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HEALTH AND SAFETY CODE - HSC

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

CHAPTER 6.65. Unified Agency Review of Hazardous Materials Release Sites [25260 - 25268] (*Chapter 6.65 added by Stats. 1993, Ch. 1184, Sec. 1.*)

25260. The definitions set forth in this section shall govern the interpretation of this chapter. Unless the context requires otherwise and except as provided in this chapter, the definitions contained in Article 3 (commencing with Section 78035) of Chapter 1 of Part 2 of Division 45 shall apply to the terms used in this chapter.

- (a) "Administering agency" means the agency designated by the committee pursuant to Section 25262.
- (b) "Advisory team" means the team convened by the committee pursuant to Section 25263.
- (c) "Agency" means any city, county, district, commission, the state, or any department, agency, or political subdivision thereof, that has jurisdiction under a state or local law, ordinance, or regulation to supervise, oversee, or approve a site investigation and a remedial action at a hazardous materials release site.
- (d) "Hazardous material" means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. "Hazardous material" includes, but is not limited to, all of the following:
 - (1) A hazardous substance, as defined in Section 25281 or subdivision (a) of Section 78075.
 - (2) A hazardous waste, as defined in Section 25117.
 - (3) A waste, as defined in Section 470 or as defined in Section 13050 of the Water Code.
- (e) "Hazardous materials release site" or "site" means any area, location, or facility where a hazardous material has been released or threatens to be released into the environment. "Hazardous materials release site" does not include a site subject to a response and cleanup operation under Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code or a corrective action under Part 6 (commencing with Section 46000) of Division 30 of the Public Resources Code.
- (f) "Committee" means the Site Designation Committee created by Section 25261.
- (g) "Remedial action" means actions required by state or local laws, ordinances, or regulations that are necessary to prevent, minimize, or mitigate damage that may otherwise result from a release or threatened release of a hazardous material, and that are consistent with a permanent remedy for a hazardous materials release. "Remedial action" includes, but is not limited to, the cleanup or removal of released hazardous materials from the environment, monitoring, testing and analysis of the site, site operation and maintenance, and the placing of conditions, limitations, or restrictions on the uses of the site after remedial action has been completed.
- (h) "Responsible party" means any person, except for an independent contractor, who agrees to carry out a site investigation and remedial action at a hazardous materials release site for one of the following reasons:
 - (1) The person is liable under a state or local law, ordinance, or regulation for the site investigation or remedial action.
 - (2) The site investigation or remedial action is required by a state or local law, ordinance, or regulation because of a hazardous materials release.
- (i) "Site investigation" means those actions that are necessary to determine the full extent of a release or threatened release of a hazardous material at a hazardous materials release site, identify the public health and safety or environmental threat posed by the

release or threatened release, collect data on possible remedies, and otherwise evaluate the hazardous materials release site for the purpose of implementing remedial action.

(Amended by Stats. 2022, Ch. 258, Sec. 69. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258.)

25261. (a) There is within the California Environmental Protection Agency a Site Designation Committee. The membership of the committee consists of the following six persons:

- (1) Secretary for Environmental Protection.
- (2) Director of Toxic Substances Control.
- (3) Chairperson of the State Water Resources Control Board.
- (4) Director of Fish and Game.
- (5) Director of the Office of Environmental Health Hazard Assessment.
- (6) Chairperson of the State Air Resources Board.

(b) The committee shall carry out the functions described in Sections 25262, 25263, and 25265 and shall meet as necessary to ensure that those functions are carried out in a timely manner. The decisions of the committee shall be subject to the concurrence of four members. The committee shall choose a chairperson from among its members. A committee member may designate an employee of the member's agency to participate in committee meetings in the member's place.

(Amended by Stats. 1994, Ch. 435, Sec. 1. Effective January 1, 1995.)

