

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF CLEAN WATER PROGRAMS

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PETROLEUM UNDERGROUND  
STORAGE TANK CLEANUP  
FUND REGULATIONS

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CHAPTER 18 (COMMENCING WITH SECTION 2804),  
DIVISION 3, TITLE 23,  
CALIFORNIA CODE OF REGULATIONS  
*EFFECTIVE NOVEMBER 27, 2000*



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## ARTICLE 1. GENERAL PROVISIONS

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### 2803. Applicability

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- (a) The regulations in this chapter implement the Barry Keene Underground Storage Tank Trust Fund Act of 1989 (Health and Safety Code, division 20, chapter 6.75, section 25299.10 et seq.). Except as otherwise specifically provided, this chapter applies to owners and operators of petroleum underground storage tanks as defined in article 2 of this chapter.
- (b) This chapter applies in part to owners of residential tanks as this term is defined in article 2 of this chapter.
- (c) This chapter establishes financial responsibility requirements for certain owners and operators of underground storage tanks (article 3).
- (d) This chapter provides for reimbursement from the Underground Storage Tank Cleanup Fund (Fund) of eligible corrective action, regulatory technical assistance, and third party compensation claim costs incurred by eligible owners and operators of underground storage tanks and residential tanks (article 4).
- (e) This chapter establishes procedures for requesting review of a staff decision by the Fund Manager, appealing a staff decision or a Fund Manager Decision to the Chief of the Division of Clean Water Programs, and for petitioning the State Water Resources Control Board for review of a decision of the Division Chief (article 5).
- (f) This chapter establishes procedures for owners and operators of underground storage tanks and other responsible parties to petition for review of a regulatory agency decision not to close an underground storage tank or residential tank site (article 6).

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.10, 25299.11, 25299.31, 25299.39.2, 25299.51, 25299.56, 25299.57, & 25299.58 Health and Safety Code

## ARTICLE 2. DEFINITION OF TERMS

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### 2804. Definitions

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

**“Accident”** means an unintentional and unexpected event.

**“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 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 the physical injury, sickness, disease, including death, sustained by any person as a proximate result of an unauthorized release from an underground storage tank or residential tank.

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

**“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.

**“Claim”** means a written request for payment of costs eligible for reimbursement from the Fund.

**“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 residential tank.

**“De facto owner”** means the owner of real property who has actual possession of and control over an underground storage tank or residential tank that is located on the property and that has been abandoned by its legal owner and operator.

**“Designated representative”** means any person who provides financing for costs claimed in a reimbursement request. The term includes the state, any department or agency thereof, or the federal government.

**“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.

**“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 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Solid Waste Amendments of 1984 (42 U.S.C. §§ 6991-6991i), 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 state and federal financial responsibility requirements for petroleum underground storage tanks. These requirements are established by:

- (a) title 40 Code of Federal Regulations, part 280, subpart H (commencing with section 280.90), established pursuant to section 6991c(c) of title 42, United States Code;
- (b) Health and Safety Code section 25292.2;
- (c) Health and Safety Code, division 20, article 3, chapter 6.75 (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 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, that causes or allows an unauthorized release from an underground storage tank or residential tank to occur or to continue.

**“Heating oil”** means petroleum, as defined in 40 Code of Federal Regulations, section 280.12, that is: 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.

**“Initial site investigation”** means a soil and groundwater investigation sufficient to identify where contamination resulting from an unauthorized release is most likely to be present.

**“Initiation of corrective action”** means actual commencement of corrective action work by or under the authority of an owner or operator in accordance with California Code of Regulations, title 23, division 3, chapter 16, article 11 (commencing with section 2720).

**“Local agency”** means a local agency authorized to implement Health and Safety Code, division 20, chapter 6.7 (commencing with section 25280) pursuant to section 25283 of the Health and Safety Code.

**“Nonprofit organization”** means a nonprofit public benefit organization incorporated pursuant to title 1, division 2, part 2 (commencing with section 5110) of the Corporations Code.

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

**“Operator”** means any person in control of, or having responsibility for, the daily operation of an underground storage tank or residential 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 a person who owns an underground storage tank or a residential tank. The term includes an owner of real property who is a de facto owner of an underground storage tank or residential tank located on such property; however, the term does not include the state or any agency or department thereof, or the federal government.

**“Permit”** means a written authorization issued under Health and Safety Code, division 20, chapter 6.7 (commencing with section 25280) 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, limited liability company, or association. The term includes a city, county, district, or state, and an agency or department thereof; or the United States to the extent authorized by federal law.

**“Petroleum”** means crude oil, or any fraction thereof, that is liquid at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute, including the following substances: motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils, including any additives contained in the formulation of the substances.

**“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 actual 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 or residential tank.

**“Regional board”** means a California Regional Water Quality Control Board.

**“Regulatory agency”** means the Board, a regional board, or a local, state, or federal agency that has responsibility or authority for regulating underground storage tanks or residential tanks or that has responsibility for corrective action or overseeing corrective action, for unauthorized releases from underground storage tanks or residential tanks.

**“Regulatory technical assistance”** means assistance from a person other than the claimant in the preparation and submission of a claim to the Fund. Regulatory technical assistance includes assistance with completing and submitting the claim application, reimbursement requests, and supporting documentation, and complying with procurement requirements. Regulatory technical assistance does not include assistance with preparing and pursuing a site closure petition, an appeal to the Division Chief for unpaid claims, a petition for unpaid claims, or an action in court.

**“Reimbursement Request”** means documents required by the Division and necessary for reimbursement of a claim.

**“Release”** means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or residential 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 or overfills occurring as a result of filling or emptying of an underground storage tank or residential tank.

**“Residence”** means real property which is improved with an owner-occupied single family dwelling or duplex.

**“Residential tank”** means a tank, as defined in Health and Safety Code section 25281, subdivision (t), including pipes connected thereto, that meets all of the following conditions:

- (a) The tank is used for the storage of petroleum.
- (b) The tank is substantially or totally beneath the surface of the ground.
- (c)
  - (i) The tank is located at the residence of a person on property used exclusively for residential purposes at the time of discovery of the unauthorized release; or
  - (ii) The tank is located at the residence of a person, the tank is located on property which on or after January 1, 1985, has not been used for agricultural purposes, the tank has a capacity of 1,100 gallons or less, and on or after January 1, 1985, the tank has been used for the sole purpose of storing home heating oil for consumptive use on the premises where stored.
- (d) The tank is not located on a farm, and on or after January 1, 1985, the tank has not been used primarily to store motor vehicle fuel for agricultural or resale purposes.

**“Site”** means the parcel of real property at which an underground storage tank or residential tank is located, subject to the following limitations:

- (a) If underground storage tanks or residential tanks are located at adjacent parcels of real property, the adjacent parcels together constitute one site if both of the following apply:
  - (i) The underground storage tanks are, or have been, operated by the same person.
  - (ii) The adjacent parcels are under common ownership or control.
- (b) Notwithstanding subdivision (a), the Board may consider a parcel of real property as consisting of multiple sites, corresponding to the number of distinct underground storage tank or residential tank operations at the parcel, if the Board makes both of the following findings:
  - (i) There is more than one underground storage tank or residential tank located at the parcel.
  - (ii) Each separately operated underground storage tank, residential tank, or group of underground storage tanks and residential tanks is not, and has not been, operated by a person who is operating or has operated another underground storage tank or residential tank at the same parcel.

**“Small business”** means a business which, at the time of application to the Fund, fits the definition of a small business set forth in Government Code section 14837, subdivision (d), except that a business that is domiciled or has its principal office outside of the state is a “small business” if the business otherwise fits the definition set forth in section 14837, subdivision (d).

**“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 an owner of the real property, or an owner or operator of the underground storage tank or residential tank that is the subject of a claim. The term does not include current or former tenants or landlords of the site.

**“Third party compensation”** means compensation an owner or operator is legally obligated to pay a third party, whether or not the owner or operator receives reimbursement from the fund, for bodily injury or property damage to the third party resulting from an unauthorized release of petroleum from an underground storage tank or residential tank. Compensation must be made pursuant to a court-approved settlement, a final judgment other than a default judgment, or an arbitration award by a court-appointed arbitrator as a result of proceedings conducted in accordance with the Code of Civil Procedure, part 3, title 9 (commencing with section 1280), imposing liability on the owner or operator for costs eligible for reimbursement as set forth in section 2812.2, subdivision (f) of this chapter.

