13)(12) The cost of small tools except as required for corrective action;
- (14)(13) The cost of purchase of equipment, unless the claimant can demonstrate that the purchase of equipment is more cost effective than leasing or renting;
- (15) Any cost associated with obtaining the services of contractors or consultants qualified to perform corrective action;
- (16) Any consequential costs incurred as a result of corrective action such as, but not limited to, loss of rents or business;
- (17)(14) Any other cost not directly related to corrective action and including

but not limited to costs associated with completing and filing of claims and appeals.

- (e) Only the following types of third party compensation claim costs are eligible for reimbursement from the Fund:
- (1) Medical expenses occasioned by an unauthorized release;
 - (2) Actual lost wages or business income caused by an unauthorized release;
 - (3) Actual expenses for remedial action necessary to remedy the effects of property damage caused by an unauthorized release; and
 - (4) Damages equal to the fair market value of any property rendered permanently unsuitable for beneficial use by an unauthorized release.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.57(b), (c) and (d)(4), 25299.58(c) and 25299.77, Health and Safety Code

2812.3. Reimbursement Limitations

- (a) A claimant is responsible for payment of the first \$10,000 (~~\$20,000 if waiver granted pursuant to Section 2811 (a)(2)(B))~~) of eligible costs for each occurrence which involves corrective action or third party compensation costs. Only eligible costs in excess of \$10,000 (~~\$20,000 if waiver granted pursuant to Section 2811 (a)(2)(B))~~) for each such occurrence shall be reimbursable.
- (b) Reimbursement from the Fund shall not exceed \$990,000 per occurrence (~~\$980,000 per occurrence if waiver granted pursuant to Section 2811 (a)(2)(B))~~).
- (c) No claimant shall, in any fiscal year, receive reimbursement from the Fund which exceeds 5 percent of the total amount appropriated by the Legislature for payment of claims for that fiscal year ~~unless exempted by the Board pursuant to Section 25299.60 (c)(2) of the California Health and Safety Code.~~
- (d) In the event of any overpayment of a claim, the claimant shall repay the overpayment within ~~20 days~~ 30-days of request ~~as provided by Government Code Section 12419.~~

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.32(a), 25299.57(a), 25299.58(a) and (e), 25299.59(e) and 25299.60(c), Health and Safety Code

2812.4. Verification of Claims

Claimants shall verify under penalty of perjury that all statements, documents and certifications contained in or accompanying a claim are true and correct to the best of the claimant's knowledge. This shall include all statements and documents submitted during the active life of the claim.

Authority: Section 25299.77, Health and Safety Code

Reference: Section 25299.55(a), Health and Safety Code

2812.5. Submission and Receipt of Claims

Claims may be personally delivered to the Board or submitted by mail. Claims may not be submitted by facsimile or through other electronic means. Claims will be deemed to be received as of the time that they are date stamped by the Division.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.55 and 25299.77, Health and Safety Code

2812.6 Disqualification of Claims

A claim may be disqualified and barred from further participation in the fund at any time during the active life of the claim if it is found that the documents contain a material error and the error was a result of intentional misrepresentation on the part of the claimant.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.37(a), 25299.54(a)(b)(c) and (d), 25299.55, and 25299.77, Health and Safety Code

2813. Creation of Initial Priority List

- (a) Claims received within the first forty-five (45) calendar days after December 2, 1991 ~~the effective date of this Chapter~~, will be ranked as if received on the same date. Only these claims will be processed for the Initial Priority List.

- (b) The Division will conduct a cursory review of all claims received by the Division within 90 calendar days of receipt of the claim.
- (c) Those claims which are determined to be acceptable and eligible will be tentatively assigned to the Priority Class which is determined by the Division to be appropriate for the claim involved. Claims within each Priority Class will be randomly ranked within that Priority Class.
- (d) The Division will notify all initial claimants whose claims are determined to be unacceptable or ineligible that their claim has been rejected and the reasons therefore. These claimants may correct any deficiencies and resubmit revised claims against the Fund. The priority ranking of any revised claim shall be based on the date that the Division receives the revised claim.
- (e) The Division will prepare an initial proposed Priority List which will be presented to the Board for consideration and adoption. Upon adoption of the initial Priority List by the Board, the Division will determine which of the claims on the Priority List will likely be processed and paid within the next calendar year. Claimants will be requested to supply such additional information, documentation and certifications, including detailed financial or cost information, as may be necessary to complete processing of, and payment or approval of, the claims involved. Additional claimants will be requested to supply the additional information, documentation and certifications needed to complete processing of their claims as higher ranked claims are processed and as it appears that additional claims can be processed within reasonable periods of time.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.52(a) and (b), 25299.55 and 25299.77, Health and Safety Code

