



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

Code:  Section:

[Up^](#) [Add To My Favorites](#)

**HEALTH AND SAFETY CODE - HSC**

**DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS [24000 - 27007]** ( *Division 20 enacted by Stats. 1939, Ch. 60.*  )

**CHAPTER 6.5. Hazardous Waste Control [25100 - 25259]** ( *Chapter 6.5 added by Stats. 1972, Ch. 1236.*  )

**ARTICLE 9.5. Surface Impoundments [25208 - 25208.17]** ( *Article 9.5 added by Stats. 1984, Ch. 1543, Sec. 2.*  )

**25208.** This article shall be known and may be cited as the Toxic Pits Cleanup Act of 1984.

(*Added by Stats. 1984, Ch. 1543, Sec. 2.*)

**25208.1.** The Legislature finds and declares as follows:

- (a) Discharges of liquid hazardous wastes or hazardous wastes containing free liquids into lined or unlined ponds, pits, and lagoons pose a serious threat to the quality of the waters of the state.
- (b) Recent reports indicate that hazardous waste contamination from surface impoundments is migrating to domestic drinking water supplies and threatening the continued beneficial uses of the state's ground and surface waters, air, and environment.
- (c) Under the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.), and under state regulations, the storage of hazardous wastes in existing ponds has not been required to meet the same requirements as new impoundments, such as double liners, leachate collection, and leak detection.
- (d) Recent studies have found that synthetic liners, clay liners, and combinations, including clay and synthetic liners, impede, but do not eliminate, leachate from surface impoundments migrating into the surrounding environment.
- (e) It is in the public interest to establish a continuing program for the purpose of preventing contamination from, and improper storage, treatment, and disposal of, liquid hazardous wastes or hazardous wastes containing free liquids in surface impoundments. It is the intent of the Legislature, in enacting this article, to establish a program that will ensure that existing surface impoundments are either made safe or are closed, so that they do not contaminate the air or waters of the state, and so that the health, property, and resources of the people of the state are protected.

(*Added by Stats. 1984, Ch. 1543, Sec. 2.*)

**25208.2.** For purposes of this article, the following definitions apply:

- (a) "Active life of the facility" means that period of time when the facility has the potential to adversely affect the waters of the state, but if the owner enters into an agreement with the board to properly close the impoundment on a specified date, the active life of the facility means that period of time up to that specified date.
- (b) "Background water quality" means the level of concentration of indicator parameters in groundwater that is not, or has not been, affected by any hazardous waste, hazardous waste constituent, or hazardous waste leachate emanating from a particular waste management unit.
- (c) "Board" or "state board" means the State Water Resources Control Board.
- (d) "Close the impoundment" means the permanent termination of all hazardous waste discharge operations at a waste management unit and any operations necessary to prepare that waste management unit for postclosure maintenance that are conducted pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.), and the regulations adopted by the state board and the department concerning the closure of surface impoundments.
- (e) "Constituent" means an element, chemical compound, or mixture of compounds that is a component of a hazardous waste or leachate and has the physical or chemical properties that cause the waste to be identified as hazardous waste by the department.
- (f) "Discharge" means to place, dispose of, or store liquid hazardous wastes or hazardous wastes containing free liquids into or in a surface impoundment owned or operated by the person who is conducting the placing, disposal, or storage.

- (g) "Emergency containment dike" means a berm that is located around a tank solely for the purpose of containing any emergency spills from the tank and does not contain any liquid hazardous waste or hazardous wastes containing free liquids for longer than 48 hours.
- (h) "Facility" means the structures, appurtenances, and improvements on the land, and all contiguous land, that are used for treating, storing, or disposing of hazardous waste. A facility may consist of several waste management units.
- (i) "Free liquids" means liquids that readily separate from the solid portion of a hazardous waste under ambient temperature and pressure.
- (j) "Groundwater" means water below the land surface in a zone of saturation.
- (k) "Hazardous waste" means a waste that is a hazardous waste, as specified in this chapter.
- (l) "Indicator parameters" means the measureable physical or chemical characteristics in groundwater or soil-pore moisture that are likely to be affected by hazardous waste disposal operations and are used, for comparison purposes, to assess the result of hazardous waste disposal operations at a particular waste management unit on the waters of the state.
- (m) "Landfill" means a facility or part of a facility where hazardous waste is placed in or on land for disposal and that is not a land farm, surface impoundment, or an injection well.
- (n) "Leachate" means any fluid, including any constituents in the liquid, that has percolated through, migrated from, or drained from, a hazardous waste management unit.
- (o) "Owner" means a person who owns a facility or part of a facility.
- (p) "Perched water" means a localized body of groundwater that overlies, and is hydraulically separated from, an underlying body of groundwater.
- (q) "pH" means a measure of a sample's acidity expressed as a negative logarithm of the hydrogen ion concentration.
- (r) "Pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for the purpose of treatment or storage.
- (s) "Pollution" has the same meaning as defined in Section 13050 of the Water Code.
- (t) "Potential source of drinking water" means either water that is identified or designated in a water quality control plan adopted by a regional board as being suitable for domestic or municipal uses and is potable, or water that is located in water-bearing strata, is an underground source of drinking water, as defined in Section 146.3 of Title 40 of the Code of Federal Regulations, and does not meet the criteria for an exempted aquifer, pursuant to Section 146.4 of Title 40 of the Code of Federal Regulations.
- (u) "Qualified person" means a person who has at least five years of full-time experience in hydrogeology and who is a certified engineering geologist certified pursuant to Section 7842 of the Business and Professions Code, a professional geologist registered pursuant to Section 7850 of the Business and Professions Code, or a registered civil engineer registered pursuant to Section 6762 of the Business and Professions Code. "Full-time experience" in hydrogeology may include a combination of postgraduate studies in hydrogeology and work experience, with each year of postgraduate work counted as one year of full-time work experience, except that not more than three years of postgraduate studies may be counted as full-time experience.
- (v) "Regional board" means the California regional water quality control board for the region in which the surface impoundment is located.
- (w) "Report" means the hydrogeological assessment report specified in Section 25208.8.
- (x) "Surface impoundment" or "impoundment" means a waste management unit or part of a waste management unit that is a natural topographic depression, artificial excavation, or diked area formed primarily of earthen materials, although it may be lined with artificial materials, that is designed to hold an accumulation of liquid hazardous wastes or hazardous wastes containing free liquids, including, but not limited to, holding, storage, settling, or aeration pits, evaporation ponds, percolation ponds, other ponds, and lagoons. Surface impoundment does not include a landfill, a land farm, a pile, an emergency containment dike, a tank, or an injection well.
- (y) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste, that is constructed primarily of nonearthen materials, such as fiberglass, steel, or plastic to provide structural support, and has been issued a permit pursuant to Section 25284.
- (z) "Vadose zone" means the zone between the land surface and the water table.
- (aa) "Waste management unit" means that portion of a facility used for the discharge of hazardous waste into or onto land, including all containment and monitoring equipment associated with that portion of the facility.