**“Unauthorized release”** means any release that does not conform to Health and Safety Code, division 20, chapter 6.7 (commencing with section 25280), whether the release is from a residential tank or a petroleum underground storage tank, unless the release is authorized by the Board or a regional board pursuant to Water Code, division 7 (commencing with section 13000).

**“Underground storage tank”** means an underground storage tank as defined in Health and Safety Code section 25281, subdivision (x), except that “underground storage tank” means only those underground storage tanks that are defined as petroleum underground storage tanks under the Federal Act. “Underground storage tank” does not include any structures specifically exempted under California Code of Regulations, title 23, section 2621.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25281, 25299.11-25299.25, 25299.31, 25299.37, 25299.52, 25299.54(e)(1)-(2), 25299.55, 25299.57, 25299.58, & 25299.61, Health and Safety Code and 40 Code of Federal Regulations section 280.12

### ARTICLE 3. FINANCIAL RESPONSIBILITY REQUIREMENTS

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#### 2805. Applicability

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- (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 Code of Federal Regulations, part 280 and are incorporated herein by reference.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.30, Health and Safety Code

#### 2806. General Responsibility to Meet Federal Requirements

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- (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 that has been permanently closed or, if corrective action is required, after the corrective action has been completed and the underground storage tank has been permanently closed in accordance with the applicable provisions of Health and Safety Code section 25298, the California Code of Regulations, title 23, division 3, chapter 16, article 7, and applicable local requirements.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.30, Health and Safety Code

#### 2806.1. Current Federal Compliance Dates

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- (a) Owners and operators must comply with federal financial responsibility requirements by the date or dates specified in the Federal Act. The compliance date is determined by the characteristics of the owner as set forth in 40 Code of Federal Regulations, section 280.91. 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;
  - (4) December 31, 1993 for all petroleum underground storage tank owners or operators not described in subdivisions (1) through (3) of this section, excluding local governmental entities;
  - (5) February 18, 1994 for local governmental entities; and
  - (6) December 31, 1998 for federally recognized Indian tribes that own underground storage tanks on Indian lands if those underground storage tanks comply with all current technical requirements, such as leak detection requirements.
- (b) Federal and state agencies are not subject to financial responsibility requirements.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.30, Health and Safety Code

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### **2806.2. Demonstration of Compliance with Financial Responsibility Requirements by Owners and Operators**

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If the owner and operator are separate persons, either the owner or operator shall demonstrate compliance with financial responsibility requirements. However, both the owner and operator are responsible for ensuring that applicable financial responsibility requirements are met.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.30 & 25299.31, Health and Safety Code

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### **2807. Required Financial Responsibility Amounts**

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- (a) Owners or operators must demonstrate financial responsibility in the amounts required by the Federal Act. Currently the federally required minimum amounts are:

- (1) \$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
  - (2) \$500,000 per occurrence for all owners or operators not included in the preceding subdivision; and
  - (3) \$1 million annual aggregate coverage for owners or operators of 1 to 100 underground storage tanks; or
  - (4) \$2 million annual aggregate coverage for owners or operators of 101 or more underground storage tanks.
- (b) The amounts of assurance required under this section exclude legal defense cost as defined in 40 Code of Federal Regulations, section 280.92.
- (c) The required per occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.30 & 25299.32, Health and Safety Code

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## **2808. Demonstration of Financial Responsibility Through Compliance with Federal Requirements**

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Owners or operators may fulfill federal financial responsibility requirements in the manner and through the mechanisms authorized by the Federal Act. Owners or operators who choose to fulfill financial responsibility requirements through a mechanism other than the Fund 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 & 25299.33, Health and Safety Code

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### **2808.1. Use of Fund to Meet Financial Responsibility Requirements**

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- (a) As an alternative to, or in conjunction with, demonstration of financial responsibility in the manner and through use of other 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 the following amount per occurrence and per annual aggregate coverage exclusive of the Fund:

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

If a waiver is granted pursuant to section 2811, subdivision (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 an additional \$1 million, exclusive of the Fund if the owner or operator is required to comply with the provisions of section 2807, subdivision (a)(4); and
- (3) maintain eligibility to participate in the Fund.
- (b) An owner or operator may demonstrate the financial responsibility required by subdivisions (a)(1) and (2) of this section through the use of any of the mechanisms authorized by the Federal Act, or through the 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.
- (c) As an alternative to the mechanisms indicated in subdivision (b) 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 subdivision (a)(1) 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 subdivision, the owner or operator shall ensure that both of the following occur:
- (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 the underground storage 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 section 2808.1, subdivision (c)(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 subdivision and the letter must be renewed within 150 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.
- (d) If an owner or operator using the alternative provided by subdivision (c) 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 days of the close of such fiscal year.
- (e) The Division or any appropriate regulatory agency may require reports of financial condition at any time from an owner or operator. If the Division 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 days after notification of such finding.

- (f) If an owner or operator subject to the requirements of subdivisions (d) and (e) of this section cannot demonstrate the required financial responsibility called for by these subdivisions within the time frames stated therein, the owner or operator must notify the Division and any appropriate regulatory agencies within 10 days after expiration of the time frames indicated in subdivisions (d) and (e).

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

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## 2808.2. Fund Coverage

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- (a) An owner or operator using the Fund to demonstrate financial responsibility shall be liable for all costs of corrective action, third party compensation, and regulatory technical assistance.
- (b) 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 as follows:
- (1) for the reasonable and necessary cost of corrective action, third party compensation, and regulatory technical assistance incurred by the owner or operator up to an amount not to exceed \$1,000,000 for each occurrence, less the applicable financial responsibility limits set forth in section 2808.1, subdivision (a)(1) of this chapter; and
  - (2) after the Fund has reimbursed an owner or operator the maximum amount specified in subdivision (b)(1) of this section, up to an additional \$500,000 for each occurrence for the reasonable and necessary cost of corrective action and regulatory technical assistance in excess of the amount specified in subdivision (b)(1) of this section.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.32, 25299.57(a), (d), & (j), 25299.58, 25299.59(b), 25299.60 & 25299.81(c)(1), Health and Safety Code

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## 2809. Reporting by Owner or Operator

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- (a) An owner or operator shall notify the appropriate regulatory agency, in writing, of compliance with the financial requirements of this article within 45 days of the appropriate date specified in section 2806.1. An owner or operator shall notify the

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Sections 2808.1(e) thru 2809(a)

appropriate regulatory agency of compliance with financial responsibility when applying for an initial permit to operate a new underground storage tank containing petroleum. Thereafter, at the time of permit renewal, an owner or operator shall notify the appropriate regulatory 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 under any of the following conditions:
- (1) within 30 days after the owner or operator identifies an unauthorized release of petroleum which is required to be reported under the California Code of Regulations, title 23, division 3, chapter 16, article 5; or
  - (2) as required by the Federal Act.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.31 & 25299.33, Health and Safety Code

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### **2809.1. Recordkeeping**

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- (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 subdivision (c) 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 subdivision (c) of section 2808.1 must be maintained on file at the underground storage tank site(s) or the owner or operator's place of business within 5 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 and must be maintained in addition to the certification provided for in subdivision (c) of this section.
- (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 [owner or operator] 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 & 25299.33, Health and Safety Code

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### 2809.2. Additional Financial Information

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The Division or an appropriate regulatory 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 & 25299.33, Health and Safety Code

## ARTICLE 4. THE FUND

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### 2810. Types of Claims Permitted

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- (a) A claimant may submit the following types of claims against the Fund:
  - (1) a claim for reimbursement of corrective action costs incurred for work performed on or after January 1, 1988;
  - (2) a claim for reimbursement of third party compensation costs;
  - (3) a claim for regulatory technical assistance costs incurred for work performed on or after January 1, 1997; or
  - (4) any combination of the foregoing claims.
- (b) A claimant may submit only one claim per cost. A claimant must submit a separate claim for each occurrence. Multiple owners and operators of a site may submit joint claims.