2813.1. Creation of Subsequent Priority Lists

- (a) As often as the Board deems necessary or appropriate, but at least ~~once~~ twice annually in each calendar year subsequent to adoption of the initial Priority List, the Board will adopt a revised Priority List.
- (b) Within 90 calendar days of receipt of the claim, the Division will conduct a cursory review of new claims received which were not included on the previous Priority List to determine if the new claims appear to be acceptable and eligible, and, if so, the apparent Priority Class to which each claim should be assigned.

Only new claims received at least 30 calendar days prior to adoption of a revised List will be considered for placement on that revised List.

- (c) The Division will notify those new claimants whose claims are determined to be unacceptable or ineligible that their claims have been rejected and the reasons therefore. These claimants may correct any deficiencies and resubmit revised claims against the Fund. The priority ranking of any revised claim shall be based on the date that the Division receives the revised claim.
- (d) Revised Priority Lists will not incorporate those claims from the previous Priority List for which an agreement to reimburse or a letter of credit or commitment has been issued.
- (e) Claims which are carried over from a previous Priority List will retain their previous ranking within their respective Priority Class on any revised Priority List. New claims added to any Priority Class in any revised Priority List will be ranked below claims which are carried over from the previous Priority List within that class, and the new claims will be ranked among themselves according to the date on which the claims are received by the Division with the earlier claim receiving the higher ranking. The Division shall adopt a random system for ranking new claims received by the Division on the same day.
- (f) After adoption of a revised Priority List, the Division will determine which of the claims on the Priority List will likely be processed and paid or approved within the next calendar year. Claimants will be requested to supply such additional information, documentation and certifications, including detailed financial or cost information, as may be necessary to complete processing of, and payment or approval of, the claims involved. Additional claimants will be requested to supply the additional information, documentation and certifications needed to complete processing of their claims as higher ranked claims are processed and as it appears that additional claims can be processed within reasonable periods of time.

Authority: Section 25299.77, Health and Safety Code

Reference: Section 25299.52(a) and (b), 25299.55 and 25299.77, Health and Safety Code

2813.2. Effect of Placement on Priority List

- (a) Placement of a claim on a Priority List does not constitute a commitment to reimburse corrective action or third party compensation costs indicated in the claim. Such a commitment will be deemed to occur only as and when payments, contracts or letters of credit or commitment are issued which specifically commit funds to a claim.
- (b) Claims on a Priority List will generally be processed and paid or approved according to Priority Classes and the ranking of claims within the Priority Class. To the extent practicable, all claims within a higher Priority Class will be processed and paid or approved before any claims in a lower Priority Class are processed, paid or approved.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.52(a) and (b), 25299.55 and 25299.77, Health and Safety Code

2813.3. Management of Priority Lists

To assure equitable, effective, and timely use and expenditure of available Fund monies, the Board reserves the right at any time to:

- (a) Modify the order of processing, payment and approval of claims against the Fund;
- (b) Modify the ranking of claims within any Priority Class, provided, however, that such action will only be taken after public hearing;
- (c) Transfer a claim to its correct Priority Class if the claim has been inappropriately assigned to a Priority Class. The claim would be placed at the end of its appropriate class for the date on which the claim was received;
- (d) Determine that a claim for pre-approval of corrective action costs which is on a Priority List should receive no further funding or should be reduced in rank or Priority Class if the claimant fails to pursue completion of corrective action with reasonable diligence;
- (e) Waive any non-statutory requirements pertaining to processing, payment or approval of claims.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.52(a) and (b), 25299.55, 25299.57(d)(2) and (3) and 25299.77, Health and Safety Code

