

**2008 Proposal for Water Quality Improvement Initiative  
Legislative Language**

**Consolidated Text of All Amendments**

**1. Amend Water Code § 175.5.**

175.5. (a) No member of the board shall participate in any board action pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 ~~which involves himself or herself or any waste discharger with which the board member is connected as a director, officer or employee, or~~ in which the board member has a **disqualifying** financial interest in the decision within the meaning of Section 87103 of the Government Code.

(b) No board member shall participate in any proceeding before any regional board as a consultant or in any other capacity on behalf of any waste discharger.

(c) Upon the request of any person, or on the Attorney General's own initiative, the Attorney General may file a complaint in the superior court for the county in which the board has its principal office alleging that a board member has knowingly violated this section and the facts upon which the allegation is based and asking that the member be removed from office. Further proceedings shall be in accordance as near as may be with rules governing civil actions. If after trial the court finds that the board member has knowingly violated this section it shall pronounce judgment that the member be removed from office.

**2. Add Water Code § 13148 and Water Code § 13148.1.**

**13148. (a) There is hereby created a water quality council comprised of the chairpersons of the regional boards and state board. The water quality council's primary responsibility is to assist the state board in promoting consistent water quality regulation throughout the state. Responsibilities of the water quality council include:**

- (1) overseeing the consistency review process established in subdivision (b);**
- (2) coordinating with the state board and other federal, state, and local agencies to identify areas for state policy for water quality control development;**
- (3) reviewing and providing recommendations concerning the water quality performance report required by Section 13166.5;**
- (4) assisting the state board in promoting statewide consistency and excellence among the regional boards in the areas of public participation, permitting, and enforcement;**
- (5) coordinating with the state board to adapt the state's water quality control planning activities to address the impacts associated with global climate change;**
- (6) planning and coordinating regular meetings of the water quality coordinating committee established pursuant to Section 13171;**
- (7) advising the state board on appropriate training for regional board members.**

**(b) (1) The water quality council shall consider requests from interested persons concerning alleged inconsistencies in water quality regulation by the regional boards and shall make recommendations to the state board for the development of regulations or state policy for water quality control to address regulatory consistency.**

**(2) Within 180 days of receiving a request, the water quality council shall make a recommendation to the state board as to whether the state board should initiate a regulatory action to establish or amend its regulations or state policy for water quality control to address the alleged inconsistency. The water quality council can also initiate its own recommendations to the state board. In making its recommendations, the water quality council shall focus on issues where the alleged inconsistencies have a substantial adverse impact on water quality or the regulated community because of**

*inconsistent application of law or policy by one or more regional boards, or where there is another significant basis for development of statewide policy or regulation.*

*(3) The water quality council's recommendation concerning a request is not binding on the state board. The state board shall maintain a page on its internet site identifying the water quality council's recommendations and whether the state board is acting on the recommendation. The state board chairperson's participation in recommendations of the water quality council shall not limit the chairperson's participation in subsequent state board decisions concerning the recommendation.*

*(c) Except as set forth in this subdivision, the provisions of the Bagley-Keene Open Meeting Act (commencing with Government Code section 11120) apply to the water quality council. The water quality council shall not make a recommendation to the state board pursuant to subdivision (b) without first conducting at least one public meeting at which persons may provide comments on the need for statewide consistency. At least 30 days before a public meeting of the water quality council, the state board must provide notice of the public meeting on the state board's website and mail or electronically mail the notice to persons who have expressed an interest in water quality council matters. Water quality council members may participate in the meeting telephonically or by videoconference, from any public or private location. The water quality council may conduct private fact-finding meetings, provided that those fact-finding meetings are limited to members of the water quality council and advisory staff of the state board and regional boards.*

*(d) The state board may establish regulations concerning the water quality council and shall provide legal and technical assistance to the water quality council. An individual member of the council may also request assistance from his or her regional board.*

*(e) A request for action by the water quality council cannot challenge a specific action or inaction of a regional board, and may not serve as the basis for any legal challenge to an action or inaction of a regional board or the state board.*

*13148.1 The water quality council shall, within 180 days of the effective date of this bill, make a recommendation to the state board as to whether the state board should initiate a regulatory action to establish or amend its regulations or state policy for water quality control to address alleged inconsistencies by the regional boards in considering the costs of the reasonably foreseeable methods of compliance with total maximum daily loads (TMDLs).*

### **3. Add Water Code § 13166.5.**

*13166.5. (a) Every two years the state board shall assess and establish priorities and performance targets for enhancing and restoring the quality of waters of the state consistent with this division and the state board's strategic plan. The assessment shall include a biennial report to the Governor and the Legislature identifying priorities and identifying specific performance targets that the state board will use to assess the progress of the state board and regional boards in achieving water quality priorities. The first biennial report required by this section will be due September 1, 2010.*

*(b) In conducting the assessment and preparing the water quality performance report required by subdivision (a), the state board shall consider the recommendations of the water quality council established pursuant to Section 13148, and shall solicit recommendations from the public.*

*(c) Six months after the release of the first water quality performance report, and every six months thereafter, each regional board shall report to the state board and the water quality council on the regional board's progress toward meeting the priorities and performance targets set forth in the water quality performance report.*

**(d) The water quality council shall review each regional board's semi-annual report prepared pursuant to subdivision (c). As part of its review of semi-annual reports, the water quality council will recommend actions to the state board that would assist regional boards in achieving the priorities and performance targets established in the water quality performance report. In order to promote achieving performance targets, the state board shall consider the recommendations of its staff and the water quality council in deciding whether to reallocate resources among the regional boards consistent with Section 13168.**

**(e) The performance targets developed pursuant to this section shall, where appropriate, be consistent with and included in the system of environmental indicators developed pursuant to Section 71081 of the Public Resources Code. Notwithstanding Section 71081 of the Public Resources Code, the state board shall develop and maintain performance targets developed pursuant to this section.**

#### **4. Amend Water Code § 13201.**

13201. (a) There is a regional board for each of the regions described in Section 13200. Each board shall consist of the following ~~nine~~ **seven** members appointed by the Governor, each of whom shall represent and act on behalf of all the people and shall reside or have a principal place of business within the region:

(1) One person associated with water supply, conservation, and production, **or associated with industrial water use.**

(2) One person associated with irrigated agriculture.