*(Amended by Stats. 2006, Ch. 538, Sec. 381. Effective January 1, 2007.)*

**25208.3.** (a) The state board shall, by emergency regulation, adopt a fee schedule that assesses a fee upon any person discharging any liquid hazardous wastes or hazardous wastes containing free liquids into a surface impoundment, except as

provided in Section 25208.17. The state board shall include in this fee schedule the fees charged for applications for, and renewals of, an exemption from Section 25208.5, as specified in subdivision (h) of Section 25208.5, from subdivision (a) of Section 25208.4, as specified in subdivision (b) of Section 25208.4, from subdivision (c) of Section 25208.4, as specified in Section 25208.16, and from Sections 25208.4 and 25208.5, as specified in subdivision (e) of Section 25208.13. The state board shall also include provisions in the fee schedule for assessing a penalty pursuant to subdivision (c). The state board shall set these fees at an amount equal to the state board's and regional board's reasonable and anticipated costs of administering this article.

(b) The emergency regulations that set the fee schedule shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the state board.

(c) The state board shall send a notice to each person subject to the fee specified in subdivision (a). If a person fails to pay the fee within 60 days after receipt of this notice, the state board shall require the person to pay an additional penalty fee. The state board shall set the penalty fee at not more than 100 percent of the assessed fee, but in an amount sufficient to deter future noncompliance, as based upon that person's past history of compliance and ability to pay, and upon additional expenses incurred by this noncompliance.

(d) The state board shall collect and deposit the fees collected pursuant to this article in the Surface Impoundment Assessment Account, which is hereby created in the General Fund. The money within the Surface Impoundment Assessment Account is available, upon appropriation by the Legislature, to the state board and the regional boards for purposes of administering this article and Article 9.7 (commencing with Section 25209.10).

*(Amended by Stats. 2002, Ch. 597, Sec. 1. Effective January 1, 2003.)*

**25208.4.** (a) Notwithstanding any other provision of law, unless the person was granted an exemption pursuant to subdivision (b) on or before December 31, 1987, pursuant to Section 25208.4, as it read on December 31, 1988, or pursuant to Section 25208.13 or 25208.18, a person shall not discharge liquid hazardous wastes or hazardous wastes containing free liquids into a surface impoundment, if the surface impoundment, or the land immediately beneath it, contains hazardous wastes and is within one-half mile upgradient from a potential source of drinking water.

A person who owns a surface impoundment which meets the conditions specified in this subdivision shall close the impoundment.

(b) A person may apply to a regional board to exempt a surface impoundment from subdivision (a) pursuant to this subdivision. A person shall submit the application for exemption to the regional board on or before January 1, 1986.

(1) A regional board shall either grant or deny an exemption from subdivision (a) on or before December 31, 1987. A regional board may grant an exemption from subdivision (a) only if the regional board makes both of the following findings:

(A) No extremely hazardous wastes are currently being discharged into the surface impoundment, and either one of the following applies:

(i) The records of the person applying for an exemption indicate that no extremely hazardous wastes have been discharged into the surface impoundment.

(ii) Extremely hazardous wastes are not present in the surface impoundment, in the vadose zone, or in the waters of the state.

(B) The surface impoundment is in compliance with Section 25208.5, and a report has been filed pursuant to Section 25208.8.

(2) An exemption granted pursuant to this subdivision shall not be effective for more than five years. Applications for an exemption or a renewal of an exemption shall be accompanied by the fee specified in the fee schedule adopted by the state board pursuant to Section 25208.3. A regional board shall not renew the exemption unless the regional board makes both of the following findings:

(A) No hazardous waste constituents have migrated from the surface impoundment into the vadose zone or the waters of the state in concentrations which pollute the vadose zone, or pollute, or threaten to pollute, the waters of the state.

(B) Continuing the operation of the surface impoundment does not pose a significant potential of hazardous waste constituents migrating from the surface impoundment into the vadose zone or the waters of the state, thus polluting the vadose zone, or polluting, or threatening to pollute, these waters.

(3) Except as provided in paragraph (4), the regional board shall revoke an exemption granted pursuant to this subdivision and require the person granted the exemption to comply with subdivision (a) if the regional board determines that the surface impoundment granted the exemption is polluting, or threatening to pollute, the waters of the state or that hazardous waste constituents are migrating from the surface impoundment into the vadose zone or the waters of the state in concentrations which pollute or threaten to pollute these waters. The regional board shall also issue a cease and desist order pursuant to Section 13301 of the Water Code and require appropriate removal and remedial actions by the person granted the exemption, or the responsible parties, to clean up any pollution which may have occurred.

(4) Notwithstanding paragraph (3), a regional board may continue in effect an exemption granted pursuant to this subdivision if the regional board orders the person to double line the surface impoundment, equip the surface impoundment with a leachate collection system, and conduct groundwater monitoring, as specified in subdivision (a) of Section 25208.5, within one year after granting this continuance, and if the regional board makes all of the following findings:

(A) The surface impoundment granted the exemption has hazardous waste constituents, in concentrations which threaten to pollute the waters of the state, which are migrating from the surface impoundment into the vadose zone, but no hazardous waste constituents have migrated into the waters of the state.

