

STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 96 -042

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. Section 25299.77 of Chapter 6.75 authorizes the SWRCB to adopt regulations to implement Chapter 6.75 of the Health and Safety Code.
2. Chapter 6.75 of the Health and Safety Code was added to the Code by Chapter 1443 of the Statutes of 1989, amended by Chapter 1366 of the Statutes of 1990, (SB 299 as amended by SB 2004, Keene), and amended by Chapter 1191, Statutes of 1994 (SB 1764, Thompson).
3. Section 25299.32 of Chapter 6.75 of the Health and Safety Code was amended by Senate Bill 1764 (Chapter 1191, Statutes of 1995) to reduce the financial responsibility requirements for Priority Class A, B, and C claimants to the Fund.
4. Section 25299.51 of Chapter 6.75 of the Health and Safety Code increases the maximum amount the SWRCB may pay for corrective action costs to \$1 million.
5. Section 25299.52 of Chapter 6.75 of the Health and Safety Code was amended by Senate Bill 1764 to remove the requirement for nonprofit organizations to include all of their affiliates in their revenue calculations for qualifying as a Priority Class B and in determining the number of full time and part time employees for qualification as a Priority Class C claimant.
6. Section 25299.37 of Chapter 6.75 of the Health and Safety Code was amended by Senate Bill 1764 to give claimants to the Fund the opportunity to seek preapproval of cost estimates or bids for preparing work plans, or the opportunity to request assistance in the selection of contractors and consultants.
7. Where three bids or estimates are required, Section 25299.57 of Chapter 6.75 of the Health and Safety Code was amended by Senate Bill 1764 (Chapter 1191, Statutes of 1995) to no longer require the selection of the lowest estimated fee for corrective action work performed by professional engineers or professional geologists, if the fee estimate conforms with the range of acceptable costs established by the Board.
8. Section 25299.37 of Chapter 6.75 of the Health and Safety Code was amended by Senate Bill 1764 to eliminate the Final Staff Decision as the first step in a claimant's appeal process, allows the claimant to directly request a Final Division Decision, and requires the SWRCB to issue the decision within 30 days of receiving the request.

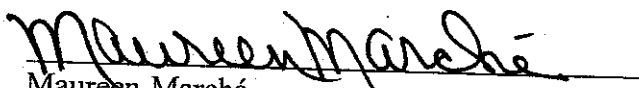
9. The amendments to Chapter 6.75 brought about by SB 1764 necessitate changes to program regulations (Chapter 18, Division 3, Title 23 of the California Code of Regulations).

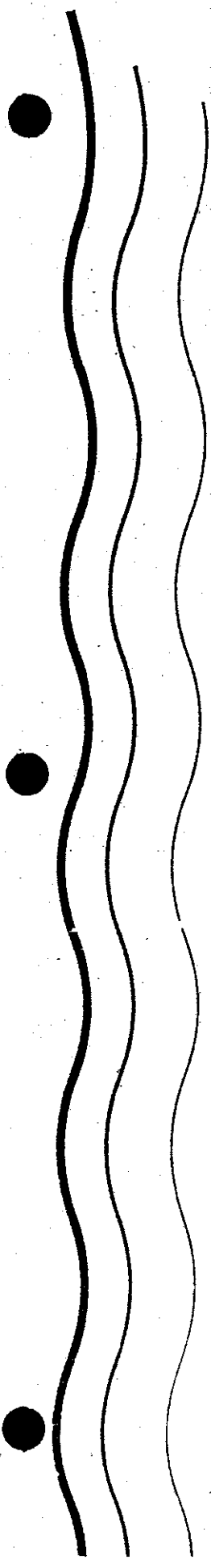
THEREFORE BE IT RESOLVED THAT:

The State Water Resources Control Board adopts the proposed amendments to Chapter 18, Division 3, Title 23 of the California Code of Regulations, the Petroleum Underground Storage Tank Cleanup Fund to implement, interpret, and make specific Chapter 6.75 of the Health and Safety Code.

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 June 20, 1996.

  
Maureen Marché  
Administrative Assistant to the Board



**The Petroleum  
Underground Storage Tank  
Cleanup Fund**

# **PROPOSED AMENDMENTS**

**California Code of Regulations  
Title 23 Waters  
Division 3 Water Resources Control Board  
Chapter 18**

**March 1996**

**State Water Resources Control Board  
California Environmental Protection Agency**



**STATE OF CALIFORNIA**  
*Pete Wilson, Governor*

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**  
*James M. Strock, Secretary*

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**CALIFORNIA CODE OF REGULATIONS  
TITLE 23 WATERS  
DIVISION 3 WATER RESOURCES CONTROL BOARD  
CHAPTER 18 PETROLEUM UNDERGROUND STORAGE TANK  
CLEANUP FUND REGULATIONS  
PROPOSED AMENDMENTS  
MARCH 1996**

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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 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,



CCR, TITLE 23, DIVISION 3, CHAPTER 18, PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND

- (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.