~~(3) One person associated with industrial water use.~~

~~(4) One person associated with municipal or county government. Upon the next vacancy occurring in this office on or after January 1, 2004, this This person shall be a city council member, or mayor, or a county supervisor, on the date of appointment and any reappointment.~~

~~(5) One person associated with county government. Upon the next vacancy occurring in this office on or after January 1, 2004, this person shall be a county supervisor.~~

~~(6)-(4) One person from a responsible nongovernmental organization associated with recreation, fish, or wildlife.~~

~~(7) (5) Three Two persons not specifically associated with any of the foregoing categories, two of whom who shall have special competence in areas related to water quality problems.~~

**(6) A chairperson who shall have special competence in areas related to water quality problems.**

(b) All persons appointed to a regional board shall be subject to Senate confirmation, but shall not be required to appear before any committee of the Senate for purposes of such confirmation unless specifically requested to appear by the Senate Committee on Rules.

(c) Insofar as practicable, appointments shall be made in such manner as to result in representation on the board from all parts of the region.

~~(d) Notwithstanding subdivision (a), if appointments cannot be made pursuant to paragraph (5) of subdivision (a) because of the requirements of Section 13388, those appointments may be made of persons not specifically associated with any category.~~

Uncodified section of bill.

**The amendment to Section 13201, subdivisions (a)(1) and (a)(3), shall take effect for each regional board upon the later of the expiration dates for the two members' terms under those two subdivisions that are in existence on the effective date of this bill.**

***The amendments to Section 13201, subdivisions (a)(4) and (a)(5), shall take effect for each regional board upon the later of the expiration dates for the two members' terms under those two subdivisions that are in existence on the effective date of this bill.***

***The amendment to Section 13201, subdivision (a)(7), shall take effect for each regional board upon the later of the expiration dates for the three members' terms under this subdivision that are in existence on the effective date of this bill.***

#### **5. Amend Water Code § 13202.**

***(a) Except as provided in subdivisions (b) and (c), Each each*** member of a regional board shall be appointed for a term of four years. Vacancies shall be immediately filled by the Governor for the unexpired portion of the terms in which they occur.

***(b) Beginning in 2009 and each year thereafter,***

***(1) the members of the North Coast, San Francisco Bay, and Central Coast regional boards whose terms would otherwise have expired in September of that year shall have their terms expire on March 31.***

***(2) the members of the Los Angeles, Central Valley, and Lahontan regional boards whose terms would otherwise have expired in September of that year shall have their terms expire on June 30.***

***(3) the members of the Colorado River Basin, Santa Ana, and San Diego regional boards whose terms would otherwise have expired in September of that year shall have their terms expire on September 30.***

***(c) The terms of the initial full-time chairpersons appointed pursuant to subdivision (a)(6) of Section 13201 are as follows:***

***(1) The terms of the initial full-time chairpersons of the North Coast, San Francisco Bay, and Central Coast regional boards end on January 1, 2011.***

***(2) The terms of the initial full-time chairpersons of the Los Angeles, Central Valley, and Lahontan regional boards end on January 1, 2012.***

***(3) The terms of the initial full-time chairpersons of the Colorado River Basin, Santa Ana, and San Diego regional boards end on January 1, 2013.***

#### **6. Amend Water Code § 13205.**

13205. ***(a)*** Each member of a regional board, ***except the chairperson,*** shall receive one hundred dollars (\$100) for each day during which that member is engaged in the performance of official duties, ***including one preparation day for each regional board meeting,*** except that no member shall be entitled to receive the one hundred dollars (\$100) compensation if the member otherwise receives compensation from other sources for performing those duties. **~~The total compensation received by members of each regional board shall not exceed, in any one fiscal year, the sum of thirteen thousand five hundred dollars (\$13,500).~~** A member may decline compensation. In addition to the compensation, each member shall be reimbursed for necessary traveling and other expenses incurred in the performance of official duties.

***(b) The chairperson shall serve full time and receive the salary provided for a state board member pursuant to Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.***

#### **7. Amend Water Code § 13207.**

13207. ***(a)*** No member of a regional board shall participate in any board action pursuant to Article 4 (commencing with Section 13260) of Chapter 4, or Article 1 (commencing with Section 13300) of Chapter 5, of this division **~~which involves himself or herself or any waste discharger with which he or she is connected as a director, officer or employee, or in~~**

which he or she has a **disqualifying** financial interest in the decision within the meaning of Section 87103 of the Government Code.

(b) No board member shall participate in any proceeding before any regional board or the state board as a consultant or in any other capacity on behalf of any waste discharger.

(c) Upon the request of any person, or on the Attorney General's own initiative, the Attorney General may file a complaint in the superior court for the county in which the regional board has its principal office alleging that a board member has knowingly violated this section and the facts upon which the allegation is based and asking that the member be removed from office. Further proceedings shall be in accordance as near as may be with rules governing civil actions. If after trial the court finds that the board member has knowingly violated this section it shall pronounce judgment that the member be removed from office.

#### **8. Amend Water Code § 13223.**

13223. (a) Each regional board may delegate any of its powers and duties vested in it by this division to its executive officer excepting only the following: (1) the promulgation of any regulation; (2) the issuance, modification, or revocation of any water quality control plan, water quality objectives, ~~or waste discharge requirement~~; (3) the issuance, modification, or revocation of any cease and desist order; **and** (4) the holding of any hearing on water quality control plans; ~~and (5) the application to the Attorney General for judicial enforcement but excluding cases of specific delegation in a cease and desist order and excluding the cases described in subdivision (c) of Section 13002 and Sections 13304 and 13340.~~

(b) Whenever any reference is made in this division to any action that may be taken by a regional board, such reference includes such action by its executive officer pursuant to powers and duties delegated to him by the regional board.

