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Hazardous Waste and Hazardous Substances Law Code Excerpts

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Department of Toxic Substances
Control

State of California

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California Code Excerpts 2008

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STATE OF CALIFORNIA

HEALTH AND SAFETY CODE

DIVISION 10, CHAPTER 8

CHAPTER 8. SEIZURE AND DISPOSITION
(Chapter 8 added by Stats. 1972, Ch. 1407.)

11469. In order to ensure the proper utilization of the laws permitting the seizure and forfeiture of property under this chapter, the Legislature hereby establishes the following guidelines:

(a) Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.

(b) No prosecutor's or sworn law enforcement officer's employment or salary shall be made to depend upon the level of seizures or forfeitures he or she achieves.

(c) Whenever appropriate, prosecutors should seek criminal sanctions as to the underlying criminal acts which give rise to the forfeiture action.

(d) Seizing agencies shall have a manual detailing the statutory grounds for forfeiture and all applicable policies and procedures. The manual shall include procedures for prompt notice to interestholders, the expeditious release of seized property, where appropriate, and the prompt resolution of claims of innocent ownership.

(e) Seizing agencies shall implement training for officers assigned to forfeiture programs, which training should be ongoing.

(f) Seizing agencies shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.

(g) Seizing agencies shall not put any seized or forfeited property into service.

(h) Unless otherwise provided by law, forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.

(i) Seizing agencies shall ensure that seized property is protected and its value preserved.

(j) Although civil forfeiture is intended to be remedial by removing the tools and profits from those engaged in the illicit drug trade, it can have harsh effects on property owners in some circumstances. Therefore, law enforcement shall seek to protect the interests of innocent property owners, guarantee adequate notice and due process to property owners, and ensure that forfeiture serves the remedial purpose of the law.

(Added by Stats. 1994, Ch. 314, Sec. 1. Effective August 19, 1994.)

11470. The following are subject to forfeiture:

(a) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this division.

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this division.

(c) All property except real property or a boat, airplane, or any vehicle which is used, or intended for use, as a container for property described in subdivision (a) or (b).

(d) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this division.

(e) The interest of any registered owner of a boat, airplane, or any vehicle other than an implement of husbandry, as defined in Section 36000 of the Vehicle Code, which has been used as an instrument to facilitate the manufacture of, or possession for sale or sale of 14.25 grams or more of heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or a substance containing 14.25 grams or more of heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or 14.25 grams or more of a substance containing heroin or cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or 28.5 grams or more of Schedule I controlled substances except marijuana, peyote, or psilocybin; 10 pounds dry weight or more of marijuana, peyote, or psilocybin; or 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or a substance containing 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or 57 grams or more of a substance containing cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or 28.5 grams or more of Schedule II controlled substances. No interest in a vehicle which may be lawfully driven on the highway with a class C, class M1, or class M2 license, as prescribed in Section 12804 of the Vehicle Code, may be forfeited under this subdivision if there is a community property interest in the vehicle by a person other than the defendant and the vehicle is the sole class C, class M1, or class M2 vehicle available to the defendant's immediate family.

(f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first.

(g) The real property of any property owner who is convicted of violating Section 11366, 11366.5, or 11366.6 with respect to that property. However, property which is used as a family residence or for other lawful purposes, or which is owned by two or more persons, one of whom had no knowledge of its unlawful use, shall not be subject to forfeiture.

(h) Subject to the requirements of Section 11488.5 and except as further limited by this subdivision to protect innocent parties who claim a property interest acquired from a defendant, all right, title, and interest in any personal property described in this section shall vest in the state upon commission of the act giving rise to forfeiture under this chapter, if the state or local governmental entity proves a violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves the manufacture, sale, possession for sale, offer for sale, offer to manufacture, or conspiracy to commit at least one of those offenses, in accordance with the burden of proof set forth in paragraph (1) of subdivision (i) of Section 11488.4 or, in the case of cash or negotiable instruments in excess of twenty-five thousand dollars ($25,000), paragraph (4) of subdivision (i) of Section 11488.4.

The operation of the special vesting rule established by this subdivision shall be limited to circumstances where its application will not defeat the claim of any person, including a bona fide purchaser or encumbrancer who, pursuant to Section 11488.5, 11488.6, or 11489, claims an interest in the property seized, notwithstanding that the interest in the property being claimed was acquired from a defendant whose property interest would otherwise have been subject to divestment pursuant to this subdivision.

(Amended by Stats. 1997, Ch. 241, Sec. 1. Effective January 1, 1998.)

11470.1. (a) The expenses of seizing, eradicating, destroying, or taking remedial action with respect to, any controlled substance or its precursors shall be recoverable from:

(1) Any person who manufactures or cultivates a controlled substance or its precursors in violation of this division.

(2) Any person who aids and abets or who knowingly profits in any manner from the manufacture or cultivation of a controlled substance or its precursors on property owned, leased, or possessed by the defendant, in violation of this division.

(b) The expenses of taking remedial action with respect to any controlled substance or its precursors shall also be recoverable from any person liable for the costs of that remedial action under Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(c) It shall not be necessary to seek or obtain a criminal conviction prior to the entry of judgment for the recovery of expenses. However, if criminal charges are pending against the defendant for the unlawful manufacture or cultivation of any controlled substance or its precursors, an action brought pursuant to this section shall, upon a

defendant's request, be continued while the criminal charges are pending.

(d) The action may be brought by the district attorney, county counsel, city attorney, the State Department of Health Services, or Attorney General. All expenses recovered pursuant to this section shall be remitted to the law enforcement agency which incurred them.

(e) (1) The burden of proof as to liability shall be on the plaintiff and shall be by a preponderance of the evidence in an action alleging that the defendant is liable for expenses pursuant to paragraph (1) of subdivision (a). The burden of proof as to liability shall be on the plaintiff and shall be by clear and convincing evidence in an action alleging that the defendant is liable for expenses pursuant to paragraph (2) of subdivision (a). The burden of proof as to the amount of expenses recoverable shall be on the plaintiff and shall be by a preponderance of the evidence in any action brought pursuant to subdivision (a).

(2) Notwithstanding paragraph (1), for any person convicted of a criminal charge of the manufacture or cultivation of a controlled substance or its precursors there shall be a presumption affecting the burden of proof that that person is liable.

(f) Only expenses which meet the following requirements shall be recoverable under this section:

(1) The expenses were incurred in seizing, eradicating, or destroying the controlled substance or its precursors or in taking remedial action with respect to a hazardous substance. These expenses may not include any costs incurred in use of the herbicide paraquat.

(2) The expenses were incurred as a proximate result of the defendant's manufacture or cultivation of a controlled substance in violation of this division.

(3) The expenses were reasonably incurred.

(g) For purposes of this section, "remedial action" shall have the meaning set forth in Section 25322.

(h) For the purpose of discharge in bankruptcy, a judgment for recovery of expenses under this section shall be deemed to be a debt for willful and malicious injury by the defendant to another entity or to the property of another entity.

(i) Notwithstanding Section 526 of the Code of Civil Procedure, the plaintiff may be granted a temporary restraining order or a preliminary injunction, pending or during trial, to restrain the defendant from transferring, encumbering, hypothecating, or otherwise disposing of any assets specified by the court, if it appears by the complaint that the plaintiff is entitled to the relief demanded and it appears that the defendant may dispose of those assets to thwart enforcement of the judgment.

(j) The Legislature finds and declares that civil penalties for the recovery of expenses incurred in enforcing the provisions of this division shall not supplant criminal prosecution for violation of those provisions, but shall be a supplemental remedy to criminal enforcement.

(k) Any testimony, admission, or any other statement made by the defendant in any proceeding brought pursuant to this section, or any evidence derived from the testimony, admission, or other statement, shall not be admitted or otherwise used in any criminal proceeding arising out of the same conduct.

(l) No action shall be brought or maintained pursuant to this section against a person who has been acquitted of criminal charges for conduct which may be the basis for an action under this section if, in the criminal action, there has been a finding of factual innocence by the court pursuant to standards set forth in subdivision (b) of Section 851.8 of the Penal Code.

(Amended by Stats. 1986, Ch. 1031, Sec. 1.5.)

11470.2. (a) In lieu of a civil action for the recovery of expenses as provided in Section 11470.1, the prosecuting attorney in a criminal proceeding may, upon conviction of the underlying offense, seek the recovery of all expenses recoverable under Section 11470.1 from:

(1) Any person who manufacturers or cultivates a controlled substance or its precursors in violation of this division.

(2) Any person who aids and abets or who knowingly profits in any manner from the manufacture or cultivation of a controlled substance or its precursors on property owned, leased, or possessed by the defendant, in violation of this division. The trier of fact shall make an award of expenses, if proven, which shall be enforceable as any civil judgment. If probation is granted, the court may order payment of the expenses as a condition of probation. All expenses recovered pursuant to this section shall be remitted to the law enforcement agency which incurred them.

(b) The prosecuting attorney may, in conjunction with the criminal proceeding, file a petition for recovery of expenses with the superior court of the county in which the defendant has been charged with the underlying offense. The petition shall allege that the defendant had manufactured or cultivated a controlled substance in violation of Division 10 (commencing with Section 11000) of the Health and Safety Code and that expenses were incurred in seizing, eradicating, or destroying the controlled substance or its precursors. The petition shall also state the amount to be assessed. The prosecuting attorney shall make service of process of a notice of that petition to the defendant.

(c) The defendant may admit to or deny the petition for recovery of expenses. If the defendant admits the allegations of the petition, the court shall rule for the prosecuting attorney and enter a judgment for recovery of the expenses incurred.

(d) If the defendant denies the petition or declines to admit to it, the petition shall be heard in the superior court in which the underlying criminal offense will be tried and shall be promptly heard following the defendant's conviction on the underlying offense. The hearing shall be held either before the same jury or before a new jury in the discretion of the court, unless waived by the consent of all parties.

(e) At the hearing, the burden of proof as to the amount of expenses recoverable shall be on the prosecuting attorney and shall be by a preponderance of the evidence.

(f) For the purpose of discharge in bankruptcy, a judgment for recovery of expenses under this section shall be deemed to be a debt for willful and malicious injury by the defendant to another entity or to the property of another entity.

(Added by Stats. 1983, Ch. 931, Sec. 2.)

11470.3. (a) Section 11470 shall be applicable to property owned by, or in the possession of, minors.

(b) The procedures for the forfeiture of property that comes within Section 11470 shall be applicable to minors.

(c) Notwithstanding the provisions of this chapter, if a petition has been filed alleging that the minor is a person described in Section 602 of the Welfare and Institutions Code because of a violation which is the basis for the seizure and forfeiture of property under this chapter, any related forfeiture hearing shall be continued until the adjudication of the petition. The forfeiture hearing shall not be conducted in juvenile court.

(Added by Stats. 1988, Ch. 1358, Sec. 2.)

11470.4. The provisions of this chapter apply to any minor who has been found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of Section 11351, 11351.5, 11352, 11355, 11366, 11366.5, 11366.6, 11378.5, 11379, 11379.5, 11379.6, or 11382.

(Added by Stats. 1988, Ch. 1249, Sec. 1.)

11471. Property subject to forfeiture under this division may be seized by any peace officer upon process issued by any court having jurisdiction over the property. Seizure without process may be made if any of the following situations exist:

(a) The seizure is incident to an arrest or a search under a search warrant.

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this division.

(c) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(d) There is probable cause to believe that the property was used or is intended to be used in violation of this division.

(e) Real property subject to forfeiture may not be seized, absent exigent circumstances, without notice to the interested parties and a hearing to determine that seizure is necessary to preserve the property pending the outcome of the proceedings. At the hearing, the prosecution shall bear the burden of establishing that probable cause exists for the forfeiture of the property and that seizure is necessary to preserve the property pending the outcome of the forfeiture proceedings. The court may issue seizure orders pursuant to this section if it finds that seizure is warranted or pendente lite orders pursuant to Section 11492 if it finds that the status quo or value of the property can be preserved without seizure.

(f) Where business records are seized in conjunction with the seizure of property subject to forfeiture, the seizing agency shall, upon request, provide copies of the records to the person, persons, or business

entity from whom such records were seized.

(Amended by Stats. 1994, Ch. 314, Sec. 4. Effective August 19, 1994.)

11471.5. A peace officer making a seizure pursuant to Section 11471 shall notify the Franchise Tax Board where there is reasonable cause to believe that the value of the seized property exceeds five thousand dollars ($5,000).

(Added by Stats. 1987, Ch. 924, Sec. 1.5. Effective September 22, 1987.)

11472. Controlled substances and any device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance, which are possessed in violation of this division, may be seized by any peace officer and in the aid of such seizure a search warrant may be issued as prescribed by law.

(Added by renumbering Section 11473 by Stats. 1980, Ch. 1019.)

11473. (a) All seizures under provisions of this chapter, except seizures of vehicles, boats, or airplanes, as specified in subdivision (e) of Section 11470, or seizures of moneys, negotiable instruments, securities, or other things of value as specified in subdivision (f) of Section 11470, shall, upon conviction of the owner or defendant, be ordered destroyed by the court in which conviction was had.

(b) Law enforcement may request of the court that certain uncontaminated science equipment be relinquished to a school or school district for science classroom education in lieu of destruction.

(Amended by Stats. 1994, Ch. 979, Sec. 2. Effective January 1, 1995.)

11473.5. (a) All seizures of controlled substances, instruments, or paraphernalia used for unlawfully using or administering a controlled substance which are in possession of any city, county, or state official as found property, or as the result of a case in which no trial was had or which has been disposed of by way of dismissal or otherwise than by way of conviction, shall be destroyed by order of the court, unless the court finds that the controlled substances, instruments, or paraphernalia were lawfully possessed by the defendant.

(b) If the court finds that the property was not lawfully possessed by the defendant, law enforcement may request of the court that certain uncontaminated instruments or paraphernalia be relinquished to a school or school district for science classroom education in lieu of destruction.

(Amended by Stats. 1994, Ch. 979, Sec. 3. Effective January 1, 1995.)

11474. A court order for the destruction of controlled substances, instruments, or paraphernalia pursuant to the provisions of Section 11473 or 11473.5 may be carried out by a police or sheriff's department, the Department of Justice, the Department of the California Highway Patrol, or the Department of Alcoholic Beverage Control. The court order shall specify the agency responsible for the destruction. Controlled substances, instruments, or paraphernalia not in the possession of the designated agency at the time the order of the court is issued shall be delivered to the designated agency for destruction in compliance with the order.

(Amended by Stats. 1999, Ch. 787, Sec. 7. Effective January 1, 2000.)

11475. Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this division are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(Added by Stats. 1972, Ch. 1407.)

11476. Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this division, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(Added by Stats. 1972, Ch. 1407.)

11477. The failure, upon demand by a peace officer of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(Amended by Stats. 1980, Ch. 1019.)

11478. Marijuana may be provided by the Attorney General to the heads of research projects which have been registered by the Attorney General, and which have been approved by the research advisory panel pursuant to Section 11480.

The head of the approved research project shall personally receipt for such quantities of marijuana and shall make a record of their disposition. The receipt and record shall be retained by the Attorney General. The head of the approved research project shall also, at intervals and in the manner required by the research advisory panel, report the progress or conclusions of the research project.

(Amended by Stats. 1980, Ch. 1019.)

11479. Notwithstanding Sections 11473 and 11473.5, at any time after seizure by a law enforcement agency of a suspected controlled substance, that amount in excess of 10 pounds in gross weight may be destroyed without a court order by the chief of the law enforcement agency or a designated subordinate. Destruction shall not take place pursuant to this section until all of the following requirements are satisfied:

(a) At least five random and representative samples have been taken, for evidentiary purposes, from the total amount of suspected controlled substances to be destroyed. These samples shall be in addition to the 10 pounds required above. When the suspected controlled substance consists of growing or harvested marijuana plants, at least one 10 pound sample (which may include stalks, branches, or leaves) and five representative samples consisting of leaves or buds shall be retained for evidentiary purposes from the total amount of suspected controlled substances to be destroyed.

(b) Photographs have been taken which reasonably demonstrate the total amount of the suspected controlled substance to be destroyed.

(c) The gross weight of the suspected controlled substance has been determined, either by actually weighing the suspected controlled substance or by estimating that weight after dimensional measurement of the total suspected controlled substance.

(d) The chief of the law enforcement agency has determined that it is not reasonably possible to preserve the suspected controlled substance in place, or to remove the suspected controlled substance to another location. In making this determination, the difficulty of transporting and storing the suspected controlled substance to another site and the storage facilities may be taken into consideration.

Subsequent to any destruction of a suspected controlled substance pursuant to this section, an affidavit shall be filed within 30 days in the court which has jurisdiction over any pending criminal proceedings pertaining to that suspected controlled substance, reciting the applicable information required by subdivisions (a), (b), (c), and (d) together with information establishing the location of the suspected controlled substance, and specifying the date and time of the destruction. In the event that there are no criminal proceedings pending which pertain to that suspected controlled substance, the affidavit may be filed in any court within the county which would have jurisdiction over a person against whom those criminal charges might be filed.

(Amended by Stats. 2002, Ch. 787, Sec. 3. Effective January 1, 2003.)

11479.1. (a) Notwithstanding the provisions of Sections 11473, 11473.5, and 11479, at any time after seizure by a law enforcement agency and identification by a forensic chemist or criminalist of phencyclidine, or an analog thereof, that amount in excess of one gram of a crystalline substance containing phencyclidine or its analog, 10 milliliters of a liquid substance containing phencyclidine or its analog, two grams of plant material containing phencyclidine or its analog, or five hand-rolled cigarettes treated with phencyclidine or its analog, may be destroyed without a court order by the chief of the law enforcement agency or a designated subordinate. Destruction shall not take place pursuant to this section until all of the following requirements are satisfied:

(1) At least one gram of a crystalline substance containing phencyclidine or its analog, 10 milliliters of a liquid substance containing phencyclidine or its analog, two grams of plant material containing phencyclidine or its analog, or five hand-rolled cigarettes treated with

phencyclidine or its analog have been taken as samples from the phencyclidine or analog to be destroyed.

(2) Photographs have been taken which reasonably demonstrate the total amount of phencyclidine or its analog to be destroyed.

(3) The gross weight of the phencyclidine or its analog has been determined by actually weighing the phencyclidine or analog.

(b) Subsequent to any destruction of phencyclidine or its analog, an affidavit shall be filed within 30 days in the court which has jurisdiction over any pending criminal proceedings pertaining to that phencyclidine or its analog, reciting the applicable information required by paragraphs (1), (2), and (3) of subdivision (a), together with information establishing the location of the phencyclidine or analog and specifying the date and time of the destruction. In the event that there are no criminal proceedings pending which pertain to that phencyclidine or analog, the affidavit may be filed in any court within the county which would have jurisdiction over a person against whom these criminal charges might be filed.

(Amended by Stats. 2002, Ch. 787, Sec. 4. Effective January 1, 2003.)

11479.2. Notwithstanding the provisions of Sections 11473, 11473.5, 11474, 11479, and 11479.1, at any time after seizure by a law enforcement agency of a suspected controlled substance, except marijuana, any amount, as determined by the court, in excess of 57 grams may, by court order, be destroyed by the chief of a law enforcement agency or a designated subordinate. Destruction shall not take place pursuant to this section until all of the following requirements are satisfied:

(a) At least five random and representative samples have been taken, for evidentiary purposes, from the total amount of suspected controlled substances to be destroyed. Those samples shall be in addition to the 57 grams required above and each sample shall weigh not less than one gram at the time the sample is collected.

(b) Photographs have been taken which reasonably demonstrate the total amount of the suspected controlled substance to be destroyed.

(c) The gross weight of the suspected controlled substance has been determined, either by actually weighing the suspected controlled substance or by estimating such weight after dimensional measurement of the total suspected controlled substance.

(d) In cases involving controlled substances suspected of containing cocaine or methamphetamine, an analysis has determined the qualitative and quantitative nature of the suspected controlled substance.

(e) The law enforcement agency with custody of the controlled substance sought to be destroyed has filed a written motion for the order of destruction in the court which has jurisdiction over any pending criminal proceeding in which a defendant is charged by accusatory pleading with a crime specifically involving the suspected controlled substance sought to be destroyed. The motion shall, by affidavit of the chief of the law enforcement agency or designated subordinate, recite the applicable information required by subdivisions (a), (b), (c), and (d), together with information establishing the location of the suspected controlled substance and the title of any pending criminal proceeding as defined in this subdivision. The motion shall bear proof of service upon all parties to any pending criminal proceeding. No motion shall be made when a defendant is without counsel until the defendant has entered his or her plea to the charges.