(B) Installing double liners and a leachate collection system and conducting groundwater monitoring, as specified in subdivision (a) of Section 25208.5, will abate the threat to the waters of the state before any hazardous waste constituents migrate to the waters.

(C) All removal and remedial actions necessary to abate the threat specified in subparagraph (A) can be completed prior to the migration of any hazardous waste constituents into the waters of the state.

(5) Notwithstanding paragraph (4), the regional board shall revoke the exemption continued pursuant to paragraph (4) and shall require the person granted this continuance to comply with subdivision (a) if the regional board determines either of the following:

(A) The surface impoundment is polluting the waters of the state or that hazardous waste constituents are migrating from the surface impoundment into the vadose zone or the waters of the state in concentrations which pollute, or threaten to pollute, these waters.

(B) The person does not comply with the board's order or conduct the necessary removal or remedial actions, as required by paragraph (4).

The regional board shall also issue a cease and desist order pursuant to Section 13301 of the Water Code and require appropriate removal and remedial actions by the person granted the exemption, or the responsible parties, to clean up any pollution which may have occurred, upon making either of these determinations.

(c) Notwithstanding any other provision of law, a person shall not discharge any restricted hazardous waste into a surface impoundment, unless the person is granted an exemption pursuant to Section 25208.13 or 25208.16.

(d) This section shall become operative on January 1, 1989.

*(Amended (as amended by Stats. 1985, Ch. 1366, Sec. 3) by Stats. 1988, Ch. 920, Sec. 3. Section operative January 1, 1989, by its own provisions.)*

**25208.5.** (a) Unless granted an exemption pursuant to subdivision (c) or Section 25208.13 or 25208.18, on or after January 1, 1989, no person shall discharge any liquid hazardous waste or hazardous wastes containing free liquids into a surface impoundment, unless the surface impoundment is double lined, as specified in subdivision (b), equipped with a leachate collection system, and groundwater monitoring is conducted, in accordance with the federal Resource Conservation and Recovery Act of 1976, the regulations and guidance documents adopted pursuant thereto, and the regulations adopted by the state board and the department.

(b) Until the regulations and guidance documents specified in subdivision (a) relating to double liners for surface impoundments go into effect, the requirement of installing double liners in subdivision (a) may be satisfied by installing a top liner which is designed, operated, and constructed of materials to prevent the migration of any constituents into the top liner during the period the facility remains in operation, including any postclosure monitoring period, and by installing a lower liner which is designed, operated, and constructed to prevent the migration of any constituents through the lower liner during the same period, and is constructed of at least a three-foot thick layer of recompacted clay or other natural materials which have a permeability of not more than  $1 \times 10^{-7}$  centimeter per second.

(c) A person may apply for an exemption from subdivision (a) for a surface impoundment for which construction had begun on or before July 1, 1984, and which was issued waste discharge requirements by filing an application with the regional board on or before January 1, 1986. The initial application for exemption shall include a completed hydrogeological assessment report which contains the accurate data and documentation specified in Section 25208.8. An application for renewal of an exemption shall include the

report only if required by the regional board. If the regional board has not granted the exemption by June 30, 1988, the person shall then comply with the requirements specified in subdivision (a), except that if the regional board denies the application for exemption but determines that a reasonable person would have applied for an exemption, the regional board may temporarily exempt the applicant from subdivision (a), for up to one year from the date of the denial of the exemption, for the sole purpose of bringing the surface impoundment into compliance with subdivision (a).

(d) The regional board may grant an exemption upon reviewing the application and making all of the following findings:

(1) The applicant has fully complied with subdivision (c).

(2) No hazardous waste constituents have migrated from the surface impoundment into the vadose zone or the waters of the state in concentrations which pollute or threaten to pollute the waters of the state.

(3) Continuing the operation of the surface impoundment without the requirements specified in subdivision (a) does not pose a significant potential of hazardous waste constituents migrating from the surface impoundments into the vadose zone or the waters of the state, in concentrations which pollute or threaten to pollute the waters of the state.

(e) If the regional board grants an exemption pursuant to subdivision (d), the regional board shall revise the waste discharge requirements prescribed pursuant to Section 13263 of the Water Code for that surface impoundment based upon a review of the report and shall include conditions in the waste discharge requirements to ensure that the waters of the state will not be threatened with pollution or polluted.

(f) An exemption granted pursuant to subdivision (d) or (g) shall not be effective for more than five years. A regional board shall not renew the exemption unless the regional board makes the findings specified in subdivision (d).

(g) If a regional board does not take any action by June 30, 1988, on a completed application for an exemption that was filed on or before January 1, 1986, the person who filed the application may file a request with the state board on or before July 31, 1988, to review the application. The state board shall deny or grant the exemption pursuant to the findings specified in subdivision (d) within four months after the request for review is filed, and, if the board grants the exemption, the state board shall revise the waste discharge requirements pursuant to subdivision (e). An exemption granted pursuant to this subdivision is subject to the requirements specified in subdivision (f). The state board shall act on an application for exemption on or before November 30, 1988. A person who files a request for a review of an application with the state board is exempt from subdivision (a) until the state board acts on the application, and, if the state board denies the exemption, the applicant is exempt from subdivision (a) for one year from the date of the denial of the exemption for the sole purpose of bringing the surface impoundment into compliance with subdivision (a).

(h) Applications for an exemption or a renewal of an exemption shall be accompanied by the fee specified in the fee schedule adopted by the state board pursuant to Section 25208.3.

*(Amended by Stats. 1988, Ch. 920, Sec. 4.)*

**25208.6.** When a regional board determines that a surface impoundment is polluting, or threatens to pollute, the waters of the state or that hazardous waste constituents are migrating from that surface impoundment into the vadose zone or the waters of the state, in concentrations which pollute the vadose zone, or pollute, or threaten to pollute, the waters of the state, the regional board shall either order the surface impoundment to close, if the regional board determines that requiring the installation of double liners and a leachate collection system and the conducting of groundwater monitoring, as specified in subdivision (a) of Section 25208.5, does not provide reasonable assurance of protection against future migration into the vadose zone or the waters of the state, or take both of the following actions:

(a) Issue a cease and desist order pursuant to Section 13301 of the Water Code prohibiting any discharge into the surface impoundment and require appropriate removal and remedial actions by the person or other responsible parties to clean up any pollution which may have occurred.

