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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 6.67. Aboveground Storage of Petroleum [25270 - 25270.13] (*Chapter 6.67 added by Stats. 1989, Ch. 1383, Sec. 1.*)

25270. This chapter shall be known and may be cited as the Aboveground Petroleum Storage Act.

(*Repealed and added by Stats. 2007, Ch. 626, Sec. 2. Effective January 1, 2008.*)

25270.2. For purposes of this chapter, the following definitions apply:

(a) "Aboveground storage tank" or "storage tank" means a tank or container that has the capacity to store 55 gallons or more of petroleum that is substantially or totally above the surface of the ground, except that, for purposes of this chapter, "aboveground storage tank" or "storage tank" includes a tank in an underground area. "Aboveground storage tank" does not include any of the following:

(1) A pressure vessel or boiler that is subject to Part 6 (commencing with Section 7620) of Division 5 of the Labor Code.

(2) A tank containing hazardous waste or extremely hazardous waste, as respectively defined in Sections 25117 and 25115, if the owner or operator of the storage tank has a hazardous waste facilities permit from the Department of Toxic Substances Control or a permit by rule authorization from the unified program agency for the storage tank.

(3) An aboveground oil production tank that is subject to Section 3106 of the Public Resources Code.

(4) Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers, or capacitors, if the oil-filled electrical equipment meets either of the following conditions:

(A) The equipment contains less than 10,000 gallons of dielectric fluid.

(B) The equipment contains 10,000 gallons or more of dielectric fluid with PCB levels less than 50 parts per million, appropriate containment or diversionary structures or equipment are employed to prevent discharged oil from reaching a navigable water course, and the electrical equipment is visually inspected in accordance with the usual routine maintenance procedures of the owner or operator.

(5) A tank regulated as an underground storage tank under Chapter 6.7 (commencing with Section 25280) of this division and Chapter 16 (commencing with Section 2610) of Division 3 of Title 23 of the California Code of Regulations and that does not meet the definition of a tank in an underground area.

(6) A transportation-related tank facility, subject to the authority and control of the United States Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the United States Environmental Protection Agency, as set forth in Appendix A to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(7) A tank or tank facility located on and operated by a farm that is exempt from the federal spill prevention, control, and countermeasure rule requirements pursuant to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(8) A tank in an underground area that has the capacity to store less than 55 gallons of petroleum, has secondary containment, and is inspected monthly, if the owner or operator maintains a log of inspection records for review by the unified program agency upon request.

(b) "Board" means the State Water Resources Control Board.

(c) (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 and enforce the unified program element specified in paragraph (2) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) (A) "Unified program agency" or "UPA" means the CUPA, or its participating agencies to the extent that each PA has been designated by the CUPA, pursuant to a written agreement, to implement and enforce the unified program element specified in paragraph (2) of subdivision (c) of Section 25404. The UPAs have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 to 25404.2, inclusive, to implement and enforce the requirements of this chapter.

(B) After a CUPA has been certified by the secretary, the unified program agency shall be the only agency authorized to enforce the requirements of this chapter.

(C) This paragraph does not limit the authority or responsibility granted to the office, the board, and the regional boards by this chapter.

(d) "Office" means the Office of the State Fire Marshal.

(e) "Operator" means the person responsible for the overall operation of a tank facility.

(f) "Owner" means the person who owns the tank facility or part of the tank facility.

(g) "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 University of California, the California State University, the state, any department or agency thereof, and the United States, to the extent authorized by federal law.

(h) "Petroleum" means crude oil, or a fraction thereof, that is liquid at 60 degrees Fahrenheit temperature and 14.7 pounds per square inch absolute pressure.

(i) "Regional board" means a California regional water quality control board.

(j) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, or disposing into the environment.

(k) "Secretary" means the Secretary for Environmental Protection.

(l) "Storage" or "store" means the containment, handling, or treatment of petroleum, for a period of time, including on a temporary basis.

(m) "Storage capacity" means the aggregate capacity of all aboveground storage tanks at a tank facility.

(n) "Tank facility" means one or more aboveground storage tanks, including any piping that is integral to the tanks, that contain petroleum and that are used by an owner or operator at a single location or site. For purposes of this chapter, a pipe is integrally related to an aboveground storage tank if the pipe is connected to the tank and meets any of the following:

(1) The pipe is within the dike or containment area.

