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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 7. Cost Recovery, Enforcement, and Administration [25299.70 - 25299.80.6] (*Article 7 added by Stats. 1989, Ch. 1442, Sec. 5.*)

25299.70. (a) The board may recover any costs incurred and payable from the fund pursuant to subdivisions (c), (e), (h), and (n) of Section 25299.51 from the owner or operator of the underground storage tank which released the petroleum and which is the subject of those costs or from any other responsible party.

(b) The liability of an owner or operator shall be the full and total costs specified in subdivision (a) if the owner or operator has not complied with the requirements of Article 3 (commencing with Section 25299.30) or has violated Section 25296.10 or any corrective action order, directive, notification, or approval order issued pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), or Division 7 (commencing with Section 13000) of the Water Code. The liability of a responsible party who is not an owner or operator shall be the full and total costs specified in subdivision (a).

(c) The amount of costs determined pursuant to this section shall be recoverable in a civil action. This section does not deprive a party of any defense the party may have.

(d) All money recovered by the board pursuant to this section shall be deposited in the fund.

(e) The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, if the notice identifies the property on which the condition was abated, the amount of the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien shall have the same force, effect, and priority as a judgment lien, except that it attaches only to the property posted and described in the notice of lien, and shall continue for 10 years from the time of the recording of the notice, unless sooner released or otherwise discharged. Not later than 45 days from the date of receipt of a notice of lien, the owner may petition the court for an order releasing the property from the lien or reducing the amount of the lien. In that court action, the governmental agency that incurred the cleanup costs shall establish that the costs were reasonable and necessary. The lien may be foreclosed by an action brought by the board for a money judgment.

(Amended by Stats. 2014, Ch. 547, Sec. 19. (SB 445) Effective September 25, 2014. Inoperative January 1, 2036, pursuant to Section 25299.81.)

25299.71. (a) (1) Except as provided in subdivisions (b) and (c), if a person is convicted under Section 25299.80.5 or is found to be civilly liable under Section 25299.78 or 25299.80, the executive director of the board may permanently disqualify that person from receiving any moneys from the fund. If the executive director of the board determines that the disqualified person is a contractor or consultant, a claimant shall not submit invoices to the fund for any work performed or directed by that person.

(2) For purposes of this section, "contractor or consultant" means a person whose professional services are engaged to perform work that is the subject of a claim specified in paragraph (2) of subdivision (d) of Section 25299.57.

(b) If the person convicted under Section 25299.80.5 or found to be civilly liable under Section 25299.78 or 25299.80 is a claimant, the executive director of the board may permanently disqualify the claimant from further participation in the fund, with respect to only the fund claims that are the subject of that conviction under Section 25299.80.5 or that civil liability under Section 25299.78 or 25299.80, and only if the executive director makes a finding that the alleged violation is knowing, willful, or intentional.

(c) If the person convicted under Section 25299.80.5 or found to be civilly liable under Section 25299.78 or 25299.80 is a contractor or consultant, the executive director of the board may permanently disqualify the contractor or consultant from further participation in

the fund, including participation in corrective action for fund claims that are not the subject of that conviction under Section 25299.80.5 or civil liability under Section 25299.78 or 25299.80, only if the executive director makes one of the following findings:

(1) The alleged violation is knowing, willful, or intentional.

(2) The contractor or consultant received a material economic benefit from the action that caused the violation.

(3) The alleged violation is chronic or the contractor or consultant is a recalcitrant violator, as determined pursuant to subdivision (g) of Section 13399 of the Water Code.

(d) In addition to the requirements of subdivisions (b) and (c), in determining the extent to which a person, including, but not limited to, a claimant, contractor, or consultant, convicted under Section 25299.80.5 or found to be civilly liable under Section 25299.78 or 25299.80 may be disqualified from receiving any money from the fund, including the extent to which the person may be reimbursed for pending or future claims from the fund, the executive director of the board, or the court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation, the person's ability to pay, any prior history of misrepresentations by the person to the board, or local agency, any economic benefits or savings that resulted or would have resulted from the false statement, and any other matters as justice may require.

(Added by Stats. 2014, Ch. 547, Sec. 20. (SB 445) Effective September 25, 2014. Inoperative January 1, 2036, pursuant to Section 25299.81.)

25299.72. Upon motion and sufficient showing by any party, the court shall join to the action any person who may be liable for costs or expenditures of the type recoverable pursuant to this article.

(Added by renumbering Section 25299.62 by Stats. 1990, Ch. 1366, Sec. 27. Effective September 27, 1990. Inoperative January 1, 2036, pursuant to Section 25299.81.)