***(c) Each regional board's executive officer is delegated the power and duty to issue waste discharge requirements that serve as a national pollutant discharge elimination system (NPDES) permit pursuant Chapter 5.5 (commencing with Section 13370) of this division. This delegation shall become effective upon either the U.S. Environmental Protection Agency's (1) determination that no program approval is necessary in order for an executive officer to issue NPDES permits or (2) approval of a change in California's NPDES program to allow an executive officer to issue NPDES permits.***

#### **9. Amend Water Code § 13245.**

13245. ***(a) Except as provided in subdivisions (b) and (c), a*** water quality control plan, or a revision thereof adopted by a regional board, shall not become effective unless and until it is approved by the state board. The state board may approve such plan, or return it to the regional board for further consideration and resubmission to the state board. Upon resubmission the state board may either approve or, after a public hearing in the affected region, revise and approve such plan.

***(b) If a revision to a water quality control plan solely involves the establishment of a total maximum daily load (TMDL) to comply with section 303(d) (33 U.S.C. § 1313(d)) of the Federal Water Pollution Control Act and a program of implementation for the TMDL, then the water quality control plan revision shall become effective without state board approval, unless an interested person files, within 30 days of adoption by the regional board, a written request for state board consideration of the water quality control plan revision. If a person requests state board consideration, then the timelines of Section 13246 shall apply.***

***(c) At any state board meeting on the consideration of a water quality control plan revision described in subdivision (b), the state board may make changes to the program of implementation for the TMDL and approve the water quality control plan revision, as amended, without returning it to the regional board.***

**(d) Prior to the adoption of a water quality control plan revision described in subdivision (b), the state board or the regional board shall consider the costs of the reasonably foreseeable methods of compliance.**

#### **10. Amend Water Code § 13265.**

13265. (a)(1) Any person discharging waste in violation of Section 13264, ~~after such violation has been called to his attention in writing by the regional board, is guilty of a misdemeanor and~~ may be liable civilly in accordance with subdivision (b). Each day of such discharge shall constitute a separate offense.

**(2) Any person discharging waste in violation of Section 13264, after the violation has been called to his attention in writing by the regional board or state board, is guilty of a misdemeanor.**

(b)(1) Civil liability may be administratively imposed by a regional board **or the state board** in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Articles 5 (commencing with Section 13350) and 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(c) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, in violation of Section 13264 is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (d). That liability shall not be imposed if the discharger is not negligent and immediately files a report of the discharge with the board, or if the regional board determines that the violation of Section 13264 was insubstantial.

This subdivision shall not be applicable to any waste discharge which is subject to Chapter 5.5 (commencing with Section 13370).

(d)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Articles 5 (commencing with Section 13350) and 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

**(e) Notwithstanding subdivision (c) of Section 13441, all funds generated by the imposition of liabilities pursuant to subdivision (b) shall be deposited into the Waste Discharge Permit Fund. These moneys shall be separately accounted for, and shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.**

#### **11. Amend Water Code § 13320.**

13320. (a) Within 30 days of any action or failure to act by a regional board under subdivision (c) of Section 13225, **Section 13228**, Article 4 (commencing with Section 13260) of Chapter 4, Chapter 5 (commencing with Section 13300), Chapter 5.5 (commencing with Section 13370), Chapter 5.9 (commencing with Section 13399.25), or Chapter 7 (commencing with Section 13500), any aggrieved person may petition the state board to review that action or failure to act. In case of a failure to act, the 30-day period shall commence upon the refusal of the regional board to act, or 60 days after request has been made to the regional board to act. The state

board may, on its own motion, at any time, review the regional board's action or failure to act and also any failure to act under Article 3 (commencing with Section 13240) of Chapter 4.

(b) The evidence before the state board shall consist of the record before the regional board, and any other relevant evidence which, in the judgment of the state board, should be considered to effectuate and implement the policies of this division.

(c) The state board may find that the action of the regional board, or the failure of the regional board to act, was appropriate and proper. Upon finding that the action of the regional board, or the failure of the regional board to act, was inappropriate or improper, the state board may direct that the appropriate action be taken by the regional board, refer the matter to any other state agency having jurisdiction, take the appropriate action itself, or take any combination of those actions. In taking any such action, the state board is vested with all the powers of the regional boards under this division.

(d) If a waste discharge in one region affects the waters in another region and there is any disagreement between the regional boards involved as to the requirements which should be established, either regional board may submit the disagreement to the state board which shall determine the applicable requirements.

(e) If a petition for state board review of a regional board action on waste discharge requirements includes a request for a stay of the waste discharge requirements, the state board shall act on the requested stay portion of the petition within 60 days of accepting the petition. The board may order any stay to be in effect from the effective date of the waste discharge requirements.

## **12. Amend Water Code § 13350.**

13350. (a) Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, **(3) makes any false statement, representation, or certification in any record, report, plan, notice to comply, or other document filed with a regional board or the state board, or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required under this division,** or ~~(34)~~ causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

(b)(1) Any person who, without regard to intent or negligence, causes or permits any hazardous substance to be discharged in or on any of the waters of the state, except in accordance with waste discharge requirements or other provisions of this division, shall be strictly liable civilly in accordance with subdivision (d) or (e).

(2) For purposes of this subdivision, the term "discharge" includes only those discharges for which Section 13260 directs that a report of waste discharge shall be filed with the regional board.

(3) For purposes of this subdivision, the term "discharge" does not include any emission excluded from the applicability of Section 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to Environmental Protection Agency regulations interpreting Section 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

(c) There shall be no liability under subdivision (b) if the discharge is caused solely by any one or combination of the following:

(1) An act of war.

(2) An unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(3) Negligence on the part of the state, the United States, or any department or agency thereof; provided, that this paragraph shall not be interpreted to provide the state, the United States, or any department or agency thereof a defense to liability for any discharge caused by its own negligence.

(4) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(5) Any other circumstance or event which causes the discharge despite the exercise of every reasonable precaution to prevent or mitigate the discharge.