(f) The order for destruction shall issue pursuant to this section upon the motion and affidavit in support of the order, unless within 20 days after application for the order, a defendant has requested, in writing, a hearing on the motion. Within 10 days after the filing of that request, or a longer period of time upon good cause shown by either party, the court shall conduct a hearing on the motion in which each party to the motion for destruction shall be permitted to call and examine witnesses. The hearing shall be recorded. Upon conclusion of the hearing, if the court finds that the defendant would not be prejudiced by the destruction, it shall grant the motion and make an order for destruction. In making the order, the court shall ensure that the representative samples to be retained are of sufficient quantities to allow for qualitative analyses by both the prosecution and the defense. Any order for destruction pursuant to this section shall include the applicable information required by subdivisions (a), (b), (c), (d), and (e) and the name of the agency responsible for the destruction. Unless waived, the order shall provide for a 10-day delay prior to destruction in order to allow expert analysis of the controlled substance by the defense.

Subsequent to any destruction of a suspected controlled substance pursuant to this section, an affidavit shall be filed within 30 days in the court which ordered destruction stating the location of the retained, suspected controlled substance and specifying the date and time of destruction.

This section does not apply to seizures involving hazardous chemicals or controlled substances in mixture or combination with hazardous chemicals.

(Amended by Stats. 1986, Ch. 1031, Sec. 3.)

11479.5. (a) Notwithstanding Sections 11473 and 11473.5, at any time after seizure by a law enforcement agency of a suspected hazardous chemical, the chemical's container, or any item contaminated with a hazardous substance believed to have been used or intended to have been used in the unlawful manufacture of controlled substances, that amount in excess of one fluid ounce if liquid, or one avoirdupois ounce if solid, of each different type of suspected hazardous chemical, its container, and any item contaminated with a hazardous substance may be disposed of without a court order by the seizing agency. For the purposes of this section, "hazardous chemical" means any material that is believed by the chief of the law enforcement agency, or his or her designee, to be toxic, carcinogenic, explosive, corrosive, or flammable, and that is believed by the chief of the law enforcement agency, or his or her designee, to have been used or intended to have been used in the unlawful manufacture of controlled substances.

(b) Destruction pursuant to this section of suspected hazardous chemicals or suspected hazardous chemicals and controlled substances in combination, or the chemical containers and items contaminated with a hazardous substance, shall not take place until all of the following requirements are met:

(1) At least a one ounce sample is taken from each different type of suspected hazardous chemical to be destroyed.

(2) At least a one ounce sample has been taken from each container of a mixture of a suspected hazardous chemical with a suspected controlled substance.

(3) Photographs have been taken which reasonably demonstrate the total amount of suspected controlled substances and suspected hazardous chemicals to be destroyed.

(4) The gross weight or volume of the suspected hazardous chemical seized has been determined.

(5) Photographs have been taken of the chemical containers and items contaminated with a hazardous substance that reasonably demonstrate their size.

(c) Subsequent to any disposal of a suspected hazardous chemical, its container, or any item contaminated with a hazardous substance pursuant to this section, the law enforcement agency involved shall maintain records concerning the details of its compliance with, and reciting the applicable information required by paragraphs (1), (2), (3), (4), and (5) of subdivision (b), together with the information establishing the location of the suspected hazardous chemical, its container, and any item contaminated with a hazardous substance, and specifying the date and time of the disposal.

(d) (1) Subsequent to any destruction of a suspected controlled substance in combination with a hazardous chemical or any item contaminated with a hazardous substance pursuant to this section, an affidavit containing applicable information required by paragraphs (1), (2), (3), (4), and (5) of subdivision (b) shall be filed within 30 days in the court that issued the search warrant.

(2) If the disposed materials were seized without a warrant, an affidavit containing applicable information required by paragraphs (1), (2), (3), (4), and (5) of subdivision (b) shall be filed in the court that has jurisdiction over any criminal proceedings pertaining to the suspected controlled substance after the criminal proceedings are initiated.

(e) A law enforcement agency responsible for the disposal of any hazardous chemical shall comply with the provisions of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, as well as all applicable state and federal statutes and regulations.

(Amended by Stats. 2002, Ch. 443, Sec. 1. Effective January 1, 2003.)

11480. The Legislature finds that there is a need to encourage further research into the nature and effects of marijuana and hallucinogenic drugs and to coordinate research efforts on such subjects.

There is a Research Advisory Panel which consists of a representative of the State Department of Health Services, a representative of the California State Board of Pharmacy, a representative of the Attorney General, a representative of the University of California who shall be a pharmacologist, a physician, or a person holding a doctorate degree in the

health sciences, a representative of a private university in this state who shall be a pharmacologist, a physician, or a person holding a doctorate degree in the health sciences, a representative of a statewide professional medical society in this state who shall be engaged in the private practice of medicine and shall be experienced in treating controlled substance dependency, a representative appointed by and serving at the pleasure of the Governor who shall have experience in drug abuse, cancer, or controlled substance research and who is either a registered nurse, licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, or other health professional. The Governor shall annually designate the private university and the professional medical society represented on the panel. Members of the panel shall be appointed by the heads of the entities to be represented, and they shall serve at the pleasure of the appointing power.

The Research Advisory Panel shall appoint two special members to the Research Advisory Panel, who shall serve at the pleasure of the Research Advisory Panel only during the period Article 6 (commencing with Section 11260) of Chapter 5 remains effective. The additional members shall be physicians and surgeons, and who are board certified in oncology, ophthalmology, or psychiatry.

The panel shall annually select a chairman from among its members.

The panel may hold hearings on, and in other ways study, research projects concerning marijuana or hallucinogenic drugs in this state. Members of the panel shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with the performance of their duties.

The panel may approve research projects, which have been registered by the Attorney General, into the nature and effects of marijuana or hallucinogenic drugs, and shall inform the Attorney General of the head of the approved research projects which are entitled to receive quantities of marijuana pursuant to Section 11478.

The panel may withdraw approval of a research project at any time, and when approval is withdrawn shall notify the head of the research project to return any quantities of marijuana to the Attorney General.

The panel shall report annually to the Legislature and the Governor those research projects approved by the panel, the nature of each research project, and, where available, the conclusions of the research project.

(Amended by Stats. 1983, Ch. 101, Sec. 111.)

11481. The Research Advisory Panel may hold hearings on, and in other ways study, research projects concerning the treatment of abuse of controlled substances.

The panel may approve research projects, which have been registered by the Attorney General, concerning the treatment of abuse of controlled substances and shall inform the chief of such approval. The panel may withdraw approval of a research project at any time and when approval is withdrawn shall so notify the chief.

The panel shall, annually and in the manner determined by the panel, report to the Legislature and the Governor those research projects approved by the panel, the nature of each research project, and where available, the conclusions of the research project.

(Added by Stats. 1972, Ch. 1407.)

11483. No provision of this division shall be construed to prohibit the establishment and effective operation of a narcotic treatment program licensed pursuant to Article 4 (commencing with Section 11885) of Chapter 1 of Part 3 of Division 10.5.

(Amended by Stats. 1995, Ch. 455, Sec. 12. Effective September 5, 1995.)

11485. Any peace officer of this state who, incident to a search under a search warrant issued for a violation of Section 11358 with respect to which no prosecution of a defendant results, seizes personal property suspected of being used in the planting, cultivation, harvesting, drying, processing, or transporting of marijuana, shall, if the seized personal property is not being held for evidence or destroyed as contraband, and if the owner of the property is unknown or has not claimed the property, provide notice regarding the seizure and manner of reclamation of the property to any owner or tenant of real property on which the property was seized. In addition, this notice shall be posted at the location of seizure and shall be published at least once in a newspaper of general circulation in the county in which the property was seized. If, after 90 days following the first publication of the notice, no owner appears and proves his or her ownership, the seized personal property shall be deemed to be abandoned and may be disposed of by sale to the public at public auction as set forth in Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code, or may be disposed of by transfer to a government agency or community service organization. Any profit from the sale or transfer of the property shall be expended for investigative services with respect to crimes involving marijuana.

(Added by Stats. 1985, Ch. 1563, Sec. 2. Effective October 2, 1985.)

11488. (a) Any peace officer of this state, subsequent to making or attempting to make an arrest for a violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 of this code, or Section 182 of the Penal Code insofar as the offense involves manufacture, sale, purchase for the purpose of sale, possession for sale or offer to manufacture or sell, or conspiracy to commit one of those offenses, may seize any item subject to forfeiture under subdivisions (a) to (f), inclusive, of Section 11470. The peace officer shall also notify the Franchise Tax Board of a seizure where there is reasonable cause to believe that the value of the seized property exceeds five thousand dollars ($5,000).

(b) Receipts for property seized pursuant to this section shall be delivered to any person out of whose possession such property was seized, in accordance with Section 1412 of the Penal Code. In the event property seized was not seized out of anyone's possession, receipt for the property shall be delivered to the individual in possession of the premises at which the property was seized.

(c) There shall be a presumption affecting the burden of proof that the person to whom a receipt for property was issued is the owner thereof. This presumption may, however, be rebutted at the forfeiture hearing specified in Section 11488.5.

(Repealed and added by Stats. 1994, Ch. 314, Sec. 9. Effective August 19, 1994. Note: Repeal of former Section 11488 (already repealed) was for clarification purposes stated in Sec. 25 of Ch. 314.)

11488.1. Property seized pursuant to Section 11488 may, where appropriate, be held for evidence. The Attorney General or the district attorney for the jurisdiction involved shall institute and maintain the proceedings.

(Amended by Stats. 1994, Ch. 314, Sec. 10. Effective August 19, 1994.)

11488.2. Within 15 days after the seizure, if the peace officer does not hold the property seized pursuant to Section 11488 for evidence or if the law enforcement agency for which the peace officer is employed does not refer the matter in writing for the institution of forfeiture proceedings by the Attorney General or the district attorney pursuant to Section 11488.1, the officer shall comply with any notice to withhold issued with respect to the property by the Franchise Tax Board. If no notice to withhold has been issued with respect to the property by the Franchise Tax Board, the officer shall return the property to the individual designated in the receipt therefor or if the property is a vehicle, boat, or airplane, it shall be returned to the registered owner.

(Amended by Stats. 1990, Ch. 1200, Sec. 3.)

11488.4. (a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the defendant has been charged with the underlying criminal offense or in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located.

A petition of forfeiture under this subdivision shall be filed as soon as practicable, but in any case within one year of the seizure of the property which is subject to forfeiture, or as soon as practicable, but in any case within one year of the filing by the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier.

(b) Physical seizure of assets shall not be necessary in order to

have that particular asset alleged to be forfeitable in a petition under this section. The prosecuting attorney may seek protective orders for any asset pursuant to Section 11492.

(c) The Attorney General or district attorney shall make service of process regarding this petition upon every individual designated in a receipt issued for the property seized. In addition, the Attorney General or district attorney shall cause a notice of the seizure, if any, and of the intended forfeiture proceeding, as well as a notice stating that any interested party may file a verified claim with the superior court of the county in which the property was seized or if the property was not seized, a notice of the initiation of forfeiture proceedings with respect to any interest in the property seized or subject to forfeiture, to be served by personal delivery or by registered mail upon any person who has an interest in the seized property or property subject to forfeiture other than persons designated in a receipt issued for the property seized. Whenever a notice is delivered pursuant to this section, it shall be accompanied by a claim form as described in Section 11488.5 and directions for the filing and service of a claim.

(d) An investigation shall be made by the law enforcement agency as to any claimant to a vehicle, boat, or airplane whose right, title, interest, or lien is of record in the Department of Motor Vehicles or appropriate federal agency. If the law enforcement agency finds that any person, other than the registered owner, is the legal owner thereof, and such ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, boat, or airplane, it shall forthwith send a notice to the legal owner at his or her address appearing on the records of the Department of Motor Vehicles or appropriate federal agency.

(e) When a forfeiture action is filed, the notices shall be published once a week for three successive weeks in a newspaper of general circulation in the county where the seizure was made or where the property subject to forfeiture is located.

(f) All notices shall set forth the time within which a claim of interest in the property seized or subject to forfeiture is required to be filed pursuant to Section 11488.5.

(g) Nothing contained in this chapter shall preclude a person, other than a defendant, claiming an interest in property actually seized from moving for a return of property if that person can show standing by proving an interest in the property not assigned subsequent to the seizure or filing of the forfeiture petition.

(h) If there is an underlying or related criminal action, a defendant may move for the return of the property on the grounds that there is not probable cause to believe that the property is forfeitable pursuant to subdivisions (a) to (g), inclusive, of Section 11470 and is not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter. The motion may be made prior to, during, or subsequent to the preliminary examination. If made subsequent to the preliminary examination, the Attorney General or district attorney may submit the record of the preliminary hearing to establish that probable cause exists to believe that the underlying or related criminal violations have occurred.

Within 15 days after a defendant's motion is granted, the people may file a petition for a writ of mandate or prohibition seeking appellate review of the ruling.

(i) (1) With respect to property described in subdivisions (e) and (g) of Section 11470 for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought was used, or intended to be used, to facilitate a violation of one of the offenses enumerated in subdivision (f) or (g) of Section 11470.

(2) In the case of property described in subdivision (f) of Section 11470, except cash, negotiable instruments, or other cash equivalents of a value of not less than twenty-five thousand dollars ($25,000), for which forfeiture is sought and as to which forfeiture is contested, the state or local governmental entity shall have the burden of proving beyond a reasonable doubt that the property for which forfeiture is sought meets the criteria for forfeiture described in subdivision (f) of Section 11470.

(3) In the case of property described in paragraphs (1) and (2), a judgment of forfeiture requires as a condition precedent thereto, that a defendant be convicted in an underlying or related criminal action of an offense specified in subdivision (f) or (g) of Section 11470 which offense occurred within five years of the seizure of the property subject to forfeiture or within five years of the notification of intention to seek forfeiture. If the defendant is found guilty of the underlying or related criminal offense, the issue of forfeiture shall be tried before the same jury, if the trial was by jury, or tried before the same court, if trial was by court, unless waived by all parties. The issue of forfeiture shall be bifurcated from the criminal trial and tried after conviction unless waived by all the parties.

(4) In the case of property described in subdivision (f) of Section 11470 that is cash or negotiable instruments of a value of not less than twenty-five thousand dollars ($25,000), the state or local governmental entity shall have the burden of proving by clear and convincing evidence that the property for which forfeiture is sought is such as is described in subdivision (f) of Section 11470. There is no requirement for forfeiture thereof that a criminal conviction be obtained in an underlying or related criminal offense.

(5) If there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no underlying or related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial.

(j) The Attorney General or the district attorney of the county in which property is subject to forfeiture under Section 11470 may, pursuant to this subdivision, order forfeiture of personal property not exceeding twenty-five thousand dollars ($25,000) in value. The Attorney General or district attorney shall provide notice of proceedings under this subdivision pursuant to subdivisions (c), (d), (e), and (f), including:

(1) A description of the property.

(2) The appraised value of the property.

(3) The date and place of seizure or location of any property not seized but subject to forfeiture.

(4) The violation of law alleged with respect to forfeiture of the property.

(5) The instructions for filing and serving a claim with the Attorney General or the district attorney pursuant to Section 11488.5 and time limits for filing a claim and claim form.

If no claims are timely filed, the Attorney General or the district attorney shall prepare a written declaration of forfeiture of the subject property to the state and dispose of the property in accordance with Section 11489. A written declaration of forfeiture signed by the Attorney General or district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited property. The prosecuting agency ordering forfeiture pursuant to this subdivision shall provide a copy of the declaration of forfeiture to any person listed in the receipt given at the time of seizure and to any person personally served notice of the forfeiture proceedings.

If a claim is timely filed, then the Attorney General or district attorney shall file a petition of forfeiture pursuant to this section within 30 days of the receipt of the claim. The petition of forfeiture shall then proceed pursuant to other provisions of this chapter, except that no additional notice need be given and no additional claim need be filed.

(k) If in any underlying or related criminal action or proceeding, in which a petition for forfeiture has been filed pursuant to this section, and a criminal conviction is required before a judgment of forfeiture may be entered, the defendant willfully fails to appear as required, there shall be no requirement of a criminal conviction as a prerequisite to forfeiture. In these cases, forfeiture shall be ordered as against the defendant and judgment entered upon default, upon application of the state or local governmental entity. In its application for default, the state or local governmental entity shall be required to give notice to the defendant's attorney of record, if any, in the underlying or related criminal action, and to make a showing of due diligence to locate the defendant. In moving for a default judgment pursuant to this subdivision, the state or local governmental entity shall be required to establish a prima facie case in support of its petition for forfeiture.

(Repealed and added by Stats. 1994, Ch. 314, Sec. 13. Effective August 19, 1994. Note: Repeal of former Section 11488.4 (already repealed) was for clarification purposes stated in Sec. 25 of Ch. 314.)

11488.5. (a) (1) Any person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 30 days after receipt of actual notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized or, if there was no seizure, in which the property is

located, a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim. The Judicial Council shall develop and approve official forms for the verified claim that is to be filed pursuant to this section. The official forms shall be drafted in nontechnical language, in English and in Spanish, and shall be made available through the office of the clerk of the appropriate court.

(2) Any person who claims that the property was assigned to him or to her prior to the seizure or notification of pending forfeiture of the property under this chapter, whichever occurs first, shall file a claim with the court and prosecuting agency pursuant to Section 11488.5 declaring an interest in that property and that interest shall be adjudicated at the forfeiture hearing. The property shall remain under control of the law enforcement or prosecutorial agency until the adjudication of the forfeiture hearing. Seized property shall be protected and its value shall be preserved pending the outcome of the forfeiture proceedings.

(3) The clerk of the court shall not charge or collect a fee for the filing of a claim in any case in which the value of the respondent property as specified in the notice is five thousand dollars ($5,000) or less. If the value of the property, as specified in the notice, is more than five thousand dollars ($5,000), the clerk of the court shall charge the filing fee specified in Section 70611 of the Government Code.

(4) The claim of a law enforcement agency to property seized pursuant to Section 11488 or subject to forfeiture shall have priority over a claim to the seized or forfeitable property made by the Franchise Tax Board in a notice to withhold issued pursuant to Section 18817 or 26132 of the Revenue and Taxation Code.

(b) (1) If at the end of the time set forth in subdivision (a) there is no claim on file, the court, upon motion, shall declare the property seized or subject to forfeiture pursuant to subdivisions (a) to (g), inclusive, of Section 11470 forfeited to the state. In moving for a default judgment pursuant to this subdivision, the state or local governmental entity shall be required to establish a prima facie case in support of its petition for forfeiture.

(2) The court shall order the forfeited property to be distributed as set forth in Section 11489.

(c) (1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases. Notice of the hearing shall be given in the same manner as provided in Section 11488.4. Such a verified claim or a claim filed pursuant to subdivision (j) of Section 11488.4 shall not be admissible in the proceedings regarding the underlying or related criminal offense set forth in subdivision (a) of Section 11488.

(2) The hearing shall be by jury, unless waived by consent of all parties.

(3) The provisions of the Code of Civil Procedure shall apply to proceedings under this chapter unless otherwise inconsistent with the provisions or procedures set forth in this chapter. However, in proceedings under this chapter, there shall be no joinder of actions, coordination of actions, except for forfeiture proceedings, or cross-complaints, and the issues shall be limited strictly to the questions related to this chapter.

(d) (1) At the hearing, the state or local governmental entity shall have the burden of establishing, pursuant to subdivision (i) of Section 11488.4, that the owner of any interest in the seized property consented to the use of the property with knowledge that it would be or was used for a purpose for which forfeiture is permitted, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4.

(2) No interest in the seized property shall be affected by a forfeiture decree under this section unless the state or local governmental entity has proven that the owner of that interest consented to the use of the property with knowledge that it would be or was used for the purpose charged. Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4.