**"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.

~~"Reimbursement Request" means the documents required to be submitted for payment from the Fund for corrective action costs, or third party compensation costs.~~

"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 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:

- (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 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;
- (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;
- (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);
- (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 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.

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. Demonstrate financial responsibility of at least the following amount per occurrence and per annual aggregate coverage exclusive of the Fund:~~

<i>Claim Priority Class Pursuant to Section 2811.1</i>	<i>Financial Responsibility Amount</i>
<i>Priority Class A</i>	<i>\$ -0-</i>
<i>Priority Class B</i>	<i>\$ 5,000</i>
<i>Priority Class C</i>	<i>\$ 5,000</i>
<i>Priority Class D</i>	<i>\$10,000</i>

*If a waiver is granted pursuant to Section 2811(a)(2)(B), demonstrate financial responsibility of at least twice the above amounts per occurrence and per 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.....\$ \_\_\_\_\_
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 using the Fund to demonstrate financial responsibility who meets the qualifications of Class B or Class C as defined in Section 2811.1 (a)(2) or (3) is exempt from demonstrating financial responsibility in an amount exceeding of the Fund.~~

~~(b)(c) An owner or operator using the Fund to demonstrate financial responsibility who meets the qualifications of Class B or Class C as defined in Section 2811.1 (a)(2) or (3) is liable for payment of the first \$10,000 (\$5,000 (\$10,000 if waiver granted pursuant to Section 2811(a)(2)(B)) 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.~~

(d) An owner or operator using the Fund to demonstrate financial responsibility who meets the qualifications of Class D as defined Section 2811.1 (a)(4) is liable for payment of the first \$10,000 (\$20,000 if waiver granted pursuant to Section 2811(a)(2)(B)) in corrective action or third party compensation costs.

(e)(e) 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 \$1,000,000 for each occurrence less the applicable financial responsibility limits as set forth in Section 2808.1.

**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 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 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

### **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, 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.
    - (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.
- (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 twice as great as the amount which the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32 of the California Health and Safety Code.~~ 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, an owner or operator of an underground storage tank or a residential tank for which a permit is required under

(e) 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.

(a) Where a claimant seeks pre-approval of a cost estimate or bid for preparing a workplan as specified in Article 11, Chapter 16, Division 3, Title 23, California Code of Regulations, the claimant shall submit copies of all estimates or bids received for preparing the workplan.

(b) Where a claimant seeks pre-approval of construction cost estimates or bids for implementing a workplan, the claimant shall submit the following:

(1) A copy of the workplan specified in Article 11, Chapter 16, Division 3, Title 23, California Code of Regulations.

(2) A copy of a letter or other written materials that demonstrate to the Division satisfactory that the local agency or regional body has concurred with the workplan.

(3) Copies of all bids or estimates received for the workplan and all requests for proposals for construction, as specified in the workplan, that have been obtained. The claimant shall submit the three lowest bids or estimates, if the three lowest bids or estimates are unnecessary, unreasonable or impossible to obtain, with as specified in section 28121(c).

(4) Other information deemed necessary by the Division.

(c) The Division shall approve or disapprove, as reasonable, the cost estimates or bids submitted for preparing or implementing the specified workplan.

(d) Where a claimant requests assistance in the selection of contractors and consultants, the Division shall provide the following:

(1) Assistance in identifying potential contractors and consultants;

(2) Assistance in preparing requests for statements of qualifications from potential contractors and consultants;

(3) Assistance in comparing and evaluating the qualifications of contractors and consultants;

(4) Assistance in preparing invitations for obtaining estimates and bids from contractors and consultants;

(5) Assistance in comparing cost estimates and bids.

- ~~(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) When providing assistance to claimants pursuant to paragraph (d) of this section, the Division shall not recommend, approve nor disapprove consultants, contractors, or other purveyors of corrective action goods and services. The responsibility for procuring, managing, and dismissing vendors is the sole responsibility of the claimant.~~
- ~~(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 which are still correct need not be repeated or duplicated. The three year retention period 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), ~~(c)~~ 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) *Reimbursement requests must include invoices and auxiliary documentation which documents to the Division's satisfaction that the invoice is for necessary corrective action work. Invoices must include, at a minimum, all of the following:*
- (1) *A brief description of the work performed;*
  - (2) *The date that the work was performed;*
  - (3) *The vendor name and address; and*
  - (4) *The cost amount of the work performed.*