Authority: Section 25299.77, Health and Safety Code

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

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### 2810.1. Eligible Claimants

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- (a) Only a current or former owner or operator of an underground storage tank or residential tank who has paid or will pay for the costs being claimed may file a claim against the Fund. In order to file a claim for third party compensation costs, the owner or operator must be eligible to file a claim for corrective action costs for the site at which the unauthorized release occurred, and the judgment, arbitration award, or settlement must have been entered or approved after January 1, 1988.
- (b) Notwithstanding subdivision (a), a person who owns a site may file a claim against the Fund if:
  - (1) an unauthorized release requiring corrective action previously occurred at the site;
  - (2) the site was the subject of completed corrective action;
  - (3) as a result of the corrective action identified in subdivisions (b)(1) and (b)(2), a regulatory agency issued a closure letter stating that no further action was required at the site;

- (4) the person who completed the corrective action identified in subdivisions (b)(1) and (b)(2) was eligible for reimbursement from the Fund and filed a claim with the Fund;
  - (5) reimbursements by the Fund for earlier claims at the site did not exceed the amount of reimbursement authorized by section 2808.2, subdivision (b) of this chapter; and
  - (6) a regulatory agency requires additional corrective action at the site due to additionally discovered contamination from the previous unauthorized release.
- (c) Purchasers of real property or persons who otherwise acquire real property on which an underground storage tank or residential tank is situated may not receive reimbursement from the Fund for a cost attributable to an occurrence that commenced prior to acquisition of the real property if:
- (1) the purchaser or acquirer knew or in the exercise of reasonable diligence would have discovered that an underground storage tank or residential tank was located on the real property being acquired; and
  - (2) any person who owned the site or owned or operated an underground storage tank or residential tank at the site prior to acquisition by the purchaser or acquirer would not have been eligible for reimbursement from the Fund.
- (d)
- (1) If an owner of an underground storage tank or residential tank is ineligible to file a claim against the Fund, the operator at the time of the act or omission causing the owner's ineligibility is also ineligible to file a claim for the site.
  - (2) If an operator of an underground storage tank or residential tank is ineligible to file a claim against the Fund, the owner at the time of the act or omission causing the operator's ineligibility is also ineligible to file a claim for the site.
  - (3) If a previous owner or operator of an underground storage tank or residential tank is ineligible to file a claim against the Fund, the current owner and the current operator may not receive reimbursement from the Fund for a cost attributable to an occurrence that commenced when a previous owner or operator had ownership or control over the underground storage tank or residential tank.
- (e) For purposes of subdivisions (c) and (d)(3), an owner or operator may use one of the following to demonstrate that a cost is eligible for reimbursement from the Fund because the cost is attributable to an occurrence that commenced after an ineligible owner or operator ceased having ownership of or control over the underground storage tank or residential tank.

- (1) A regulatory agency has issued a no further action letter for the site after the previous, ineligible owner or operator ceased having ownership of or control over the underground storage tank or residential tank.
- (2) A person acquired the real property, underground storage tank, or residential tank, or commenced operating at a site in reliance on an environmental site assessment that concluded that petroleum contamination was not an environmental concern at the site. For purposes of this subdivision, an environmental site assessment must conform to the standards set forth in subdivision (e)(4) of this section.
- (3) After a person acquired the real property, underground storage tank, or residential tank, or commenced operating at a site, an environmental site assessment concluded that petroleum contamination was not present at the site at the time of the assessment above regulatory action levels. For purposes of this subdivision, an environmental site assessment must conform to the standards set forth in subdivision (e)(4) of this section.
- (4) A person may rely only on an environmental site assessment that conforms with all the standards of this subdivision (e)(4) to demonstrate that a cost to be submitted to the Fund is not attributable to an occurrence that commenced when a prior owner or operator had ownership of or control over an underground storage tank or residential tank.
  - (A) the person seeking to submit a claim to the Fund contracted with the person conducting the environmental site assessment for preparation of the site assessment;
  - (B) the environmental site assessment conforms to generally accepted commercial practices or standards for due diligence;
  - (C) a professional geologist or professional engineer substantially controls the environmental site assessment and signs the report of the environmental site assessment;
  - (D) the environmental site assessment concludes that petroleum contamination is not an environmental concern because either:
    - (i) there is no evidence that there has been a release at the property; or
    - (ii) to the extent there has been a release at the property, a regulatory agency has issued a written statement that no further action is required for any release identified by the environmental site assessment; and
  - (E) in those circumstances in which the person preparing the environmental site assessment determines that an underground

storage tank or residential tank is present or has been present on the site, the environmental site assessment includes sampling at locations that, in the engineer's or geologist's professional opinion, are most likely to have petroleum contamination, but at a minimum, includes sampling and analysis of soil for petroleum constituents at each of the following locations:

- (i) underneath the underground storage tank or residential tank,
- (ii) at least once for each twenty linear feet of trench for piping, and
- (iii) beneath each dispenser island at the site.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.10, 25299.37(a)-(c), 25299.51(f) & (i), 25299.54, 25299.55, 25299.57, & 25299.58, Health and Safety Code

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### **2810.2. Ineligibility of Cost Prior to January 1, 1988 [Repealed]**

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

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### **2810.3. Intentional or Reckless Acts; Ineligibility of Costs [Repealed]**

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

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## **2811. Permitting and Other Eligibility Requirements**

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- (a) An owner or operator of an underground storage tank or a residential tank for which a permit is required under section 25284 of the Health and Safety Code shall be entitled to reimbursement for eligible corrective action, regulatory technical assistance, and third party compensation costs if all of the following are met:
  - (1) There was an unauthorized release of petroleum from the underground storage tank or residential tank.
  - (2) The claimant obtained or applied for any permit required by Health and Safety Code, division 20, chapter 6.7, if the underground storage tank or residential tank that is the subject of the claim was installed on or after January 1, 1990. If the underground storage tank or residential tank that is the subject of the claim was installed before January 1, 1990, then the claimant must have obtained any permit required by Health and Safety Code, division 20, chapter 6.7, or filed a substantially complete application for any required permit before January 1, 1990. If the underground storage tank or residential tank that is the subject of the claim was installed before

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Sections 2810.1(e)(4)(E) thru 2811(a)(2)

January 1, 1990, and the claimant did not obtain or file for a permit as required, then the claimant may obtain a waiver of the permit requirement as set forth in subdivisions (A) and (B) below.

- (A) For claims filed prior to January 1, 1994, a claimant may obtain a waiver of the permit requirement if the claimant demonstrates to the satisfaction of the Division that obtaining or applying for a permit as required was beyond the reasonable control of the claimant, or that under the circumstances of the particular case, it would be unreasonable or inequitable to impose the permit requirement. Any claimant who obtains a waiver of the permit requirement pursuant to this subdivision shall pursue with reasonable diligence and obtain any permit required by Health and Safety Code, division 20, chapter 6.7.
- (B) For claims filed on or after January 1, 1994, a claimant may obtain a waiver of the permit requirement if the claimant demonstrates all of the following to the satisfaction of the Division:
  - (i) The claimant was unaware of the permit requirement before January 1, 1990, and the claimant did not intentionally avoid the requirement or associated fees at any time.
  - (ii) Prior to filing a claim, the claimant complied with the financial responsibility requirements set forth in section 25299.31 of the Health and Safety Code.
  - (iii) Prior to filing a claim, the claimant paid for and obtained any currently required permit.
  - (iv) Prior to filing a claim, the claimant paid all currently due storage fees imposed pursuant to section 25299.41 of the Health and Safety Code, and all prior fees due on and after January 1, 1991.
- (C) A claimant to whom the Division grants a waiver pursuant to subdivision (B) shall obtain a level of financial responsibility twice as great as the amount which the claimant is otherwise required to obtain pursuant to section 25299.32 of the Health and Safety Code. The Division may waive the requirements of this subdivision if the claimant can demonstrate that the conditions specified in subdivisions (i-iv) above were satisfied prior to the release resulting in contamination. That demonstration may be made through a certification issued by the permitting agency based on site and underground storage tank tests at the time of permit application, or in any other manner acceptable to the Division.