2813.4. Removal from the Priority List

- (a) A claim may be removed from a Priority List if:
- (1) The claimant is not in compliance with any of the applicable requirements of this Chapter, Chapter 16 of Division 3 of Title 23 of the California Code of Regulations, Chapters 6.7 or 6.75, Division 20, of the California Health and Safety Code, or any provisions of the California Water Code under which the claimant is required to take corrective action in response to an unauthorized release of petroleum from an underground storage tank or a residential tank;
 - (2) The claimant fails to provide necessary documentation or information, or refuses access to any site which is the subject of the claim to the Division or any other local or regulatory agency;
 - (3) There has been a material error in the information presented on the claim.
- (b) The Division shall issue a Notice of Intended Removal from the Priority List 30 calendar days prior to the effective date of such removal. The Notice shall inform the claimant that removal of a claim is proposed and shall state the grounds for this determination. In the event of issuance of such Notice, no further payments shall be made on account of such claim until the reasons for proposed removal have been corrected or satisfactorily resolved. If removal is proposed pursuant to subsection (a) of this Section and the claimant fails to correct the conditions which are the basis for the proposed removal or fails to file a petition with the Board pursuant to Article 5 of this Chapter within 30 calendar days after mailing of the Notice, the claim involved shall be deemed to be removed from the Priority List 30 calendar days after the date on which the Notice is mailed. In the event of a petition to the Board, the claim involved shall remain on the Priority List pending resolution of the appeal but no further payments shall be made on the claim until such resolution. A petition shall be deemed to be filed when it is date stamped by the Board or deposited in the United States mail properly addressed with postage prepaid.
- (c) A claimant may resubmit a claim which is removed from the Priority List pursuant to subsection (a) of this Section after elimination of the grounds or correction of the error which gave rise to removal thereof, unless the error

resulted from intentional misrepresentation or other misconduct on the part of the claimant in which case the claim shall be barred from further participation in the Fund.

- (d) Upon resubmission of any claim which has been removed from the Priority List, for purposes of priority, the resubmitted claim shall be considered a new claim and its priority shall be determined on the basis of the date on which the resubmitted claim is received by the Division.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.37(a)-(c), 25299.52(a), 25299.54(a), (b) and (d), 25299.55, 25299.57(a),(d)(2) and (3), 25299.58(b)(3) and (4) and 25299.77, Health and Safety Code

ARTICLE 5. APPEAL PROCESS

2814. Final Staff and Division Decisions

- (a) Any claimant who fails to reach agreement with Division staff on any matter over which the division has authority to take discretionary action may request a final staff decision. In addition, Division staff may at any time, on their own motion, issue a final staff decision on any matter over which the staff has discretionary authority. Any final staff decision shall be in writing and labeled as a final staff decision, and shall inform the claimant that the decision is final and conclusive unless the claimant requests review of the decision by the Chief of the Division within 60 calendar days after receipt of the decision.
- (b) Any claimant who is dissatisfied with a final staff decision may request a final decision from the Chief of the Division. The request must be accompanied by all material that the claimant wishes to be considered by the Division and by the Board in any subsequent review by the Board. After review of the material presented, the Division shall make a final Division decision. The decision shall be in writing, labeled as the final decision of the Division, and shall inform the claimant that the decision is final and conclusive unless the claimant files a petition with the Board for review of the decision within 30 calendar days from the date of receipt of the Division decision. A petition will be deemed to be filed with the Board or when it is deposited in the United States mail properly addressed with postage prepaid.

Authority: Section 25299.77, Health and Safety Code

Reference: Section 25299.56, Health and Safety Code

2814.1. Petition for Board Review and Division Response

- (a) A petition for board review shall contain the following:
 - (1) The name and address of the petitioner;
 - (2) A statement of the date on which the petitioner received the Division's final decision;
 - (3) The specific decision of the Division which the Board is requested to review;

- (4) A full and complete statement of the reasons that the Division's decision was inappropriate or improper;
 - (5) A statement of the manner in which the petitioner is aggrieved;
 - (6) A statement of the specific Board action that the petitioner requests; and
 - (7) A copy of the Division's final decision which is being appealed.
- (b) The petition shall be sent to the Board Chairperson, with copies sent to the Chief Counsel of the Board and the Division.
- (c) The petitioner may request a hearing for the purpose of presenting material not presented to the Division or for oral argument or both. Any request to present material which was not presented to the Division must include a detailed statement as to the nature of the additional material which the petitioner wishes to submit, the facts which the petitioner expects to establish, and a statement explaining why any new material was not presented to the Division. A copy of any documentary material which the petitioner wishes to present must accompany the petition.
- (d) The Division shall file a response to the petition with the Board within 30 calendar days after receipt of the petition. A copy of the Division's response shall be provided to the petitioner.

Authority: Section 25299.77, Health and Safety Code

Reference: Section 25299.56, Health and Safety Code

2814.2. Defective Petitions

- (a) Upon receipt by the Board of a petition which does not comply with Section 2814.1, the Board, through its Chief Counsel, will advise the petitioner of the manner in which the petition is defective and allow a reasonable time within which an amended petition may be filed. If a proper amended petition is not received by the Board within the time allowed, the petition shall be dismissed.
- (b) The Board reserves the right, at its discretion, to consider any petition upon its own motion.