25262. (a) A responsible party for a hazardous materials release site may request the committee at any time to designate an administering agency to oversee a site investigation and remedial action at the site. The committee shall designate an administering agency as responsible for the site within 45 days of the date the request is received. A request to designate an administering agency may be denied only if the committee makes one of the following findings:

- (1) No single agency in state or local government has the expertise needed to adequately oversee a site investigation and remedial action at the site.
- (2) Designating an administering agency will have the effect of reversing a regulatory or enforcement action initiated by an agency that has jurisdiction over the site, a facility on the site, or an activity at the site.
- (3) Designating an administering agency will prevent a regulatory or enforcement action required by federal law or regulations.
- (4) The administering agency and the responsible party are local agencies formed, in whole or in part, by the same political subdivision.

(b) A responsible party who requests the designation of an administering agency for a hazardous materials release site shall provide the committee with a brief description of the site, an analysis of the known or suspected nature of the release or threatened release that is the subject of required site investigation or remedial action, a description of the type of facility from which the release occurred or the type of activity that caused the release, a specification of the regulatory or enforcement actions that have been taken, or are pending, with respect to the release, and a statement of which agency the responsible party believes should be designated as administering agency for the site.

(c) (1) The committee shall take all of the following factors into account in determining which agency to designate as administering agency for a site:

- (A) The type of release that is the subject of site investigation and remedial action.
- (B) The nature of the threat that the release poses to human health and safety or to the environment.
- (C) The source of the release, the type of facility or activity from which the release occurred, the regulatory programs that govern the facility or activity involved, and the agency or agencies that administer those regulatory programs.
- (D) The regulatory history of the site, the types of regulatory actions or enforcement actions that have been taken with respect to the site or the facility or activity from which the release occurred, and the experience and involvement that various agencies

have had with the site.

(E) The capabilities and expertise of the agencies that are candidates for designation as the administering agency for the site and the degree to which those capabilities and that expertise are applicable to the type of release at the site, the nature of the threat that the release poses to health and safety or the environment and the probable remedial measures that will be required.

(2) After weighing the factors described in paragraph (1) as they apply to the site, the committee shall use the criteria specified in subparagraphs (A), (B), (C), and (D) as guidelines for designating the administering agency. If more than one of the criteria apply to the site, the committee shall use its best judgment, taking into account the known facts concerning the hazardous materials release at the site and its regulatory history, in determining which agency may best serve as the administering agency. The criteria are as follows:

(A) The administering agency shall be the Department of Toxic Substances Control if one of the following applies:

(i) The department has issued an order, or otherwise initiated action, with respect to the release at the site pursuant to Article 1 (commencing with Section 78650) of Chapter 4 of, or Article 10 (commencing with Section 79130) of Chapter 5 of, Part 2 of Division 45 or Section 78870, 79055, 79060, or 79065.

(ii) The department has issued an order for corrective action at the site pursuant to Section 25187.

(iii) The source of the release is a facility or hazardous waste management unit or an activity that is, or was, regulated by the department pursuant to Chapter 6.5 (commencing with Section 25100).

(iv) The department is conducting, or has conducted, oversight of the site investigation and remedial action at the site at the request of the responsible party.

(B) The administering agency shall be the California regional water quality control board for the region in which the site is located, if one of the following applies:

(i) The California regional water quality control board has issued a cease and desist order pursuant to Section 13301, or a cleanup and abatement order pursuant to Section 13304 of the Water Code in connection with the release at the site.

(ii) The source of the release is a facility or an activity that is subject to waste discharge requirements issued by the California regional water quality control board pursuant to Section 13263 of the Water Code or that is regulated by the California regional water quality control board pursuant to Article 5.6 (commencing with Section 25159.10) of, or Article 9.5 (commencing with Section 25208) of, Chapter 6.5, or pursuant to Chapter 6.67 (commencing with Section 25270).

(iii) The California regional water quality control board has jurisdiction over the site pursuant to Chapter 5.6 (commencing with Section 13390) of Division 7 of the Water Code.