(e) The forfeiture hearing shall be continued upon motion of the prosecution or the defendant until after a verdict of guilty on any criminal charges specified in this chapter and pending against the defendant have been decided. The forfeiture hearing shall be conducted in accordance with Sections 190 to 222.5, inclusive, Sections 224 to 234, inclusive, Section 237, and Sections 607 to 630, inclusive, of the Code of Civil Procedure if a trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure if by the court. Unless the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, the court shall order the seized property released to the person it determines is entitled thereto.

If the court or jury finds that the seized property was used for a purpose for which forfeiture is permitted, but does not find that a person claiming an interest therein, to which the court has determined he or she is entitled, had actual knowledge that the seized property would be or was used for a purpose for which forfeiture is permitted and consented to that use, the court shall order the seized property released to the claimant.

(f) All seized property which was the subject of a contested forfeiture hearing and which was not released by the court to a claimant shall be declared by the court to be forfeited to the state, provided the burden of proof required pursuant to subdivision (i) of Section 11488.4 has been met. The court shall order the forfeited property to be distributed as set forth in Section 11489.

(g) All seized property which was the subject of the forfeiture hearing and which was not forfeited shall remain subject to any order to withhold issued with respect to the property by the Franchise Tax Board.

(Amended by Stats. 2008, Ch. 214, Sec. 1. Effective January 1, 2009.)

11488.6. (a) If the court or jury at the forfeiture hearing finds that the property is forfeitable pursuant to Section 11470, but does not find that a person having a valid ownership interest, which includes, but is not limited to, a valid lien, mortgage, security interest, or interest under a conditional sales contract acquired such interest with actual knowledge that the property was to be used for a purpose for which forfeiture is permitted, and the amount due such person is less than the appraised value of the property, such person may pay to the state or the local governmental entity which initiated the forfeiture proceeding the amount of the equity, which shall be deemed to be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon such payment, the state or local governmental entity shall relinquish all claims to the property. If the holder of the interest elects not to make such payment to the state or local governmental entity, the property shall be deemed forfeited to the state or local governmental entity and the ownership certificate shall be forwarded. The appraised value shall be determined as of the date judgment is entered on a wholesale basis either by agreement between the legal owner and the governmental entity involved, or if they cannot agree, then by the inheritance tax appraiser for the county in which the action is brought. A person having a valid ownership interest, which includes, but is not limited to, a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest in accordance with the provisions of Section 11489.

(b) If the amount due to a person having a valid ownership interest, which includes, but is not limited to, a valid lien, mortgage, security interest, or interest under a conditional sales contract is less than the value of the property and the person elects not to make payment to the governmental entity, the property shall be sold at public auction by the Department of General Services or by the local governmental entity which shall provide notice of such sale by one publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place.

(c) The proceeds of sale pursuant to subdivision (b) shall be first distributed in accordance with the provisions of Section 11489.

(Amended by Stats. 1994, Ch. 314, Sec. 16. Effective August 19, 1994.)

11489. Notwithstanding Section 11502 and except as otherwise provided in Section 11473, in all cases where the property is seized pursuant to this chapter and forfeited to the state or local governmental entity and, where necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the amount of his or her interest in the property, when the court declaring the forfeiture orders a distribution to that person.

(b) The balance, if any, to accumulate, and to be distributed and transferred quarterly in the following manner:

(1) To the state agency or local governmental entity for all expenditures made or incurred by it in connection with the sale of the

property, including expenditures for any necessary costs of notice required by Section 11488.4, and for any necessary repairs, storage, or transportation of any property seized under this chapter.

(2) The remaining funds shall be distributed as follows:

(A) Sixty-five percent to the state, local, or state and local law enforcement entities that participated in the seizure distributed so as to reflect the proportionate contribution of each agency.

(i) Fifteen percent of the funds distributed pursuant to this subparagraph shall be deposited in a special fund maintained by the county, city, or city and county of any agency making the seizure or seeking an order for forfeiture. This fund shall be used for the sole purpose of funding programs designed to combat drug abuse and divert gang activity, and shall wherever possible involve educators, parents, community-based organizations and local businesses, and uniformed law enforcement officers. Those programs that have been evaluated as successful shall be given priority. These funds shall not be used to supplant any state or local funds that would, in the absence of this clause, otherwise be made available to the programs.

It is the intent of the Legislature to cause the development and continuation of positive intervention programs for high-risk elementary and secondary schoolage students. Local law enforcement should work in partnership with state and local agencies and the private sector in administering these programs.

(ii) The actual distribution of funds set aside pursuant to clause (i) is to be determined by a panel consisting of the sheriff of the county, a police chief selected by the other chiefs in the county, and the district attorney and the chief probation officer of the county.

(B) Ten percent to the prosecutorial agency which processes the forfeiture action.

(C) Twenty-four percent to the General Fund. Notwithstanding Section 13340 of the Government Code, the moneys are hereby continuously appropriated to the General Fund. Commencing January 1, 1995, all moneys deposited in the General Fund pursuant to this subparagraph, in an amount not to exceed ten million dollars ($10,000,000), shall be made available for school safety and security, upon appropriation by the Legislature, and shall be disbursed pursuant to Senate Bill 1255 of the 1993-94 Regular Session, as enacted.

(D) One percent to a private nonprofit organization composed of local prosecutors which shall use these funds for the exclusive purpose of providing a statewide program of education and training for prosecutors and law enforcement officers in ethics and the proper use of laws permitting the seizure and forfeiture of assets under this chapter.

(c) Notwithstanding Item 0820-101-469 of the Budget Act of 1985 (Chapter 111 of the Statutes of 1985), all funds allocated to the Department of Justice pursuant to subparagraph (A) of paragraph (2) of subdivision (b) shall be deposited into the Department of Justice Special Deposit Fund-State Asset Forfeiture Account and used for the law enforcement efforts of the state or for state or local law enforcement efforts pursuant to Section 11493.

All funds allocated to the Department of Justice by the federal government under its Federal Asset Forfeiture program authorized by the Comprehensive Crime Control Act of 1984 may be deposited directly into the Narcotics Assistance and Relinquishment by Criminal Offender Fund and used for
state and local law enforcement efforts pursuant to Section 11493.

Funds which are not deposited pursuant to the above paragraph shall be deposited into the Department of Justice Special Deposit Fund-Federal Asset Forfeiture Account.

(d) All the funds distributed to the state or local governmental entity pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (b) shall not supplant any state or local funds that would, in the absence of this subdivision, be made available to support the law enforcement and prosecutorial efforts of these agencies.

The court shall order the forfeiture proceeds distributed to the state, local, or state and local governmental entities as provided in this section.

For the purposes of this section, "local governmental entity" means any city, county, or city and county in this state.

(e) This section shall become operative on January 1, 1994.

(Amended by Stats. 1997, Ch. 241, Sec. 3. Effective January 1, 1998. Note: Operative date in text relates to a prior version.)

11490. The provisions of this division relative to forfeiture of vehicles, boats, or airplanes shall not apply to a common carrier, or to an employee acting within the scope of his employment in the enforcement of this division.

(Added by renumbering Section 11498 by Stats. 1983, Ch. 948, Sec. 29.)

11491. Nothing in this chapter shall be construed to extend or change decisional law as it relates to the topic of search and seizure.

(Added by renumbering Section 11499 by Stats. 1983, Ch. 948, Sec. 30.)

11492. (a) Concurrent with, or subsequent to, the filing of the petition, the prosecuting agency may move the superior court for the following pendente lite orders to preserve the status quo or value of the property alleged in the petition for forfeiture.

(1) An injunction to restrain all interested parties and enjoin them from transferring, encumbering, hypothecating, or otherwise disposing of that property.

(2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that the property may be maintained and preserved.

(3) Order an interlocutory sale of the property named in the petition when the property is liable to perish, to waste, or to be significantly reduced in value, or when the expenses of maintaining the property are disproportionate to the value thereof, and the proceeds thereof shall be deposited with the court or as directed by the court pending determination of the forfeiture proceeding.

(b) No preliminary injunction may be granted, receiver appointed, or interlocutory sale ordered without notice to the interested parties and a hearing to determine that the order is necessary to preserve the property named in the petition, pending the outcome of the proceedings, and that there is probable cause to believe that the property is subject to forfeiture under Section 11470. However, a temporary restraining order may issue pending that hearing pursuant to the provisions of Section 527 of the Code of Civil Procedure.

(c) Notwithstanding any other provision of law, the court in granting these motions may order a surety bond or undertaking to preserve the property interests of the interested parties.

(Amended by Stats. 1997, Ch. 241, Sec. 4. Effective January 1, 1998.)

11493. There is hereby created in the General Fund the Narcotics Assistance and Relinquishment by Criminal Offender Fund. The fund shall be administered by an advisory committee which shall be appointed by the Attorney General and which shall be comprised of three police chiefs, three sheriffs, two district attorneys, one private citizen, and an official of the Department of Justice who shall serve as the executive officer.

The money in the fund shall be available, upon appropriation by the Legislature, for distribution by the advisory committee to local and state law enforcement agencies in support of general narcotic law enforcement efforts.

(Amended by Stats. 2007, Ch. 176, Sec. 61. Effective August 24, 2007.)

11494. In the case of any property seized or forfeiture proceeding initiated before January 1, 1994, the proceeding to forfeit the property and the distribution of any forfeited property shall be subject to the provisions of this chapter in effect on December 31, 1993, as if those sections had not been repealed, replaced, or amended.

(Repealed and added by Stats. 1994, Ch. 314, Sec. 22. Effective August 19, 1994.)

11495. (a) The funds received by the law enforcement agencies under Section 11489 shall be deposited into an account maintained by the Controller, county auditor, or city treasurer. These funds shall be distributed to the law enforcement agencies at their request. The Controller, auditor, or treasurer shall maintain a record of these disbursements which records shall be open to public inspection, subject to the privileges contained in Sections 1040, 1041, and 1042 of the Evidence Code.

(b) Upon request of the governing body of the jurisdiction in which the distributions are made, the Controller, auditor, or treasurer shall conduct an audit of these funds and their use. In the case of the state, the governing body shall be the Legislature.

(c) Each year, the Attorney General shall publish a report which sets forth the following information for the state, each county, each city, and each city and county:

(1) The number of forfeiture actions initiated.

(2) The number of cases and the administrative number or court docket number of each case for which forfeiture was ordered or declared.

(3) The value of the assets forfeited.

(4) The recipients of the forfeited assets, the amounts received, and the date of the disbursement.

(d) The Attorney General shall develop administrative guidelines for the collection and publication of the information required in subdivision (c).

(e) The Attorney General's report shall cover the calendar year and shall be made no later than March 1 of each year beginning with the year after the enactment of this law.

(Added by Stats. 1994, Ch. 314, Sec. 23. Effective August 19, 1994.)

HEALTH AND SAFETY CODE

DIVISION 20, CHAPTER 6.5

CHAPTER 6.5. HAZARDOUS WASTE CONTROL

(Chapter 6.5 added by Stats. 1972, Ch. 1236.)

Article 1. Findings and Declarations

(Article 1 added by Stats. 1972, Ch. 1236.)

25100. The Legislature finds that:

(a) Increasing quantities of hazardous wastes are being generated in the state, for which the generators of the hazardous waste must provide safe disposal.

(b) Long-term threats to public health and to air and water quality are posed by the landfill disposal of many types of untreated hazardous wastes and by the inappropriate handling, storage, use, and disposal of hazardous wastes.

(c) Extensive technology exists for the safe treatment, neutralization, and destruction of many types of hazardous wastes prior to disposal.

(d) Numerous opportunities exist to reduce the amount of hazardous waste generated in the state and to conserve resources through the application of existing source reduction and recycling technology.

(e) The people of the state face immense costs as a result of improper hazardous waste handling and disposal practices.

(Repealed and added by Stats. 1982, Ch. 89, Sec. 2. Effective

25101. The Legislature therefore declares that:

(a) In order to protect the public health and the environment and to conserve natural resources, it is in the public interest to establish regulations and incentives which ensure that the generators of hazardous waste employ technology and management practices for the safe handling, treatment, recycling, and destruction of their hazardous wastes prior to disposal.

(b) In order to assist the generators of hazardous waste in meeting the responsibility for the safe disposal of hazardous waste it is necessary to establish the Hazardous Waste Management Council.

(c) The Legislature further declares that in order to protect the public of this state and particularly the communities where hazardous wastes are treated and disposed, it is essential to assure full compensation of all people injured or damaged by hazardous wastes. It is therefore necessary that the Hazardous Waste Management Council, created pursuant to Section 25206, make recommendations regarding a system of insurance and mechanisms establishing liability to achieve this result, as required by subdivision (e)

(d) It is in the best interest of the health and safety of the people of the State of California for the state to obtain and maintain authorization to administer a state hazardous waste program in lieu of the federal program pursuant to Section 3006 of Public Law 94-580, as amended, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6926). Therefore, it is the intent of the Legislature that the director shall have those powers necessary to secure and maintain interim and final authorization for the state hazardous waste program pursuant to the requirements of Section 3006 of Public Law 94-580, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6926), and to implement such program in lieu of the federal program.

(Repealed and added by Stats. 1982, Ch. 89, Sec. 4. Effective March 2, 1982.)

25103. The Legislature has found that access by the people of this state to public records is a fundamental and necessary right. The Legislature finds that it is necessary to further the public's right of access to public records pertaining to hazardous waste management, information, and cleanup, to assure the fullest opportunity for public participation in permitting and other decisions in order to protect public health and the environment.

(Added by Stats. 1986, Ch. 1140, Sec. 1.)

25105. No provision of this chapter shall limit the authority of any state or local agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce and administer.

(Added by renumbering Section 25172 by Stats. 1982, Ch. 89, Sec. 16. Effective March 2, 1982.)

25106. Except as expressly provided by statute, this chapter does not supersede or modify Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats. 1988, Ch. 1631, Sec. 1.)

Article 2. Definitions

(Article 2 added by Stats. 1972, Ch. 1236.)

25110. Unless expressly incorporated by reference by another statute, the definitions in this article govern only the construction of this chapter. Until terms used in this chapter are defined in either this chapter or in regulations adopted to implement this chapter, the corresponding definitions found in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.) and the regulations adopted pursuant to that act, shall apply to the terms used in this chapter.

(Amended by Stats. 1989, Ch. 1436, Sec. 1. Effective October 2, 1989.)

25110.02. "Acutely hazardous waste" means any hazardous waste classified as an acutely hazardous waste in regulations adopted by the department.

(Added by Stats. 1988, Ch. 1631, Sec. 2.)

25110.1. "Applicant" means any person seeking an original hazardous waste facilities permit, or an original hazardous waste hauler's registration from the department to generate, transport, treat, store, recycle, dispose of or handle hazardous waste.

(Added by Stats. 1986, Ch. 1304, Sec. 2.)

25110.2. "Authorized local health officer" means a local health officer authorized by the department pursuant to Section 25187.7.

(Added by Stats. 1991, Ch. 886, Sec. 2.)

25110.3. "Buffer zone" means an area of land which surrounds a hazardous waste facility and on which certain land uses and activities are restricted to protect the public health and safety and the environment from existing or potential hazards caused by the migration of hazardous waste.

(Added by Stats. 1984, Ch. 1736, Sec. 1. Effective September 30, 1984.)

25110.5. "Business" means the conduct of activity and is not limited to a commercial or proprietary activity.

(Added by Stats. 1977, Ch. 1039.)

25110.8. "Business concern" means any sole proprietorship, corporation, association, firm, partnership, trust, or other form of commercial organization.

(Added by Stats. 1986, Ch. 1304, Sec. 3.)

25110.8.5. "Class I violation" means any of the following:

(a) A deviation from the requirements of this chapter, or any regulation, standard, requirement, or permit or interim status document condition adopted pursuant to this chapter, that is any of the following:

(1) The deviation represents a significant threat to human health or safety or the environment because of one or more of the following:

(A) The volume of the waste.

(B) The relative hazardousness of the waste.

(C) The proximity of the population at risk.

(2) The deviation is significant enough that it could result in a failure to accomplish any of the following:

(A) Ensure that hazardous waste is destined for, and delivered to, an authorized hazardous waste facility.

(B) Prevent releases of hazardous waste or constituents to the environment during the active or postclosure period of facility operation.

(C) Ensure early detection of releases of hazardous waste or constituents.

(D) Ensure adequate financial resources in the case of releases of hazardous waste or constituents.

(E) Ensure adequate financial resources to pay for facility closure.

(F) Perform emergency cleanup operations of, or other corrective actions for, releases.

(b) The deviation is a Class II violation which is a chronic

violation or committed by a recalcitrant violator. "Class II Violation" has the same meaning as defined in Section 66260.10 of Title 22 of the California Code of Regulations.

(Added by Stats. 1994, Ch. 1217, Sec. 2. Effective January 1, 1995.)

25110.9. (a) "Conditionally exempt small quantity treatment" means the operations of a generator conditionally exempted pursuant to subdivision (a) of Section 25201.5.

(b) "Conditionally exempt specified waste stream" means a waste stream treated by a generator conditionally exempted pursuant to subdivision (c) of Section 25201.5.

(Added by Stats. 1993, Ch. 411, Sec. 1. Effective September 21, 1993.)

25110.9.1. (a) "Conditional authorization" means a provision of this chapter, including, but not limited to, Section 25200.3, which provides that a person or activity is deemed to be operating pursuant to a grant of authorization, as required pursuant to subdivision (a) of Section 25201, if the person or activity meets the requirements of that provision.

(b) "Conditional exemption" means a provision of this chapter, including, but not limited to, Sections 25144.6, 25201.5, 25201.5.1, 25201.8, and 25201.13, which provides that a person or activity is exempted from, or is otherwise not subject to, the requirement to obtain a hazardous waste facilities permit or other grant of authorization if the person or activity meets the requirements of that provision.

(Added by Stats. 1995, Ch. 640, Sec. 1. Effective January 1, 1996.)

25110.9.3. For purposes of this chapter, "consolidated manifest" means a hazardous waste manifest used by a milk run transporter to combine hazardous waste shipments from multiple generators on one consolidated manifest pursuant to the procedures in Section 25160.2.

(Added by Stats. 2001, Ch. 319, Sec. 1. Effective January 1, 2002.)

25110.10. (a) "Consolidation site" means a site to which hazardous waste initially collected at a remote site, as defined in Section 25121.3, is transported.

(b) Hazardous waste initially collected at a remote site and subsequently transported to a consolidation site, which is operated by the generator of the hazardous waste, shall be deemed to be generated at the consolidation site for purposes of this chapter if the generator complies with the notification requirements of subdivision (d) and all of the following conditions are met:

(1) The hazardous waste is non-RCRA hazardous waste, or the hazardous waste or its management at the consolidation site is otherwise exempt from, or is not otherwise regulated pursuant to, the federal act.

(2) (A) The hazardous waste is not generated through large spill cleanup activities.

(B) As used in this paragraph, "large spill cleanup" means a spill cleanup operation that generates more than a total of 275 gallons or 2,500 pounds, whichever is greater, of hazardous waste.

(3) The hazardous waste is transported to the consolidation site within 10 days from the date that the generator first begins to actively manage the hazardous waste at the remote site, unless the generator has been granted an extension to the 10-day period. An extension of up to 20 days may be granted by the department, if the generator demonstrates to the department's satisfaction that more than 10 days is required to collect and transport the hazardous waste to the consolidation site solely for the purpose of facilitating effective and efficient removal, collection, or transportation of the hazardous waste.

(4) The hazardous waste is not handled at any interim site en route from the remote site to the consolidation site, except that the hazardous waste may be temporarily held at an interim site pursuant to subdivision (b) of Section 25121.3 and subdivision (e) of Section 25163.3.

(5) At the consolidation site, the hazardous waste is managed at all times in accordance with all applicable requirements of this chapter and the regulations adopted by the department pursuant to this chapter. For purposes of Section 25123.3, the accumulation period shall begin on the day that the hazardous waste arrives at the consolidation site.

(6) Each container of hazardous waste is labeled at the remote site, in accordance with the regulations adopted by the department pertaining to labeling requirements for generators, and the label remains on the container at all times while the hazardous waste is in the container and in the possession of the generator. Each container shall be labeled with the date that the container reaches the consolidation site. If individual containers are placed into a larger container, the labeling information required pursuant to this paragraph and paragraph (6) of subdivision (b) of Section 25121.3 shall also be placed on the outside of the larger container. If the hazardous waste is transferred to another container, the labeling information required pursuant to this paragraph and paragraph (6) of subdivision (b) of Section 25121.3 shall also be placed on the outside of the new container.