25299.73. The standard of liability for any costs of corrective action recoverable pursuant to this chapter is strict liability.

(Added by renumbering Section 25299.63 by Stats. 1990, Ch. 1366, Sec. 28. Effective September 27, 1990. Inoperative January 1, 2036, pursuant to Section 25299.81.)

25299.74. (a) No indemnification, hold harmless, conveyance, or similar agreement shall be effective to preclude any liability for costs recoverable under this article. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs under this chapter.

(b) The entry of judgment against any party to the action does not bar any future action by the fund against any person who is later discovered to be potentially liable for costs paid from the fund.

(c) Payment of any claim by the fund pursuant to this chapter shall be subject to the state acquiring by subrogation the rights of the claimant to recover those costs of corrective action for which it has compensated the claimant from the person responsible or liable for the unauthorized release.

(Added by renumbering Section 25299.64 by Stats. 1990, Ch. 1366, Sec. 29. Effective September 27, 1990. Inoperative January 1, 2036, pursuant to Section 25299.81.)

25299.75. (a) Except as provided in Sections 25299.70, 25299.72, and 25299.73, this chapter does not affect or modify the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from an unauthorized release of petroleum or for corrective action or the costs of corrective action.

(b) This chapter shall not be construed as authorizing recovery for costs of corrective action resulting from any release authorized or permitted pursuant to state or federal law.

(Added by renumbering Section 25299.65 by Stats. 1990, Ch. 1366, Sec. 30. Effective September 27, 1990. Inoperative January 1, 2036, pursuant to Section 25299.81.)

25299.76. (a) Any person who violates any requirement of Article 3 (commencing with Section 25299.30) or Article 4 (commencing with Section 25299.36) is liable for a civil penalty of not more than ten thousand dollars (\$10,000) for each underground storage tank for each day of violation.

(b) The state or a local agency may bring an action in superior court to impose the civil penalty specified in subdivision (a).

(c) The board or a regional board may impose the civil penalty specified in subdivision (a) pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(d) In determining the amount of any liability imposed under this section, the superior court, the board, or the regional board shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, the economic benefits or savings, if any, resulting from the violations, and other matters as justice may require.

(e) Remedies under this section are in addition to, and do not supersede or limit, any other civil or criminal remedies, except that no civil penalties shall be recovered under this section for violations for which a civil penalty is recovered pursuant to Section 13268 or 13350 of the Water Code.

(Added by renumbering Section 25299.66 by Stats. 1990, Ch. 1366, Sec. 31. Effective September 27, 1990. Inoperative January 1, 2036, pursuant to Section 25299.81.)

25299.77. (a) The board shall adopt regulations to implement this chapter. In adopting these regulations, the board shall ensure that the regulations are consistent with this chapter, Chapter 6.7 (commencing with Section 25280), and the requirements for state programs implementing the federal act.

(b) The adoption of any regulations pursuant to this section that are filed with the Office of Administrative Law on or before January 1, 1995, shall be deemed to be an emergency necessary for the immediate preservation of the public peace, health, 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 regulation adopted by the board pursuant to this subdivision shall not be repealed by the Office of Administrative Law, and shall remain in effect until revised by the board.

(Amended by Stats. 2002, Ch. 37, Sec. 3. Effective May 10, 2002. Inoperative January 1, 2036, pursuant to Section 25299.81.)

25299.78. (a) To carry out the purposes of this chapter, any authorized representative of the local agency, regional board, or board shall have the authority specified in Section 25185, with respect to any place where underground storage tanks are located, and in Section 25185.5, with respect to any real property which is within 2,000 feet of any place where underground storage tanks are located.

(b) A person shall furnish, under penalty of perjury, any information on fees imposed pursuant to Article 5 (commencing with Section 25299.40), financial responsibility, unauthorized releases, corrective actions, response actions, costs related to grants issued under this chapter, or requests for reimbursement pursuant to a claim or grant issued under this chapter as the local agency, regional board, or board may require.

(c) A person who fails or refuses to furnish information under subdivision (b) or furnishes false information to the fund is subject, in accordance with the requirements of subdivision (d), to civil liability of not more than ten thousand dollars (\$10,000) for each violation of this subdivision.

(d) (1) Except as provided in subdivision (2), a claimant shall not be liable under subdivision (c) unless one of the following is established by the court, if the action is brought pursuant to subdivision (e), or the executive director, if the action is brought pursuant to subdivision (f):

(A) The alleged violation is knowing, willful, or intentional.

(B) The claimant received a material economic benefit from the action which caused the alleged violation.

(C) The alleged violation is chronic or that the claimant is a recalcitrant violator, as determined pursuant to subdivision (g) of Section 13399 of the Water Code.