- (3) The claimant has complied with any applicable financial responsibility requirements.
  - (4) On or after January 1, 1988, the claimant was required to perform corrective action pursuant to Health and Safety Code, division 20, chapter 6.7, Water Code, division 7, or section 25299.37 of the Health and Safety Code. If the claimant knew of the unauthorized release of petroleum that is the subject of the claim before January 1, 1988, and failed to initiate corrective action on or before June 30, 1988, then the claimant may not file a claim against the Fund.
  - (5) Any corrective action performed before December 2, 1991, was performed in accordance with Health and Safety Code, division 20, chapter 6.7 and Water Code, division 7. Any corrective action performed on or after December 2, 1991, was performed in accordance with California Code of Regulations, title 23, division 3, chapter 16, article 11. Any corrective action performed was performed in accordance with the written or oral directives of the appropriate regulatory agency. If oral directives are relied upon, the claimant shall provide a written statement from the regulatory agency certifying that the directives were issued or other verification as may be acceptable to the Division.
- (b) An owner or operator of a residential tank for which a permit is not required under section 25284 of the Health and Safety Code shall be entitled to reimbursement for eligible corrective action, regulatory technical assistance, and third party compensation costs only if the conditions set forth in subdivisions (a)(1) and (3) of this section are met, and if any corrective action performed was required to be performed by the regulatory agency and was performed in accordance with the written or oral directives of the regulatory agency. If oral directives are relied upon, the claimant shall provide a written statement from the regulatory agency certifying that the directives were issued or shall provide such other verification as may be acceptable to the Division.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.37(a)-(c), 25299.54, 25299.57 & 25299.58, Health and Safety Code

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### **2811.1. Claim Priority Classes**

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- (a) The Board will assign each acceptable claim to one of the following priority classes:
  - (1) Class A--Claims by owners of residential tanks as defined in article 2 of this chapter.
  - (2) Class B--Claims by owners and operators of underground storage tanks who meet the definition of a small business as defined in article 2 of this chapter, and cities, counties, districts, and nonprofit organizations that have total

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Sections 2811(a)(3) thru 2811.1(a)(2)

annual revenues of not more than \$7,000,000. In determining the amount of a nonprofit organization's annual revenues, only those revenues directly attributable to the particular site which is the subject of the claim will be calculated.

- (3) Class C--Claims by owners and operators of underground storage tanks who own or operate a business that employs fewer than 500 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation, and claims by cities, counties, districts, and nonprofit organizations that have less than 500 full-time and part-time employees. In determining the number of employees employed by a nonprofit organization, only those full-time and part-time employees employed at the site that is the subject of the claim will be calculated.
  - (4) Class D--Claims by all other owners and operators of underground storage tanks.
- (b) For purposes of assignment to a priority class, the Board will base the priority of a claim on the lowest priority appropriate for any claimant, including any joint claimant, the owners and operators at the time of discovery of the unauthorized release, and the owners and operators at the time of application to the Fund, 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, subdivision (b) of the Health and Safety Code.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.52(a)-(b) & 25299.54(e)(1)-(2), Health and Safety Code

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### **2811.2. Claim Application Requirements; Claims For Corrective Action Costs**

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A claim for reimbursement of corrective action costs shall contain the following:

- (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 of each claimant, and the dates during which each claimant owned or operated the underground storage tank or residential tank that is the subject of the claim;
- (c) if the claimant designates a representative to be a co-payee for payment from the Fund, the name, address, and telephone number of the co-payee;

- (d) the site address or a description of the site where the underground storage tank or residential tank that is the subject of the claim is located, and a site map drawn to scale which includes a north arrow and distances relative to the nearest public roads;
- (e) any identification number assigned by a regulatory 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, to the best of the claimant's knowledge, including the following:
  - (1) if the claimant is an owner, the date on which the claimant acquired the underground storage tank or residential tank that is the subject of the claim, the person from whom the claimant acquired the underground storage tank or residential tank and, if the underground storage tank or residential tank has been transferred to another person, the date of transfer and the person who acquired the underground storage tank or residential tank;
  - (2) if the claimant is an operator, the dates during which the claimant operated the underground storage tank or residential tank that is the subject of the claim, the person who owned the underground storage tank or residential tank during such periods, including the person's last known correspondence address and telephone number, the name and address of the current owner of the underground storage tank or residential tank involved, and the priority class that would be appropriate for the current owner if the owner were to file a claim against the Fund;
  - (3) if the claimant owns the site at which the underground storage tank or residential tank that is the subject of the claim is located, the date on which the claimant acquired the site, the person from whom the claimant acquired the site, and if the site has been transferred, the date of sale and the person who acquired the underground storage tank or residential tank.
  - (4) the capacity of the underground storage tanks or residential tanks located at the site and the substances that have been stored therein;
  - (5) the date on which the claimant first learned of the unauthorized release;
  - (6) the date on which any corrective action was initiated and the current status of any corrective action in progress;
  - (7) if corrective action on the site is complete, the date on which such action was completed; and
  - (8) a brief description of the corrective action which was undertaken;

- (g) a statement of the priority class sought by the claimant and the following documentation to support assignment to that priority class:
  - (1) for Priority Class A, documentation showing that the property on which the residential tank is located was owner-occupied at the time of the discovery of the unauthorized release (e.g., a property tax bill or a utility bill);
  - (2) for Priority Class B, copies of the claimant's federal tax returns. If the claimant is a city, county, or district, a copy of the Annual Report of Financial Transactions as submitted to the State Controller's Office for the latest fiscal year. If the claimant is a nonprofit organization, a copy of the annual fiscal report filed with the Registry of Charitable Trust or a copy of the federal tax records for the latest fiscal year;
  - (3) for Priority Class C, documentation identifying the number of full-time and part-time employees (e.g., copy of an Employment Development Department form DE6);
- (h) a statement of the 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) a certification that the claimant meets all applicable eligibility requirements set forth in section 2811 of this chapter;
- (k) 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 Board for any disallowance of costs occasioned by such an audit. The claimant must agree to retain all records pertaining to the claim for a period of at least three years after final payment by the Fund, and to provide the records to the Board upon request. The three-year period shall be extended until the completion of any audit in progress; and
- (l) any other information or supporting documentation reasonably required by the Division to determine the eligibility, reimbursable amount due, or appropriate priority class of the claim.

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

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### **2811.3. Claim Application Requirements; Third Party Compensation Claims**

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Claims for reimbursement of third party compensation costs shall contain the following:

- (a) the information described in section 2811.2, subdivisions (a) through (h);

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Sections 2811.2(g) thru 2811.3(a)

- (b) a certification that the claimant meets all applicable eligibility requirements set forth in section 2811 of this chapter;
- (c) a certified or verified copy of the judgment, court-approved settlement, or arbitration award pursuant to which the claimant seeks reimbursement;
- (d) 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 Board for any disallowance of costs occasioned by such an audit. The claimant must also agree to retain all records pertaining to the claim for a period of at least three years after final payment on the claim, and to provide the records to the Board upon request. The three-year period shall be extended until the completion of any audit in progress.
- (e) any other information or supporting documentation reasonably required by the Division to determine the eligibility, reimbursable amount due, and appropriate priority class of the claim.