(7) The generator maintains at the consolidation site the information specified in paragraphs (1) to (10), inclusive, of subdivision (g) of Section 25163.3 for each shipment of hazardous waste initially collected at a remote site that is received at the consolidation site. This information shall be maintained for at least three years from the date that hazardous waste is received at the consolidation site. For shipments subject to the requirement to be accompanied by a shipment paper pursuant to subdivision (g) of Section 25163.3, the requirements of this paragraph may be fulfilled by maintaining a copy of the shipping paper at the consolidation site.

(c) For purposes of paragraph (1) of subdivision (d) of Section 25123.3, the "initial accumulation point" for hazardous waste initially collected at a remote site and subsequently transported to a consolidation site, in accordance with subdivision (b), shall be deemed to be the location where the hazardous waste is first accumulated at the consolidation site.

(d) (1) Subdivision (b) of this section and subdivision (b) of Section 25121.3 apply only to a generator who annually submits a notification of the generator's intent to operate under this exemption, in person or by certified mail, with return receipt requested, to the department and one of the following:

(A) The CUPA, if the generator is under the jurisdiction of a CUPA.

(B) If the generator is not under the jurisdiction of a CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(2) Any person who submits a notification of their intent to operate under this exemption shall comply with the requirements of this section and Sections 25121.3 and 25163.3.

(3) The notification required pursuant to paragraph (1) shall include all of the following information:

(A) A general description of the remote location from which the non-RCRA hazardous waste will be initially collected.

(B) A description of the type of hazardous waste that may be collected.

(C) The location of the consolidation site and the generator ID number for that generator.

(D) Significant differences in the generator's operations from the prior year's notification.

(e) Following the procedures specified in Section 25187, the department may revoke a generator's authority to operate pursuant to the exemption specified in this section and Sections 25121.3 and 25163.3, if the generator has demonstrated a pattern of failure to meet the requirements of this section and Sections 25121.3 and 25163.3 and the department, or the local officer or agency authorized to enforce this section pursuant to subdivision (a) of Section 25180, has notified the generator of these violations prior to issuing an order pursuant to Section 25187.

(Amended by Stats. 2000, Ch. 343, Sec. 2.5. Effective January 1, 2001.)

25110.10.1. For purposes of this chapter, "consolidated transporter" means a hazardous waste transporter registered pursuant to Section 25165 and the regulations adopted by the department who has notified the department pursuant to Section 25165 of its intent to use the consolidated manifesting procedures set forth in Section 25160.2.

(Added by Stats. 2001, Ch. 319, Sec. 2. Effective January 1, 2002.)

25110.11. "Contained gaseous material," for purposes of subdivision (a) of Section 25124 or any other provision of this chapter, means any gas that is contained in an enclosed cylinder or other enclosed container. "Contained gaseous material" does not include any exhaust gas, flue gas, or other vapor stream, regardless of the source, that is abated or controlled by

an air pollution control device that is permitted by an air pollution control district or air quality management district, or which is specially exempted from those permit requirements.

(Added by Stats. 1994, Ch. 1225, Sec. 2. Effective January 1, 1995.)

25111. "Department" means the Department of Toxic Substances Control.

(Amended by Stats. 2000, Ch. 343, Sec. 3. Effective January 1, 2001.)

25111.1. "Designated local public officer" means a local public officer designated by the director pursuant to subdivision (a) of Section 25180.

(Amended by Stats. 2000, Ch. 343, Sec. 3.5. Effective January 1, 2001.)

25112. "Director" means the Director of Toxic Substances Control.

(Amended by Stats. 2000, Ch. 343, Sec. 4. Effective January 1, 2001.)

25112.5. (a) "Disclosure statement" means a statement submitted to the department by an applicant, signed by the applicant under penalty of perjury, which includes all of the following information:

(1) The full name, any previous name or names, business address, social security number, and driver's license number of all of the following:

(A) The applicant.

(B) Any officers, directors, or partners, if the applicant is a business concern.

(C) All persons or any officers, partners, or any directors if there are no officers, of business concerns holding more than 5 percent of the equity in, or debt liability of the applicant, except that if the debt liability is held by a lending institution, the applicant shall only supply the name and address of the lending institution.

(2) Except as provided in subdivision (b), the following persons listed on the disclosure statement shall properly submit fingerprint images and related identification information:

(A) The sole proprietor.

(B) The partners.

(C) Other persons listed in subparagraph (C) of paragraph (1) and any officers or directors of the applicant company as required by the department.

(3) If fingerprint images and related identification information are submitted for purposes of paragraph (2), the fingerprint images and related identification information shall be submitted for any person required by paragraph (2) only once. If there is a change in the person serving in a position for which fingerprint images and related identification information are required to be submitted pursuant to paragraph (2), fingerprint images and related identification information shall be captured and submitted for that person. Fingerprint images and the related identification information may be obtained using the Department of Justice's electronic fingerprint network.

(4) The full name and business address of any business concern that generates, transports, treats, stores, recycles, disposes of, or handles hazardous waste and hazardous materials in which the applicant holds at least a 5 percent debt liability or equity interest.

(5) A description of any local, state, or federal licenses, permits, or registrations for the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials applied for, or possessed by the applicant, or by the applicant under any previous name or names, in the five years preceding the filing of the statement, or, if the applicant is a business concern, by the officers, directors, or partners of the business concern, including the name and address of the issuing agency.

(6) A listing and explanation of any final orders or license revocations or suspensions issued or initiated by any local, state, or federal authority, in the five years immediately preceding the filing of the statement, or any civil or criminal prosecutions filed in the five years immediately preceding, or pending at the time of, the filing of the statement, with any remedial actions or resolutions if applicable, relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials by the applicant, or by the applicant under any previous name or names, or, if the applicant is a business concern, by any officer, director, or partner of the business concern.

(7) A listing of any agencies outside of the state that regulate, or had regulated, the applicant's, or the applicant's under any previous name or names, generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials in the five years preceding the filing of the disclosure statement.

(8) A listing and explanation of any federal or state conviction, judgment, or settlement, in the five years immediately preceding the filing of the statement, with any remedial actions or resolutions if applicable, relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials by the applicant, or by the applicant under any previous name or names, or if the applicant is a business concern, by any officer, director, or partner of the business concern.

(9) A listing of all owners, officers, directors, trustees, and partners of the applicant who have owned, or been an officer, director, trustee, or partner of, any company that generated, transported, treated, stored, recycled, disposed of, or handled hazardous wastes or hazardous materials and which was the subject of any of the actions described in paragraphs (6) and (8) for the five years preceding the filing of the statement.

(b) Notwithstanding paragraph (2) of subdivision (a), a corporation, the stock of which is listed on a national securities exchange and registered under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), or a subsidiary of such a corporation, is not subject to the fingerprint requirements of subdivision (a).

(c) In lieu of the statement specified in subdivision (a), a corporation, the stock of which is listed on a national securities exchange or on the National Market System of the NASDAQ Stock Market and registered under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), or a subsidiary of that corporation, may submit to the department copies of all periodic reports, including, but not limited to, those reports required by Section 78m of Title 15 of the United States Code and Part 229 (commencing with Section 229.10) of Chapter II of Title 17 of the Code of Federal Regulations that the corporation or subsidiary has filed with the Securities and Exchange Commission in the three years immediately preceding the submittal, if the corporation or subsidiary thereof has held a hazardous waste facility permit or operated a hazardous waste facility under interim status pursuant to Section 25200 or 25200.5 since January 1, 1984.

(d) (1) Before issuing an authorization for which a disclosure statement is required pursuant to this chapter, the department shall submit the fingerprint cards or electronic fingerprint images and related identification information submitted pursuant to paragraph (2) of subdivision (a) to the Department of Justice for the purpose of obtaining information as to the existence and nature of a record of state and federal level convictions and state and federal level arrests for which the Department of Justice establishes that the applicant is incarcerated or was released on bail or on his or her own recognizance pending trial. The Department of Justice shall forward any request for federal level criminal offender record information, received by the Department of Justice, pursuant to this subdivision, to the Federal Bureau of Investigation.

(2) For each applicant or licensee whose fingerprint images and related identification information are submitted to the Department of Justice pursuant to this subdivision, the Department of Justice shall provide the following information to the department pursuant to this section:

(A) Every conviction rendered against that applicant or licensee.

(B) Every arrest for an offense for which that applicant or licensee is presently awaiting trial, whether the applicant or licensee is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(3) The department, pursuant to this subdivision, shall request subsequent arrest notification service from the Department of Justice as provided under Section 11105.2 of the Penal Code.

(4) The department shall reimburse the Department of Justice for the actual costs incurred by the Department of Justice for searching and furnishing state and federal level criminal offender record information pursuant to this subdivision.

(Amended by Stats. 2002, Ch. 607, Sec. 1. Effective January 1, 2003.)

25113. (a) "Disposal" means either of the following:

(1) The discharge, deposit, injection, dumping, spilling, leaking,

or placing of any waste so that the waste or any constituent of the waste is or may be emitted into the air or discharged into or on any land or waters, including groundwaters, or may otherwise enter the environment.

(2) The abandonment of any waste.

(b) The amendment of the section made at the 1989-90 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law.

(Amended by Stats. 1989, Ch. 1436, Sec. 2. Effective October 2, 1989.)

25114. "Disposal site" means the location where any final deposition of hazardous waste occurs.

(Amended by Stats. 1977, Ch. 1039.)

25115. "Extremely hazardous waste" means any hazardous waste or mixture of hazardous wastes which, if human exposure should occur, may likely result in death, disabling personal injury or serious illness caused by the hazardous waste or mixture of hazardous wastes because of its quantity, concentration, or chemical characteristics.

(Amended by Stats. 1977, Ch. 1039.)

25115.1. "Federal act" means the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

(Added by Stats. 1988, Ch. 1061, Sec. 1.)

25116. "Handling" means the transporting or transferring from one place to another, or pumping, processing, storing, or packaging of hazardous waste, but does not include the handling of any substance before it becomes a waste.

(Amended by Stats. 1980, Ch. 878.)

25116.5. (a) "Intermediate manufacturing process stream" means a material, or combination of materials, that meets all of the following conditions:

(1) It is produced as part of the manufacturing process.

(2) It is used onsite on a batch or continuous basis, in either the same or in a different manufacturing process to produce a commercial product.

(3) It is not a recyclable material.

(4) The person who produced the material or combination of materials is able to demonstrate all of the following:

(A) The material, or combination of materials, is used, alone or in combination with other materials, in a manufacturing process that is designed for its use.

(B) The material, or combination of materials, is not accumulated or stored in amounts greater than can be used in the manufacturing process.

(C) The material, or combination of materials, is not handled, stored, or processed in a manner that is inconsistent with its intended use or the operating requirements of the manufacturing process.

(D) The material, or combination of materials, is not burned or incinerated for the purpose of abandoning or relinquishing the material or combination of materials, except as may otherwise be allowed under both this chapter and the federal act.

(b) Notwithstanding subdivision (a), a material is not an intermediate manufacturing process stream if it has been released in violation of this chapter, or any other applicable law, or an order issued pursuant to this chapter or other applicable law, unless it has been released into an appropriate containment area or structure and has been promptly recovered and returned to the manufacturing process, without prior treatment, for use in the originally intended manufacturing process.

(Amended by Stats. 2001, Ch. 605, Sec. 2. Effective October 9, 2001. Operative January 1, 2002, by Sec. 18 of Ch. 605.)

25117. (a) Except as provided in subdivision (d), "hazardous waste" means a waste that meets any of the criteria for the identification of a hazardous waste adopted by the department pursuant to Section 25141.

(b) "Hazardous waste" includes, but is not limited to, RCRA hazardous waste.

(c) Unless expressly provided otherwise, "hazardous waste" also includes extremely hazardous waste and acutely hazardous waste.

(d) Notwithstanding subdivision (a), in any criminal or civil prosecution brought by a city or district attorney or the Attorney General for violation of this chapter, when it is an element of proof that the person knew or reasonably should have known of the violation, or violated the chapter willfully or with reckless disregard for the risk, or acted intentionally or negligently, the element of proof that the waste is hazardous waste may be satisfied by demonstrating that the waste exhibited the characteristics set forth in subdivision (b) of Section 25141.

(Amended by Stats. 1996, Ch. 437, Sec. 2. Effective January 1, 1997.)

25117.1. "Hazardous waste facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste. A hazardous waste facility may consist of one or more treatment, transfer, storage, resource recovery, disposal, or recycling hazardous waste management units, or combinations of these units.

(Amended by Stats. 1990, Ch. 1686, Sec. 1.)

25117.2. "Hazardous waste management" or "management" means the transportation, transfer, recycling, recovery, disposal, handling, processing, storage, and treatment of hazardous waste.

(Amended by Stats. 1988, Ch. 1632, Sec. 6.)

25117.3. (a) "Hazardous waste property" means land which is either of the following:

(1) Any hazardous waste facility or portion thereof, required to be permitted pursuant to this chapter, which has a permit for disposal from the department or has submitted an application for such a permit.

(2) A portion of any land designated as a hazardous waste property pursuant to Section 25229 where a significant disposal of hazardous waste has occurred on, under, or into the land resulting in a significant existing or potential hazard to present or future public health or safety.

(b) "Hazardous waste property" does not mean residential land that has never received waste chemicals from an industrial, commercial, agricultural, research, or business activity.

(Added by Stats. 1980, Ch. 1161.)

25117.4. "Border zone property" means any property designated as border zone property pursuant to Section 25229 which is within 2,000 feet of a significant disposal of hazardous waste, and the wastes so located are a significant existing or potential hazard to present or future public health or safety on the land in question.

(Added by Stats. 1980, Ch. 1161.)

25117.4.1. (a) "Local health officer" means county health officers, city health officers, and district health officers, as defined in this code.

(b) "Local officer" means a local public officer authorized to implement this chapter pursuant to subdivision (a) of Section 25180.

(Amended by Stats. 2004, Ch. 183, Sec. 199. Effective January 1, 2005.)

25117.5. (a) Waste that is hazardous only because it is medical waste, as defined in the Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104) shall not be governed by, subject to fees assessed by, or otherwise subject to, the requirements of this chapter or regulations adopted pursuant to this chapter.

(b) Biohazardous waste that meets the conditions specified in subdivision (f) or (g) of Section 117635 is not subject to this chapter.

(Amended by Stats. 1996, Ch. 536, Sec. 23. Effective January 1, 1997.)

25117.6. (a) "Minor violation" means a deviation from the requirements of this chapter, or any regulation, standard, requirement, or permit or interim status document condition adopted pursuant to this chapter, that is not a class I violation.

(b) (1) A minor violation does not include any of the following:

(A) Any knowing, willful, or intentional violation of this chapter.

(B) Any violation of this chapter that enables the violator to benefit economically from noncompliance, either by reduced costs or competitive advantage.

(C) Any class II violation that is a chronic violation or that is committed by a recalcitrant violator.

(2) In determining whether a violation is chronic or a violator is recalcitrant, for purposes of subparagraph (C) of paragraph (1), the department, or the local officer or agency authorized to enforce this chapter

pursuant to subdivision (a) of Section 25180, shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to the requirements of this chapter.

(Amended by Stats. 1995, Ch. 639, Sec. 4. Effective January 1, 1996.)

25117.8. "Natural resources" includes, but is not limited to, disposal site capacity and substances which are hazardous waste, or which are in hazardous waste, the reuse of which is technologically and economically feasible.

(Added by Stats. 1982, Ch. 89, Sec. 6. Effective March 2, 1982.)

25117.9. "Non-RCRA hazardous waste" means all hazardous waste regulated in the state, other than RCRA hazardous waste, as defined in Section 25120.2. A hazardous waste regulated in the state is presumed to be RCRA hazardous waste, unless it is determined, pursuant to regulations adopted by the department, that the hazardous waste is a non-RCRA hazardous waste.

(Amended by Stats. 1991, Ch. 1126, Sec. 2.)

25117.9.1. "Notice to comply" means a written method of alleging a minor violation which is in compliance with all of the following requirements:

(a) The notice to comply is written in the course of conducting an inspection of a facility by an authorized representative of the department or by a local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.

(b) A copy of the notice to comply is presented to a person who is an owner or employee of the facility being inspected at the time that the notice to comply is written.

(c) The notice to comply clearly states the nature of the alleged minor violation, a means by which compliance with the permit conditions, rule, regulation, standard, or other requirement cited by the inspector may be achieved, and a time limit in which to comply, which shall not exceed 30 days.

(d) The notice to comply shall contain the information specified in subdivision (h) of Section 25187.8 with regard to inspection of the facility.

(Amended by Stats. 1995, Ch. 639, Sec. 5. Effective January 1, 1996.)

25117.10. "License" includes, but is not limited to any, permit, registration, or certification issued by any local, state, or federal agency for the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste.

(Added by Stats. 1986, Ch. 1304, Sec. 5.)

25117.11. "Offsite facility" means a hazardous waste facility that is not an onsite facility.

(Added by Stats. 1982, Ch. 1121, Sec. 2.)

25117.12. "Onsite facility" means a hazardous waste facility at which a hazardous waste is produced and which is owned by, leased to, or under the control of, the producer of the waste.

(Added by Stats. 1982, Ch. 1121, Sec. 3.)

25117.13. "Land use restriction" means any limitation regarding the uses of property which may be provided by, but is not limited to, a written instrument which imposes an easement, covenant, restriction, or servitude, or a combination thereof, as appropriate, upon the present and future uses of all, or part of, the land, pursuant to Section 25202.5, 25222.1, 25230, or 25355.5.

(Added by Stats. 1989, Ch. 906, Sec. 1.)

25117.14. "Permit-by-rule" means a provision of the regulations adopted pursuant to this chapter stating that a facility or activity is deemed to have a hazardous waste facilities permit if it meets the requirements of that provision.

(Added by Stats. 1992, Ch. 1345, Sec. 2. Effective January 1, 1993.)

25118. "Person" means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, and corporation, including, but not limited to, a government corporation. "Person" also includes any city, county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.

(Amended by Stats. 1994, Ch. 1200, Sec. 34. Effective September 30, 1994.)

25119. "Processing" means treatment, as defined in Section 25123.5.

(Amended by Stats. 1980, Ch. 878.)

25120. "Producer" means any person who generates a waste material.

(Added by Stats. 1982, Ch. 496, Sec. 1. Effective July 12, 1982.)

25120.2. "RCRA hazardous waste" means all waste identified as a hazardous waste in Part 261 (commencing with Section 261.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations and appendixes thereto.

(Added by Stats. 1989, Ch. 1436, Sec. 5. Effective October 2, 1989.)

25120.5. "Recyclable material" means a hazardous waste that is capable of being recycled, including, but not limited to, any of the following:

(a) A residue.

(b) A spent material, including, but not limited to, a used or spent stripping or plating solution or etchant.

(c) A material that is contaminated to such an extent that it can no longer be used for the purpose for which it was originally purchased or manufactured.

(d) A byproduct listed in the regulations adopted by the department as "hazardous waste from specific sources" or "hazardous waste from nonspecific sources. "

(e) Any retrograde material that has not been used, distributed, or reclaimed through treatment by the original manufacturer or owner by the later of the following dates:

(1) One year after the date when the material became a retrograde material.

(2) If the material has been returned to the original manufacturer, one year after the material is returned to the original manufacturer.

(Amended by Stats. 1988, Ch. 1631, Sec. 6.)

25120.55. (a) Used or spent etchants, stripping solutions, and plating solutions are spent, contaminated, or used material for purposes of this chapter.

(b) Used or spent etchants, stripping solutions, and plating solutions which meet a characteristic established by or are listed by the Environmental Protection Agency or the department as a hazardous waste and are
transported from the site where they are produced, and transferred to an unrelated or unaffiliated person for any purpose, are subject to the requirements of this chapter which apply to hazardous waste unless the department waives any specific provision of this chapter pursuant to Section 25143. Nothing in this section exempts any used or spent etchant, stripping solution, or plating solution from any other requirement of this chapter.

(Added by renumbering Section 25122.55 by Stats. 1988, Ch. 160, Sec. 105.)

25121. (a) "Recycled material" means a recyclable material which has been used or reused, or reclaimed.

(b) "Recycled material" does not include an intermediate manufacturing process stream.