(2) The pipe is between the containment area and the first flange or valve outside the containment area.

(3) The pipe is connected to the first flange or valve on the exterior of the tank, if state or federal law does not require a containment area.

(4) The pipe is connected to a tank in an underground area.

(o) (1) "Tank in an underground area" means a stationary storage tank to which all of the following apply:

(A) The storage tank is located in a structure that is at least 10 percent below the ground surface, including, but not limited to, a basement, cellar, shaft, pit, or vault.

(B) The structure in which the storage tank is located, at a minimum, provides for secondary containment of the contents of the tank, piping, and ancillary equipment, until cleanup occurs. A shop-fabricated double-walled storage tank with a mechanical or electronic device used to detect leaks in the interstitial space meets the requirement for secondary containment of the contents of the tank.

(C) The storage tank meets one or more of the following conditions:

(i) The storage tank contains petroleum to be used or previously used as a lubricant or coolant in a motor engine or transmission, oil-filled operational equipment, or oil-filled manufacturing equipment, is situated on or above the surface of the floor, and the structure in which the tank is located provides enough space for direct viewing of the exterior of the tank except for the part of the tank in contact with the surface of the floor.

(ii) The storage tank only contains petroleum that is determined to be a hazardous waste, complies with the hazardous waste tank standards pursuant to Article 10 (commencing with Section 66265.190) of Chapter 15 of Division 4.5 of Title 22 of the California Code of Regulations as it may be amended, and the tank facility has been issued a unified program facility permit pursuant to Section 25404.2 for generation, treatment, accumulation, or storage of hazardous waste.

(iii) The storage tank contains petroleum and is used solely in connection with a fire pump or an emergency system, legally required standby system, or optional standby system as defined in the most recent version of the California Electrical Code (Section 700.2 of Article 700, Section 701.2 of Article 701, and Section 702.2 of Article 702, of Chapter 7 of Part 3 of Title 24 of the California Code of Regulations), is situated on or above the surface of the floor, and the structure in which the tank is located provides enough space for direct viewing of the exterior of the tank except for the part of the tank in contact with the surface of the floor.

(iv) The storage tank does not meet the conditions in clause (i), (ii), or (iii), but meets all of the following conditions:

(I) It contains petroleum.

(II) It is situated on or above the surface of the floor.

(III) The structure in which the storage tank is located provides enough space for direct viewing of the exterior of the tank, except for the part of the tank in contact with the surface of the floor.

(IV) Except for an emergency vent that is solely designed to relieve excessive internal pressure, all piping connected to the tank, including any portion of a vent line, vapor recovery line, or fill pipe that is beneath the surface of the ground, and all ancillary equipment that is designed and constructed to contain petroleum, can either be visually inspected by direct viewing or has both secondary containment and leak detection that meet the requirements of the regulations adopted by the office pursuant to Section 25270.4.1.

(2) Direct viewing of the exterior of the tank is not required under paragraph (1) if inspections of the interstitial space or containment structure are performed or if the storage tank has a mechanical or electronic device that will detect leaks in the interstitial space or containment structure and alert the tank operator.

(3) (A) A storage tank in an underground area is not subject to Chapter 6.7 (commencing with Section 25280) if the storage tank meets the definition of a tank in an underground area, as provided in paragraph (1) and, except as specified in subparagraph (B), the regulations that apply to all new and existing tanks in underground areas and buried piping connected to tanks in underground areas have been adopted by the office pursuant to Section 25270.4.1.

(B) A storage tank meeting the description of clause (i) of subparagraph (C) of paragraph (1) shall continue to be subject to this chapter, and excluded from the definition of an underground storage tank in Chapter 6.7 (commencing with Section 25280), before and after the date the regulations specific to tanks in underground areas have been adopted by the office.

(p) "Viewing" means visual inspection, and "direct viewing" means, in regard to a storage tank, direct visual inspection of the exterior of the tank, except for the part of the tank in contact with the surface of the floor, and, where applicable, the entire length of all piping and ancillary equipment, including all exterior surfaces, by a person or through the use of visual aids, including, but not limited to, mirrors, cameras, or video equipment.