- (d)(e) 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, 25299.57, 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) Claimants must obtain at least three written ~~proposals and~~ competitive bids ~~submitted~~ for corrective action work not contracted for prior to December 2, 1991 ~~provided by persons licensed under the provisions of Chapter 10 (commencing with Section 6700) of Division 5 of the Business and Professions Code or persons licensed under the meaning of Chapter 10 (commencing with Section 4525) of Division 5 of the Business and Professions Code~~ ~~Professionals of the State shall obtain at least three written proposals for corrective action work not contracted for prior to December 2, 1991 whose services are provided by licensed contractors within the meaning of Chapter 10 (commencing with Section 6700) of Division 5 of the Business and Professions Code~~. 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. ~~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).~~
- (c) Where bids or estimates are required, submission of the bids or estimates is not required at the time of initial filing of a claim. However, final approval reimbursement for any work for which bids or estimates are required will not normally be given until the estimated actual cost of the work involved is supported by at least three bids or estimates. Where bids or estimates are required, final approval may be given where less than three bids or estimates 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 *or estimates* are required, reimbursement from the Fund will be limited to the amount represented by the lowest bid *or estimate* submitted *to the claimant* for the work involved unless:
- (1) The claimant submits justification for rejection of the low bid *or estimate*; *or*
  - (2) *The corrective action work involved services provided by professional engineers within the meaning of Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or professional geologists within the meaning of Chapter 25 (commencing with Section 7800) of Division 3 of the Business and Professions Code, and the costs incurred conform to the range of acceptable costs established by the Board.*
- (e) Where there are increased costs or changes to the *scope of* work covered by the low ~~quoted~~ bid *or estimate*, an amended claim may be submitted upon completion of the work involved. The amended claim ~~the claimant~~ must adequately justify to the ~~Division's satisfaction~~ any costs in excess of the low ~~quoted~~ bid *or estimate*.
- (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 (g)(2)~~ 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 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) 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) The cost of small tools except as required for corrective action;
  - (14) 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) 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))~~ *amount of their level of financial responsibility pursuant to Section 2808.1* 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))~~ *the level of financial responsibility* for each such occurrence shall be reimbursable.
- (b) Reimbursement from the Fund shall not exceed ~~\$990,000~~ \$1,000,000 per occurrence ~~(\$980,000 per occurrence if waiver granted pursuant to Section 2811 (a)(2)(B))~~ *less the claimant's level of financial responsibility pursuant to Section 2808.1.*
- (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 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

#### **2812.7 Payment of Approved Workplan Costs**

*Within sixty (60) days of the receipt of a properly documented reimbursement request, the Board shall pay for reasonable and necessary costs specified in an approved workplan and all costs which are otherwise necessary to comply with an order issued by a local, state, or federal agency if such costs meet the requirements of Section 25299.57 of the Health and Safety Code. If costs are rejected, the*

*Board shall inform the claimant within sixty (60) days of receipt of the request of the basis for rejection.*

*Authority: Section 25299.77, Health and Safety Code*  
*Reference: Section 25299.57(6), 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, 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 annually in each calendar year subsequent to adoption of the initial Priority List, the Board will adopt a revised Priority List.

- (b) Within *ninety (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 *thirty (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 ~~thirty~~ (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 ~~thirty~~ (30) calendar days after mailing of the Notice, the claim involved shall be deemed to be removed from the Priority List ~~thirty~~ (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 ~~division~~ decision ~~from the Chief of the Division~~. In addition, Division staff may at any time, on their own motion, issue a final staff ~~division~~ 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 ~~for a final division decision~~ 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.~~  
~~The request must contain the following information presented in the following order:~~
- (1) ~~A statement describing how the claimant is damaged by the prior staff decision. This paragraph shall be entitled "Claimant's Grievance."~~
  - (2) ~~A description of the remedy or outcome desired. This paragraph shall be entitled "Remedy Requested."~~
  - (3) ~~An explanation of why the claimant believes the action or the decision of division staff is erroneous, inappropriate or improper. This paragraph shall be entitled "Statement of Reasons."~~
  - (4) ~~A completed reimbursement request when the subject of the request is non-payment of a specific cost.~~
- (c) *The Division shall make a final division decision within thirty (30) calendar days of receipt of the request. 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 thirty (30) calendar days from the date of receipt of the final division decision. A petition will be deemed to be filed with the Board when it is deposited in the United States mail properly addressed with postage prepaid.*

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.37(c)(8)(A)-(B) and 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~~ ~~180~~ ~~90~~ 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 ~~30~~ ~~60~~ calendar days by written agreement between the State Board and the petitioner.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections ~~25299.37(c)(8)(B)~~ and 25299.56, Health and Safety Code