(b) Require the surface impoundment to comply with subdivision (a) of Section 25208.5. The regional board shall not grant an exemption for such a surface impoundment pursuant to subdivision (c) of Section 25208.5.

*(Added by Stats. 1984, Ch. 1543, Sec. 2.)*

**25208.7.** (a) The regional board shall make at least one inspection per year of all facilities with surface impoundments, and shall regularly review monitoring data, as necessary, to ensure that all surface impoundments comply with this article and that any equipment or programs required pursuant to this article are operating properly.

(b) Except as provided in subdivisions (c) and (d), each regional board shall establish a schedule and a notification system requiring the submission of reports to the regional board on or before January 1, 1988, by every person discharging liquid hazardous wastes or hazardous wastes containing free liquids into a surface impoundment located within the jurisdiction of the regional board. Any person discharging liquid hazardous wastes or hazardous wastes containing free liquids into a surface impoundment who receives this notice from the regional board shall submit a report to the regional board within the time specified in the notice, except that if the

person has filed a report with an application for exemption, pursuant to subdivision (c) of Section 25208.5, the regional board shall not require the person to file a report.

(c) The regional board may require that the report specified in Section 25208.8 be filed by a person who has conducted a site assessment pursuant to subdivision (a) of Section 25208.17 only after the regional board makes the determination specified in subdivision (g) of Section 25208.17.

(d) The regional board may exempt a person from submitting a report specified in Section 25208.8 if the person has ceased discharging into the surface impoundment, the person closed the surface impoundment on or before December 31, 1985, with the approval of the regional board and the department, and the board makes both of the following findings:

- (1) The report is not required to determine the extent to which the hazardous waste constituents have migrated from the surface impoundment.
- (2) No hazardous waste constituents are present in the vadose zone or the waters of the state beneath the surface impoundment in concentrations which pollute the vadose zone or threaten to pollute or pollute the waters of the state.

*(Amended by Stats. 1987, Ch. 748, Sec. 1.)*

**25208.8.** A person who receives a notice from a regional board pursuant to Section 25208.7 or who files an application for an exemption pursuant to Section 25208.5 or 25208.13, shall submit a hydrogeological assessment report to the regional board. A qualified person shall be responsible for the preparation of the report and shall certify its completeness and accuracy. The report shall contain, for each surface impoundment, any information required by the state board or the regional board, and all of the following information:

(a) A description of the surface impoundment, including its physical characteristics, its age, the presence or absence of a liner, a description of the liner, the liner's compatibility with the hazardous wastes discharged to the impoundment, and the design specifications of the impoundment.

(b) A description of the volume and concentration of hazardous waste constituents placed in the surface impoundment, based on a representative chemical analysis of the specific hazardous waste type and accounting for variance in hazardous waste constituents over time.

(c) A map showing the distances, within the facility, to the nearest surface water bodies and springs, and the distances, within one mile from the facility's perimeter, to the nearest surface water bodies and springs.

(d) Tabular data for each surface water body and spring shown on the map specified in subdivision (c) that indicate its flow and a representative water analysis. The report shall include an evaluation and characterization of seasonal changes and, if substantive changes result from season to season, the tabular data shall reflect these seasonal changes.

(e) A map showing the location of all wells within the facility and the locations of all wells within one mile of the facility's perimeter. The report shall include, for each well, a description of the present use of the well, a representative water analysis from the well, and, when possible, the water well driller's report or well log.

(f) An analysis of the vertical and lateral extent of the perched water and water-bearing strata that could be affected by leachate from the surface impoundment, and the confining beds under and adjacent to the surface impoundment. This analysis shall include all of the following:

- (1) Maps showing contours of equal elevation of the water surface for perched water, unconfined water, and confined groundwater required to be analyzed by this subdivision.
- (2) An estimate of the groundwater flow, direction of the perched water, and all water-bearing strata on both the maps and the subsurface geologic cross sections.
- (3) An estimate of the transmissivity, permeability, and storage coefficient for each perched zone of water and water-bearing strata identified on the maps specified in paragraph (1).
- (4) A determination of the rate of groundwater flow.
- (5) A determination of the water quality of each zone of the water-bearing strata and perched water that is identified on the maps specified in paragraph (1) and is under, or adjacent to, the facility. This determination shall be conducted by taking samples either from upgradient of the surface impoundment or from another location that has not been affected by leakage from the surface impoundment.

(g) An indication as to whether the groundwater is contiguous with regional bodies of groundwater and the depth measured to the groundwater, including the depth measured to perched water and water-bearing strata identified on the maps specified in paragraph (1) of subdivision (f).

(h) The following climatological information:

- (1) A map showing the contours for the mean annual long-term precipitation for the surrounding region within 10 miles of the surface impoundment.
- (2) Calculations estimating the maximum 24-hour precipitation and maximum and minimum annual precipitation at the facility based upon direct measurement at the facility or upon measured values of precipitation from a nearby climatologically similar station.
- (3) The projected volume and pattern of runoff for any streams that, in a 100-year interval, could affect the facility, including peak stream discharges associated with storm conditions.

(i) A description of the composition of the vadose zone beneath the surface impoundment. This description shall include a chemical and hydrogeological characterization of both the consolidated and unconsolidated rock material underlying the surface impoundment, and an analysis for pollutants, including those constituents discharged into the surface impoundment. This description shall also include soil moisture readings from a representative number of points around the surface impoundment's perimeter and at the maximum depth of the surface impoundment. If the regional board determines that the use of suction type soil sampling devices is infeasible due to climate, soil hydraulics, or soil texture, the regional board may authorize the use of alternative devices. The report shall arrange all monitoring data in a tabular form so that the data, the constituents, and the concentrations are readily discernible.