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

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#### **2811.4. Pre-Approval of Corrective Action Proposals or Bids; Assistance with Contractor and Consultant Selection**

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- (a) Where a claimant seeks pre-approval of a proposal or bid for preparing a workplan or corrective action plan as specified in the California Code of Regulations, title 23, division 3, chapter 16, article 11, the claimant shall submit copies of all proposals or bids received for preparing the workplan or corrective action plan.
- (b) Where a claimant seeks pre-approval of corrective action proposals or bids for implementing a workplan or corrective action plan, the claimant shall submit the following:
  - (1) a copy of the workplan or corrective action plan prepared as specified in the California Code of Regulations, title 23, division 3, chapter 16, article 11;
  - (2) a copy of a letter or other written materials that demonstrate to the Division's satisfaction that the appropriate regulatory agency has directed that a workplan or corrective action plan be prepared, and that the regulatory agency has concurred with the workplan or corrective action plan;
  - (3) copies of all proposals or bids that the claimant received from contractors or consultants for conducting the work specified in the workplan or corrective action plan. If the claimant has obtained fewer than three proposals or bids, the claimant must submit a written request that the Division waive the three

- bid requirement pursuant to section 2812.1 of this chapter. The request must include an explanation as to why the three bid requirement is unnecessary, unreasonable or impossible to comply with under the circumstances pertaining to the claim; and
- (4) other information the Division deems necessary.
- (c) The Division shall approve or disapprove as reasonable and necessary the proposals or bids submitted for preparing or implementing the specified workplan or corrective action plan within 30 days after the date a request is received. If the Division disapproves a request for pre-approval or fails to act within 30 days after receiving the request, the claimant may petition the Board for review using the procedures set forth in article 5 of this chapter.
- (d) Where a claimant requests assistance in the selection of contractors and consultants, the Division shall provide assistance with the following:
- (1) identification of potential contractors and consultants;
  - (2) preparation of requests for statements of qualifications from potential contractors and consultants;
  - (3) comparison and evaluation of the qualifications of contractors and consultants;
  - (4) preparation of invitations for obtaining estimates and bids from contractors and consultants; and
  - (5) comparison of proposals and bids.
- (e) When providing assistance to claimants pursuant to subdivision (d) of this section, the Division may not recommend, approve, or disapprove consultants or contractors. The responsibility for procuring, managing, and dismissing consultants and contractors is the sole responsibility of the claimant.

Authority: Section 25299.77, Health and Safety Code

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

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## **2812. General Procedures for Reimbursement**

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- (a) The Board will issue eligible claimants a letter of commitment that will obligate funds for eligible corrective action costs, regulatory technical assistance costs, third party compensation costs, or any combination of the foregoing. Issuance of a letter of commitment does not guarantee that the costs claimed in the application are eligible or will be reimbursed by the Fund.

- (b) After being issued a letter of commitment, a claimant may submit a request for reimbursement of costs incurred to date.
- (c) A claimant may submit reimbursement requests on an on-going basis for eligible costs provided that the requests are for \$10,000 or more, and not made more than once a month except for final payment.
- (d) Reimbursement requests must include invoices and auxiliary documentation that demonstrate to the Division's satisfaction that the corrective action and regulatory technical assistance costs claimed by a claimant are eligible. Invoices must include, at a minimum, all of the following:
  - (1) a brief description of the work performed;
  - (2) the date when the work was performed;
  - (3) the consultant's or contractor's name and address;
  - (4) the name or initials of the person performing the work;
  - (5) the job classification or title and hourly rate of the person performing the work;
  - (6) the hours charged for each task per day;
  - (7) the cost amount of the work performed;
  - (8) if the invoice is for telephone calls or meetings and is submitted to support a claim for regulatory technical assistance, then the invoice must identify the subject of the telephone calls or meetings and the person contacted; and
  - (9) if the invoice identifies typical overhead costs (such as clerical support, copying costs, postage costs, and telephone costs) as distinct costs, then documentation should be submitted explaining why these costs are not included in the billed rate.
- (e) A claimant may name a designated representative as a co-payee for payments from the Fund. In such cases, the Board will issue payments jointly to the claimant and the designated representative.
- (f) Within 60 days of the receipt of a properly documented reimbursement request, the Board will pay for reasonable and necessary costs or inform the claimant of the Board's basis for rejecting the costs.
- (g) A claimant must pay all costs incurred by the claimant, but not yet paid, and claimed against the Fund within 30 days of receipt of reimbursement from the Fund. If a claimant has not paid such costs within 30 days, the claimant shall return the unpaid funds to the Board.

- (h) In the event of an 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 25299.37(d), 25299.55, 25299.56, & 25299.57, Health and Safety Code

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### **2812.1. Compliance with Laws; Bid Requirements**

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- (a) Claimants must follow applicable state laws and regulations in procuring consultant and contractor services and must ensure that such services are obtained from qualified firms at a reasonable cost and that the costs are necessary.
- (b) Claimants must obtain at least three written competitive bids with detailed cost estimates that include unit prices and quantities for corrective action work contracted for on or after December 2, 1991, and to be performed by licensed contractors within the meaning of Business and Professions Code, division 3, chapter 9 (commencing with section 7000). Claimants must obtain at least three written proposals with detailed cost estimates that include unit prices and quantities for corrective action work contracted for on or after December 2, 1991, and to be performed by professional geologists within the meaning of Business and Professions Code, division 3, chapter 12.5 (commencing with section 7800) or by professional engineers within the meaning of Business and Professions Code, division 3, chapter 7 (commencing with section 6700). The requisite bids or proposals must conform to the workplans and corrective action plans prepared pursuant to California Code of Regulations, title 23, division 3, chapter 16, article 11.
- (c) Local governmental entities shall comply with applicable public contract requirements including the requirements of Public Contract Code, division 2, part 3 (commencing with section 20100).
- (d) Claimants are not required to submit proposals or bids when they initially file a claim, but the Fund will not normally reimburse claimants for any work for which proposals or bids are required until the costs claimed are supported by at least three proposals or bids. The Fund may waive the three-bid or -proposal requirement if the Division finds that the requirement is unnecessary, unreasonable, or impossible to comply with under the circumstances pertaining to a particular claim.
- (e) Where this chapter requires a claimant to submit proposals or bids, the Board will limit reimbursement from the Fund to the amount of the lowest proposal or bid submitted to the claimant for the work involved unless:
- (1) the Division determines justification exists for rejection of the lowest proposal or bid; or

- (2) the costs of the work involved are reasonable and necessary, and the work involved was performed by or under the direction of professional engineers within the meaning of Business and Professions Code, division 3, chapter 7 or professional geologists within the meaning of Business and Professions Code, division 3, chapter 12.5.
- (f) Where a claimant incurs increased costs or changes the scope of work covered by the awarded proposal or bid, the claimant must justify to the Division's satisfaction any costs in excess of the awarded proposal or bid.

Authority: Section 25299.77, Health and Safety Code  
Reference: Section 25299.57, Health and Safety Code

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### **2812.2. Eligible and Ineligible Costs**

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- (a) The Board may only reimburse from the Fund reasonable and necessary corrective action, regulatory technical assistance, and third party compensation costs that are incurred by or on behalf of a claimant.
- (b) In order to be reimbursable from the Fund, the corrective action work undertaken must be acceptable to the appropriate regulatory agency.
- (c) The Board will review court-approved settlements to assure that awarded costs, including third party compensation costs, are eligible.
- (d) Regulatory agency oversight costs of corrective action work are eligible costs.
- (e) The following are ineligible corrective action and regulatory technical assistance costs:
  - (1) attorney fees or other legal costs, except those to provide regulatory technical assistance;
  - (2) interest or any finance charge;
  - (3) any cost associated with removal, repair, retrofit, or installation of an underground storage tank, residential tank, or the equipment associated with an underground storage tank or residential tank;
  - (4) any cost associated with supervision by a claimant of corrective action;
  - (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 consequential costs incurred as a result of corrective action such as, but not limited to, loss of rents or business;
- (16) the added costs of implementing a corrective action alternative that is not the most cost-effective alternative to achieve cleanup levels identified as necessary by the regulatory agency;
- (17) the costs of corrective action incurred to clean up the property beyond cleanup levels identified as necessary by the regulatory agency;
- (18) corrective action costs incurred by the claimant before January 1, 1988;
- (19) regulatory technical assistance costs incurred before January 1, 1997;
- (20) regulatory technical assistance costs in excess of \$3,000 per occurrence submitted with a reimbursement request received by the Fund on or after January 1, 2000;
- (21) costs associated with resubmitting an application or reimbursement request to the extent the costs are incurred in response to a finding of noncompliance with the application or reimbursement requirements contained in this chapter; and
- (22) any other costs not directly related to corrective action, including but not limited to costs associated with filing of appeals and petitions.