Authority: Section 25299.77, Health and Safety Code

Reference: Section 25299.56, Health and Safety Code

2814.3. Action by the Board

- (a) In response to the petition, the Board may:
- (1) Refuse to review the petition if it is late or fails to raise substantial issues which are appropriate for or require Board review;
 - (2) Affirm the final decision under appeal;
 - (3) Set aside or modify the final decision; or
 - (4) Take such other action as the Board deems appropriate;
- (b) Before taking action, the Board may, at its discretion, hold a hearing, or the Board may provide for an informal meeting between the petitioner, the Division, a member of the Board, and such other persons as the Board deems appropriate for the purpose of attempting to resolve the dispute.
- (c) If a hearing is held, it shall be conducted in the manner deemed most suitable for securing all relevant evidence without unnecessary delay.
- (d) If the Board does not act on the petition within 270 calendar days after receipt of a proper petition, the petition shall be deemed to be denied. This time limit may be extended for a period not to exceed 60 calendar days by written agreement between the State Board and the petitioner.

Authority: Section 25299.77, Health and Safety Code

Reference: Section 25299.56, Health and Safety Code

2810.2. Ineligibility of Cost Prior to January 1, 1988

Corrective action costs incurred for work performed on or prior to January 1, 1988 and bodily injury or property damage costs to third parties incurred by the third party on or prior to January 1, 1988 are not eligible for reimbursement from the Fund.

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.55(c), Health and Safety Code

2810.3. Intentional or Reckless Acts; Ineligibility of Costs

Notwithstanding any other provision of this Article, corrective action costs and third party compensation claim costs which are occasioned by or result from the gross negligence or the intentional or reckless acts of the claimant or the agents, servants, employees or representatives of the claimant, are not eligible for reimbursement from the Fund.

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.61, Health and Safety Code

2811. Eligibility Requirements

- (a) With respect to corrective action costs incurred prior to ~~December 2, 1991~~ the effective date of these regulations, an owner or operator of an underground storage tank or a residential tank shall be entitled to reimbursement for such costs only if:
- (1) There was an unauthorized release of petroleum from the underground storage tank or residential tank; and
 - (2) The claimant had and has obtained any permit or permits required of the claimant pursuant to Chapter 6.7, Division 20, of the California Health and Safety Code ~~unless the claimant can demonstrate that waiver of the permit requirement is appropriate in accordance with the criteria set forth below~~, or had filed a substantially complete application for such permit or permits, not later than January 1, 1990 ~~unless the claimant can demonstrate to the satisfaction of the Division that obtaining any required permit was beyond the reasonable control of the claimant or that under the circumstances of the particular case it would be unreasonable or inequitable to require the claimant to have filed an application for such a~~

~~permit by January 1, 1990. Any claimant who is excused from obtaining a permit or filing an application pursuant to this subsection shall continue to pursue and obtain any permits required by Chapter 6.7 with reasonable diligence; and~~

(A) For claims filed prior to January 1, 1994, the claimant had and has obtained any permit or permits required pursuant to Chapter 6.7, Division 20, of the California Health and Safety Code, or had filed a substantially complete application for such permit or permits not later than January 1, 1990, unless the claimant can demonstrate to the satisfaction of the Division that obtaining any required permit was beyond the reasonable control of the claimant or that under the circumstances of the particular case, it would be unreasonable or inequitable to require the claimant to have filed an application for such a permit by January 1, 1990. Any claimant who is excused from obtaining a permit or filing an application pursuant to this subsection shall continue to pursue and obtain any permits required by Chapter 6.7 with reasonable diligence; or

(B) For claims filed on or after January 1, 1994, the claimant had and has obtained any permit or permits required of the claimant pursuant to Chapter 6.7, Division 20, of the California Health and Safety Code, or had filed a substantially complete application for such permit or permits not later than January 1, 1990. The Board may waive the provisions of this subparagraph if the Board finds all of the following:

- (i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit; and
- (ii) Prior to filing the claim, the claimant has complied with financial responsibility requirements of Section 25299.31 of the California Health and Safety Code, and has obtained and paid for all currently required permits; and
- (iii) Prior to filing the claim, the claimant has paid all current underground storage tank fees imposed pursuant to Section 25299.41 of the California Health and Safety Code, and all prior fees due on and after January 1, 1991.