(j) A measurement of the chemical characteristics of the soil made by collecting a soil sample upgradient from the impoundment or from an area that has not been affected by seepage from the surface impoundment and is in a hydrogeologic environment similar to the surface impoundment. The measurement shall be analyzed for the same pollutants analyzed pursuant to subdivision (i).

(k) A description of the existing monitoring being conducted to detect leachate, including vadose zone monitoring, the number and positioning of the monitoring wells, the monitoring wells' distances from the surface impoundment, the monitoring wells' design data, the monitoring wells' installation, the monitoring development procedures, the sampling methodology, the sampling frequency, the chemical constituents analyzed, and the analytical methodology. The design data of the monitoring wells shall include the monitoring wells' depth, the monitoring wells' diameters, the monitoring wells' casing materials, the perforated intervals within the well, the size of the perforations, the gradation of the filter pack, and the extent of the wells' annular seals.

(l) Documentation demonstrating that the monitoring system and methods used at the facility can detect any seepage before the hazardous waste constituents enter the waters of the state. This documentation shall include, but is not limited to, substantiation of each of the following:

(1) The monitor wells are located close enough to the surface impoundment to identify lateral and vertical migration of any constituents discharged to the impoundment.

(2) The monitoring wells are not located within the influence of any adjacent pumping wells that might impair their effectiveness.

(3) The monitor wells are only screened in the aquifer to be monitored.

(4) The chosen casing material does not interfere with, or react to, the potential contaminants of major concern at the facility.

(5) The casing diameter allows an adequate amount of water to be removed during sampling and allows full development of the monitor well.

(6) The annular seal prevents pollutants from migrating down the monitor well.

(7) The methods of water sample collection require that the sample is collected after at least five well volumes have been removed from the well and that the samples are transported and handled in accordance with the United States Geological Survey's "National Handbook of Recommended Methods for Water-Data Acquisition," which provides guidelines for collection and analysis of groundwater samples for selected unstable constituents. If the wells are low-yield wells, in that the wells are incapable of yielding three well volumes during a 24-hour period, the methods of water sample collection shall ensure that a representative sample is obtained from the well.

(8) The hazardous waste constituents selected for analysis are specific to the facility, taking into account the chemical composition of hazardous wastes previously placed in the surface impoundment. The monitoring data shall be arranged in tabular form so that the date, the constituents, and the concentrations are readily discernible.

(9) The frequency of monitoring is sufficient to give timely warning of leachate so that remedial action can be taken prior to any adverse changes in the quality of the groundwater.

(10) A written statement from the qualified person preparing the report indicating whether any constituents have migrated into the vadose zone, surface water bodies, perched water, or water-bearing strata.



(11) A written statement from the qualified person preparing the report indicating whether any migration of leachate into the vadose zone, surface water bodies, perched water, or water-bearing strata is likely or not likely to occur within five years, and any evidence supporting that statement.

*(Amended by Stats. 2006, Ch. 538, Sec. 382. Effective January 1, 2007.)*

**25208.9.** (a) Notwithstanding Section 25189, any person who is required to file a hydrogeological assessment report with a regional board pursuant to Section 25208.7, and who fails to do so, shall be liable civilly in a sum of not less than one thousand dollars (\$1,000) and not more than ten thousand dollars (\$10,000) for each day the report has not been received.

(b) Notwithstanding Section 25189, any person who submits false information to the regional board shall be liable civilly in a sum of not less than two thousand dollars (\$2,000) and not more than twenty-five thousand dollars (\$25,000) for each day the false information goes uncorrected.

(c) In determining the amount of civil liability imposed pursuant to this section, the court 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.

(d) A regional board shall submit any report that contains false information to the State Board for Geologists and Geophysicists for the purpose of disciplinary action pursuant to Section 7860 of the Business and Professions Code or to the Board for Professional Engineers and Land Surveyors for the purpose of taking disciplinary action pursuant to Section 6775 of the Business and Professions Code, as appropriate.

*(Amended by Stats. 1998, Ch. 59, Sec. 15. Effective January 1, 1999.)*

**25208.10.** For purposes of performing the functions and duties provided for in this article, and because of the urgency in protecting the public, the state board and regional boards may, during the 1984–85 fiscal year, contract for temporary services necessary to implement this article.

*(Added by Stats. 1984, Ch. 1543, Sec. 2.)*

**25208.11.** This article shall not be construed to limit or abridge the powers and duties granted to the department pursuant to this chapter or pursuant to Part 2 (commencing with Section 78000) of Division 45 or to the state board or any regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

*(Amended by Stats. 2022, Ch. 258, Sec. 56. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258.)*

**25208.12.** Article 2 (commencing with Section 13320) of, Article 3 (commencing with Section 13330) of, and Article 4 (commencing with Section 13340) of, Chapter 5 of Division 7 of the Water Code applies to any action of, or failure to act by, a regional board pursuant to this article.

*(Added by Stats. 1984, Ch. 1543, Sec. 2.)*

**25208.13.** (a) If the regional board determines that certain mining wastes have properties so that the wastes do not pollute or threaten to pollute the waters of the state when discharged into a surface impoundment which is in compliance with all applicable regulations adopted by the state board pursuant to Division 7 (commencing with Section 13000) of the Water Code, the regional board may exempt a surface impoundment into which these mining wastes are discharged from Sections 25208.4 and 25208.5, pursuant to subdivision (b).

(b) A person may apply to a regional board authorized pursuant to subdivision (a) for an exemption from Section 25208.4 or 25208.5, or from both sections, for a surface impoundment, into which mining wastes are discharged by filing an application with the regional board. If the surface impoundment was constructed before January 1, 1984, the person shall file the application with a regional board by January 1, 1986. Except as provided in subdivision (c), the initial application for exemption shall include a completed hydrogeological assessment report which contains the accurate data and documentation specified in Section 25208.8. A regional board may grant the applicant an exemption from Section 25208.4 or 25208.5, or both, if the regional board makes both of the following findings:

(1) The applicant for the exemption has fully complied with all the applicable regulations adopted by the state board for mining waste.