(d) The court may impose civil liability either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed fifteen thousand dollars (\$15,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis may not exceed twenty dollars (\$20) for each gallon of waste discharged.

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.

(2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.

(f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

(g) ~~(1) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess, and recover such sums. **Except in the case of a violation of a cease and desist order, a regional board or the state board shall make such request only after a hearing, with due notice of the hearing given to all affected persons.**~~

In determining that amount, the court shall be subject to Section 13351.

**(2) A district attorney, a city attorney of a city with a population that exceeds 750,000, or a city attorney for a city and county, upon request of a regional board or the state board, may petition the superior court to impose, assess, and recover those sums. In determining that amount, the court shall be subject to Section 13351.**

(h) Article 3 (commencing with Section 13330) and Article 6 (commencing with Section 13360) apply to proceedings to impose, assess, and recover an amount pursuant to this article.

(i) Any person who incurs any liability established under this section shall be entitled to contribution for that liability from any third party, in an action in the superior court and upon proof that the discharge was caused in whole or in part by an act or omission of the third party, to the extent that the discharge is caused by the act or omission of the third party, in accordance with the principles of comparative fault.



- (j) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, except that no liability shall be recoverable under subdivision (b) for any discharge for which liability is recovered under Section 13385.
- (k) Notwithstanding any other provision of law, all funds generated by the imposition of liabilities pursuant to this section shall be deposited into the Waste Discharge Permit Fund. These moneys shall be separately accounted for, and shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

### **13. Amend Water Code § 13361.**

13361. (a) Every civil action brought under the provisions of this division at the request of a regional board or the state board shall be brought by the Attorney General, **a district attorney, a city attorney of a city with a population exceeding 750,000, or a city attorney for a city and county**, in the name of the people of the State of California and any such actions relating to the same discharge may be joined or consolidated.

(b) Any civil action brought pursuant to this division shall be brought in a county in which the discharge is made, or proposed to be made. However, any action by or against a city, city and county, county, or other public agency shall, upon motion of either party, be transferred to a county or city and county not a party to the action or to a county or city and county other than that in which the city or public agency is located.

(c) In any civil action brought pursuant to this division in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued, or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction, or permanent injunction shall issue without such allegations and without such proof.

### **14. Amend Water Code § 13385.**

13385. (a) **(1)** Any person who violates any of the following shall be liable civilly in accordance with this section:

**(4A)** Section 13375 or 13376.

**(2B)** Any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

**(3C)** Any requirements established pursuant to Section 13383.

**(4D)** Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.

**(5E)** Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.

**(6F)** Any requirement imposed in a pretreatment program approved pursuant to waste discharge requirements issued under Section 13377 or approved pursuant to a permit issued by the administrator.

**(2) Any person who makes any false statement, representation, or certification in any record, report, plan, notice to comply, or other document filed with a regional board or the state board, or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required under this chapter shall be liable civilly in accordance with this section.**

(b) Civil liability may be imposed by the superior court in an amount not to exceed the sum of both of the following:

(1) Twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed twenty-five dollars (\$25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

***Upon request of a regional board or the state board, the Attorney General shall petition the superior court to impose the liability. Upon request of a regional board or the state board, a district attorney, a city attorney of a city with a population that exceeds 750,000, or a city attorney for a city and county, may petition the superior court to impose the liability.***

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(d) For purposes of subdivisions (b) and (c), "discharge" includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f)(1) Except as provided in paragraph (2), for the purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(2)(A) For the purposes of subdivisions (h) and (i), a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in violations of more than one effluent limitation and the violations continue for a period of more than one day, if all of the following apply:

(i) The discharger demonstrates all of the following:

(I) The upset was not caused by wastewater treatment operator error and was not due to discharger negligence.

(II) But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day.

(III) The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.

(ii) The discharger is implementing an approved pretreatment program, if so required by federal or state law.

(B) Subparagraph (A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal, except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.

(h)(1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

(2) For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(i)(1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(A) Violates a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(2) For the purposes of this section, a "period of six consecutive months" means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

(j) Subdivisions (h) and (i) do not apply to any of the following:

(1) A violation caused by one or any combination of the following:

(A) An act of war.

(B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(C) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(D)(i) The operation of a new or reconstructed wastewater treatment unit during a defined period of adjusting or testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit, if all of the following requirements are met:

(I) The discharger has submitted to the regional board, at least 30 days in advance of the operation, an operations plan that describes the actions the discharger will take during the period of adjusting and testing, including steps to prevent violations and identifies the shortest reasonable time required for the period of adjusting and testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit.

(II) The regional board has not objected in writing to the operations plan.

(III) The discharger demonstrates that the violations resulted from the operation of the new or reconstructed wastewater treatment unit and that the violations could not have reasonably been avoided.

(IV) The discharger demonstrates compliance with the operations plan.

(V) In the case of a reconstructed wastewater treatment unit, the unit relies on a biological treatment process that is required to be out of operation for at least 14 days in order to perform the reconstruction, or the unit is required to be out of operation for at least 14 days and, at the time of the reconstruction, the cost of reconstructing the unit exceeds 50 percent of the cost of replacing the wastewater treatment unit.

(ii) For the purposes of this section, "wastewater treatment unit" means a component of a wastewater treatment plant that performs a designated treatment function.

(2)(A) Except as provided in subparagraph (B), a violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000, specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i), and the date by which compliance is required to be achieved and, if the final date by which compliance is required to be achieved is later than one year from the effective date of the cease and desist order or time schedule order, specifies the interim requirements by which progress towards compliance will be measured and the date by which the discharger will be in compliance with each interim requirement.

(ii) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan that meets the requirements of Section 13263.3.

(iii) The discharger demonstrates that it has carried out all reasonable and immediately feasible actions to reduce noncompliance with the waste discharge requirements applicable to the waste discharge and the executive officer of the regional board concurs with the demonstration.

(B) Subdivisions (h) and (i) shall become applicable to a waste discharge on the date the waste discharge requirements applicable to the waste discharge are revised and reissued pursuant to Section 13380, unless the regional board does all of the following on or before that date:

(i) Modifies the requirements of the cease and desist order or time schedule order as may be necessary to make it fully consistent with the reissued waste discharge requirements.