(Amended by Stats. 1996, Ch. 579, Sec. 2. Effective January 1, 1997.)

25121.1. (a) "Recycling" means using, reusing, or reclaiming a recyclable material.

(b) Notwithstanding subdivision (a), for purposes of the fees, taxes, and charges imposed pursuant to Article 7 (commencing with Section 25170), "recycling" means the collecting, transporting, storing, transferring, handling, segregating, processing, using or reusing, or reclaiming of recyclable material to produce recycled material.

(Added by Stats. 1998, Ch. 880, Sec. 2. Effective January 1, 1999.)

25121.3. (a) "Remote site" means a site operated by the generator where hazardous waste is initially collected, at which generator staff, other than security staff, is not routinely located, and that is not contiguous to a staffed site operated by the generator of the hazardous waste or that does not have access to a staffed site without the use of public roads. Generator staff who visit a remote location to perform inspection, monitoring, or maintenance activities on a periodic scheduled or random basis, less frequently than daily, are not considered to be routinely located at the remote location.

(b) Notwithstanding this chapter or the regulations adopted by the department pursuant to this chapter, a generator who complies with the notification requirements of subdivision (d) of Section 25110.10 may hold hazardous waste at the remote site where the hazardous waste is initially collected, or at another remote site operated by the generator, while en route to the consolidation site, if all of the following requirements are met with respect to the hazardous waste:

(1) The hazardous waste is a non-RCRA hazardous waste, or the hazardous waste or its management at the remote site is otherwise exempt from, or is not otherwise regulated pursuant to, the federal act.

(2) The requirements of subdivision (b) of Section 25110.10 are met.

(3) All personnel handling hazardous waste at any remote site complete health and safety training equivalent to the training required under Section 5194 of Title 8 of the California Code of Regulations, prior to being assigned to handle hazardous waste.

(4) A description of the actions that the generator's personnel will take to minimize hazards to human health and safety or to the environment from fires, explosions, or any unplanned release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the remote site where the hazardous waste is being managed shall be included in the contingency plan for the consolidation site. A single generic description of response actions may be used for all similar remote sites associated with a single consolidation site.

(5) As soon as the generator begins to actively manage the hazardous waste at the remote site, the generator places the hazardous waste in a container meeting the requirements of the United States Department of Transportation applicable to containers used to transport hazardous waste, and the containers are managed in accordance with the regulations adopted by the department regarding the management by generators of containers used to hold hazardous waste.

(6) The containers used to hold the hazardous waste at the remote site are labeled, in accordance with the regulations adopted by the department pertaining to labeling requirements for generators, as soon as the hazardous waste is placed in the container.

(7) The generator makes a reasonable effort to minimize the possibility of unknowing or unauthorized entry into the area where the hazardous waste is held at the remote site. If the remote site is located within one mile of a residential or commercial area, or is otherwise readily accessible to the public, the area where hazardous waste is held at the remote site shall at all times be supervised by employees or agents of the generator or otherwise secured so as to prevent unknowing entry and to minimize the possibility for unauthorized entry.

(c) If the management of hazardous wastes at a remote site does not meet all of the conditions specified in subdivision (b), the hazardous waste shall be subject to all other applicable generator and facility requirements of this chapter and the regulations adopted by the department to implement this chapter.

(Amended by Stats. 2004, Ch. 183, Sec. 200. Effective January 1, 2005.)

25121.5. (a) "Retrograde material" means any hazardous material which is not to be used, sold, or distributed for use in an originally intended or prescribed manner or for an originally intended or prescribed purpose and which meets any one or more of the following criteria:

(1) Has undergone chemical, biochemical, physical, or other changes due to the passage of time or the environmental conditions under which it was stored.

(2) Has exceeded a specified or recommended shelf life.

(3) Is banned by law, regulation, ordinance, or decree.

(4) Cannot be used for reasons of economics, health or safety, or environmental hazard.

(b) "Retrograde material" does not include material designated in regulations adopted by the department as included in a category which the department shall title "Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof" , if either of the following conditions is met:

(1) The material is used in a manner constituting disposal and the material is not normally used in a manner constituting disposal.

(2) The material is burned for energy recovery and the material is not normally burned for energy recovery.

(Amended by Stats. 1988, Ch. 1631, Sec. 8.)

25122.7. "Restricted hazardous waste" includes both of the following:

(a) Any hazardous waste subject to land disposal restrictions pursuant to Section 25179.6 and the regulations adopted by the department pursuant to that section.

(b) Any hazardous waste which contains any of the following substances, in the following concentrations, as determined without considering any dilution which may occur, unless the dilution is a normal part of a manufacturing process:

(1) Liquid hazardous wastes containing free cyanides at concentrations greater than, or equal to, 1,000 milligrams per liter.

(2) Liquid hazardous wastes containing any of the following metals or elements, or compounds of these metals or elements, at concentrations greater than, or equal to, any of the following:

Arsenic ..... 500 milligrams per liter
Cadmium ..... 100 milligrams per liter
Chromium (VI) ..... 500 milligrams per liter
Lead ..... 500 milligrams per liter
Mercury ..... 20 milligrams per liter
Nickel ..... 134 milligrams per liter
Selenium ..... 100 milligrams per liter
Thallium ..... 130 milligrams per liter

(3) Liquid hazardous wastes having a pH less than or equal to two.

(4) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than, or equal to, 50 milligrams per liter.

(5) Hazardous wastes containing halogenated organic compounds in total concentration greater than, or equal to, 1,000 milligrams per kilogram.

(Amended by Stats. 1990, Ch. 1686, Sec. 2.)

25122.8. "State operational costs" means the costs to the state of overseeing removal and remedial action, as defined in Sections 25322 and 25323, to releases of hazardous substances, as defined in Sections 25316 and 25320, if the responsible party is in compliance with an order issued, or with an enforceable agreement entered into, pursuant to paragraph (1) of subdivision (a) of Section 25355.5. "State operational costs" include, but are not limited to, the expenditure of funds pursuant to subdivision (c) or (d) of Section 25355.5.

(Added by Stats. 1989, Ch. 269, Sec. 1. Effective August 3, 1989.)

25122.9. "Secretary" means the Secretary for Environmental Protection.

(Added by Stats. 1995, Ch. 639, Sec. 7. Effective January 1, 1996.)

25123. "Storage" means the holding of hazardous wastes, for a temporary period.

(Amended by Stats. 1988, Ch. 1632, Sec. 9.)

25123.3. (a) For purposes of this section, the following terms have the following meaning:

(1) "Liquid hazardous waste" means a hazardous waste that meets the definition of free liquids, as specified in Section 66260.10 of Title 22 of the California Code of Regulations, as that section read on January 1, 1994.

(2) "Remediation waste staging" means the temporary accumulation of non-RCRA contaminated soil that is generated and held onsite, and that is accumulated for the purpose of onsite treatment pursuant to a certified, authorized or permitted treatment method, such as a transportable treatment unit, if all of the following requirements are met:

(A) The hazardous waste being accumulated does not contain free liquids.

(B) The hazardous waste is accumulated on an impermeable surface,

such as high density polyethylene (HDPE) of at least 20 mills that is supported by a foundation, or high density polyethylene of at least 60 mills that is not supported by a foundation.

(C) The generator provides controls for windblown dispersion and precipitation runoff and run-on and complies with any stormwater permit requirements issued by a regional water quality control board.

(D) The generator has the accumulation site inspected weekly and after storms to ensure that the controls for windblown dispersion and precipitation runoff and run-on are functioning properly.

(E) The staging area is certified by a registered engineer for compliance with the standards specified in subparagraphs (A) to (D), inclusive.

(3) "Transfer facility" means any offsite facility that is related to the transportation of hazardous waste, including, but not limited to, loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(b) "Storage facility" means a hazardous waste facility at which the hazardous waste meets any of the following requirements:

(1) The hazardous waste is held for greater than 90 days at an onsite facility. The department may establish criteria and procedures to extend that 90-day period, consistent with the federal act, and to prescribe the manner in which the hazardous waste may be held if not otherwise prescribed by statute.

(2) The hazardous waste is held for any period of time at an offsite facility which is not a transfer facility.

(3) (A) Except as provided in subparagraph (B), the waste is held at a transfer facility and any one of the following apply:

(i) The transfer facility is located in an area zoned residential by the local planning authority.

(ii) The transfer facility commences initial operations on or after January 1, 2005, at a site located within 500 feet of a structure identified in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (b) of Section 25232.

(iii) The hazardous waste is held for a period greater than six days at a transfer facility located in an area that is not zoned industrial or agricultural by the local planning authority.

(iv) The hazardous waste is held for a period greater than 10 days at a transfer facility located in an area zoned industrial or agricultural by the local planning authority.

(v) The hazardous waste is held for a period greater than six days at a transfer facility that commenced initial operations before January 1, 2005, is located in an area zoned agricultural by the local planning authority, and is located within 500 feet of a structure identified in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (b) of Section 25232.

(B) (i) Notwithstanding subparagraph (A), a transfer facility located in an area that is not zoned residential by the local planning authority is not a storage facility, if the only hazardous waste held at the transfer facility is hazardous waste that is generated as a result of an emergency release and that hazardous waste is collected and temporarily stored by emergency rescue personnel, as defined in Section 25501, or by a response action contractor upon the request of emergency rescue personnel or the response action contractor, and the holding of that hazardous waste is approved by the department.

(ii) For purposes of this subparagraph, "response action contractor" means any person who enters into a contract with the department to take removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) in response to a release or threatened release, including any subcontractors of the response action contractor.

(4) (A) Except as provided in subparagraph (B), the hazardous waste is held onsite for any period of time, unless the hazardous waste is held in a container, tank, drip pad, or containment building pursuant to regulations adopted by the department.

(B) Notwithstanding subparagraph (A), a generator that accumulates hazardous waste generated and held onsite for 90 days or less for offsite transportation is not a storage facility if all of the following requirements are met:

(i) The waste is non-RCRA contaminated soil.

(ii) The hazardous waste being accumulated does not contain free liquids.

(iii) The hazardous waste is accumulated on an impermeable surface, such as high density polyethylene (HDPE) of at least 20 mills that is supported by a foundation, or high density polyethylene of at least 60 mills that is not supported by a foundation.

(iv) The generator provides controls for windblown dispersion and precipitation runoff and run-on and complies with any stormwater permit requirements issued by a regional water quality control board.

(v) The generator has the accumulation site inspected weekly and after storms to ensure that the controls for windblown dispersion and precipitation runoff and run-on are functioning properly.

(vi) The generator, after final offsite transportation, inspects the accumulation site for contamination and remediates as necessary.

(vii) The site is certified by a registered engineer for compliance with the standards specified in clauses (i) to (vi), inclusive.

(5) The hazardous waste is held at a transfer facility at any location for any period of time in a manner other than in a container.

(6) The hazardous waste is held at a transfer facility at any location for any period of time and handling occurs. For purposes of this paragraph, "handling" does not include the transfer of packaged or containerized hazardous waste from one vehicle to another.

(c) The time period for calculating the 90-day period for purposes of paragraph (1) of subdivision (b), or the 180-day or 270-day period for purposes of subdivision (h), begins when the facility has accumulated 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste. However, if the facility generates more than 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste during any calendar month, the time period begins when any amount of hazardous waste first begins to accumulate in that month.

(d) Notwithstanding paragraph (1) of subdivision (b), a generator of hazardous waste that accumulates waste onsite is not a storage facility if all of the following requirements are met:

(1) The generator accumulates a maximum of 55 gallons of hazardous waste, one quart of acutely hazardous waste, or one quart of extremely hazardous waste at an initial accumulation point that is at or near the area where the waste is generated and that is under the control of the operator of the process generating the waste.

(2) The generator accumulates the waste in containers other than tanks.

(3) The generator does not hold the hazardous waste onsite without a hazardous waste facilities permit or other grant of authorization for a period of time longer than the shorter of the following time periods:

(A) One year from the initial date of accumulation.

(B) Ninety days, or if subdivision (h) is applicable, 180 or 270 days, from the date that the quantity limitation specified in paragraph (1) is reached.

(4) The generator labels any container used for the accumulation of hazardous waste with the initial date of accumulation and with the words "hazardous waste" or other words that identify the contents of the container.

(5) Within three days of reaching any applicable quantity limitation specified in paragraph (1), the generator labels the container holding the accumulated hazardous waste with the date the quantity limitation was reached and either transports the waste offsite or holds the waste onsite and complies with either the regulations adopted by the department establishing requirements for generators subject to the time limit specified in paragraph (1) of subdivision (b) or the requirements specified in paragraph (1) of subdivision (h), whichever requirements are applicable.

(6) The generator complies with regulations adopted by the department pertaining to the use and management of containers and any other regulations adopted by the department to implement this subdivision.

(e) (1) Notwithstanding paragraphs (1) and (4) of subdivision (b), hazardous waste held for remediation waste staging shall not be considered to be held at a hazardous waste storage facility if the total accumulation period is one year or less from the date of the initial placing of hazardous waste by the generator at the staging site for onsite remediation, except that the department may grant one six-month extension, upon a showing of reasonable cause by the generator.

(2) (A) The generator shall submit a notification of plans to store and treat hazardous waste onsite pursuant to paragraph (2) of subdivision (a), in person or by certified mail, with return receipt requested, to the department and to one of the following:

(i) The CUPA, if the generator is under the jurisdiction of a CUPA.

(ii) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the agency authorized, pursuant to

subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(B) If, after the notification pursuant to subparagraph (A), or during the initial year or the six-month extension granted by the department, the generator determines that treatment cannot be accomplished for all, or part of, the hazardous waste accumulated in a remediation waste staging area, the generator shall immediately notify the department and the appropriate local agency, pursuant to subparagraph (A), that the treatment has been discontinued. The generator shall then handle and dispose of the hazardous waste in accordance with paragraph (4) of subdivision (b).

(C) A generator shall not hold hazardous waste for remediation waste staging unless the generator can show, through laboratory testing, bench scale testing, or other documentation, that soil held for remediation waste staging is potentially treatable. Any fines and penalties imposed for a violation of this subparagraph may be imposed beginning with the 91st day that the hazardous waste was initially accumulated.

(3) Once an onsite treatment operation is completed on hazardous waste held pursuant to paragraph (1), the generator shall inspect the staging area for contamination and remediate as necessary.

(f) Notwithstanding any other provision of this chapter, remediation waste staging and the holding of non-RCRA contaminated soil for offsite transportation in accordance with paragraph (4) of subdivision (b) shall not be considered to be disposal or land disposal of hazardous waste.

(g) A generator who holds hazardous waste for remediation waste staging pursuant to paragraph (2) of subdivision (a) or who holds hazardous waste onsite for offsite transportation pursuant to paragraph (4) of subdivision (b) shall maintain records onsite that demonstrate compliance with this section related to storing hazardous waste for remediation waste staging or related to holding hazardous waste onsite for offsite transportation, as applicable. The records maintained pursuant to this subdivision shall be available for review by any public agency authorized pursuant to Section 25180 or 25185.

(h) (1) Notwithstanding paragraph (1) of subdivision (b), a generator of less than 1,000 kilograms of hazardous waste in any calendar month who accumulates hazardous waste onsite for 180 days or less, or 270 days or less if the generator transports the generator's own waste, or offers the generator's waste for transportation, over a distance of 200 miles or more, for offsite treatment, storage, or disposal, is not a storage facility if all of the following apply:

(A) The quantity of hazardous waste accumulated onsite never exceeds 6,000 kilograms.

(B) The generator complies with the requirements of subdivisions (d), (e), and (f) of Section 262.34 of Title 40 of the Code of Federal Regulations.

(C) The generator does not hold acutely hazardous waste or extremely hazardous waste in an amount greater than one kilogram for a time period longer than that specified in paragraph (1) of subdivision (b).

(2) A generator meeting the requirements of paragraph (1) who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the facility to which the generator's waste is submitted, within 60 days from the date that the hazardous waste was accepted by the initial transporter, shall submit to the department a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery.

(i) The department may adopt regulations that set forth additional restrictions and enforceable management standards that protect human health and the environment and that apply to persons holding hazardous waste at a transfer facility. A regulation adopted pursuant to this subdivision shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare, and may be adopted as an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 2004, Ch. 779, Sec. 1. Effective January 1, 2005.)

25123.4. "Transportable hazardous waste treatment unit" or "transportable treatment unit" means mobile equipment which performs treatment, is transported onto a facility to perform treatment, and is not permanently stationed at a single facility.

(Added by Stats. 1994, Ch. 1151, Sec. 1. Effective January 1, 1995.)

25123.5. (a) Except as provided in subdivisions (b) and (c), "treatment" means any method, technique, or process which is not otherwise excluded from the definition of treatment by this chapter and which is designed to change the physical, chemical, or biological character or composition of any hazardous waste or any material contained therein, or which removes or reduces its harmful properties or characteristics for any purpose.

(b) (1) "Treatment" does not include any of the activities listed in paragraph (2), if one of the following requirements is met:

(A) The activity is conducted onsite in accordance with the requirements of this chapter and the department's regulations adopted pursuant to this chapter governing the generation and accumulation of hazardous waste.

(B) The activity is conducted in accordance with the conditions specified in a permit issued by the department for the storage of hazardous waste.

(2) The activities subject to the exemption specified in paragraph (1) include all of the following:

(A) Sieving or filtering liquid hazardous waste to remove solid fractions, without added heat, chemicals, or pressure, as the waste is added to or removed from a storage or accumulation tank or container. For purposes of this subparagraph, sieving or filtering does not include adsorption, reverse osmosis, or ultrafiltration.

(B) Phase separation of hazardous waste during storage or accumulation in tanks or containers, if the separation is unaided by the addition of heat or chemicals. If the phase separation occurs at a commercial offsite permitted storage facility, all phases of the hazardous waste shall be managed as hazardous waste after separation.

(C) Combining two or more waste streams that are not incompatible into a single tank or container if both of the following conditions apply:

(i) The waste streams are being combined solely for the purpose of consolidated accumulation or storage or consolidated offsite shipment, and they are not being combined to meet a fuel specification or to otherwise be chemically or physically prepared to be treated, burned for energy value, or incinerated.

(ii) The combined waste stream is managed in compliance with the most stringent of the regulatory requirements applicable to each individual waste stream.

(D) Evaporation of water from hazardous wastes in tanks or containers, such as breathing and evaporation through vents and floating roofs, without the addition of pressure, chemicals, or heat other than sunlight or ambient room lighting or heating.

(3) This subdivision does not apply to any activity for which a hazardous waste facilities permit for treatment is required under the federal act.

(c) "Treatment" does not include the combination of glutaraldehyde or orthophthalaldehyde, which is used by medical facilities to disinfect medical devices, with formulations containing glycine as the sole active chemical, if the process is carried out onsite.

(Amended by Stats. 2000, Ch. 343, Sec. 6. Effective January 1, 2001.)

25123.6. "Volatile organic compound" means a compound which is a volatile organic compound according to Method No. 8240 in the Environmental Protection Agency Document No. Solid Waste 846 (1982) or any equivalent, alternative method acceptable to the department.

(Added by Stats. 1985, Ch. 1338, Sec. 3.)

25123.7. (a) "Unified Program Facility" means all contiguous land and structures, other appurtenances, and improvements on the land which are subject to the requirements of paragraph (1) of subdivision (c) of Section 25404.

(b) "Certified Unified Program Agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(c) "Participating Agency" or "PA" means an agency which has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in paragraph (1) of subdivision (c) of Section 25404, in accordance with the provisions of Sections 25404.1 and 25404.2.

(d) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in paragraph (1) of subdivision (c) of Section

25404. For purposes of this chapter, the UPAs have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404. The UPAs also have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce the regulations adopted to implement the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404. After a CUPA has been certified by the secretary, the unified program agencies shall be the only local agencies authorized to enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA. This section shall not be construed to limit the authority or responsibility granted to the department by this chapter to implement and enforce this chapter and the regulations adopted pursuant thereto.

(Added by Stats. 1995, Ch. 639, Sec. 8. Effective January 1, 1996.)

25123.8. "Universal waste" means a hazardous waste identified as a universal waste in Section 66273.9 of Title 22 of the California Code of Regulations, or as that regulation may be further amended pursuant to this chapter, or a hazardous waste designated as a universal waste pursuant to this chapter.

(Added by Stats. 2002, Ch. 626, Sec. 1. Effective January 1, 2003.)