(2) If a claimant is in violation of subdivision (c), but does not meet any of the conditions specified in paragraph (1), the claimant may be held liable only if the board or an authorized representative of the board issues a notice to comply pursuant to Chapter 5.8 (commencing with Section 13399) of Division 7 of the Water Code before an action is taken pursuant to subdivision (e) or (f).

(e) The Attorney General, upon request of the board, shall bring an action in superior court to impose the civil liability specified in subdivision (c).

(f) The executive director of the board may impose the civil liability specified in subdivision (c) administratively in the same manner as the executive director of the board is authorized to impose civil liability pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(g) In determining the amount of any civil liability imposed under this section, the executive director of the board, or the court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the false statement or refusal or failure to furnish information, the person's ability to pay, any prior history by the person of misrepresentations to or noncooperation with the board or local agency, any economic benefits or savings that resulted or would have resulted from the false statement or refusal or failure to furnish information, and other matters as justice may require.

(h) Remedies under this section are in addition to, and do not supersede or limit, any other civil, administrative, or criminal remedies.

(i) All funds collected pursuant to this section shall be deposited into the fund.

(Amended by Stats. 2018, Ch. 721, Sec. 8. (AB 2902) Effective January 1, 2019. Inoperative January 1, 2036, pursuant to Section 25299.81.)

25299.79. The costs specified in subdivision (d) of Section 25299.51 are not recoverable pursuant to this article.

(Added by Stats. 1990, Ch. 1574, Sec. 3. Inoperative January 1, 2036, pursuant to Section 25299.81.)

25299.80. (a) A person who makes a misrepresentation in any claim, including, but not limited to, a record, report, certification, application, invoice, form, or other document that is submitted to the fund relating to a claim, is subject to civil liability of not more than five hundred thousand dollars (\$500,000) for each violation of this subdivision.

(b) Except as provided in subdivision (d), the Attorney General, upon request of the state board, shall bring an action in superior court to impose the civil liability specified in subdivision (a).

(c) Except as provided in subdivision (d), the executive director of the board may impose the civil liability specified in subdivision (a) administratively in the same manner as the executive director of the board is authorized to impose civil liability pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(d) If the violation by a claimant of subdivision (a) is not knowing, willful, or intentional, the board or an authorized representative shall first issue a notice to comply pursuant to Chapter 5.8 (commencing with Section 13399) of Division 7 of the Water Code before an action may be taken pursuant to subdivision (b) or (c).

(e) In determining the amount of civil liability imposed under this section, the executive director of the board, or the court, as the case may be, shall take into account the nature, circumstance, extent, and gravity of the violation, the person's ability to pay, any prior history of misrepresentations by the person to the board or local agency, any economic benefits or savings that resulted or would have resulted from the false statement, and other matters as justice may require.

(f) Remedies under this section are in addition to, and do not supersede or limit, any other civil, administrative, or criminal remedies.

(g) All money collected pursuant to this section shall be deposited into the fund.

(h) The board shall file a complaint with any applicable licensing board against any person licensed or otherwise regulated by that licensing board who is found to be liable under this section.

(Added by Stats. 2014, Ch. 547, Sec. 22. (SB 445) Effective September 25, 2014. Inoperative January 1, 2036, pursuant to Section 25299.81.)

25299.80.5. (a) A person who knowingly makes or causes to be made any false statement, material misrepresentation, or false certification in support of any claim under this chapter, including, but not limited to, in an application, record, report, certification, plan, invoice, form, or other document that is submitted, filed, or required to be maintained under this chapter for purposes of a claim, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment in a county jail for not more than one year, or in the state prison for 16 months, two years, or three years, or by both that fine and imprisonment.

(b) The Attorney General, upon request of the board, may bring an action in superior court to impose the criminal penalty specified in subdivision (a).

(c) Remedies under this section are in addition to, and do not supersede or limit, any other civil or criminal remedies.

(d) All funds collected pursuant to this section shall be deposited into the fund.

(e) The board shall file a complaint with any applicable licensing board against any person licensed or otherwise regulated by that licensing board who is convicted under this section.

(Added by Stats. 2014, Ch. 547, Sec. 23. (SB 445) Effective September 25, 2014. Inoperative January 1, 2036, pursuant to Section 25299.81.)

25299.80.6. An action by the executive director to impose civil liability under this chapter is subject to review by the board in the same manner as provided for the review by the State Water Resources Control Board of actions of a regional board under Section 13320 of the Water Code.

(Added by Stats. 2014, Ch. 547, Sec. 24. (SB 445) Effective September 25, 2014. Inoperative January 1, 2036, pursuant to Section 25299.81.)