(2) The surface impoundment does not pollute or threaten to pollute the waters of the state.

(c) If the regional board grants an exemption pursuant to subdivision (b), the regional board shall revise the waste discharge requirements prescribed pursuant to Section 13263 of the Water Code for that surface impoundment based upon a review of the



report and shall include conditions in the waste discharge requirement to ensure that the waters of the state will not be polluted or threatened with pollution. Except as hereafter provided, if the regional board does not grant the exemption within two years of the date of application, the applicant shall comply with the requirements specified in either Section 25208.4 or 25208.5, or with both sections, whichever is applicable, within three years from the initial date of application. If the applicant submitted the hydrogeologic assessment report on or before January 1, 1986, and the regional board determines that the report submitted contains insufficient information to allow the regional board to complete a reasoned evaluation and the applicant did not receive notice in writing of the deficiencies on or before January 1, 1988, the applicant may be granted up to a maximum of one year from the date of written notification of the deficiencies for the sole purpose of providing the information necessary to correct the deficiencies. Upon receipt of the additional information, the regional board shall complete the evaluation and may grant an exemption in accordance with this section within 60 days. If the regional board denies the exemption, the applicant shall comply with the requirements specified in either Section 25208.4 or 25208.5, or with both sections, whichever is applicable, within one year of the date of denial.

(d) An exemption granted pursuant to subdivision (b) shall not be effective for more than five years. A regional board shall not renew the exemption unless the regional board makes the findings specified in subdivision (b).

(e) Applications for an exemption or renewal of an exemption shall be accompanied by the fee specified in the fee schedule adopted by the state board pursuant to Section 25208.3.

(f) If a regional board determines that a surface impoundment granted an exemption pursuant to subdivision (b) is polluting the waters of the state, the regional board shall take all of the actions specified in Section 25208.6.

*(Amended by Stats. 1988, Ch. 885, Sec. 1.)*

**25208.14.** Not later than January 1, 1987, the state board shall provide the Legislature with a report containing information regarding the number of applications for exemption which are filed pursuant to Sections 25208.4 and 25208.5. The state board shall include in this report a preliminary workplan detailing plans for implementation of this article.

The time limits set forth in this article are predicated upon the assumption that there will be not more than 300 applications filed pursuant to subdivision (b) of Section 25208.4 and subdivision (c) of Section 25208.5. The time limits set forth in this article assume that there are, on the average, three surface impoundments per facility.

It is the intent of the Legislature that if it determines that there are more than 300 applications filed with regional boards with on the average, more than three surface impoundments for each facility, the Legislature will adjust the time limits specified in Sections 25208.4 and 25208.5.

The Legislature hereby recognizes that if there are more than 300 applications filed by January 1, 1986, with the regional boards, the time limits should be adjusted to ensure a thorough analysis of each application.

*(Added by Stats. 1984, Ch. 1543, Sec. 2.)*

**25208.15.** (a) Notwithstanding any other provision of this article, an in-ground sump, used by a pest control operator licensed under Section 11705 of the Food and Agricultural Code, or used by a local or state agency, which meets all of the specifications listed in subdivision (b) and complies with subdivision (c), is exempt from the requirements of subdivision (a) of Section 25208.4, Section 25208.5, and Section 25208.8 if, prior to installation, the plan for the in-ground system is submitted to the regional board and the regional board determines that the system complies with this section.

(b) For purposes of this article, an "in-ground sump" shall have the following specifications:

(1) It consists of two containment units. The primary container is constructed primarily of nonearthen materials, including, but not limited to, stainless steel or plastic, and is designed to prevent the migration of any constituents into the secondary container. The secondary container is constructed of impermeable materials and is designed to prevent the migration of any hazardous waste constituents into the ground surrounding the secondary container. The secondary container shall also be designed to prevent the intrusion of groundwater, rainwater, or any other surface runoff into the space beneath the primary container.

(2) It is designed to allow visual inspection of the space underlying the primary container each operating day.

(3) The dimensions of the in-ground sump do not exceed six feet in depth, nor 75 square feet of surface area for each hazardous waste containment system.

(4) The in-ground sump is used for pest control operations.

(c) In order to qualify for the exemption, an in-ground sump shall be pumped empty of free liquid at least twice each operating day and these free liquids shall not be returned to the sump. The sump shall be visually inspected at least once each operating day. A record of all visual inspections shall be maintained by the pest control operator or local or state agency and shall be audited by the regional board at least annually.

(d) If at any time the regional board determines that the primary container of an in-ground sump is leaking, the regional board shall immediately order the discharge to cease and shall either order installation of a new primary container as provided in paragraph (1) of subdivision (b) or revoke the exemption authorized by this section. Nothing in this section shall be construed to limit the regional board's authority to take any action necessary to determine whether an in-ground sump poses any threat to the waters of the state.

*(Added by Stats. 1985, Ch. 1400, Sec. 1.)*

**25208.16.** (a) A person may apply to the regional board for an exemption from subdivision (c) of Section 25208.4 for a surface impoundment into which restricted hazardous wastes that do not contain cyanide wastes or polychlorinated biphenyls (PCBs) in concentrations specified in paragraphs (1) and (4) of subdivision (a) of Section 25122.7 are discharged for the purpose of onsite temporary storage and treatment by filing an application with the regional board. If the surface impoundment was constructed before January 1, 1984, the person shall file the application with a regional board by March 1, 1986. The initial application for exemption shall include a completed hydrogeological assessment report that contains the accurate data and documentation specified in Section 25208.8. A regional board may grant the applicant an exemption from subdivision (c) of Section 25208.4 if the regional board makes all of the following findings:

(1) No extremely hazardous wastes are currently being discharged into the surface impoundment, and either one of the following applies:

(A) The records of the person applying for the exemption indicate that no extremely hazardous wastes have been discharged into the surface impoundment.

(B) Extremely hazardous wastes are not present in the surface impoundment, in the vadose zone, or in the waters of the state.