25124. (a) Except as provided in subdivision (c), "waste" means any solid, liquid, semisolid, or contained gaseous discarded material that is not excluded by this chapter or by regulations adopted pursuant to this chapter.

(b) For purposes of subdivision (a), a discarded material is any material that is any of the following:

(1) Relinquished by being any of the following:

(A) Disposed of.

(B) Burned or incinerated.

(C) Accumulated, stored, or treated, but not recycled, before, or in lieu of, being relinquished by being disposed of, burned, or incinerated.

(2) Recycled, or accumulated, stored, or treated before recycling, except as provided in Section 25143.2.

(3) Poses a threat to public health or the environment and meets either, or both, of the following conditions:

(A) It is mislabeled or not adequately labeled, unless the material is correctly labeled or adequately labeled within 10 days after the material is discovered to be mislabeled or inadequately labeled.

(B) It is packaged in deteriorated or damaged containers, unless the material is contained in sound or undamaged containers within 96 hours after the containers are discovered to be deteriorated or damaged.

(4) Considered inherently wastelike, as specified in regulations adopted by the department.

(c) Notwithstanding subdivision (a), a material is not a discarded material if it is either of the following:

(1) An intermediate manufacturing process stream.

(2) (A) Except as specified in subparagraph (B) and to the extent consistent with the federal act, a coolant, lubricant, or cutting fluid necessary to the operation of manufacturing equipment, that is processed to extend the life of the material for continued use, and is processed in the same manufacturing equipment in which the material is used or in connected equipment that returns the material to the originating manufacturing equipment for continued use.

(B) Subparagraph (A) does not apply to any of the following material:

(i) Material that is processed in connected equipment that is not directly and permanently connected to the originating manufacturing equipment or that is constructed or operated in a manner that may allow the release of any material or constituent of the material into the environment.

(ii) Material that is a hazardous waste prior to being introduced into the manufacturing equipment or connected equipment.

(iii) Material that is removed from the manufacturing equipment or connected equipment for storage, treatment, disposal, or burning for energy recovery outside that equipment.

(iv) Material that remains in the manufacturing equipment or connected equipment more than 90 days after that equipment ceases to be operated.

(v) Material that is processed using methods other than physical procedures.

(Amended by Stats. 1997, Ch. 470, Sec. 1. Effective January 1, 1998.)

Article 3. Hazardous Waste Resource and Research Coordination Program

(Article 3 repealed and added by Stats. 1987, Ch. 914, Sec. 2.)

25130. The department shall establish the Hazardous Waste Resource and Research Coordination Program, which consists of the following two components:

(a) A data base containing information on known hazardous waste research being conducted within the state pursuant to Section 25131.

(b) A pool of research consultants qualified in the field of hazardous waste management established pursuant to Section 25132.

(Repealed and added by Stats. 1987, Ch. 914, Sec. 2.)

25131. (a) The department shall assemble a bibliographic cross-referenced data base containing all of the following information on known hazardous waste research programs which are ongoing within the state:

(1) The institution or organization sponsoring the research program.

(2) The principal investigators conducting the research.

(3) A brief description of the research, including anticipated applications of the resulting information.

(4) The specific problems facing hazardous waste generators that the research is designed to address, including, but not limited to, specific hazardous waste streams or specific production processes.

(5) A summary of results already achieved by the research program.

(6) The date on which the program began, and its expected completion date.

(b) The department shall update the data base annually, and the department shall make the information in the data base available to the public at a cost not greater than the department's printing and mailing costs.

(Repealed and added by Stats. 1987, Ch. 914, Sec. 2.)

25132. (a) The department shall establish and maintain a pool of research consultants expert in the field of hazardous waste management. The department may consult with the individual members of the pool to develop a directed approach to research in hazardous waste management. This approach shall include, but is not limited to, emphasis on interdisciplinary research into the relationships between air, water, and soils as media for the spread of hazardous substances and toxic effects in the environment. The department may utilize these research consultants as needed to implement this chapter.

(b) Individual research consultants within the pool may receive compensation as determined by the department, including per diem and reimbursement for travel expenses incurred as a result of official business.

(Repealed and added by Stats. 1987, Ch. 914, Sec. 2.)

Article 3.5. Hazardous Waste Management Plans

(Article 3.5 added by Stats. 1986, Ch. 1504, Sec. 6.)

25135. (a) The Legislature finds and declares as follows:

(1) An effective planning process involving public and private sector participation exists at the county level for establishing new, or expanding existing, solid waste facilities, but an equivalent process has not been established at the local level to plan for the management of hazardous wastes.

(2) Counties are presently required to prepare solid waste management plans for all waste disposal within each county and for all waste originating in each county. While the department has requested that counties include in their solid waste management plans a hazardous waste management element, there is not presently a clear mandate that they do so.

(3) Hazardous waste management planning at the local level has been hampered because the department has not provided the counties with adequate and comprehensive planning guidelines, there is a lack of accurate data on hazardous waste generation, handling, and disposal practices, adequate funding has not been available, and local expertise in hazardous waste planning has not been developed.

(4) The failure to plan for the safe and effective management of hazardous wastes has contributed to the public's general uncertainty in viewing proposals to site hazardous waste facilities at various locations

throughout the state. Because advance planning has not taken place, local governments are not prepared to consider siting proposals and the public has not received adequate answers to questions concerning the need for proposed facilities.

(5) Safe and responsible management of hazardous wastes is one of the most important environmental problems facing the state at the present time. It is critical to the protection of the public health and the environment, and to the economic growth of the state. If environmentally sound hazardous waste facilities are not available to effectively manage the hazardous wastes produced by the many industries of the state, economic activity will be hampered and the economy cannot prosper.

(b) The Legislature, therefore, declares that it is in the public interest to establish an effective process for hazardous waste management planning at the local level. This process is consistent with the responsibility of local governments to assure that adequate treatment and disposal capacity is available to manage the hazardous wastes generated within their jurisdictions.

(c) It is the intent of the Legislature that the hazardous waste management plans prepared pursuant to this article serve as the primary planning document for hazardous waste management at the local level; that the plans be integrated with other local land use planning activities to ensure that suitable locations are available for needed hazardous waste facilities; that land uses adjacent to, or near, hazardous waste facilities, or proposed sites for these facilities, are compatible with their operation; and that the plans are prepared with the full and meaningful involvement of the public, environmental groups, civic associations, generators of hazardous wastes, and the hazardous waste management industry.

(d) It is further the intent of the Legislature, in enacting this article, to define the respective responsibilities of state and local governments in hazardous waste management planning; to establish a comprehensive planning process in which state and local government, the public, and industry jointly develop safe and effective solutions for the management and disposal of hazardous wastes; to ensure that local governments are assisted adequately by the state in carrying out their responsibilities; and to provide funding for local-level planning.

(Added by Stats. 1986, Ch. 1504, Sec. 6.)

25135.1. (a) For purposes of this article, and unless the context indicates otherwise, "county" means a county that notifies the department that it will prepare a county hazardous waste management plan in accordance with this article and receives a grant pursuant to Section 25135.8. "County" also means any city, or two or more cities within a county acting jointly, which notifies the department that it will prepare a county hazardous waste management plan in accordance with subdivision (c).

(b) A county may, at its discretion, and after notification to the department, prepare a county hazardous waste management plan for the management of all hazardous waste produced in the county. A county hazardous waste management plan prepared pursuant to this article shall serve in lieu of the hazardous waste portion of the county solid waste plan provided for in Article 2 (commencing with Section 66780) of Chapter 2 of Title 7.3 of the Government Code. The county hazardous waste management plan shall be prepared in cooperation with the affected cities in the county and the advisory committee appointed pursuant to Section 25135.2, in accordance with the guidelines adopted by the department pursuant to Section 25135.5, and in accordance with the schedule specified in Section 25135.6.

(c) On or before March 31, 1987, every county shall notify the department and the cities within the county whether the county has elected to prepare a county hazardous waste management plan pursuant to this article. A city, or two or more cities acting jointly, located within a county which elects not to prepare a county hazardous waste management plan or which fails to make an election, on or before March 31, 1987, to prepare a plan, may, at the city's or cities' discretion, elect to undertake the preparation of the plan. The city or cities shall be deemed to be acting in place of the county for purposes of this article and may apply for funding to pay the cost of preparing the plan pursuant to subdivision (c) of Section 25135.8. However, the city or cities may not receive funding pursuant to subdivision (c) of Section 25135.8, unless the proposal to prepare a county hazardous waste management plan by the city or cities is approved by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county and the proposal is received by the department on or before June 30, 1987.

(d) The county hazardous waste management plan authorized by subdivision (b) or (c) shall serve as the primary planning document for hazardous waste management in the county and shall be prepared as a useful informational source for local government and the public. The plan shall include, but is not limited to, all of the following elements:

(1) An analysis of the hazardous waste stream generated in the county, including an accounting of the volumes of hazardous wastes produced in the county, by type of waste, and estimates of the expected rates of hazardous waste production until 1994, by type of waste.

(2) A description of the existing hazardous waste facilities which treat, handle, recycle, and dispose of the hazardous wastes produced in the county, including a determination of the existing capacity of each facility.

(3) An analysis of the potential in the county for recycling hazardous waste and for reducing the volume and hazard of hazardous waste at the source of generation.

(4) A consideration of the need to manage the small volumes of hazardous waste produced by businesses and households.

(5) A determination of the need for additional hazardous waste facilities to properly manage the volumes of hazardous wastes currently produced or that are expected to be produced during the planning period.

(6) An identification of those hazardous waste facilities that can be expanded to accommodate projected needs and an identification of general areas for new hazardous waste facilities determined to be needed. In lieu of this facility and area identification, the plan may instead include siting criteria to be utilized in selecting sites for new hazardous waste facilities. If siting criteria are included in the county hazardous waste management plan, the plan shall also designate general areas where the criteria might be applicable.

(7) A statement of goals, objectives, and policies for the siting of hazardous waste facilities and the general management of hazardous wastes through the year 2000.

(8) A schedule which describes county and city actions necessary to implement the hazardous waste management plan through the year 2000, including the assigning of dates for carrying out the actions.

(e) In addition to the elements of the plan required by subdivision (d), a county may include a description of any additional local programs which the county determines to be necessary to provide for the proper management of hazardous wastes produced in the county. These programs may include, but are not limited to, public education, enforcement, surveillance, transportation, and administration.

(f) The inclusion of an element in a county hazardous waste management plan pursuant to subdivision (d) or (e) does not authorize the county to adopt a program which the county is not otherwise authorized to adopt under any other provision of law.

(Amended by Stats. 1987, Ch. 1167, Sec. 1.)

25135.2. (a) Each county shall establish an advisory committee of at least seven members to assist the county in the preparation and administration of the county hazardous waste management plan. The board of supervisors of the county shall appoint the members who are not city representatives to the advisory committee, including at least one representative of industry, one representative of an environmental organization, and one representative of the public. The advisory committee shall also consist of at least three members to represent cities appointed by the city selection committee specified in Article 11 (commencing with Section 50270) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. The board of supervisors shall, to the extent possible, appoint other members that have expertise concerning aspects of hazardous waste management planning, including, but not limited to, engineering, geology, and water quality.

(b) The advisory committee shall do all of the following:

(1) Advise the county staff, the board of supervisors of the county, and the staff, mayors, and council members of the cities within the county, on issues related to the development, approval, and administration of the county hazardous waste management plan.

(2) Hold informal public meetings and workshops to provide the public with information, and to receive comments, during the preparation of the county hazardous waste management plan.

(c) If a city or group of cities are preparing the county hazardous waste management plan pursuant to subdivision (c) of Section 25135.1, the city or cities shall establish the advisory committee, using the qualifications and

representation specified in subdivision (a).

(Added by Stats. 1986, Ch. 1504, Sec. 6.)

25135.3. The Association of Bay Area Governments, the Southern California Association of Governments, the Sacramento Area Council of Governments, and the Association of Monterey Bay Area Governments may, at the discretion of their governing boards, prepare a regional hazardous waste management plan to serve as a resource document and to identify hazardous waste management issues, needs, and solutions at the regional level. A council of governments specified in this subdivision shall include in the regional plan additional counties affected by the regional plan, at the request of the councils of governments for those counties. A council of governments shall prepare the regional plan pursuant to the following procedure:

(a) A council of governments specified in this subdivision may apply to the department for funding pursuant to paragraph (3) of subdivision (b) of Section 25135.8.

(b) On or before December 31, 1987, a council of governments which receives funding from the department shall prepare a draft regional hazardous waste management plan and submit the draft plan to the department. If a council of governments shows the department that it has made substantial compliance towards completing the draft regional hazardous waste management plan and needs additional time to complete the draft regional plan, the department may extend, to March 31, 1988, the date by which the draft regional plan is required to be submitted. The council of governments shall involve the public with the preparation of the draft plan, to the fullest extent possible, by public hearings, informational meetings, and other appropriate forums that offer the public the opportunity to respond to clearly defined alternative objectives, policies, and actions.

(c) From January 1, 1988, to March 31, 1988, or, if the department has given the council of governments a time extension pursuant to subdivision (b), on or before June 30, 1988, the council of governments shall conduct hearings on the draft regional hazardous waste management plan, in the number determined appropriate by the council of governments. The council of governments shall provide affected local jurisdictions, the public, industry, business organizations, and the hazardous waste management industry with a full opportunity to comment orally and in writing on the draft plan.

(d) On or before March 31, 1988, or, if the department has given the council of governments a time extension pursuant to subdivision (b), on or before June 30, 1988, the department shall review the draft plan, and provide the council of governments with comments on the draft plan.

(e) After conducting the review and comment period required by subdivision (c), the council of governments shall revise, as appropriate, the draft regional hazardous waste management plan.

(f) On or before September 30, 1988, or, on or before January 31, 1989, if the council of governments is given a time extension pursuant to subdivision (g), the council of governments shall complete and adopt the plan.

(g) On or before October 1, 1988, the council of governments shall submit the final regional hazardous waste management plan adopted by its governing board to the department for review and approval. If a council of governments shows the department that the council of governments has made substantial progress towards completing the regional hazardous waste management plan and needs more time to complete the plan, the department may extend this date to September 1, 1989. The department shall approve the regional plan if the department determines that all of the following requirements are met:

(1) The regional plan is consistent with the guidelines for the preparation of regional hazardous waste management plans adopted by the department.

(2) The regional plan applies the methods, techniques, and policies established by the department to analyze the waste stream and to determine whether there is a need for additional or expanded hazardous waste facilities to safely manage and properly dispose of the hazardous waste produced within the region.

(h) Throughout the process of preparing a regional hazardous waste management plan, a council of governments shall cooperate and consult with representatives and staff of affected counties and cities.

(i) Notwithstanding subdivisions (a) to (h), inclusive, of this section, if, pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, a joint powers agreement provides for the creation of the Southern California Hazardous Waste Management Authority, the Southern California Association of Governments shall, if it has elected to prepare a regional hazardous waste management plan pursuant to this section, transfer the responsibility for preparing the regional hazardous waste management plan and all funds received pursuant to subdivision (b) of Section 25135.8 to the authority, if the governing board of the authority requests the transfer by the adoption of a resolution. If the transfer takes place, the authority shall comply with this section in the same manner as this section applies to the association. If the transfer of responsibility and funds authorized by this subdivision takes place and the authority is dissolved at any time before the regional hazardous waste management plan is approved by the department, the association shall prepare the regional hazardous waste management plan and any remaining funds received pursuant to subdivision (b) of Section 25135.8 shall be transferred back to the association.

(Amended by Stats. 1989, Ch. 7, Sec. 1. Effective April 3, 1989.)

25135.4. (a) No person shall establish or expand an offsite facility, unless the legislative body of the city or county in which the new offsite facility, or the expansion of an existing offsite facility, is proposed makes a determination that the facility or expansion is consistent with the county hazardous waste management plan.

(b) This section applies only to proposed new offsite facilities, or expansions of existing offsite facilities, if an approval action pursuant to Title 7 (commencing with Section 65000) of the Government Code is necessary.

(c) This section does not apply to cities or counties which do not have an approved county hazardous waste management plan.

(Added by Stats. 1986, Ch. 1504, Sec. 6.)

25135.5. (a) The department shall, pursuant to this section, provide direction and technical data to counties and regional councils of governments to assist them in preparing planning documents for the management of hazardous wastes produced within their jurisdictions.

(b) The department shall do all of the following:

(1) On or before June 30, 1987, after conducting a workshop with county and city government officials and industry and environmental representatives, prepare and transmit to counties and regional councils of governments guidelines for the preparation and adoption of county and regional hazardous waste management plans. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the preparation and transmittal of these guidelines. The guidelines shall include, but are not limited to, all of the following:

(A) A listing of types or categories of hazardous wastes that can be used in characterizing the hazardous waste stream in each county or region.

(B) Methods for determining the capacity of the hazardous waste facilities that currently manage the hazardous wastes in the county or region and for assessing the capacity of these hazardous waste facilities to manage these hazardous wastes in the future.

(C) Methods for assessing the need to establish new, or expand existing, capacity for the management of hazardous wastes produced in each county or region.

(D) Methods for estimating the amounts of hazardous waste produced by small businesses and households.

(2) On or before June 30, 1987, provide to each county and regional council of governments, all of the following information:

(A) Available data on the types and quantities of hazardous wastes produced in the county or region. The department shall inform the counties and regional councils of governments of the strengths and limitations of the data.

(B) A listing of the hazardous waste facilities that have received hazardous waste facilities permits or grants of interim status in each county or region. The listing shall specify whether the facilities are onsite or offsite facilities and whether the facilities are used for the storage, treatment, transfer, recycling, or disposal of hazardous waste.

(C) A listing of producers of hazardous wastes known to the department in the county or region.

(D) An assessment of overall needed capacities for treating and disposing of hazardous wastes at the state and regional levels through the year 1994.

(E) A description of state policies and programs concerning the management of hazardous waste, including, but not limited to, the policies and programs for recycling various types of hazardous wastes, requiring the treatment of particular types of hazardous wastes, restricting the disposal to

land of particular types or categories of hazardous wastes, encouraging the reduction of the amounts of hazardous waste produced at the source of production, and any other policies and programs that affect the need for additional management capacity in various types of hazardous waste facilities.

(F) An assessment of the potential for recycling, or reducing the volume of, various types of hazardous wastes in various classes of industry.

(Added by Stats. 1986, Ch. 1504, Sec. 6.)

25135.6. (a) A county shall prepare, review, and adopt the county hazardous waste management plan pursuant to the schedule specified in this section.

(b) On or before December 31, 1987, each county, with the cooperation of affected local jurisdictions and the advisory committee established pursuant to Section 25135.2, shall prepare a draft county hazardous waste management plan and submit the draft plan to the department. If a county shows to the department that the county has made substantial compliance towards completing the draft county hazardous waste management plan
and needs additional time to complete the draft plan, the department may extend to March 31, 1988, the date by which the draft plan is required to be submitted. The county shall involve the public with the preparation of the draft plan, to the fullest extent possible, by public hearings, informational meetings, and other appropriate forums that offer the public the opportunity to respond to clearly defined alternative objectives, policies, and actions.

(c) On or before March 31, 1988, or, if the department has given the county a time extension pursuant to subdivision (b), on or before June 30, 1988, the county shall conduct hearings on the draft county hazardous waste management plan, in the number determined appropriate by the county. The county shall provide affected local jurisdictions, the public, industry, business organizations, and the hazardous waste management industry with the full opportunity to comment orally and in writing on the draft county hazardous waste management plan.

(d) On or before March 31, 1988, or, if the department has given the county a time extension pursuant to subdivision (b), on or before June 30, 1988, the department shall review the draft plan, and provide each county with comments which specify the changes or additions which are required to be made to the draft plan to result in a final plan which can be approved by the department pursuant to Section 25135.7.

(e) After conducting the review and comment period required by subdivision (c), each county shall revise, as appropriate, the draft county hazardous waste management plan.

(f) The revised county hazardous waste management plan shall be approved by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, subject to subdivision (g).

(g) The revised county hazardous waste management plan shall be submitted to each city within the county for their approval. Each city shall act upon the revised county hazardous waste management plan within 90 days after the city has received the plan. If a city fails to act upon the plan within 90 days of receiving the plan, the city shall be deemed to have approved the plan as submitted.