(ii) Establishes in the modified cease and desist order or time schedule order a date by which full compliance with the reissued waste discharge requirements shall be achieved. For the purposes of this subdivision, the regional board may not establish this date later than five years from the date the waste discharge requirements were required to be reviewed pursuant to Section 13380. If the reissued waste discharge requirements do not add new effluent limitations or do not include effluent limitations that are more stringent than those in the original waste discharge requirements, the date shall be the same as the final date for compliance in the original cease and desist order or time schedule order or five years from the date that the waste discharge requirements were required to be reviewed pursuant to Section 13380, whichever is earlier.

(iii) Determines that the pollution prevention plan required by clause (ii) of subparagraph (A) is in compliance with the requirements of Section 13263.3 and that the discharger is implementing the pollution prevention plan in a timely and proper manner.

(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308, if all of the following requirements are met:

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).

(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order

to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(ii) New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures are necessary in order to comply with the effluent limitation and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.

(iv) The discharger is a publicly owned treatment works located in Orange County that is unable to meet effluent limitations for biological oxygen demand, suspended solids, or both, because the publicly owned treatment works meets all of the following criteria:

(I) Was previously operating under modified secondary treatment requirements pursuant to Section 301(h) of the Clean Water Act (33 U.S.C. Sec. 1311(h)).

(II) Did vote on July 17, 2002, not to apply for a renewal of the modified secondary treatment requirements.

(III) Is in the process of upgrading its treatment facilities to meet the secondary treatment standards required by Section 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec. 1311(b)(1)(B)).

(C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. For the purposes of this subdivision, the time schedule may not exceed five years in length, except that the time schedule may not exceed 10 years in length for the upgrade described in subclause (III) of clause (iv) of subparagraph (B). If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both of the following:

(i) Effluent limitations for the pollutant or pollutants of concern.

(ii) Actions and milestones leading to compliance with the effluent limitation.

(D) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan pursuant to Section 13263.3.

(k)(1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:

(A) The compliance project is designed to correct the violations within five years.

(B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.

(C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

(2) For the purposes of this subdivision, "a publicly owned treatment works serving a small community" means a publicly owned treatment works serving a population of ~~10,000-20,000~~ persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

(l)(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

(2) For the purposes of this section, a "supplemental environmental project" means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

(3) This subdivision applies to the imposition of penalties pursuant to subdivision (h) or (i) on or after January 1, 2003, without regard to the date on which the violation occurs.

(m) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any liability or penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any liability or penalty imposed under this section shall be required to pay, in addition to that liability or penalty, interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person's penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(n)(1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2)(A) Notwithstanding any other provision of law, moneys collected for a violation of a water quality certification in accordance with ~~subparagraph (2) (1)(B)~~ of subdivision (a), ~~or~~ for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with ~~subparagraph (5) (1)(E)~~ of subdivision (a), **or for a violation of subdivision (b)** shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

(o) The state board shall continuously report and update information on its Internet Web site, but at a minimum, annually on or before ~~January 4~~ **July 1**, regarding its enforcement activities. The information shall include all of the following:

(1) A compilation of the number of violations of waste discharge requirements in the previous calendar year, including stormwater enforcement violations.

(2) A record of the formal and informal compliance and enforcement actions taken for each violation, including stormwater enforcement actions.

(3) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

(p) The amendments made to subdivisions (f), (h), (i) and (j) during the second year of the 2001-02 Regular Session apply only to violations that occur on or after January 1, 2003.

## **15. Amend Water Code § 13385.1.**

13385.1. (a) (1) For the purposes of subdivision (h) of Section 13385, a "serious violation" also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations. **For a publicly owned treatment works serving a small community, as determined pursuant to Section 13385, subdivision (k)(2), failure to file a**

***discharge monitoring report by a deadline shall not be treated as more than three separate serious violations unless the state board or a regional board has informed the person in writing of the failure to file the report. Any failure to file the report after such written notification shall be treated as a separate violation.***

(2) Paragraph (1) applies only to violations that occur on or after January 1, 2004.

(b)(1) Notwithstanding any other provision of law, moneys collected pursuant to this section for a failure to timely file a report, as described in subdivision (a), shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(2) The funds described in paragraph (1) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in responding to significant water pollution problems.

(c) For the purposes of this section, paragraph (2) of subdivision (f) of Section 13385, and subdivisions (h), (i), and (j) of Section 13385 only, "effluent limitation" means a numeric or numerically expressed narrative restriction, on the quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants that may be discharged from an authorized location. An effluent limitation may be final or interim, and may be expressed as a prohibition. An effluent limitation, for those purposes, does not include a receiving water limitation, a compliance schedule, or a best management practice.

#### **16. Add Water Code § 13385.5.**

***13385.5. (a) The mandatory minimum penalties that are required to be assessed pursuant to Section 13385, subdivisions (h)(1) and (i)(1), and Section 13385.1, subdivision (a)(1), shall be reduced from three thousand dollars (\$3,000) to two thousand, five hundred dollars (\$2,500) if all of the following requirements are met:***

***(1) The discharger identifies the specific violation as subject to a mandatory minimum penalty in the discharge monitoring report that covers the time period for reporting that violation.***

***(2) The discharge monitoring report that identifies the violation is timely submitted.***

***(3) The discharger remits a full payment of two thousand, five hundred dollars (\$2,500) in settlement of the mandatory minimum penalty for a violation within 30 days of submitting the discharge monitoring report.***

***(b) Any full payment in accordance with subdivisions (a)(1) through (3) shall, upon acceptance by the regional board or the state board, constitute a final resolution of the mandatory minimum penalty and shall not be subject to review by any court or agency. Any settlement of the mandatory minimum penalty for a violation does not require public notice and comment, but all such settlements shall be included in the report required by subdivision (o) of Section 13385. The settlement or imposition of a mandatory minimum penalty does not preclude the future settlement or imposition of additional civil liabilities for the same violation, unless the regional board or state board provides notice and a period of at least 30 days for public comment prior to the settlement or imposition of the mandatory minimum penalty.***