(Amended by Stats. 2018, Ch. 721, Sec. 1. (AB 2902) Effective January 1, 2019.)

25270.3. A tank facility is subject to this chapter if any of the following apply:

(a) The tank facility is subject to the oil pollution prevention regulations specified in Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(b) The tank facility has a storage capacity of 1,320 gallons or more of petroleum.

(c) (1) Except as provided in paragraph (3), the tank facility has a storage capacity of less than 1,320 gallons of petroleum and has one or more tanks in an underground area meeting the conditions specified in paragraph (1) of subdivision (o) of Section 25270.2.

(2) If a tank facility is subject to this chapter only pursuant to this subdivision, only those tanks that meet the conditions specified in paragraph (1) of subdivision (o) of Section 25270.2 shall be included as storage tanks and subject to this chapter.

(3) A tank in an underground area that would otherwise be subject to this chapter only pursuant to this subdivision is not subject to this chapter if any of the following apply:

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

(B) The tank is a heating oil tank.

(C) The tank is a sump, separator, clarifier, catch basin, or storm drain.

(Amended by Stats. 2018, Ch. 721, Sec. 2. (AB 2902) Effective January 1, 2019.)

25270.4. This chapter shall be implemented by the unified program agency, in accordance with the regulations adopted by the office pursuant to Section 25270.4.1.

(Amended by Stats. 2018, Ch. 721, Sec. 3. (AB 2902) Effective January 1, 2019.)

25270.4.1. (a) The office shall adopt regulations implementing this chapter. The office shall also provide interpretation of this chapter to the UPAs, and oversee the implementation of this chapter by the UPAs.

(b) The office shall establish an advisory committee that includes representatives from regulated entities, appropriate trade associations, fire service organizations, federal, state, and local organizations, including UPAs, and other interested parties. The advisory committee shall act in an advisory capacity to the office in conducting its responsibilities.

(c) The office shall, in addition to any other requirements imposed pursuant to this chapter, train UPAs, ensure consistency with state law, to the maximum extent feasible, ensure consistency with federal enforcement guidance issued by federal agencies pursuant to subdivision (d), and support the UPAs in providing outreach to regulated persons regarding compliance with current local, state, and federal regulations relevant to the office's obligations under this chapter.

(d) Any regulation adopted by the office pursuant to this section shall ensure consistency with the requirements for spill prevention, control, and countermeasure plans under Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations, and shall include any more stringent requirements necessary to implement this chapter.

(Amended by Stats. 2015, Ch. 452, Sec. 4. (SB 612) Effective January 1, 2016.)

25270.4.5. (a) Except as provided in subdivision (b), the owner or operator of a storage tank at a tank facility subject to this chapter shall prepare a spill prevention control and countermeasure plan applying good engineering practices to prevent petroleum releases using the same format required by Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations, including owners and operators of tank facilities not subject to the general provisions in Section 112.1 of those regulations. An owner or operator specified in this subdivision shall conduct periodic inspections of the storage tank to ensure compliance with Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations. In implementing the spill prevention control and countermeasure plan, an owner or operator specified in this subdivision shall fully comply with the latest version of the regulations contained in Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(b) A tank facility located on and operated by a farm, nursery, logging site, or construction site is not subject to subdivision (a) if no storage tank at the location exceeds 20,000 gallons of petroleum and the cumulative petroleum storage capacity of the tank facility does not exceed 100,000 gallons. Unless excluded from the definition of an "aboveground storage tank" in Section 25270.2, the owner or operator of a tank facility exempt pursuant to this subdivision shall take the following actions:

(1) Conduct a daily visual inspection of any storage tank storing petroleum. For purposes of this section, "daily" means every day that contents are added to or withdrawn from the tank, but no less than five days per week. The number of days may be reduced by the number of state or federal holidays that occur during the week if there is no addition to, or withdrawal from, the tank on the holiday. The UPA may reduce the frequency of inspections to not less than once every three days at a tank facility that is exempt pursuant to this section if the tank facility is not staffed on a regular basis, provided that the inspection is performed every day the facility is staffed.

(2) Allow the UPA to conduct a periodic inspection of the tank facility.

(3) If the UPA determines installation of secondary containment is necessary for the protection of the waters of the state, install a secondary means of containment for each tank or group of tanks where the secondary containment will, at a minimum, contain the entire contents of the largest tank protected by the secondary containment plus precipitation.