(h) On or before September 30, 1988, or, on or before May 31, 1989, if the county is given an extension pursuant to subdivision (a) of Section 25135.7, the county shall adopt the revised county hazardous waste management plan as the final county hazardous waste management plan. If the county is given an additional time extension to September 1, 1989, pursuant to subdivision (a) of Section 25135. 7, the county shall adopt the revised county hazardous waste management plan as the final county hazardous waste management plan by August 31, 1989.

(Amended by Stats. 1989, Ch. 7, Sec. 2. Effective April 3, 1989.)

25135.7. (a) A county shall submit the final county hazardous waste management plan adopted by the county to the department for review and approval on or before October 1, 1988. If a county shows the department that the county has made substantial progress towards completing the county hazardous waste management plan and needs more time to complete the plan, the department may extend this date to June 1, 1989. If the department sends comments on the draft county hazardous waste management plan to a county after June 30, 1988, the department may extend the due date for submittal of the final county hazardous waste management plan for that county to September 1, 1989. The department shall, on or before December 31, 1988, or on or before November 30, 1989, if the county is given a time extension, review and either approve or disapprove the county hazardous waste management plan. If an additional time extension is given to September 1, 1989, pursuant to this subdivision, the department shall review and either approve or disapprove the county hazardous waste management plan on or before February 28, 1990. The department shall approve the county hazardous waste management plan if the department makes all of the following determinations:

(1) The plan substantially complies with the guidelines for the preparation of hazardous waste management plans adopted by the department.

(2) The plan applies the methods, techniques, and policies established by the department to analyze the waste stream and to determine whether there is a need for additional or expanded hazardous waste facilities to safely manage and properly dispose of the hazardous waste generated within the county.

(3) If the plan contains a determination pursuant to paragraph (5) of subdivision (d) of Section 25135.1 that there is a need for additional or expanded hazardous waste facilities, the plan proposes general areas, or, as determined appropriate by the county, proposes specific sites which may be suitable locations for a facility. However, if the plan instead contains siting criteria for selecting sites for new hazardous waste facilities, the plan shall propose general areas where the criteria might be applicable.

(4) If the county preparing the plan has entered into a formal agreement with other counties to manage hazardous waste, the agreement is documented.

(b) Within 180 days after the department approves a county hazardous waste management plan, the county shall either incorporate the applicable portions of the plan, by reference, into the county's general plan, or enact an ordinance which requires that all applicable zoning, subdivision, conditional use permit, and variance decisions are consistent with the portions of the county hazardous waste management plan which identify specific sites or siting criteria for hazardous waste facilities.

(c) Within 180 days after receiving written notification from the county that the county hazardous waste management plan has been approved, each city within that county shall do one of the following:

(1) Adopt a city hazardous waste management plan containing all of the elements required by subdivision (d) of Section 25135.1 which shall be consistent with the approved county hazardous waste management plan.

(2) Incorporate the applicable portions of the approved county plan, by reference, into the city's general plan.

(3) Enact an ordinance which requires that all applicable zoning, subdivision, conditional use permit, and variance decisions are consistent with the portions of the approved county plan which identify general areas or siting criteria for hazardous waste facilities.

(d) This section does not limit the authority of any city to attach appropriate conditions to the issuance of any land use approval for a hazardous waste facility in order to protect the public health, safety, or welfare, and does not limit the authority of a city to establish more stringent planning requirements or siting criteria than those specified in the county hazardous waste management plan.

(e) Any amendment to an adopted county hazardous waste management plan requires the approval of the department, the county, and a majority of the cities within the county which contain a majority of the population of the incorporated area of the county.

(Amended by Stats. 1990, Ch. 1093, Sec. 1. Effective September 20, 1990.)

25135.7.5. (a) If the department disapproves a county hazardous waste management plan pursuant to subdivision (a) of Section 25135.7, or a regional hazardous waste management plan pursuant to Section 25135.3, the department shall provide the county or regional council of governments, in writing and at the time of disapproval, with a detailed description of its reasons for disapproval of the plan. A county or regional council of governments with a disapproved hazardous waste management plan may submit a revised plan to the department one time only. A revised county or regional hazardous waste management plan shall be submitted to the department within 270 days of the effective date of the act adding this section, or within 270 days of plan disapproval if the plan is disapproved by the department after the effective date of the act adding this section. A county or regional council of governments shall notify the department of their intent to revise and resubmit a disapproved plan within 45 days of the effective date of the act adding this section, or within 45 days of plan disapproval, if the plan is disapproved after the effective date of the act adding this section. A resubmitted county or regional plan shall contain detailed responses to all of

the reasons for disapproval of the plan described by the department. The department shall provide counties with informational guidelines on developing an approvable plan.

(b) Before submitting a revised county hazardous waste management plan to the department pursuant to this section, the revised plan shall be approved by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, as specified in subdivisions (f) and (g) of Section 25135.6. A city which fails to act upon a county plan revised pursuant to this section within 90 days after the plan has been submitted to the city by the county shall be deemed to have approved the revised plan.

(c) The department shall review and either approve or disapprove a county or regional hazardous waste management plan revised pursuant to subdivision (a) within 180 days of receiving the revised plan.

(1) The department shall approve a revised county hazardous waste management plan if the department makes all of the determinations in paragraphs (1), (2), (3), and (4) of subdivision (a) of Section 25135.7. If the department approves a revised county hazardous waste management plan pursuant to this section, the county shall comply with subdivision (b) of Section 25135.7, and each city within that county shall comply with subdivision (c) of Section 25135.7.

(2) The department shall approve a revised regional hazardous waste management plan if the department makes all of the determinations in subdivision (g) of Section 25135.3.

(d) A county which did not submit its plan to the department within the due dates for plan submittal established by subdivision (a) of Section 25135.7, or a county whose plan was not formally acted upon by the department by the February 28, 1990, deadline, may submit their plan to the department for review and approval or disapproval pursuant to the provisions governing the resubmittal of revised plans established by this section.

(e) A council of governments which did not submit its plan to the department within the due dates for plan submittal established by Section 25135.3, or whose plan has not been formally acted upon by the department, may
submit their plan to the department for review and approval or disapproval pursuant to the provisions governing the resubmittal of revised plans established by this section.

(Added by renumbering Section 25135.75 by Stats. 1993, Ch. 436, Sec. 3. Effective January 1, 1994.)

25135.8. Notwithstanding Section 25135.7.5, the review and approval of county hazardous waste management plans for counties within the Association of Bay Area Governments region shall be governed in the following manner:

(a) Each county within the Association of Bay Area Governments region with an unapproved county hazardous waste management plan may submit
the final plan adopted by the county to the department for review and approval or disapproval on or before January 15, 1994.

(b) Each county within the Association of Bay Area Governments region which submitted a final plan adopted by the county to the department after June 24, 1991, and prior to January 1, 1994, shall be considered to have met the condition of subdivision (a) with regard to the timely submission of county plans.

(c) The department shall, on or before July 1, 1994, review and either approve or disapprove the county hazardous waste management plans of the counties within the Association of Bay Area Governments region. The department shall approve the county hazardous waste management plan if the department makes all the determinations specified in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 25135.7.

(Added by Stats. 1993, Ch. 436, Sec. 2. Effective January 1, 1994.)

25135.9. (a) The department shall, pursuant to this section and subdivision (c) of Section 25170, prepare and adopt a state hazardous waste management plan. The state hazardous waste management plan shall serve as a comprehensive planning document for the state and shall be prepared as a useful informational source for the public, local government, and regional councils of government. The state hazardous waste management plan shall be prepared in conjunction with, and shall take into account, hazardous waste management plans adopted by counties and regional councils of governments.

(b) The state hazardous waste management plan shall be prepared and adopted by the department on or before November 30, 1991, shall be reviewed annually, and shall be revised to reflect new information at least once every three years.

(c) In preparing and adopting the state hazardous waste management plan, and in revising the plan thereafter, the department shall do all of the following:

(1) Publish the draft plan or the revised plan and make it available to the public for review and comment at least three months before final adoption.

(2) Conduct workshops and at least two public hearings on the plan or the draft revised plan, one in the southern part of the state and one in the northern part of the state, to solicit the views of the public, local government, regional councils of governments, and interested parties.

(3) Include in the final state hazardous waste management plan and in revisions of the plan, a summary of the comments received and the department's responses to those comments.

(d) The state hazardous waste management plan, and each revision of the plan, shall include, but need not be limited to, all of the following elements:

(1) An analysis of the hazardous waste streams produced in the state, an accounting of the volumes of hazardous waste produced in each county and region of the state, by type of waste, and estimates of the expected rates of hazardous waste production, by type of waste, during the next five years.

(2) An inventory of existing and planned hazardous waste facilities which handle, treat, recycle, dispose, or otherwise manage hazardous wastes produced in the state. The inventory shall include a description of the facilities, a determination of the capacity of each existing or planned facility to handle, treat, recycle, dispose, or otherwise manage the waste streams it is authorized to handle, treat, recycle, dispose, or otherwise manage, and a description of the current progress and status of each planned facility in achieving operational status, including a timetable for becoming operational.

(3) An assessment of the need for additional hazardous waste facilities to manage the volumes of hazardous waste currently produced or which are expected to be produced during the next 20 years.

(4) An identification of the areas or regions of the state where new or expanded capacity to manage hazardous wastes are needed and the types of facilities that should be sited and constructed.

(5) A description of the policies, programs, incentives, requirements, prohibitions, or other measures which, if implemented, would reduce or eliminate the need for new or expanded facilities.

(6) A statement of goals, objectives, and policies currently in effect, or in the process of development, for the siting of hazardous waste facilities and the management of hazardous wastes during the next five years.

(7) A schedule of recommended actions, including specific dates, for carrying out state, regional, and local actions to implement the state hazardous waste management plan.

(Amended by Stats. 1990, Ch. 1093, Sec. 3. Effective September 20, 1990.)

Article 4. Listings

(Article 4 added by Stats. 1972, Ch. 1236.)

25140. The department shall prepare, adopt and may revise when appropriate, a listing of the wastes which are determined to be hazardous, and a listing of the wastes which are determined to be extremely hazardous. When identifying such wastes the department shall consider, but not be limited to, the immediate or persistent toxic effects to man and wildlife and the resistance to natural degradation or detoxification of the wastes.

(Added by Stats. 1972, Ch. 1236.)

25141. (a) The department shall develop and adopt by regulation criteria and guidelines for the identification of hazardous wastes and extremely hazardous wastes.

(b) The criteria and guidelines adopted by the department pursuant to subdivision (a) shall identify waste or combinations of waste, that may do either of the following, as hazardous waste because of its quantity, concentration, or physical, chemical, or infectious characteristics:

(1) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) Pose a substantial present or potential hazard to human health or the environment, due to factors including, but not limited to,

carcinogenicity, acute toxicity, chronic toxicity, bioaccumulative properties, or persistence in the environment, when improperly treated, stored, transported, or disposed of, or otherwise managed.

(c) Except as provided in Section 25141.5, any regulations adopted pursuant to this section for the identification of hazardous waste as it read on January 1, 1995, which are in effect on January 1, 1995, shall be deemed to comply with the intent of this section as amended by this act during the 1995 portion of the 1995-96 Regular Session of the Legislature.

(Amended by Stats. 1995, Ch. 638, Sec. 3. Effective January 1, 1996.)

25141.2. (a) (1) Except as provided in paragraph (2), the department shall not publish a notice of a proposal to adopt, amend, or repeal regulations pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) pertaining to the criteria and guidelines for the identification of hazardous waste or to management standards for special wastes until the findings of the external scientific peer review entity convened pursuant to Section 57004 have been issued and the department has reviewed those findings.

(2) Notwithstanding any other provision of law, the department shall not publish a notice of a proposal to adopt, amend, or repeal the regulations specified in paragraph (1) before January 1, 1999.

(b) With respect to the regulations specified in subdivision (a), the department shall submit for public comment its analysis of any hazardous waste management activity to be exempted from this chapter pursuant to subdivision (b) of Section 25150.6 and its demonstration that the exemption satisfies the requirements of subdivision (c) of Section 25150.6 on the earlier of the following dates:

(1) The date that the department issues its draft environmental impact report on the proposed regulations.

(2) The date the department publishes its notice of proposed regulatory action pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(c) Subdivision (b) does not prohibit the department from revising its analysis or demonstration to respond to public comments before the adoption of the regulations.

(d) The department shall, prior to adopting the final version of any regulations specifying the criteria and guidelines for the identification of hazardous waste pursuant to Section 25141 and submitting the adopted regulations to the Office of Administrative Law, do all of the following:

(1) Determine which aspects of the final version of the regulations have been changed subsequent to an external scientific peer review of the scientific basis and scientific portions of the regulations as initially proposed and identify the scientific basis and empirical data or other scientific findings, conclusions, and assumptions upon which the changes are premised.

(2) Submit each change identified pursuant to paragraph (1), together with all supporting scientific material, to external scientific peer review pursuant to paragraph (1) of subdivision (d) of Section 57004 if both of the following apply:

(A) The change is related to establishing a regulatory level, standard, or other requirement for the protection of public health, safety, or the environment.

(B) The change is not directly related to, and is not a response to, the findings of the external scientific peer review of the regulations as initially proposed.

(3) Comply with the requirements of paragraph (2) of subdivision (d) of Section 57004.

(e) (1) The department may utilize the CalTox model and the criteria and guidelines for the identification of hazardous waste, if the criteria and guidelines have been adopted pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), to generate new values for soluble constituents.

(2) Notwithstanding paragraph (1), the department shall not amend or repeal the regulations adopted pursuant to this chapter that are in effect on the effective date of the act adding this section during the 1997-98 Regular Session, with respect to the testing procedure employed to measure solubility or with respect to the regulatory thresholds measured by that testing procedure until an external scientific peer review entity convened pursuant to Section 57004 makes the following finding:

(A) The new proposed testing procedure for solubility is based on sound scientific knowledge, methods, and practices and will predict, with a reasonable degree of accuracy, the long-term mobility in landfill leachate of each hazardous constituent for which the department has established by regulation a soluble threshold limit concentration.

(B) For those hazardous constituents whose long-term mobility in landfill leachate cannot be accurately measured by any testing procedure that can be developed within a reasonable period of time, the soluble threshold limit concentration can be adjusted in a scientifically sound manner to compensate for the extent of inaccuracy of the testing procedure for that constituent.

(3) In establishing revised total threshold limit concentrations in any proposed regulations pertaining to the criteria and guidelines for the identification of hazardous waste pursuant to Section 25141, the department shall not base the total threshold limit concentration for any hazardous constituent in whole, or in part, on an assumption that when wastes are placed on or in the land outside of a permitted disposal facility, those wastes will be mixed or diluted, unless an external scientific peer review entity convened pursuant to Section 57004 finds that the department has demonstrated, in a sound scientific manner, that the assumption that dilution or mixing will occur when the wastes are applied or disposed to land is a reasonable representation of waste management practices in the state, while taking into account reasonably foreseeable mismanagement of wastes, and that these application or disposal practices do not pose significant public health or environmental risks.

(Added by Stats. 1998, Ch. 326, Sec. 1. Effective August 21, 1998.)

25141.5. (a) When classifying a waste as hazardous pursuant to the criteria in paragraph (8) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, as that section read on January 1, 1993, the department shall incorporate the department's decision into a regulation, if the department determines that the waste's classification as a hazardous waste is likely to have broad application beyond the producer who initiated the request.

(b) Unless the department makes a determination after January 1, 1996, by regulation, that additional criteria are necessary to protect the public health, safety, and environment of the state, the department shall use the following criteria and procedures for the identification and regulation of the following types of hazardous waste:

(1) In identifying wastes that are hazardous due to the characteristic of reactivity, the department shall rely on objective analytical tests, procedures, and numerical thresholds set forth in the regulations or guidance documents adopted by the United States Environmental Protection Agency.

(2) (A) On and after January 1, 1997, in identifying wastes that are hazardous due to the characteristic of acute oral toxicity, as defined in the regulations adopted by the department pursuant to this chapter, the department shall use an oral LD50 threshold of less than 2,500 milligrams per kilogram, unless the department adopts revised regulations setting forth a different threshold for acute oral toxicity, based on a review and update of the scientific basis for this criterion.

(B) Notwithstanding any other provision of this chapter or the regulations adopted by the department prior to January 1, 1996, to the extent consistent with the federal act, the substances listed in this subparagraph shall not be classified as hazardous waste due solely to the characteristic of acute oral toxicity. The language in parentheses following the scientific name of each of the substances listed in this paragraph describes one or more common uses of each substance, and is provided for informational purposes only.

(i) Acetic acid (vinegar).

(ii) Aluminum chloride (used in deodorants).

(iii) Ammonium bromide (used in textile finishing and as an anticorrosive agent).

(iv) Ammonium sulfate (used as a food additive and in fertilizer).

(v) Anisole (used in perfumes and food flavoring).

(vi) Boric acid (used in eyewashes and heat resistant glass).

(vii) Calcium fluoride (used to fluoridate drinking water).

(viii) Calcium formate (used in brewing and as a briquette binder).

(ix) Calcium propionate (used as a food additive).

(x) Cesium chloride (used in brewing and in mineral waters).

(xi) Magnesium chloride (used as a flocculating agent).

(xii) Potassium chloride (used as a salt substitute and a food additive).

(xiii) Sodium bicarbonate (baking soda, used in antacids and mouthwashes).

(xiv) Sodium borate decahydrate (borax, used in laundry detergents).

(xv) Sodium carbonate (soda ash, used in textile processing).

(xvi) Sodium chloride (table salt).

(xvii) Sodium iodide (used as an iodine supplement and in cloud seeding).

(xviii) Sodium tetraborate (borax, used in laundry detergents).

(xix) The following oils commonly used as food flavorings: allspice oil, ceylon cinnamon oil, clarified slurry oil, dill oils, or lauryl leaf oil.

(3) (A) Except as provided in subparagraph (B), a waste that would be classified as hazardous solely because it exceeds total threshold limit concentrations, as defined in regulations adopted by the department, shall be excluded from classification as a hazardous waste for purposes of disposal in, and is allowed to be disposed in, a disposal unit regulated as a permitted class I, II, or III disposal unit, pursuant to Section 2531 of Title 23, and Sections 20250 and 20260 of Title 27 of the California Code of Regulations, if, prior to disposal, the waste is managed in accordance with the management standards adopted by the department, by regulation, if any, for this specific type of waste.

(B) Subparagraph (A) shall not apply to a hazardous waste that is a liquid, a sludge or sludge-like material, soil, a solid that is friable, powdered, or finely divided, a nonfilterable and nonmillable tarry material, or a waste that contains an organic substance that exceeds the total threshold limit concentration established by the department for that substance.

(C) For purposes of this subparagraph (B), the following definitions shall apply:

(i) A waste is liquid if it meets the test specified in subdivision (i) of Section 66268.32 of Title 22 of the California Code of Regulations.

(ii) "Sludge or sludge-like material" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, but does not include the treated effluent from wastewater treatment plants.

(iii) "Friable, powdered, or finely divided" has the same meaning as used in the regulations adopted by the department pursuant to this chapter.

(iv) "Nonfilterable and nonmillable tarry material" has the same meaning as used in the regulations adopted by the department pursuant to this chapter.

(D) This paragraph does not affect the authority of a city or county regarding solid waste management under existing provisions of law.

(c) Any regulations adopted pursuant to subdivision (b) 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, and may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 2000, Ch. 343, Sec. 6.4. Effective January 1, 2001.)

25141.6. In any case where the department proposes to make a determination that a waste meets one or more of the criteria and guidelines for the identification of hazardous wastes adopted pursuant to Section 25141, but that it is not necessary to manage the waste as a hazardous waste because the waste possesses mitigating physical and chemical characteristics that render it insignificant as a hazard to human health, safety, or the environment, the department shall issue a public notice of that proposed determination. The public notice shall be electronically posted on the department's Internet home page at least 30 days before the determination becomes final and shall also be sent to all of the following:

(a) The Chairperson of the California Environmental Policy Council.

(b) The California Integrated Waste Management Board.

(c) The State Water Resources Control Board.

(d) Any person who requests the public notice.

(e) Any solid waste enforcement agency or California regional water quality control board, the jurisdiction of which the department knows will be affected by the determination.

(Added by Stats. 1999, Ch. 420, Sec. 1. Effective January 1, 2000.)