#### **17. Amend Water Code § 13388.**

***13388. (a) Notwithstanding any other provision of this division or Section 175, no person shall be a member of the state board ~~or a regional board~~ if ~~that person~~ **he** receives or has received during the previous two years a significant portion of his ~~or her~~ income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements pursuant to this chapter. ~~This section shall become operative on March 1, 1973.~~***

**(b) Notwithstanding any other provision of this division, no person shall be a member of a regional board if that person receives or has received during the previous two years a significant portion of his or her income directly or indirectly from any person subject to waste discharge requirements adopted by or applicants for waste discharge requirements to be issued by the member's regional board pursuant to this chapter.**

**(c) Subdivision (b) shall remain operative until the effective date of the delegation made pursuant to Section 13223, subdivision (c). Upon the effective date of the delegation made pursuant to Section 13223, subdivision (c), the requirements of subdivision (b) of this section shall no longer apply.**

**(d) This section shall remain operative only to the extent that federal law requires it as a condition for the State to administer the national pollutant discharge elimination system (NPDES) permit program.**

### **18. Amend Water Code § 13389.**

13389. Neither the state board nor the regional boards shall be required to comply with the provisions of ~~Chapter 3 (commencing with Section 21100)~~ of Division 13 **(commencing with section 21000)** of the Public Resources Code prior to the adoption of any waste discharge requirement, except requirements for new sources as defined in the Federal Water Pollution Control Act or acts amendatory thereof or supplementary thereto, **or prior to the adoption of a revision to a water quality control plan that solely involves the establishment of a total maximum daily load (TMDL) to comply with section 303(d) (33 U.S.C. § 1313(d)) of the Federal Water Pollution Control Act and a program of implementation for the TMDL.**

### **19. Amend Health and Safety Code § 25281.**

25281. For purposes of this chapter, the following definitions apply:

(a) "Automatic line leak detector" means any method of leak detection, as determined in regulations adopted by the board, that alerts the owner or operator of an underground storage tank to the presence of a leak. "Automatic line leak detector" includes, but is not limited to, any device or mechanism that alerts the owner or operator of an underground storage tank to the presence of a leak by restricting or shutting off the flow of a hazardous substance through piping, or by triggering an audible or visual alarm, and that detects leaks of three gallons or more per hour at 10 pounds per square inch line pressure within one hour.

(b) "Board" means the State Water Resources Control Board. "Regional board" means a California regional water quality control board.

(c) "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the tank system.

(d)(1) "Certified Unified Program Agency" or "CUPA" means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) "Participating Agency" or "PA" means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, a UPA has the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 and the regulations adopted to implement those requirements. Except as



provided in Section 25296.09, after a CUPA has been certified by the secretary, the UPA shall be the only local agency authorized to enforce the requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA. This paragraph shall not be construed to limit the authority or responsibility granted to the board and the regional boards by this chapter to implement and enforce this chapter and the regulations adopted pursuant to this chapter.

(e) "Department" means the Department of Toxic Substances Control.

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

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

(h) "Hazardous substance" means either of the following:

(1) All of the following liquid and solid substances, unless the department, in consultation with the board, determines that the substance could not adversely affect the quality of the waters of the state:

(A) Substances on the list prepared by the Director of Industrial Relations pursuant to Section 6382 of the Labor Code.

(B) Hazardous substances, as defined in Section 25316.

(C) Any substance or material that is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class III-A combustible liquid.

(2) Any regulated substance, as defined in subsection (2) of Section 6991 of Title 42 of the United States Code, as that section reads on January 1, 1989, or as it may subsequently be amended or supplemented.

(i) "Local agency" means the local agency authorized, pursuant to Section 25283, to implement this chapter.

(j) "Operator" means any person in control of, or having daily responsibility for, the daily operation of an underground storage tank system.

(k) "Owner" means the owner of an underground storage tank.

(l) "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. "Person" also includes any city, county, district, the state, another state of the United States, any department or agency of this state or another state, or the United States to the extent authorized by federal law.

(m) "Pipe" means any pipeline or system of pipelines that is used in connection with the storage of hazardous substances and that is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

(n) "Primary containment" means the first level of containment, such as the portion of a tank that comes into immediate contact on its inner surface with the hazardous substance being contained.

(o) "Product tight" means impervious to the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(p) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils.

(q) "Secondary containment" means the level of containment external to, and separate from, the primary containment.

(r) "Single walled" means construction with walls made of only one thickness of material. For the purposes of this chapter, laminated, coated, or clad materials are considered single walled.

(s) "Special inspector" means a professional engineer, registered pursuant to Chapter 7

(commencing with Section 6700) of Division 3 of the Business and Professions Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements of underground storage tanks.

(t) "Storage" or "store" means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for a period of years. "Storage" or "store" does not include the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or granted interim status under Section 25200.5.

(u) "Tank" means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials, including, but not limited to, wood, concrete, steel, or plastic that provides structural support.

(v) "Tank integrity test" means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the board.

(w) "Tank tester" means an individual who ~~performs tank integrity tests on underground storage tanks~~ **conducts tank testing activities.**

**(1) "Tank testing activities" means any of the following:**

**(A) Performing tank integrity tests on underground storage tanks as required by this chapter or pursuant to any local ordinance in compliance with Section 25299.1 or 25299.2..**

**(B) Installing, repairing, maintaining, or calibrating monitoring equipment for an underground storage tank under the authority of a tank testing license, pursuant to section 25284.1, subdivision (a)(5)(D).**

**(C) Performing secondary containment testing under the authority of a tank testing license, pursuant to section 2637 of Title 23 of the California Code of Regulations.**

**(D) Performing the work of a service technician under the authority of a tank testing license, pursuant to subdivision (i) of section 2715 of Title 23 of the California Code of Regulations.**

**(2) Tank testing activities do not include performing the work of a service technician solely under the authority of a qualifying contractor's license issued by the State Contractor's License Board.**

(x) "Unauthorized release" means any release of any hazardous substance that does not conform to this chapter, including an unauthorized release specified in Section 25295.5.