(c) The owner or operator of a tank in an underground area that is subject to this chapter pursuant to subdivision (c) of Section 25270.3 may use the format adopted by the office to prepare a spill prevention control and countermeasure plan as specified in

subdivision (a).

(Amended by Stats. 2023, Ch. 207, Sec. 4. (AB 1716) Effective January 1, 2024.)

25270.5. (a) Except as provided in subdivision (b), at least once every three years, the UPA shall inspect each storage tank or a representative sampling of the storage tanks at each tank facility that has a storage capacity of 10,000 gallons or more of petroleum. The purpose of the inspection shall be to determine whether the owner or operator is in compliance with the spill prevention control and countermeasure plan requirements of this chapter.

(b) The UPA may develop an alternative inspection and compliance plan, subject to approval by the secretary and the office.

(c) An inspection conducted pursuant to this section does not require the oversight of a professional engineer. The person conducting the inspection shall complete and pass the initial aboveground storage tank inspector training program. The curriculum of the aboveground storage tank inspector training program shall focus on the spill prevention control and countermeasure plan provisions and safety requirements for aboveground storage tank inspections.

(Amended by Stats. 2015, Ch. 452, Sec. 6. (SB 612) Effective January 1, 2016.)

25270.6. (a) (1) On or before January 1, annually, each owner or operator of a tank facility subject to this chapter shall file with the statewide information management system, a tank facility statement that shall identify the name and address of the tank facility, a contact person for the tank facility, the total petroleum storage capacity of the tank facility, and the location and contents of each petroleum storage tank that exceeds 10,000 gallons in storage capacity. A copy of a statement submitted previously pursuant to this section may be submitted in lieu of a new tank facility statement if no new or used storage tanks have been added to the facility or if no significant modifications have been made. For purposes of this section, a significant modification includes, but is not limited to, altering existing storage tanks or changing spill prevention or containment methods.

(2) Notwithstanding paragraph (1), an owner or operator of a tank facility that submits a business plan, as defined in subdivision (d) of Section 25501, to the statewide information management system and that complies with Sections 25503, 25505, 25505.1, 25507, 25507.2, 25508, 25508.1, and 25508.2, satisfies the requirement in paragraph (1) to file a tank facility statement.

(b) Each owner or operator of a tank facility who is subject to the requirements of subdivision (a) shall annually pay a fee to the UPA, on or before a date specified by the UPA. The governing body of the UPA shall establish a fee, as part of the single fee system implemented pursuant to Section 25404.5, at a level sufficient to pay the necessary and reasonable costs incurred by the UPA in administering this chapter, including, but not limited to, inspections, enforcement, and administrative costs. The UPA shall also implement the fee accountability program established pursuant to subdivision (c) of Section 25404.5 and the regulations adopted to implement that program.

(Amended by Stats. 2023, Ch. 207, Sec. 5. (AB 1716) Effective January 1, 2024.)

25270.8. Each owner or operator of a tank facility shall immediately, upon discovery, notify the Office of Emergency Services and the UPA using the appropriate 24-hour emergency number or the 911 number, as established by the UPA, or by the governing body of the UPA, of the occurrence of a spill or other release of one barrel (42 gallons) or more of petroleum that is required to be reported pursuant to subdivision (a) of Section 13272 of the Water Code.

(Amended by Stats. 2013, Ch. 352, Sec. 350. (AB 1317) Effective September 26, 2013. Operative July 1, 2013, by Sec. 543 of Ch. 352.)

25270.9. (a) The board and the regional board may oversee cleanup or abatement efforts, or cause cleanup or abatement efforts, of a release from a storage tank at a tank facility.

(b) The reasonable expenses of the board and the regional board incurred in overseeing, or contracting for, cleanup or abatement efforts that result from a release at a tank facility is a charge against the owner or operator of the tank facility. Expenses reimbursable to a public agency under this section are a debt of the tank facility owner or operator, and shall be collected in the same manner as in the case of an obligation under a contract, express or implied.

(c) Expenses recovered by the board or a regional board 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 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 of the Water Code.

(Amended by Stats. 2015, Ch. 452, Sec. 8. (SB 612) Effective January 1, 2016.)