(2) The surface impoundment is used for the purpose of temporary storage and noncontinuous batch treatment, all hazardous wastes are removed after each batch treatment within 30 days from the date of discharge into the impoundment, and the surface impoundment is visually inspected prior to each use, tested for integrity at least annually, and is in compliance with subdivision (a) of Section 25208.7. A report of this test shall be filed with the regional board.

(3) The surface impoundment is in compliance with Section 25208.5 and a report has been filed pursuant to Section 25208.8.

(b) For purposes of this section, "treatment" means any method of neutralization and precipitation of metals from an acidic solution that changes the physical or chemical characteristics of the restricted hazardous waste so as to render it less harmful to the quality of the waters of the state, safer to handle, or easier to contain or manage.

(c) An exemption granted pursuant to subdivision (a) shall be effective for not more than five years. A regional board shall not renew the exemption unless the regional board makes the findings specified in subdivision (a).

(d) Applications for an exemption or renewal of an exemption shall be accompanied by the fee specified in the fee schedule adopted by the state board pursuant to Section 25208.3.

(e) If a regional board determines that a surface impoundment granted an exemption pursuant to subdivision (a) is polluting, or threatening to pollute, the waters of the state, the regional board shall take all of the actions specified in Section 25208.6.

(f) The exemption authorized by this section shall be available only for surface impoundments used for the temporary storage and treatment of boiler cleaning wastes at fossil-fueled powerplants owned or operated by a public utility subject to the jurisdiction of the Public Utilities Commission used to generate electricity for sale to the public, except that a public utility that has secured an exemption under this section may transfer that exemption to a subsequent owner of the fossil-fueled powerplant, regardless of whether the subsequent owner is a public utility subject to the jurisdiction of the Public Utilities Commission or sells the electricity generated to the public, if all of the conditions of subdivision (i) are met. If the exemption is transferred, all the requirements of this section shall apply to the subsequent owner. A subsequent owner may, in turn, transfer the exemption to another subsequent owner if all the conditions of subdivision (i) are met at the time of that transfer.

(g) For purposes of this section, any surface impoundment located within one-half mile up gradient of a potential source of drinking water shall comply with the requirements for double liners, leachate collection systems, and groundwater monitoring specified in subdivision (a) of Section 25208.5, and shall not be granted an exemption pursuant to subdivision (c) of Section 25208.5.

(h) For purposes of this section, any surface impoundment not located within one-half mile up gradient of a potential source of drinking water shall be equipped with double liners, a leachate collection system, and groundwater monitoring. The leachate collection system and groundwater monitoring required by this subdivision shall be consistent with the requirements specified in subdivision (a) of Section 25208.5. The requirements for double liners in this section may be satisfied by double liners made of synthetic or other materials with a permeability of not more than  $1 \times 10^{-7}$  centimeters per second. If a substantial breach of the top liner in any surface impoundment covered by this subdivision is detected through inspection, testing, or otherwise, the integrity of the top liner shall be restored prior to the next subsequent use of the impoundment.

(i) A subsequent owner of a fossil-fueled powerplant seeking to obtain a transfer of an exemption granted under this section shall apply for that exemption transfer to the regional board. The application may be granted by the regional board only if the regional board finds that all of the following conditions have been met:

- (1) The subsequent owner, at the time of the transfer, will be in compliance with all requirements of this section.
- (2) The hydrogeological assessment report, as required by subdivision (a), is on file.
- (3) The surface impoundment has been inspected and tested for integrity within the six months prior to the date of the proposed transfer.
- (4) The subsequent owner has obtained a transfer of the hazardous waste facilities permit applicable to the surface impoundment and has demonstrated compliance with the financial assurance and liability insurance requirements specified in Article 8 (commencing with Section 66264.140) of Chapter 14 of Division 4.5 of Title 22 of the California Code of Regulations, or any successor regulation.
- (5) The application for transfer of the exemption is accompanied by a fee sufficient to cover the costs of processing the application, as determined by the regional board.

*(Amended by Stats. 1997, Ch. 330, Sec. 1. Effective January 1, 1998.)*

**25208.17.** (a) Except as provided in subdivision (g), a person specified in subdivision (h) is exempt from filing the report required by Section 25208.7 if the surface impoundment has been closed, or will be closed before January 1, 1988, in accordance with Subchapter 15 (commencing with Section 2510) of Chapter 3 of Title 23 of the California Code of Regulations, and it has only been used for the discharge of economic poisons, as defined in Section 12753 of the Food and Agricultural Code, and if the person submits an application for exemption to the regional board on or before February 1, 1987, pursuant to subdivision (b) and an initial hydrogeological site assessment report to the regional board on or before July 1, 1987. A qualified person shall be responsible for the preparation of the hydrogeological site assessment report and shall certify its completeness and accuracy.

(b) A person seeking exemption from Section 25208.7 shall file an application for exemption with the regional board on or before February 1, 1987, together with an initial filing fee of three thousand dollars (\$3,000). The application shall include the names of persons who own or operate each surface impoundment for which the exemption is sought and the location of each surface impoundment for which an exemption is sought.

(c) Notwithstanding Section 25208.3, each person filing an application for exemption pursuant to subdivision (b) shall pay only the application fee provided in subdivision (b) and any additional fees assessed by the state board to recover the actual costs incurred by the state board and regional boards to administer this section. The person is not liable for fees assessed pursuant to Section 25208.3, except that, if the person is required to comply with Section 25208.7 or 25208.6, the fees assessed under this section shall include the costs of the regional board and state board to administer those sections.

(d) If a person fails to pay the initial filing fee by February 1, 1987, or fails to pay any subsequent additional assessment pursuant to subdivision (c), the person shall be liable for a penalty of not more than 100 percent of the fees due and unpaid, but in an amount sufficient to deter future noncompliance, as based upon that person's past history of noncompliance and ability to pay, and upon additional expenses incurred by the regional board and state board as a result of this noncompliance.

(e) Notwithstanding Section 25208.3, after the regional board has made a determination pursuant to subdivision (g), a final payment or refund of fees specified in subdivision (c) shall be made so that the total fees paid by the person shall be sufficient to cover the actual costs of the state board and the regional board in administering this section.

