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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 6.75. Petroleum Underground Storage Tank Cleanup [25299.10 - 25299.97] (*Chapter 6.75 added by Stats. 1989, Ch. 1442, Sec. 5.*)

ARTICLE 4. Corrective Action [25299.36 - 25299.39.3] (*Article 4 added by Stats. 1989, Ch. 1442, Sec. 5.*)

25299.36. The board, a regional board, or a local agency may undertake or contract for corrective action in response to an unauthorized release from an underground storage tank that is subject to this chapter, pursuant to subdivision (f) of Section 25296.10 or if a situation exists that requires prompt action by the board, a regional board, or local agency to protect human health or the environment. At the request of the board or a regional board, the Department of General Services may enter into a contract on behalf of the board or a regional board and acting as the agent of the board or a regional board. Notwithstanding any other provision of law, if a situation requires prompt action by the board or a regional board to protect human health or the environment, the board or a regional board may enter into oral contracts for this work, and the contracts, whether written or oral, may include provisions for equipment rental and, in addition, the furnishing of labor and materials necessary to accomplish the work. These contracts for corrective action by the board or a regional board are exempt from approval by the Department of General Services if the situation requires prompt action to protect human health or the environment.

(Amended by Stats. 2002, Ch. 999, Sec. 33. Effective January 1, 2003.)

25299.38. (a) The local agency, the board, or the regional board shall advise and work with the owner, operator, or other responsible party on the opportunity to seek preapproval of corrective action costs pursuant to Section 2811.4 of Title 23 of the California Code of Regulations or any successor regulation. Regional board staff and local agency staff shall work with the responsible party and fund staff to obtain preapproval for the responsible party. The fund staff shall grant or deny a request for preapproval within 30 calendar days after the date a request is received. If fund staff denies a request for preapproval or fails to act within 30 calendar days after receiving the request, an owner, operator, or other responsible party who has prepared a work plan that has been reviewed and accepted pursuant to paragraph (3) of subdivision (c) of Section 25296.10, and is denied preapproval of corrective action costs for one or more of the actions required by the work plan, may petition the board for review of the request for preapproval. The board shall review the petition pursuant to Section 25299.56, and for that purpose the petition for review of a request for preapproval of corrective action costs shall be reviewed by the board in the same manner as a petition for review of an unpaid claim.

(b) If the board receives a petition for review pursuant to subdivision (a), the board shall review the request for preapproval and grant or deny the request pursuant to this subdivision and subdivision (c). The board shall deny the request for preapproval if the board makes one of the following findings:

- (1) The petitioner is not eligible to file a claim pursuant to Article 6 (commencing with Section 25299.50).
- (2) The petitioner failed to submit one or more of the documents required by the regulations adopted by the board governing preapproval.
- (3) The petitioner failed to obtain three bids or estimates for corrective action costs and, under the circumstances pertaining to the corrective action, there is no valid reason to waive the three-bid requirement pursuant to the regulations adopted by the board.

(c) If the board does not deny the request for preapproval pursuant to subdivision (b), the board shall grant the request for preapproval. However, the board may modify the request by denying preapproval of corrective action costs or reducing the preapproval amount of those costs for any action required by the work plan, if the board finds that the fund staff has demonstrated either of the following:

- (1) The amount of corrective action reimbursement requested for the action is not reasonable. In determining if the fund staff has demonstrated that the amount of reimbursement requested for an action is not reasonable, the board shall use, when available, recent experience with bids or estimates for similar actions.
- (2) The action required in the work plan is, in all likelihood, not necessary for the corrective action to comply with the requirements of subdivisions (a) and (b) of Section 25296.10 and the corrective action regulations adopted pursuant to Section 25299.3.

(Added by Stats. 2002, Ch. 999, Sec. 37. Effective January 1, 2003.)

25299.39.2. (a) (1) The manager responsible for the fund shall notify tank owners or operators who have an active letter of commitment that has been in an active status for five years or more and shall review the case history of their tank case on an annual basis unless otherwise notified by the tank owner or operator within 30 days of the notification.

(A) If the manager determines that closure of the tank case is appropriate based upon that review, the manager shall provide a review summary report to the applicable regional board and local agency summarizing the reasons for this determination and shall provide the applicable regional board and local agency with an opportunity for comment on the review summary report.

(B) If the manager determines that closure of the tank case is appropriate, the manager, with approval of the tank owner or operator, may make a recommendation to the board for closure.

(C) The board may close any tank case or require the closure of any tank case where an unauthorized release has occurred if the board determines that corrective action at the site is in compliance with all of the requirements of subdivisions (a) and (b) of Section 25296.10 and the corrective action regulations adopted pursuant to Section 25299.3.

(D) Before closing or requiring closure of an underground storage tank case, the board shall provide an opportunity for reviewing and providing responses to the manager's recommendation to the applicable regional board and local agency, and to the water replenishment district, municipal water district, county water district, or special act district with groundwater management authority if the underground storage tank case is located in the jurisdiction of that district.

(2) Except as provided in paragraph (3), if the manager recommends closing a tank case pursuant to paragraph (1), the board shall limit reimbursement of subsequently incurred corrective action costs, including costs for groundwater monitoring, to ten thousand dollars (\$10,000) per year.

(3) The board may allow reimbursement of corrective action costs in excess of the ten thousand dollar (\$10,000) limit specified in paragraph (2) if the board determines that corrective action costs related to the closure will exceed this amount, or that additional corrective action is necessary to meet the requirements specified in subdivisions (a) and (b) of Section 25296.10.

(4) After the manager provides a review summary report to the applicable regional board and local agency in accordance with subparagraph (A) of paragraph (1), the regional board or local agency shall not issue a corrective action directive or enforce an existing corrective action directive for the tank case until the board issues a decision on the closure of the tank case, unless one of the following applies:

(A) The regional board or local agency demonstrates to the satisfaction of the manager that there is an imminent threat to human health, safety, or the environment.

(B) The regional board or local agency demonstrates to the satisfaction of the manager that other site-specific needs warrant additional directives during the period that the board is considering case closure.

(C) After considering responses to the review summary report and other relevant information, the manager determines that case closure is not appropriate.

(D) The regional board or local agency closes the tank case but the directives are necessary to carry out case-closure activities.

(b) An aggrieved person may, not later than 30 days from the date of final action by the board, pursuant to subparagraph (C) of paragraph (1) of subdivision (a), file with the superior court a petition for writ of mandate for review of the decision. If the aggrieved person does not file a petition for writ of mandate within the time provided by this subdivision, a board decision shall not be subject to review by any court. Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this subdivision. For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall uphold the decision if the decision is based upon substantial evidence in light of the whole record.

(c) The authority provided under this section does not limit a person's ability to petition the board for review under any other state law.

(Amended by Stats. 2012, Ch. 237, Sec. 2. (AB 1715) Effective January 1, 2013.)

25299.39.3. The board, a regional board, or local agency shall be permitted reasonable access to property owned or possessed by an owner, operator, or responsible party as necessary to perform corrective action pursuant to Section 25299.36. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting public health or safety, or the environment, the board, a regional board, or local agency may enter the property without consent or the issuance of a warrant.

(Amended by Stats. 2002, Ch. 999, Sec. 42. Effective January 1, 2003.)