- (f) Only third party compensation costs incurred on or after January 1, 1988 are eligible for reimbursement from the Fund. The Fund may only reimburse the following types of third party compensation costs:
- (1) medical expenses caused 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 25299.10, 25299.14, 25299.51, 25299.57, & 25299.58, Health and Safety Code

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### **2812.3. Double Payment**

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- (a) A claimant may not receive reimbursement from the Fund for corrective action, regulatory technical assistance, or third party compensation costs that have been or will be reimbursed from another source.
- (b) If a claimant receives compensation for corrective action, regulatory technical assistance, or third party compensation costs from the Fund and also receives compensation from a source other than the Fund for the same cost, the claimant will remit to the Fund an amount equal to the sum disbursed from the Fund on account of such cost.
- (c) If a claimant has received compensation (such as a settlement payment or a reduction in the cost to acquire an interest in real property) from another source, the Division shall determine whether the claimant will receive a double payment if the Fund reimburses the claimant's corrective action, regulatory technical assistance, or third party compensation costs. If the claimant can demonstrate that the compensation was for costs other than corrective action, regulatory technical assistance, or third party compensation costs, the Division may not consider the compensation to be a double payment. If a claimant receives compensation from a source other than the Fund, the Division will base its determination regarding the purposes of the compensation on one or more of the following:
- (1) the terms of the written contract or judgment requiring the payment of compensation to the claimant.
  - (2) the causes of action in any underlying lawsuit or claim resulting in the compensation to the claimant.

- (3) the claimant's documentation of actual, ascertainable costs to which the payment of compensation reasonably may be attributed. The Division will not allocate the payment to costs that are unsubstantiated.
- (d) If corrective action, regulatory technical assistance, or third party compensation costs are advanced to a claimant, or incurred on behalf of a claimant pursuant to a written contract, other than an insurance contract, under circumstances where the claimant is obligated to repay the advance from reimbursement received from the Fund, the Division shall not consider the advance to be a double payment so long as the Fund reimbursements are paid over to the person making the advance and the claimant does not benefit, directly or indirectly, from the payover.
- (e) Notwithstanding subdivision (a), a claimant may receive reimbursement from the Fund for corrective action, regulatory technical assistance, or third party compensation costs if an insurer has advanced the costs pursuant to an insurance contract and either of the following apply:
  - (1) The insurance contract explicitly coordinates insurance benefits with the Fund and requires the claimant to do both of the following:
    - (A) maintain the claimant's eligibility for reimbursement of costs from the Fund by complying with all applicable eligibility requirements, and
    - (B) reimburse the insurer for costs paid by the insurer pending reimbursement of those costs by the Fund.
  - (2) The claimant received a letter of commitment prior to June 30, 1999, for the occurrence and the claimant is required to reimburse the insurer for any costs paid by the insurer pending reimbursement of those costs by the Fund.
- (f) Notwithstanding subdivision (a), when a claimant obtains settlement proceeds or a judgment for costs the Fund would otherwise have reimbursed, the Fund may bear a fair share of the claimant's costs of obtaining the settlement proceeds or judgment.
  - (1) (A) The Fund's fair share shall be equal to the lesser of:
    - (i) the claimant's actual legal fees and legal costs incurred in collecting the settlement or obtaining the judgment in proportion to the ratio of the costs the fund would otherwise have reimbursed to the total settlement or judgment amount; or
    - (ii) 30 percent of the claimant's otherwise reimbursable costs obtained by the settlement or judgment.
  - (B) The Fund shall deduct its fair share from the amount determined to be a double payment. If, however, the amount of the double payment is

greater than the claimant's corrective action costs, the Fund shall pay its fair share to the claimant directly.

- (2) The Fund shall not bear a fair share if the person paying the monies to the claimant pursuant to the settlement or the judgment is eligible to file a claim against the Fund and has not waived its ability to file a claim.
- (3) The Fund shall not bear a fair share if both of the following are met:
  - (A) all of the claimant's documented costs that are related to the causes of action alleged in the underlying complaint have been met by the settlement or judgment; and
  - (B) all of the claimant's documented costs of obtaining the settlement or judgment have been met.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.10, 25299.51, 25299.54, 25299.57, & 25299.58, Health and Safety Code

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#### **2812.4. Intentional or Reckless Acts; Ineligibility of Costs**

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Notwithstanding any other provision of this article, corrective action costs, regulatory technical assistance costs, and third party compensation costs that result from the gross negligence or the intentional or reckless acts of the claimant or an agent, servant, employee or representative 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

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#### **2812.5. Reimbursement Limitations**

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- (a)
  - (1) The Board may not reimburse from the Fund more than \$1,000,000 per occurrence less the claimant's level of financial responsibility as set forth in section 2808.1 of this chapter.
  - (2) Notwithstanding subdivision (a)(1) of this section, if the Board has already reimbursed a claimant the maximum amount specified in subdivision (a)(1) of this section, the Board may reimburse from the Fund up to an additional \$500,000 per occurrence for reasonable and necessary corrective action and regulatory technical assistance costs.
- (b) For each occurrence, a claimant must pay for otherwise eligible costs in the amount of the claimant's level of financial responsibility as set forth in section 2808.1 of this chapter. For each occurrence, the Board may reimburse from the Fund only eligible

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Sections 2812.3(f)(1)(B) thru 2812.5(b)

corrective action, regulatory technical assistance, and third party compensation claim costs in excess of a claimant's level of financial responsibility.

- (c) If multiple or joint claimants file separate or joint claims against the Fund for the same occurrence, the Fund will require the claimants as a group to pay the amount of financial responsibility only once per occurrence. The required amount of financial responsibility will be equal to the amount of financial responsibility that would be required of the claimant in the lowest priority class.
- (d) Reimbursement under section 2813.1, subdivision (c) of this chapter is available only to the extent that reimbursement for the earlier corrective action does not exceed the amount of reimbursement authorized by this section.
- (e) No claimant may receive reimbursement from the Fund in any fiscal year which exceeds five percent of the total amount appropriated by the legislature for payment of claims for that fiscal year unless exempted by the Board pursuant to Health and Safety Code, section 25299.60, subdivision (c)(2).

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.32, 25299.57(a), 25299.58, 25299.59(b) & 25299.60(c), Health and Safety Code

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#### **2812.6. Verification of Claims**

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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

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#### **2812.7. Submission and Receipt of Claims**

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A claimant may hand-deliver claims to the Board or submit claims by mail. A claimant shall not submit claims by facsimile or through other electronic means.

Authority: Section 25299.77, Health and Safety Code  
Reference: Section 25299.55, Health and Safety Code

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### **2812.8. Disqualification of Claims**

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The Board may disqualify a claim and may bar the claim from further participation in the Fund at any time during the active life of the claim if it is found that the claimant has made a misrepresentation.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.55 & 25299.56(a), Health and Safety Code

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### **2813. Creation of Priority Lists**

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- (a) At least once each calendar year, the Board will adopt a revised priority list. The Board will place on a revised priority list only those claims received at least 30 days prior to adoption of a revised list and for which the Board has not issued a letter of commitment.
- (b) Within 60 days of receipt of a new, completed claim application that was not included on the previous priority list, the Division will conduct a review of the claim to determine if the claim is eligible.
- (c) The Board will not incorporate into a revised priority list those claims from the previous priority list for which a letter of commitment has been issued.
- (d) 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 on any revised priority list will be ranked below claims that are carried over from the previous priority list within that class, and the new claims will be ranked in the order of receipt. New claims received on the same day will be randomly ranked.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.52(a)-(b) & 25299.55, Health and Safety Code

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#### **2813.1. Effect of Placement on Priority List**

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- (a) Placement of a claim on the priority list does not constitute a commitment to reimburse eligible costs claimed. Such a commitment will be deemed to occur only when a letter of commitment is issued that specifically commits funds to a claim.
- (b) Claims on the priority list will generally be processed and paid according to priority class and the ranking of claims within each priority class. To the extent practicable, all claims within a higher priority class will be processed and paid before any claims in a lower priority class.