(f) The hydrogeological site assessment report shall contain, for each surface impoundment, all of the following information:

- (1) A description of the surface impoundment, including its physical characteristics, its age, the presence or absence of a liner, a description of the liner, the liner's compatibility with the hazardous wastes discharged to the impoundment, and the design specifications of the impoundment.
- (2) A description of the volume and concentration of hazardous waste constituents placed in the surface impoundment, based on a representative chemical analysis of the specific hazardous waste type and accounting for variance in hazardous waste constituents over time.
- (3) An analysis of surface and groundwater on, under, and within one mile of the surface impoundment to provide a reliable indication of whether or not hazardous constituents or leachate is leaking or has been released from the surface impoundment.
- (4) A chemical characterization of soil-pore liquid in areas that are likely to be affected by hazardous constituents or leachate released from the surface impoundment, as compared to geologically similar areas near the surface impoundment that have not been affected by releases from the surface impoundment. This characterization shall include both of the following:

(A) A description of the composition of the vadose zone beneath the surface impoundment. This description shall include a chemical and hydrogeological characterization of both the consolidated and unconsolidated geologic materials underlying the surface impoundment, and an analysis for pollutants, including those constituents discharged into the surface impoundment. This description shall also include soil moisture readings from a representative number of points around the surface impoundment's perimeter and at the maximum depth of the surface impoundment. If the regional board determines that the use of suction type soil sampling devices is infeasible due to climate, soil hydraulics, or soil texture, the regional board may authorize the use of alternative devices. The initial report shall contain all data in tabular form so that data, constituents, and concentrations are readily discernible.

(B) A determination of the chemical characteristics of the soil made by collecting a soil sample upgradient from the impoundment or from an area that has not been affected by seepage from the surface impoundment and that is in a hydrogeologic environment similar to the surface impoundment. The determinations shall be analyzed for the same pollutants analyzed pursuant to subparagraph (A).

(5) A description of current groundwater and vadose zone monitoring being conducted at the surface impoundment for leak detection, including detailed plans and equipment specifications and a technical report that provides the rationale for the spatial distribution of groundwater and vadose zone monitoring points for the design of monitoring facilities, and for the selection of monitoring equipment. This description shall include:

(A) A map showing the location of monitoring facilities with respect to each surface impoundment.

(B) Drawings and design data showing construction details of groundwater monitoring facilities, including all of the following:

(i) Casing and hole diameter.

(ii) Casing materials.

(iii) Depth of each monitoring well.

(iv) Size and position of perforations.

(v) Method for joining sections of casing.

(vi) Nature and gradation of filter material.

(vii) Depth and composition of annular seals.

(viii) Method and length of time of development.

(ix) Method of drilling.

(C) Specifications, drawings, and data for the location and installation of vadose zone monitoring equipment.

(D) Discussion of sampling frequency and methods and analytical protocols used.

(E) Justification of indicator parameters used.

(6) Documentation demonstrating that the monitoring system and methods used at the facility can detect any seepage before the hazardous waste constituents enter the waters of the state. This documentation shall include, but is not limited to, substantiation of each of the following:

(A) The monitoring facilities are located close enough to the surface impoundment to identify lateral and vertical migration of any constituents discharged to the impoundment.

(B) The groundwater monitoring wells are not located within the influence of any adjacent pumping water wells that might impair their effectiveness.

(C) The groundwater monitoring wells are screened only in the zone of groundwater to be monitored.

(D) The casing material in the groundwater monitoring wells does not interfere with, or react to, the potential contaminants of major concern at the impoundment.

(E) The casing diameter allows an adequate amount of water to be removed during sampling and allows full development of each well.

(F) The annular seal of each groundwater monitoring well prevents pollutants from migrating down the well.

(G) The water samples are collected after at least five well volumes have been removed from the well and that the samples are collected, preserved, transported, handled, analyzed, and reported in accordance with guidelines for collection and analysis of groundwater samples that provide for preservation of unstable indicator parameters and prevent physical or chemical changes that could interfere with detection of indicator parameters. If the wells are low-yield wells, in that the wells are incapable of yielding three well volumes during a 24-hour period, the methods of water sample collection shall ensure that a representative sample is obtained from the well.

(H) The hazardous waste constituents selected for analysis are specific to the facility, taking into account the chemical composition of hazardous wastes previously placed in the surface impoundment.

(I) The frequency of monitoring is sufficient to give timely warning of any leakage or release of hazardous constituents or leachate so that remedial action can be taken prior to any adverse changes in the quality of the groundwater.

(7) A written statement from the qualified person preparing the report indicating whether any hazardous constituents or leachate has migrated into the vadose zone, water-bearing strata, or waters of the state in concentrations that pollute or threaten to pollute the waters of the state.

(8) A written statement from the qualified person preparing the report indicating whether any migration of hazardous constituents or leachate into the vadose zone, water-bearing strata, or waters of the state is likely or not likely to occur within five years, and any evidence supporting that statement.

(g) The regional board shall complete a thorough analysis of each hydrogeological site assessment report submitted pursuant to subdivision (b) within one year after submittal. If the regional board determines that a hazardous waste constituent from the surface impoundment is polluting or threatening to pollute, as defined in subdivision (I) of Section 13050 of the Water Code, both of the following shall occur:

(1) The regional board shall issue a cease and desist order or a cleanup and abatement order that prohibits any discharge into the surface impoundment and requires compliance with Section 25208.6.

(2) The person shall file a report pursuant to Section 25208.7 within nine months after the regional board makes the determination pursuant to subdivision (g). In making any determination under this subdivision, the regional board shall state the factual basis for the determinations.

(h) For purposes of this section, "person" means only the following:

(1) Pest control operators and businesses licensed pursuant to Section 11701 of the Food and Agricultural Code.

(2) Local governmental vector control agencies who have entered into a cooperative agreement with the department pursuant to Section 116180.

*(Amended by Stats. 2006, Ch. 538, Sec. 383. Effective January 1, 2007.)*