(C) The administering agency shall be the Department of Fish and Wildlife if the release has polluted or contaminated the waters of the state and the department has taken action against the responsible party pursuant to Section 2014 or 12015 of, or Article 1 (commencing with Section 5650) of Chapter 2 of Part 1 of Division 6 of, the Fish and Game Code, subsection (f) of Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (42 U.S.C. Sec. 9607 (f)), or Section 311 of the Federal Water Pollution Act, as amended (33 U.S.C. Sec. 1321).

(D) The administering agency shall be a local agency if any one of the following circumstances is applicable:

(i) The source of the release at the site is an underground storage tank, as defined in subdivision (y) of Section 25281, the local agency is the agency described in subdivision (i) of Section 25281, and there is no evidence of any extensive groundwater contamination at the site.

(ii) The local agency has accepted responsibility for overseeing the site investigation or remedial action at the site and a state agency is not involved.

(iii) The local agency has agreed to oversee the site investigation or remedial action at the site and is certified, or has been approved, by a state agency to conduct that oversight.

(d) A responsible party for a hazardous materials release site may request the designation of an administering agency for the site pursuant to this section only once. The action of the committee on the request is a final action and is not subject to further administrative or judicial review.

(Amended by Stats. 2022, Ch. 258, Sec. 70. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258.)

25263. (a) Any agency, including the administering agency, may request the committee at any time to convene an advisory team for the purpose of providing the administering agency with guidance in overseeing the site investigation and remedial action at a hazardous materials release site. If the request is made by an agency other than the administering agency, the request shall be in writing, and shall specify any issue that is of concern to the requesting agency, the requirements of the laws, ordinances, regulations, or standards that are related to the issue, and the manner in which the administration or implementation of those requirements by the administering agency has raised the issue concerning the site investigation or remedial action at the hazardous materials release site. The committee shall create such an advisory team within 30 calendar days of the date of receipt of the request and shall designate the members of the advisory team after consulting with interested agencies. The advisory team shall be chaired by the representative of the agency that requested the advisory team to be convened and shall meet within five working days of the date that any agency requests a meeting. A representative of the administering agency shall attend all advisory team meetings.

(b) The advisory team may only take action to ensure that the administering agency has adequate information concerning the requirements of applicable laws, ordinances, regulations, or standards to address, in an appropriate and correct manner, any issue that led to the request for, and the convening of, the advisory team. To carry out this function, the advisory team shall do all of the following:

- (1) Define, in a specific manner, any issue related to the site investigation and remedial action that led to the request to convene the advisory team.
- (2) Determine the application of the laws, ordinances, regulations, and standards related to that issue that are applicable to, and govern, the site investigation and remedial action.
- (3) Make recommendations to the administering agency concerning the manner in which the applicable laws, ordinances, regulations, and standards should be administratively applied to appropriately and correctly resolve the issue.

(c) An agency, other than the administering agency, that is a member of the advisory team shall be eligible for reimbursement of oversight costs related to its participation on the advisory team from the responsible party for the hazardous materials release site only if all of the following apply:

- (1) The issue that led to the request to convene the advisory team, or the issue that is considered by the advisory committee following its formation, is directly and materially related to the administration of a law, ordinance, regulation, or standard for which the agency has actual statutory or administrative responsibility.
- (2) The administering agency certifies that the agency is not able to address the issue without a significant expenditure of personnel time or other resources, or certifies that the issue is related to potential risks to human health or safety or the environment of sufficient significance to warrant reimbursement of the agency's oversight expenditures.
- (3) Either of the following applies:
 - (A) The responsible party agrees to reimburse the agency's oversight expenditures.
 - (B) The committee directs the responsible party or responsible parties to reimburse the agency's oversight expenditures.

(d) Subdivision (c) does not affect the authority of the administering agency to recover oversight costs in accordance with applicable law.

(Amended by Stats. 2000, Ch. 912, Sec. 2. Effective September 29, 2000.)