25270.12. (a) An owner or operator of a tank facility who fails to prepare a spill prevention control and countermeasure plan in compliance with subdivision (a) of Section 25270.4.5, to file a tank facility statement pursuant to subdivision (a) of Section 25270.6, to submit the fee required by subdivision (b) of Section 25270.6, or to report spills as required by Section 25270.8, or who otherwise fails to comply with the requirements of this chapter, is subject to a civil penalty of not more than five thousand dollars (\$5,000) for

each day on which the violation continues. If the owner or operator commits a second or subsequent violation, a civil penalty of not more than ten thousand dollars (\$10,000) for each day on which the violation continues may be imposed.

(b) (1) The civil penalties provided by this section may be assessed and recovered in a civil action brought by the city attorney, county counsel, or district attorney on behalf of the UPA.

(2) Fifty percent of all penalties assessed and recovered in a civil action brought on behalf of a UPA pursuant to this subdivision shall be deposited into a unified program account established by the UPA for the purpose of carrying out the functions of the unified program and 50 percent shall be paid to the office of the city attorney, county counsel, or district attorney, whoever brought that action.

(c) (1) The civil penalties provided in this section may be assessed and recovered in a civil action brought by the Attorney General on behalf of the office, the board, or a regional board, or on behalf of the people of the State of California.

(2) All penalties assessed and recovered in a civil action brought pursuant to this subdivision shall be deposited in the Waste Discharge Permit Fund created pursuant to Section 13260 of the Water Code. These moneys shall be separately accounted for, and shall be expended by the 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 same purposes for which the State Water Pollution Cleanup and Abatement Account may be expended pursuant to Section 13443 of the Water Code.

(d) The city attorney, county counsel, district attorney, or the Attorney General may seek to enjoin, in any court of competent jurisdiction, any person believed to be in violation of this chapter.

(e) If a county counsel or the district attorney brings an action pursuant to this section, the county counsel or the district attorney shall, within seven days of the filing of the action, notify the district attorney or county counsel, as applicable, of the county in which the violation occurs or occurred.

(f) The penalties specified in this section are in addition to any other penalties provided by law.

(Amended by Stats. 2023, Ch. 154, Sec. 6. (SB 642) Effective January 1, 2024.)

25270.12.1. (a) Any owner or operator of a tank facility who fails to prepare a spill prevention control and countermeasure plan in compliance with subdivision (a) of Section 25270.4.5, to file a tank facility statement pursuant to subdivision (a) of Section 25270.6, to submit the fee required by subdivision (b) of Section 25270.6, or to report spills as required by Section 25270.8, or who otherwise fails to comply with the requirements of this chapter is liable to the UPA for an administrative penalty of not more than five thousand dollars (\$5,000) for each day on which the violation continues. If the owner or operator commits a second or subsequent violation, an administrative penalty of not more than ten thousand dollars (\$10,000) for each day on which the violation continues may be imposed.

(b) The administrative penalties assessed by a UPA shall be deposited into a unified program account established by the UPA for the purpose of carrying out the functions of the unified program.

(c) When a UPA issues an enforcement order or assesses an administrative penalty, or both, for a violation of this chapter, the administering agency shall utilize the administrative enforcement procedures specified in Sections 25404.1.1 and 25404.1.2.

(d) The administrative penalties specified in this section are in addition to any other penalties provided by law, except for a violation for which a civil penalty under Section 25270.12 has already been imposed for the same violation.

(Amended by Stats. 2023, Ch. 207, Sec. 6. (AB 1716) Effective January 1, 2024.)

25270.12.5. (a) A person who knowingly violates Section 25270.4.5, 25270.6, or 25270.8 after reasonable notice of the violation is, upon conviction, guilty of a misdemeanor.

(b) This section does not preempt any other applicable criminal or civil penalties.

(Added by Stats. 2012, Ch. 532, Sec. 6. (AB 1566) Effective January 1, 2013.)

25270.13. (a) This chapter does not preempt local storage tank ordinances, in effect as of August 16, 1989, that meet or exceed the standards prescribed by this chapter.

(b) This chapter does not preempt the authority granted to the board and the regional boards under the Porter Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(Amended by Stats. 2007, Ch. 626, Sec. 20. Effective January 1, 2008.)