(y)(1) "Underground storage tank" means any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground. "Underground storage tank" does not include any of the following:

(A) A tank with a capacity of 1,100 gallons or less that is located on a farm and that stores motor vehicle fuel used primarily for agricultural purposes and not for resale.

(B) A tank that is located on a farm or at the residence of a person, that has a capacity of 1,100 gallons or less, and that stores home heating oil for consumptive use on the premises where stored.

(C) Structures, such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits, sumps and lagoons. A sump that is a part of a monitoring system required under Section 25290.1, 25290.2, 25291, or 25292 and sumps or other structures defined as underground storage tanks under the federal act are not exempted by this subparagraph.

(D) A tank holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be regulated by the board and any regional board pursuant to the Porter-Cologne Water Quality Control Act

(Division 7 (commencing with Section 13000) of the Water Code) to ensure that they do not pose a threat to water quality.

(z) "Underground tank system" or "tank system" means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

(aa)(1) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements of paragraph (3) of subdivision (c) of Section 25404.

(2) "Unified program facility permit" means a permit issued pursuant to Chapter 6.11 (commencing with Section 25404), and that encompasses the permitting requirements of Section 25284.

(3) "Permit" means a permit issued pursuant to Section 25284 or a unified program facility permit as defined in paragraph (2).

## **20. Amend Health and Safety Code § 25284.4.**

25284.4. (a) ~~All tank integrity tests required by this chapter or pursuant to any local ordinance in compliance with Section 25299.1~~ **Tank testing activities** shall be performed only by, or under the direct and personal supervision of, a tank tester with a currently valid tank testing license issued pursuant to this section. No person shall engage in ~~the business of tank integrity testing, or act in the capacity of a tank tester,~~ **tank testing activities** within this state, **except under the direct and personal supervision of a licensed tank tester** without first obtaining a tank testing license from the board. Any person who violates this subdivision is guilty of a misdemeanor and may be subject to civil liability pursuant to subdivision (g).

(b) Any person proposing to conduct ~~tank testing activities tank integrity testing~~ within the state, **except under the direct and personal supervision of a licensed tank tester**, shall apply to the board for a tank testing license, and shall pay the appropriate fee established by the board. A license issued pursuant to this section shall expire three years after the date of issuance and shall be subject to renewal, except as specified in this section. If the tank tester fails to renew the tank tester's license within three years of the license's expiration date, the license shall lapse and the person shall apply for a new tank testing license and shall meet the same requirements of this section for a new applicant. A tank tester shall pay a fee to the board at the time of licensing and at the time of renewal. The board shall adopt a fee schedule for the issuance and renewal of tank testing licenses to cover the necessary and reasonable costs of administering and enforcing this section.

(c)(1) The board may establish any additional qualifications and standards for the licensing of tank testers. Each applicant for licensing as a tank tester shall pass an examination specified by the board and shall have completed a minimum of either of the following:

(A) One year of qualifying field experience by personally testing a number of underground storage tanks specified by the board.

(B) Completed six months of field experience by personally testing a number of underground storage tanks specified by the board and have successfully completed a course of study applicable to tank testing that is satisfactory to the board.

(2) The examination required by paragraph (1) shall, at a minimum, test the applicant's knowledge of all of the following:

(A) General principles of tank and pipeline testing.

(B) Basic understanding of the mathematics relating to tank testing.

(C) Understanding of the specific test procedures, principles, and equipment for which the tank tester will be qualified to operate.

(D) Knowledge of the regulations and laws governing the regulation of underground storage tanks.

(E) Proper safety procedures.

(d) The board shall maintain a current list of all persons licensed pursuant to this section,

including a record of enforcement actions taken against these persons. This list shall be made available to local agencies and the public on request.

(e) A tank tester may be liable civilly in accordance with subdivision (g) and, in addition, may be subject to administrative sanctions pursuant to subdivision (f) for performing or causing another to perform, any of the following actions:

(1) Willfully or negligently violating, or causing, or allowing the violation of, this chapter or any regulations adopted pursuant to this chapter.

(2) Willfully or negligently failing to exercise direct and personal ~~control~~ **supervision** over an unlicensed employee, associate, assistant, or agent **who is performing tank testing activities during any phase of tank integrity testing.**

(3) Without regard to intent or negligence, using or permitting a licensed or unlicensed employee, associate, assistant, or agent to use any method or equipment that is demonstrated to be unsafe or unreliable **for tank integrity testing.**

(4) Submitting false or misleading information on an application for license.

(5) Using fraud or deception in the course of doing business as a tank tester.

(6) Failing to use reasonable care, or judgment, while performing **tank testing activities tank integrity tests.**

(7) Failing to maintain competence ~~in approved tank testing procedures in the performance of tank testing activities.~~

(8) Failing to use proper tests or testing equipment ~~to conduct tank integrity tests while performing tank testing activities.~~

(9) **Failure to comply with any** Any other ~~action requirement~~ that the board may, by regulation, prescribe.

(f)(1) The board may suspend the license of a tank tester for a period of up to one year, and may revoke, or refuse to grant or renew, a license and may place on probation, or reprimand, the licensee upon any reasonable ground, including, but not limited to, those violations specified in subdivision (e). ~~The board may investigate any licensed tank tester after receiving a written request from a local agency.~~

(2) The board shall notify the tank tester of any alleged violations and of proposed sanctions, before taking any action pursuant to this subdivision. The tank tester may request a hearing, or submit a written response within 30 days of the date of notice. Any hearing conducted pursuant to this subdivision shall be conducted in accordance with the hearing procedure specified in subdivision (g). After the hearing, or at a time after the 30-day response period, the board may impose the appropriate administrative sanctions authorized by this subdivision if it finds that the tank tester has committed any of the alleged violations specified in the notice.