25264. (a) The administering agency for a hazardous materials release site shall supervise all aspects of a site investigation and remedial action conducted by the responsible party and, for that purpose, the administering agency shall, notwithstanding any other provision of law, including, but not limited to, this division and Division 7 (commencing with Section 13000) of the Water Code, have sole jurisdiction over all activities that may be required to carry out a site investigation and remedial action necessary to respond to the hazardous materials release at the site. For purposes of this chapter, the administering agency shall do all of the following:

- (1) Administer all state and local laws, ordinances, regulations, and standards that are applicable to, and govern, the activities involved with the site investigation and remedial action at the site.
- (2) Determine the adequacy of site investigation and remedial action activities at the site and the extent to which the activities comply, or fail to comply, with applicable state and local laws, ordinances, regulations, and standards. In making these determinations, the administering agency shall consult with the advisory team if one has been convened pursuant to Section 25263.

(3) Issue permits or other forms of authorization that may be required by state and local laws, ordinances, and regulations and that are necessary to undertake activities related to the site investigation and remedial action at the site. Before issuing a permit or other authorization pursuant to this paragraph, the administering agency shall consult with the appropriate agency and ensure that required procedures are followed and adequate permit requirements and conditions are imposed.

(b) Upon determining that a site investigation and remedial action at a hazardous materials release site has been satisfactorily completed and that a permanent remedy to the release has been accomplished, the administering agency shall issue the responsible party a certificate of completion. The certificate shall describe the release of hazardous materials that was the subject of the remedial action and the remedial action that was taken and shall certify that applicable remedial action standards and objectives were achieved.

(c) Except as otherwise provided in Section 25265 and this subdivision, the issuance of a certificate of completion by the administering agency shall constitute a determination that the responsible party has complied with the requirements of all state and local laws, ordinances, regulations, and standards that are applicable to the site investigation and remedial action for which the certificate is issued.

Except as provided in Section 25265, no agency, other than the administering agency, that has jurisdiction over hazardous materials releases pursuant to those state and local laws, ordinances, or regulations may take action against the responsible party with respect to the hazardous materials release that was the subject of the site investigation and remedial action for which a certificate of completion is issued and the administering agency may take action against the responsible party with respect to the hazardous materials release that was the subject of the site investigation and remedial action for which a certificate of completion is issued only if the administering agency determines that one or more of the following applies:

(1) Monitoring, testing, or analysis of the hazardous materials release site subsequent to the issuance of the certificate of completion indicates that the remedial action standards and objectives were not achieved or are not being maintained.

(2) One or more of the conditions, restrictions, or limitations imposed on the site as part of the remedial action or certificate of completion are violated.

(3) Site monitoring or operation and maintenance activities that are required as part of the remedial action or certificate of completion for the site are not adequately funded or are not properly carried out.

(4) A hazardous materials release is discovered at the site that was not the subject of the site investigation and remedial action for which the certificate of completion was issued.

(5) A material change in the facts known to the administering agency at the time the certificate of completion was issued, or new facts, causes the administering agency to find that further site investigation and remedial action are required in order to prevent a significant risk to human health and safety or to the environment.

(6) The responsible party induced the administering agency to issue the certificate of completion by fraud, negligent or intentional nondisclosure of information, or misrepresentation.

(d) (1) Except as provided in Section 25265, the administering agency shall be the sole agency responsible for determining if any of the conditions described in paragraphs (1) to (6), inclusive, of subdivision (c) are applicable to a hazardous materials release site for which a certificate of completion has been issued pursuant to subdivision (b), and for taking any action that is deemed necessary if that determination is made. Any agency, other than the administering agency, that has information that any of those conditions applies to the hazardous materials site shall provide the administering agency with that information and the administering agency shall, within 45 calendar days of receipt of the request, do all of the following:

(A) Determine whether the condition is applicable.

(B) If it is applicable, determine if further action at the site is warranted.

(C) If further action is warranted, take further action at the site as may be necessary.