- (c) Reimbursement to a claimant on a site that has been reopened pursuant to section 2810.1, subdivision (b) of this chapter will be made when funds are available as follows:
- (1) If the original claim has not been issued a letter of commitment, then the claim on the reopened site shall be placed on the priority list with the same priority class and rank as the original claim.
  - (2) If the original claim has been issued a letter of commitment, then a letter of commitment will be issued for the reopened site ahead of all other claims on the priority list.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.52(a)-(c), 25299.55 & 25299.57, Health and Safety Code

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### **2813.2. Management of Priority Lists**

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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 will be placed on the list in accordance with the date on which the claim was received;
- (d) determine that a claim that is on the priority list shall receive no further funding or shall 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, 25299.55, & 25299.57(d)(2)-(3), Health and Safety Code

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### **2813.3. Removal from the Priority List; Suspension and Rejection of Claims**

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- (a) A claim that has been placed on the priority list may be removed if:
- (1) the claimant is not in compliance with any of the applicable requirements of this chapter, the California Code of Regulations, title 23, division 3, chapter 16, Health and Safety Code, division 20, chapters 6.7 or 6.75, or any

- provision of the 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; or
- (2) the claimant fails to provide necessary documentation or information, or refuses to provide access to the site that is the subject of the claim to a regulatory agency; or
  - (3) the information submitted with the claim contains a material error.
- (b) The Division staff shall issue a Notice of Intended Removal from the priority list prior to such removal. The notice shall inform the claimant that the Division staff proposes to remove the claim and shall state the grounds for the Division staff's determination.
- (1) If the Division staff issues such a notice, no payments shall be made on account of such claim until the claimant has corrected the condition that was the basis for the removal. If, within 30 days after the date of the notice, the claimant fails to correct the condition that is the basis for the proposed removal or fails to file a request for review or an appeal with the Fund Manager or Division Chief, as appropriate, pursuant to article 5 of this chapter, the Division staff shall remove the claim from the priority list when the 30-day period has ended.
  - (2) In the event of a request for review by the Fund Manager, an appeal to the Division Chief, or a petition to the Board, the claim involved shall remain on the priority list pending resolution of the request for review, appeal or petition but no payments shall be made on the claim until such resolution.
- (c) For claims filed before January 1, 1997, a claimant may resubmit a claim that has been removed from the priority list pursuant to subdivision (a) of this section if the claimant has corrected the condition that was the basis for the removal. A claim that is resubmitted pursuant to this subdivision shall be treated as a new claim, and if the Division determines that the claimant has corrected the condition that was the basis for removal, the claim's priority ranking shall be based on the date when the Division makes its determination. A claim may not be resubmitted to the Fund if the information presented about the claim contains a material error that was a result of misrepresentation or fraud or other misconduct on the part of the claimant.
- (d) For claims filed on or after January 1, 1997, the Division may suspend a claim for the reasons described in subdivision (a) of this section as follows:
- (1) The Division may suspend a claim that is on the priority list until the claimant corrects the grounds for suspension of the claim. When the claimant corrects the grounds for suspension of the claim, the Division shall

give the reinstated claim a new priority ranking as of the date of reinstatement.

- (2) The Division may suspend a claim that has received a letter of commitment until the claimant corrects the grounds for suspension of the claim. When the claimant corrects the grounds for suspension of the claim, then the Division shall reinstate the claim and reimburse the claimant's eligible costs when funding is available.
- (e) Notwithstanding subdivision (d)(1)-(2), for claims filed on or after January 1, 1997, if the information presented on the claim contains a material error, and the error resulted from fraud or misrepresentation on the part of the claimant, the Division may revoke the claimant's eligibility and may bar the claim from further participation in the Fund.
- (f) If a claim is rejected by Division staff before the claim is placed on the priority list, the claimant may either appeal the decision to reject the claim pursuant to article 5 of this chapter or the claimant may submit a new claim.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.37(a)-(c), 25299.52(a), 25299.54(a)-(b) & (d), 25299.55, 25299.56, 25299.57(a),(d)(2)-(3), 25299.58(b)(3)-(4), Health and Safety Code

## ARTICLE 5. REQUEST FOR REVIEW, APPEAL, AND PETITION PROCESS

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### 2814. Fund Manager Decisions

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- (a) A claimant who disagrees with a decision rendered by Division staff may request review of the decision by the Fund Manager.
- (b) A request for review by the Fund Manager must be accompanied by all material that the claimant wishes to be considered by the Fund Manager, and by the Division Chief and the Board in any subsequent review by the Division Chief or Board. The request for review must include the following information:
  - (1) a statement describing how the claimant is damaged by the prior staff decision. This section shall be entitled "Claimant's Grievance";
  - (2) a description of the remedy or outcome desired. This section shall be entitled "Remedy Requested";
  - (3) an explanation why the claimant believes the staff decision is erroneous, inappropriate or improper. This section shall be entitled "Statement of Reasons"; and
  - (4) a completed reimbursement request when the subject of the request is non-payment of a specific cost.
- (c) The Fund Manager shall render a Fund Manager Decision within 30 days of receipt of the appeal. A Fund Manager Decision is final and conclusive unless the claimant files an appeal to the Division Chief that is received by the Division Chief within 60 days from the date of the Fund Manager Decision.
- (d) The Fund Manager may at any time, on the Fund Manager's own motion, issue a Fund Manager Decision.

Authority: Section 25299.77, Health and Safety Code  
Reference: Section 25299.54(a), 25299.55, Health and Safety Code

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#### 2814.1. Final Division Decisions

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- (a) A claimant may appeal to the Division Chief for review of a Fund Manager Decision. In addition, a claimant who disagrees with a decision rendered by Division staff may appeal directly to the Division Chief pursuant to this section, as an alternative to requesting review by the Fund Manager. A claimant who chooses to request review by the Fund Manager must receive a Fund Manager Decision before appealing to the Division Chief.

- (b) An appeal to the Division Chief must be accompanied by all material that the claimant wishes to be considered by the Division Chief, and by the Board in any subsequent review by the Board. The appeal must include the following information:
- (1) a statement describing how the claimant is damaged by the Fund Manager Decision or prior staff decision. This section shall be entitled "Claimant's Grievance";
  - (2) a description of the remedy or outcome desired. This section shall be entitled "Remedy Requested";
  - (3) an explanation why the claimant believes the Fund Manager Decision or prior staff decision is erroneous, inappropriate, or improper. This section shall be entitled "Statement of Reasons"; and
  - (4) a completed reimbursement request when the subject of the appeal is non-payment of a specific cost.
- (c) The Division Chief shall render a Final Division Decision within 30 days of receipt of the appeal. A Final Division Decision is final and conclusive unless the claimant files a petition for review with the Board that is received by the Board within 30 days from the date of the Final Division Decision.
- (d) The Division Chief may at any time, on the Division Chief's own motion, issue a Final Division Decision.

Authority: Section 25299.77, Health and Safety Code  
Reference: Section 25299.56, Health and Safety Code

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#### **2814.2. Petition for Board Review and Response by the Division Chief**

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- (a) A claimant may petition the Board for review of a Final Division Decision.
- (b) 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) a copy of the Final Division Decision that the Board is requested to review;
  - (4) an explanation why the claimant believes the Final Division Decision is erroneous, inappropriate, or improper;
  - (5) a statement describing how the petitioner is damaged by the Final Division Decision; and

- (6) a description of the remedy or outcome desired.
- (c) The petition shall be sent to the Board Chairperson, with copies sent to the Chief Counsel of the Board, and the Division Chief.
- (d) The petitioner may request a hearing for the purpose of presenting factual material not presented to the Division Chief or for oral argument or both. The request to present material which was not presented to the Division Chief must include a description of the factual material that the petitioner wishes to submit, the facts that the petitioner expects to establish, and an explanation of the reasons why the claimant could not previously submit the new material to the Division Chief. The petitioner must include with the petition a copy of any new documentary material that the petitioner wishes to present to the Board.
- (e) The Division Chief may file a response to the petition with the Board within 30 days of the Board's notification to the petitioner that the petition is complete. The Division must provide a copy of any response to the petitioner. The Board may extend the time for filing a response by the Division Chief.

Authority: Section 25299.77, Health and Safety Code  
Reference: Section 25299.56, Health and Safety Code

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### **2814.3. Defective Petitions**

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Upon the Board's receipt of a petition which does not comply with section 2814.2 of this chapter, 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 the Board does not receive a properly amended petition within the time allowed, the petition shall be dismissed.