(g)(1) The board may impose civil liability for a violation of subdivision (a) or (e) in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code, in an amount that shall not exceed five hundred dollars (\$500) **per violation** for each day in which the violation occurs, except that the chief of the division of water quality of the board or any other person designated by the board shall issue the complaint to the violator. The complaint shall be issued based on information developed by board staff or local agencies. Any hearing on the complaint shall be made before the board, or a panel thereof, consisting of one or more board members. The decision of the board shall be final upon issuance and may be reviewed pursuant to Article 3 (commencing with Section 13330) of Chapter 5 of Division 7 of the Water Code within 30 days following issuance of the order.

(2) Civil liability for a violation of subdivision (a) or (e) may be imposed by a superior court at the request of the board in an amount which shall not exceed two thousand five hundred dollars (\$2,500) **per violation** for each day in which the violation occurs.

(h) Any fees or civil liability collected pursuant to this section shall be deposited in the Underground Storage Tank Tester Account which is hereby created in the General Fund. The money in this account is available for expenditure by the board, upon appropriation by the

Legislature, for purposes of implementing the tank tester licensing program established by this section and for repayment of the loan made by Section 13 of Chapter 1372 of the Statutes of 1987.

(i) A tank tester who ~~prepares a report required to be prepared in connection with tank testing activities conducts or supervises a tank or piping integrity test shall prepare a report detailing the results of the tank test and~~ shall maintain a record of the report for at least three years, or as otherwise required by the board. **A tank tester who conducts or supervises a tank or piping integrity test shall prepare a report detailing the results of the test and** ~~The tank tester~~ shall type or print his or her name and include his or her license number on the report and shall endorse the report under penalty of perjury by original signature.

## **21. Amend Health and Safety Code § 25299.**

25299. (a) Any operator of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) for each underground storage tank for each day of violation for any of the following violations:

- (1) Operating an underground tank system which has not been issued a permit, in violation of this chapter.
- (2) Violation of any of the applicable requirements of the permit issued for the operation of the underground tank system.
- (3) Failure to maintain records, as required by this chapter.
- (4) Failure to report an unauthorized release, as required by Sections 25294 and 25295.
- (5) Failure to properly close an underground tank system, as required by Section 25298.
- (6) Violation of any applicable requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.
- (7) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.
- (8) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.
- (9) Tampering with or otherwise disabling automatic leak detection devices or alarms.

(b) Any owner of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) per day for each underground storage tank, for each day of violation, for any of the following violations:

- (1) Failure to obtain a permit as specified by this chapter.
- (2) Failure to repair or upgrade an underground tank system in accordance with this chapter.
- (3) Abandonment or improper closure of any underground tank system subject to this chapter.
- (4) Violation of any applicable requirement of the permit issued for operation of the underground tank system.
- (5) Violation of any applicable requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.
- (6) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.
- (7) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(c) Any person who **intentionally** fails to notify the board or the local agency when required to do so by this chapter or who submits false information in a permit application, amendment, or renewal, pursuant to Section 25286, is liable for a civil penalty of not more than five thousand dollars (\$5,000) for each underground storage tank for which notification is not given or false information is submitted.

(d) (1) Any person who violates any corrective action requirement established by, or issued pursuant to, Section 25296.10 is liable for a civil penalty of not more than ten thousand dollars (\$10,000) for each underground storage tank for each day of violation.

(2) A civil penalty under this subdivision may be imposed in a civil action under this chapter, or may be administratively imposed by the board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(e) Any person who violates Section 25292.3 is liable for a civil penalty of not more than five thousand dollars (\$5,000) for each underground storage tank for each day of violation.

(f) (1) Any person who falsifies any monitoring records required by this chapter, or knowingly fails to report an unauthorized release, shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000) or more than ten thousand dollars (\$10,000), by imprisonment in the county jail for not to exceed one year, or by both that fine and imprisonment.

(2) Any person who intentionally disables or tampers with an automatic leak detection system in a manner that would prevent the automatic leak detection system from detecting a leak or alerting the owner or operator of the leak, shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000) or more than ten thousand dollars (\$10,000), by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(g) In determining both the civil and criminal penalties imposed pursuant to this section, the board, a regional board or the court, as the case may be, shall consider all relevant circumstances, including, but not limited to, the extent of harm or potential harm caused by the violation, the nature of the violation and the period of time over which it occurred, the frequency of past violations, and the corrective action, if any, taken by the person who holds the permit.

(h) (1) Each civil penalty or criminal fine imposed pursuant to this section for any separate violation shall be separate, and in addition to, any other civil penalty or criminal fine imposed pursuant to this section or any other provision of law, except that no civil penalty shall be recovered under subdivision (d) for violations for which a civil penalty is recovered pursuant to Section 13268 or 13350 of the Water Code. The penalty or fine shall be paid to the unified program agency, the participating agency, or the state, whichever is represented by the office of the city attorney, **county counsel**, district attorney, or Attorney General bringing the action.

(2) Any penalties or fines paid to a uniform program agency or a participating agency pursuant to paragraph (1) shall be deposited into a special account and shall be expended only to fund the activities of the unified program agency or participating agency in enforcing this division within that jurisdiction pursuant to the uniform program specified in Chapter 6.11 (commencing with Section 25404).

(3) All penalties or fines collected by the board or a regional board or collected on behalf of the board or a regional board by the Attorney General shall be deposited in the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund, and are available for expenditure by the board, upon appropriation, pursuant to Section 13441 of the Water Code.

(i) Paragraph (9) of subdivision (a) does not prohibit the owner or operator of an underground storage tank, or his or her designee, from maintaining, repairing, or replacing automatic leak detection devices or alarms associated with that tank.

## **22. Add Health and Safety Code § 25299.05.**

***25299.05. After consulting with the appropriate local agency or agencies, the board may impose civil liability administratively for any violation described in Section 25299 pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 the Water Code.***

## **23. Emergency Regulations**

Uncodified section of bill.

***The state board may adopt emergency regulations to carry out the provisions of this bill. The initial adoption of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Initial emergency regulations and the first readoption of those regulations shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations and shall remain in effect for no more than 180 days.***