(2) If the administering agency fails, or refuses, to act properly or in a timely manner, as required by this subdivision, the agency that provided the information to the administering agency may petition the committee for review in accordance with Section 25265. The decision of the committee shall be final, and shall not be subject to judicial review.

(Amended by Stats. 2001, Ch. 548, Sec. 1. Effective October 7, 2001.)

25265. (a) Any agency may petition the chairperson of the committee at any time to review any of the following:

(1) The manner in which the administering agency is implementing state and local laws, ordinances, regulations, and standards applicable to the site investigation and remedial action that is being carried out by the responsible party at a hazardous materials release site.

(2) The decision to issue a certificate of completion for the site.

(3) The failure, or refusal, of the administering agency to act properly or in a timely manner pursuant to subdivision (d) of Section 25264.

(b) The petition specified in subdivision (a) shall state the reasons why the review is warranted, the basis for believing that applicable state and local laws, ordinances, regulations, and standards are not being implemented properly, or the grounds for objecting to the issuance of a certificate of completion.

(c) (1) The committee shall review the petition submitted pursuant to subdivision (a), consult with the petitioning and administering agencies, and make a decision regarding the validity of the petition within 30 calendar days of the date the petition is received.

(2) If the committee finds that the petition is not valid, it shall deny the petition. If it finds that the administering agency is not properly implementing a state or local law, ordinance, regulation, or standard, the administering agency shall be divested of exclusive jurisdiction over the implementation of that law, ordinance, regulation, or standard and the jurisdiction shall revert to the appropriate agency.

(3) If the committee finds that there are valid grounds for objecting to the issuance of a certificate of completion, the committee shall specify the actions that the responsible party and the administering agency shall be required to take before the certificate may be issued.

(4) If the committee determines that the administering agency has not acted properly or in a timely manner pursuant to subdivision (d) of Section 25264, the committee shall determine whether one or more of the conditions described in paragraphs (1) through (6), inclusive, of subdivision (c) of Section 25264 applies to the hazardous materials release site for which a certificate of completion has been issued pursuant to subdivision (b) of Section 25264. If the committee makes a determination pursuant to this paragraph, the committee shall require the administering agency to take any further action at the site that is necessary to address the condition or designate another administering agency to take the necessary action.

(d) Nothing in this section shall be construed to affect or limit the jurisdiction of the administering agency in connection with the administration of any state or local law, ordinance, regulation, or standard that has not been challenged under this section.

(Amended by Stats. 2000, Ch. 912, Sec. 4. Effective September 29, 2000.)

25266. The responsible party for a hazardous materials release site may, with the approval of the administering agency, terminate the application of this chapter to the site. The administering agency shall notify the committee, the advisory team, and any agency that may have jurisdiction over site investigation or remedial action at the site that the application of this chapter has been terminated. If the application of this chapter is terminated, the responsible party may not request the designation of another administering agency pursuant to Section 25262.

(Added by Stats. 1993, Ch. 1184, Sec. 1. Effective January 1, 1994.)

25267. If, at any time after site investigation or remedial action at a hazardous materials release site has begun, the administering agency determines that the information concerning the site that was available at the time the administering agency was designated was not accurate or was incomplete and that new information would likely have resulted in the designation of a different administering agency, the administering agency may request the committee to review the original designation. If, after reviewing the new information and considering the factors and guidelines specified in subdivision (c) of Section 25262, the committee concludes that the original designation was not in the public interest, it may rescind the original designation and designate a different administering agency.

(Added by Stats. 1993, Ch. 1184, Sec. 1. Effective January 1, 1994.)

25268. Nothing in this chapter shall be construed as infringing on the right of any agency to obtain from the administering agency for a site the information that may be necessary for the agency to carry out its responsibilities under this chapter, including, but not limited to, its responsibilities under Section 25263, subdivisions (a), (c) and (d) of Section 25264, and Section 25265.

(Amended by Stats. 2000, Ch. 912, Sec. 5. Effective September 29, 2000.)