Authority: Section 25299.77, Health and Safety Code  
Reference: Section 25299.56, Health and Safety Code

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### **2814.4. Action by the Board**

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- (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 Board review;
  - (2) affirm the final decision that the Board has been requested to review;
  - (3) set aside or modify the final decision that the Board has been requested to review; 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 provide for an informal meeting between the petitioner, the Division Chief, 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 an evidentiary hearing is held, it shall be conducted in accordance with the California Code of Regulations, title 23, division 3, chapter 1.5, article 2.
- (d) The Board shall act on the petition and provide written notification of its action to the parties within 90 days after receipt of the petition, unless all parties agree in writing to an extension of time. If the Board initiates an evidentiary hearing, the Board shall act on the petition within 270 days after receipt of the petition.
- (e) The Board reserves the right, at its discretion, to consider a petition upon its own motion.

Authority: Section 25299.77, Health and Safety Code  
Reference: Section 25299.56, Health and Safety Code

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#### **2814.5. Board Workshop and Meeting**

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- (a) The Board may discuss a proposed order in response to a petition for review of a Final Division Decision in a public workshop prior to formal action at a Board meeting.
  - (1) At the workshop, the Board may invite comments on the proposed order from interested persons. These comments shall be based solely upon factual material contained in the record or upon legal argument.
  - (2) If the petitioner or an interested person desires to submit factual material not contained in the record before the Division Chief, the person may make this request to the Board prior to or during the workshop. This request shall include a description of the material, and a statement and supporting argument that the material was improperly excluded from the record or an explanation of the reasons why the person could not previously submit the factual material. If the Board in its discretion approves the request, the person requesting consideration of the material must submit the material in writing to the Board and all other interested persons within five days of such approval. The submittal shall be accompanied by a notification to all other interested persons that they will be allowed an additional five days from the submittal date to file responsive comments in writing. The person requesting consideration of the material shall file with the Board a copy of the notification to other interested persons.

- (b) (1) Formal disposition by the Board of any matter for decision will be taken at a regularly or specially scheduled Board meeting. At the meeting, the Board may invite comments on the matter from interested persons. These comments shall be based solely on factual material contained in the record or legal argument.
- (2) No new factual material shall be submitted at the Board meeting. If new legal argument is to be submitted at the Board meeting, the argument shall be filed in writing with the Board and other interested persons at least five working days prior to the Board meeting in order for such argument to be considered by the Board.

Authority: Section 25299.77, Health and Safety Code  
Reference: Section 25299.56, Health and Safety Code

## ARTICLE 6. PETITIONS FOR SITE CLOSURE

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### 2814.6. Filing of Petition

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- (a) Any underground storage tank or residential tank owner or operator or other responsible party who believes that the corrective action plan for the site has been satisfactorily implemented, but who has not been granted closure of the site, may petition the Board for review of the case, whether or not the petitioner is eligible for reimbursement from the Fund pursuant to Health and Safety Code section 25299.54.
- (b) Prior to petitioning the Board for review, an underground storage tank or residential tank owner or operator or other responsible party must do both of the following:
  - (1) remove free product to the maximum extent practicable; and
  - (2) request and be denied case closure from the regulatory agency that is overseeing corrective action at the site. The denial must be signed by the regional board's Executive Officer or, if a local agency is overseeing corrective action, by the Environmental Health Director, or equivalent. If the petitioner filed a request for closure, and if within 60 days of the date of the request for closure the regulatory agency neither acts on the request nor informs the petitioner of when the regulatory agency will act, the inaction of the regulatory agency will be deemed to constitute a denial of the request.
- (c) Petitions to the Board requesting review of an underground storage tank or residential tank case must include the following:
  - (1) the name and address of the petitioner;
  - (2) the address of the site;
  - (3) the name and address of the current owner of the site and of the owners of adjacent property including properties that are across the street from the site;
  - (4) the name, address, and telephone number of all responsible parties;
  - (5) a copy of the decision denying case closure by the regulatory agency overseeing corrective action at the site or a copy of the petitioner's request to the regulatory agency for closure accompanied by a statement that the regulatory agency failed to act within 60 days of the request; and
  - (6) a statement of the reasons why the petitioner believes the case should be reviewed.

- (d) The petitioner may request a hearing for the purpose of presenting factual material not presented to the regulatory agency or for oral argument or both. The request to present material which was not presented to the regulatory agency must include a description of the factual material that the petitioner wishes to submit, the facts that the petitioner expects to establish, and an explanation of the reasons why the claimant could not previously submit the new material to the regulatory agency. The petitioner must include with the petition a copy of any new documentary material that the petitioner wishes to present to the Board.

Authority: Section 25299.77, Health and Safety Code  
Reference: Section 25299.37, 25299.39.2, Health and Safety Code

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### **2814.7. Action by the Board**

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- (a) The Board shall send a copy of the petition to the regulatory agency overseeing corrective action at the site and notify the agency that the record relative to the case and any agency response to the petition must be received by the Board within 20 days of the date of the letter of notification. The regulatory agency overseeing corrective action at the site will also be notified that a list of persons, if any, known by the regulatory agency to have an interest in the subject matter of the petition must be received by the Board within 10 days of the date of the letter of notification.
- (b) Upon receipt of a list of interested persons, the Board will notify those persons, the current site owner, the owners of adjacent property, and the appropriate regional board if it has not already been notified as the regulatory agency overseeing corrective action at the site, that any response to the petition by an interested person must be received by the Board within 20 days of the date of the letter of notification.
- (c) The regulatory agency shall send a copy of its response, if any, to the petitioner. All other respondents shall send copies of their responses to the petitioner and the regulatory agency. The deadline for filing a response to the petition or submitting the record may be extended by the Board.
- (d) Following review of the petition, the record, and all responses to the petition, the Board may:
- (1) if a case is under the jurisdiction of a regional board or local agency that is implementing a local oversight program pursuant to Health and Safety Code section 25297.1, close the case or remand the case to the regulatory agency for action consistent with the Board decision;
  - (2) if a case is under the jurisdiction of a regulatory agency that is not implementing a local oversight program pursuant to Health and Safety Code section 25297.1, recommend that the case be closed;
  - (3) deny the request to require or recommend that the case be closed;

- (4) refuse to review the request that the case be closed if the petition fails to raise substantial issues that are appropriate for review by the Board; or
- (5) take such other action as the Board deems appropriate.
- (e) 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 staff, an appropriate representative of the regulatory agency, a member of the Board, and such other persons as the Board deems appropriate for the purpose of attempting to resolve the dispute.
- (f) If an evidentiary hearing is held, it shall be conducted in accordance with the California Code of Regulations, title 23, division 3, chapter 1.5, article 2.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.37 & 25299.39.2, Health and Safety Code

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#### **2814.8. Board Workshop and Meeting**

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- (a) The Board may discuss a proposed order in response to a petition for site closure in a public workshop prior to formal action at a Board meeting.
  - (1) At the workshop, the Board may invite comments on the proposed order from interested persons. These comments shall be based solely upon factual material contained in the record or upon legal argument.
  - (2) If the petitioner or an interested person desires to submit factual material not contained in the record before the Board, the person may make this request to the Board prior to or during the workshop. This request shall include a description of the material, and a statement and supporting argument that the material was improperly excluded from the record or an explanation of the reasons why the person could not previously submit the factual material. If the Board in its discretion approves the request, the person requesting consideration of the material must submit the material in writing to the Board and all other interested persons within five days of such approval. The submittal shall be accompanied by a notification to all other interested persons that they will be allowed an additional five days from the submittal date to file responsive comments in writing. The person requesting consideration of the material shall file with the Board a copy of the notification to other interested persons.
- (b) (1) Formal disposition by the Board of any matter for decision will be taken at a regularly or specially scheduled Board meeting. At the meeting, the Board may invite comments on the matter from interested persons. These

comments shall be based solely on factual material contained in the record or legal argument.

- (2) No new factual material shall be submitted at the Board meeting. If new legal argument is to be submitted at the Board meeting, the argument shall be filed in writing with the Board and other interested persons at least five working days prior to the Board meeting in order for such argument to be considered by the Board.

Authority: Section 25299.77, Health and Safety Code  
Reference: Sections 25299.39.2 & 25299.56, Health and Safety Code