25142. Any waste which conforms to a criterion adopted pursuant to Section 25141 shall be managed in accordance with permits, orders, and regulations issued or adopted by the department pursuant to this chapter and building standards published in the State Building Standards Code relating to hazardous waste facilities, or recycled consistent with the list of hazardous wastes which the department, pursuant to Section 25175, finds are economically and technologically feasible to recycle, until the waste is cited in a list adopted by the department pursuant to Section 25140.

(Amended by Stats. 1988, Ch. 1631, Sec. 11.)

25142.5. The department shall develop and implement a comprehensive training, education, and enforcement program for generators, transporters, and facility operators, for personnel conducting inspections for the departments, and for certified unified program agencies. The program shall be designed to increase awareness of the requirements governing the determination of whether a waste is hazardous, including, but not limited to, the requirements governing the use of the generator's knowledge of a waste to determine if the waste is hazardous, and to enhance the level of enforcement of those requirements. In implementing this program, the department shall give priority to training, education, and enforcement activities relating to the classification of the particular waste streams that the department determines are the most susceptible to misclassification, including, but not limited to, oily water and contaminated soil.

(Added by Stats. 1999, Ch. 629, Sec. 1. Effective January 1, 2000.)

25143. (a) The department may grant a variance from one or more of the requirements of this chapter, or the regulations adopted pursuant to this chapter, for the management of a hazardous waste if all of the following conditions apply:

(1) One of the following conditions applies:

(A) The hazardous waste is solely a non-RCRA hazardous waste or the hazardous waste or its management is exempt from, or is not otherwise regulated pursuant to, the federal act.

(B) The requirement from which a variance is being granted is not a requirement of the federal act, or the regulations adopted to implement the federal act.

(C) The department has issued, or is simultaneously issuing, a variance from the federal act for the hazardous waste management pursuant to subdivision (c).

(2) The department makes one of the following findings:

(A) The hazardous waste, the amount of the hazardous waste, or the hazardous waste management activity or management unit is insignificant or unimportant as a potential hazard to human health and safety or to the environment, when managed in accordance with the conditions, limitations, and other requirements specified in the variance.

(B) The requirements, from which a variance is being granted, are insignificant or unimportant in preventing or minimizing a potential hazard to human health and safety or the environment.

(C) The handling, processing, or disposal of the hazardous waste, or the hazardous waste management activity, is regulated by another governmental agency in a manner that ensures it will not pose a substantial present or potential hazard to human health and safety, and the environment.

(D) A requirement imposed by another public agency provides protection of human health and safety or the environment equivalent to the protection provided by the requirement from which the variance is being granted.

(3) The variance is granted in accordance with this section.

(b) (1) The department may grant a variance upon receipt of a variance application for a site or sites owned or operated by an individual or business concern. The individual or business concern submitting the application for a variance shall submit to the department sufficient information to enable the department to determine if all of the conditions required by subdivision (a) are satisfied for all situations within the scope of the requested variance.

(2) The department may also grant a variance, on its own initiative, to one or more individuals or business concerns. If the variance is granted to more than one individual or business concern, the department, in granting the variance pursuant to this paragraph, shall comply with all of the following requirements:

(A) The department shall make all of the following findings, in addition to the findings required pursuant to paragraph (2) of subdivision

(a):

(i) That the variance is necessary to address a temporary situation, or that the variance is needed to address an ongoing situation pending the adoption of regulations by the department.

(ii) That the variance will not create a substantive competitive disadvantage for a member or members of a specific class of facilities. This finding shall be based upon information available to the department at the time that the variance is granted.

(iii) That there are no reasonably foreseeable site-specific physical or operating conditions that could potentially impact the finding made by the department pursuant to paragraph (2) of subdivision (a). This finding shall be supported by substantial evidence in the record as a whole, and shall be based upon both of the following:

(I) The types of hazardous waste streams, the estimated amounts of hazardous waste, and the locations that are affected by the variance. The estimate of the amounts of hazardous waste that are affected by the variance shall be based upon information reasonably available to the department.

(II) Due inquiry, with respect to the hazardous waste streams and management activities affected by the variance, regarding the potential for mismanagement, enforcement and site remediation experience, and proximity to sensitive receptors.

(B) The variance shall not be granted for a period of more than one year. A variance granted pursuant to this paragraph may be renewed for one additional one-year period, if the department makes a finding that the variance has not resulted in harm to human health or safety or to the environment and that there has been substantial compliance with the conditions contained in the variance.

(C) The department shall issue a public notice at least 30 days prior to granting the variance to allow an opportunity for public comment. The public notice shall be issued in the California Regulatory Register, to the department's regulatory mailing list, and to all potentially affected hazardous waste facilities and generators known to the department. The department shall, upon request, hold a public meeting prior to granting the variance. In granting the variance and in making the findings required by paragraph (2) of subdivision (a) and subparagraph (A), the department shall consider all public comments received.

(D) The department shall not grant a variance pursuant to this paragraph from the definition of, or classification as, a hazardous waste, or from requirements pertaining to the investigation or remediation of releases of hazardous waste or constituents.

(E) The authority of the department to grant or renew variances pursuant to this paragraph shall remain in effect only until January 1, 2002, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date. This subparagraph shall not be construed to invalidate any variance granted pursuant to this paragraph prior to the expiration of the department's authority.

(c) (1) In addition to the variance authorized pursuant to subdivisions (a) and (b), the department, after making one of the findings specified in paragraph (2) of subdivision (a), may also grant a variance from the requirements of the federal act in accordance with the provisions of Sections 260.30, 260.31, 260.32, and 260.33 of Title 40 of the Code of Federal Regulations, or any successor federal regulations, regarding the issuance of variances from classification of a material as a solid waste or variances classifying enclosed devices using controlled flame combustion as boilers.

(2) This subdivision shall take effect on the date that the department obtains authorization from the Environmental Protection Agency to implement those provisions of the federal act that are identified in paragraph (1).

(d) Each variance issued pursuant to this section shall be issued on a form prescribed by the department and shall, as applicable, include, but not be limited to, all of the following:

(1) Information identifying the individuals or business concerns to which the variance applies. This identification shall be by name, location of the site or sites, type of hazardous waste generated or managed, or type of hazardous waste management activity, as applicable.

(2) As applicable, a description of the physical characteristics and chemical composition of the hazardous waste or the specifications of the hazardous waste management activity or unit to which the variance applies.

(3) The time period during which the variance is effective.

(4) A specification of the requirements of this chapter or the regulations adopted pursuant to this chapter from which the variance is granted.

(5) A specification of the conditions, limitations, or other requirements to which the variance is subject.

(e) (1) Variances issued pursuant to this section are subject to review at the discretion of the department and may be revoked or modified at any time.

(2) The department shall revoke or modify a variance if the department finds any of the following:

(A) The conditions required by this section are no longer satisfied.

(B) The holder of the variance is in violation of one or more of the conditions, limitations, or other requirements of the variance, and, as a result of the violation, the conditions required by this section are no longer satisfied.

(C) If the variance was granted because of the finding specified in subparagraph (C) or (D) of paragraph (2) of subdivision (a), the holder of the variance is in violation of one or more of the regulatory requirements of another governmental agency to which the holder is subject and the violation invalidates that finding.

(f) Within 30 days from the date of granting a variance, the department shall issue a public notice on the California Regulatory Register.

(Amended by Stats. 1997, Ch. 870, Sec. 2. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25143.1. (a) Any geothermal waste resulting from drilling for geothermal resources is exempt from the requirements of this chapter because the disposal of these geothermal wastes is regulated by the California regional water quality control boards.

(b) (1) Wastes from the extraction, beneficiation, and processing of ores and minerals that are not subject to regulation under the federal act are exempt from the requirements of this chapter, except the requirements of Article 9.5 (commencing with Section 25208), as provided in paragraph (2).

(2) The wastes subject to this subdivision are subject to Article 9.5 (commencing with Section 25208) and Chapter 6.8 (commencing with Section 25300) if the wastes would otherwise be classified as hazardous wastes pursuant to Section 25117 and the regulations adopted pursuant to Section 25141.

(3) For purposes of this subdivision, the following definitions shall apply:

(A) "Wastes from the extraction, beneficiation, and processing of ores and minerals" means any of the following:

(i) Soil, waste rock, overburden, and any other solid, semisolid, or liquid natural materials that are removed, unearthed, or otherwise displaced as a result of excavating or recovering an ore or a mineral.

(ii) Residuals of ores or minerals after those ores or minerals have been removed, unearthed, or otherwise displaced from their natural sites and physically or chemically treated or otherwise managed in order to separate or concentrate the commercial product present in the ore or mineral, or processed to produce a final marketable product.

(B) "Minerals" has the same meaning as defined in Section 2005 of the Public Resources Code.

(c) (1) Except as provided in paragraphs (3) and (4), geothermal waste, excluding filter cake, that is generated from the exploration, development, or production of geothermal energy and that does not result from drilling for geothermal resources, is exempt from the requirements of this chapter, if the geothermal waste meets either of the following requirements:

(A) The geothermal waste is contained within a piping system, nonearthen trench, or descaling area, or within related equipment, that is associated with the geothermal plant where the waste was generated.

(B) The geothermal waste is within the physical boundaries of a lined surface impoundment associated with the geothermal plant where the waste was generated.

(2) If geothermal waste that is exempted pursuant to subparagraph (B) of paragraph (1) is relocated to an elevated location inside a lined surface impoundment for dewatering, that waste shall be removed from the surface impoundment within 30 days of the relocation and while the waste still contains sufficient moisture to prevent wind dispersion, except for residuals that are impractical to remove. The geothermal waste shall be deemed to be generated at the time of removal and shall be properly managed as hazardous waste pursuant to the requirements of this chapter.

(3) Any geothermal waste that is exempt pursuant to this subdivision ceases to be exempt from the requirements of this chapter, and

shall be deemed to have been generated, when any of the following occur:

(A) It is no longer contained in one or more of the following, as described in subparagraph (A) or (B) of paragraph (1):

(i) A piping system.

(ii) Nonearthen trench.

(iii) Descaling area.

(iv) Related equipment.

(v) Lined surface impoundment.

(B) It is left in a geothermal piping system, a related piping system, a nonearthen trench, a descaling area, or another piece of related equipment 18 months after the date the geothermal power plant last produced power, unless prior to that date the operator submits a written notification, as described in paragraph (4) to the department, and the department acknowledges the notification in writing.

(C) It is left in a lined surface impoundment and at any time poses an imminent potential threat to areas outside the surface impoundment due to windblown fugitive dusts.

(D) It remains in a unit no longer actively regulated by the regional water quality control board.

(E) It is left in a lined surface impoundment 18 months after the date the surface impoundment has last received waste, unless prior to that date the operator submits a written notification as described in paragraph (4) to the department, and the department acknowledges the notification in writing.

(4) The notification that is required to be submitted by an operator pursuant to subparagraphs (B) and (E) of paragraph (3) shall contain all of the following information:

(A) The name and address of the operator, and the address and physical location of the plant or surface impoundment in which the waste will be stored.

(B) Estimated dates on which the units will resume operation.

(C) A description of how the waste will be stored and managed, demonstrating to the department that the waste will not pose a significant hazard to human health and safety or the environment.

(5) This subdivision does not exempt hazardous waste that is either not directly associated with geothermal energy exploration, development, and production, or that is not exempted from the federal act pursuant to paragraph (5) of subdivision (b) of Section 261.4 of Title 40 of the Code of Federal Regulations, or both. Hazardous waste that is not exempted pursuant to this subdivision includes, but is not limited to, used oil generated from vehicles or the lubrication of machinery.

(Amended by Stats. 2006, Ch. 143, Sec. 1. Effective August 22, 2006.)

25143.1.5. (a) For purposes of this section, "wood waste" includes poles, crossarms, pilings, fence posts, lumber, support timbers, flume lumber, and cooling tower lumber.

(b) Any wood waste, previously treated with a preservative, that has been removed from electric, gas, or telephone service, is exempt from the requirements of this chapter if all of the following conditions are met:

(1) The wood waste is not subject to regulation as a hazardous waste under the federal act.

(2) The wood waste is disposed of in a composite-lined portion of a municipal solid waste landfill that meets any requirements imposed by the state policy adopted pursuant to Section 13140 of the Water Code and regulations adopted pursuant to Sections 13172 and 13173 of the Water Code.

(3) The solid waste landfill used for disposal is authorized to accept the wood waste under waste discharge requirements issued by the California regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(Added by Stats. 1995, Ch. 670, Sec. 1. Effective January 1, 1996.)

25143.2. (a) Recyclable materials are subject to this chapter and the regulations adopted by the department to implement this chapter that apply to hazardous wastes, unless the department issues a variance pursuant to Section 25143, or except as provided otherwise in subdivision (b), (c), or (d) or in the regulations adopted by the department pursuant to Sections 25150 and 25151.

(b) Except as otherwise provided in subdivisions (e), (f), and (g), recyclable material that is managed in accordance with Section 25143.9 and is or will be recycled by any of the following methods shall be excluded from classification as a waste:

(1) Used or reused as an ingredient in an industrial process to make a product if the material is not being reclaimed.

(2) Used or reused as a safe and effective substitute for commercial products if the material is not being reclaimed.

(3) Returned to the original process from which the material was generated, without first being reclaimed, if the material is returned as a substitute for raw material feedstock, and the process uses raw materials as principal feedstocks.

(c) Except as otherwise provided in subdivision (e), any recyclable material may be recycled at a facility that is not authorized by the department pursuant to the applicable hazardous waste facilities permit requirements of Article 9 (commencing with Section 25200) if either of the following requirements is met:

(1) The material is a petroleum refinery waste containing oil that is converted into petroleum coke at the same facility at which the waste was generated unless the resulting coke product would be identified as a hazardous waste under this chapter.

(2) The material meets all of the following conditions:

(A) The material is recycled and used at the same facility at which the material was generated.

(B) The material is recycled within the applicable generator accumulation time limits specified in Section 25123.3 and the regulations adopted by the department pursuant to paragraph (1) of subdivision (b) of Section 25123.3.

(C) The material is managed in accordance with all applicable requirements for generators of hazardous wastes under this chapter and regulations adopted by the department.

(d) Except as otherwise provided in subdivisions (e), (f), (g), and (h), recyclable material that meets the definition of a non-RCRA hazardous waste in Section 25117.9, is managed in accordance with Section 25143.9, and meets or will meet any of the following requirements is excluded from classification as a waste:

(1) The material can be shown to be recycled and used at the site where the material was generated.

(2) The material qualifies as one or more of the following:

(A) The material is a product that has been processed from a hazardous waste, or has been handled, at a facility authorized by the department pursuant to the facility permit requirements of Article 9 (commencing with Section 25200) to process or handle the material, if the product meets both of the following conditions:

(i) The product does not contain constituents, other than those for which the material is being recycled, that render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141.

(ii) The product is used, or distributed or sold for use, in a manner for which the product is commonly used.

(B) The material is a petroleum refinery waste containing oil that is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter.

(C) The material is oily waste, used oil, or spent nonhalogenated solvent that is managed by the owner or operator of a refinery that is processing primarily crude oil and is not subject to permit requirements for the recycling of used oil, of a public utility, or of a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent of the refinery or public utility, and meets all of the following requirements:

(i) The material is either burned in an industrial boiler, an industrial furnace, an incinerator, or a utility boiler that is in compliance with all applicable federal and state laws, or is recombined with normal process streams to produce a fuel or other refined petroleum product.

(ii) The material is managed at the site where it was generated; managed at another site owned or operated by the generator, a corporate subsidiary of the generator, a subsidiary of the same entity of which the generator is a subsidiary, or the corporate parent of the generator; or, if the material is generated in the course of oil or gas exploration or production, managed by an unrelated refinery receiving the waste through a common pipeline.

(iii) The material does not contain constituents, other than those for which the material is being recycled, that render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141, unless the material is an oil-bearing material or recovered oil that is managed in accordance with subdivisions (a) and (c) of Section 25144 or unless the

material is used oil removed from equipment, vehicles, or engines used primarily at the refinery where it is to be used to produce fuels or other refined petroleum products and the used oil is managed in accordance with Section 279.22 of Title 40 of the Code of Federal Regulations prior to insertion into the refining process.

(D) The material is a fuel that is transferred to, and processed into, a fuel or other refined petroleum product at a petroleum refinery, as defined in paragraph (4) of subdivision (a) of Section 25144, and meets one of the following requirements:

(i) The fuel has been removed from a fuel tank and is contaminated with water or nonhazardous debris, of not more than 2 percent by weight, including, but not limited to, rust or sand.

(ii) The fuel has been unintentionally mixed with an unused petroleum product.

(3) The material is transported between locations operated by the same person who generated the material, if the material is recycled at the last location operated by that person and all of the conditions of clauses (i) to (vi), inclusive, of subparagraph (A) of paragraph (4) are met. If requested by the department or by any official authorized to enforce this section pursuant to subdivision (a) of Section 25180, a person handling material subject to this paragraph, within 15 days from the date of receipt of the request, shall supply documentation to show that the requirements of this paragraph have been satisfied.

(4) (A) The material is transferred between locations operated by the same person who generated the material, if the material is to be recycled at an authorized offsite hazardous waste facility and if all of the following conditions are met:

(i) The material is transferred by employees of that person in vehicles under the control of that person or by a registered hazardous waste hauler under contract to that person.

(ii) The material is not handled at any interim location.

(iii) The material is not held at any publicly accessible interim location for more than four hours unless required by other provisions of law.

(iv) The material is managed in compliance with this chapter and the regulations adopted pursuant to this chapter prior to the initial transportation of the material and after the receipt of the material at the last location operated by that person. Upon receipt of the material at the last location operated by that person, the material shall be deemed to have been generated at that location.

(v) All of the following information is maintained in an operating log at the last location operated by that person and kept for at least three years after receipt of the material at that location:

(I) The name and address of each generator location contributing material to each shipment received.

(II) The quantity and type of material contributed by each generator to each shipment of material.

(III) The destination and intended disposition of all material shipped offsite or received.

(IV) The date of each shipment received or sent offsite.

(vi) If requested by the department, or by any law enforcement official, a person handling material subject to this paragraph, within 15 days from the date of receipt of the request, shall supply documentation to show that the requirements of this paragraph have been satisfied.

(B) For purposes of paragraph (3) and subparagraph (A) of this paragraph, "person" also includes corporate subsidiary, corporate parent, or subsidiary of the same corporate parent.

(C) Persons that are a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent, and that manage recyclable materials under paragraph (3) or subparagraph (A) of this paragraph, are jointly and severally liable for any activities excluded from regulation pursuant to this section.

(5) The material is used or reused as an ingredient in an industrial process to make a product if the material meets all of the following requirements:

(A) The material is not a wastewater that meets all of the following criteria:

(i) The wastewater is a non-RCRA hazardous waste.

(ii) The wastewater contains more than 75 parts per million of total petroleum hydrocarbons, as determined by use of United States Environmental Protection Agency Method 1664, Revision A for Silica Gel Treated N-Hexane Extractable Material.

(iii) The wastewater has been transported offsite to a facility, that is not a publicly owned treatment works, a facility owned by the generator, or a corporate subsidiary, corporate parent, or a subsidiary of the same corporate parent of the generator.

(B) Any discharges to air from the treatment of the material by the procedures specified in subparagraph (C) do not contain constituents that are hazardous wastes pursuant to the regulations of the department and are in compliance with applicable air pollution control laws.

(C) The material is not being treated except by one or more of the following procedures:

(i) Filtering.

(ii) Screening.

(iii) Sorting.

(iv) Sieving.

(v) Grinding.

(vi) Physical or gravity separation without the addition of external heat or any chemicals.

(vii) pH adjustment.

(viii) Viscosity adjustment.

(6) The material is used or reused as a safe and effective substitute for commercial products, if the material meets all of the following requirements:

(A) The material is not a wastewater that meets all of the following criteria:

(i) The wastewater is a non-RCRA hazardous waste.

(ii) The wastewater contains more than 75 parts per million of total petroleum hydrocarbons, as determined by use of United States Environmental Protection Agency Method 1664, Revision A for Silica Gel Treated N-Hexane Extractable Material.

(iii) The wastewater has been transported offsite to a facility that is not a publicly owned treatment works, or a facility owned by the generator, or a corporate subsidiary, corporate parent, or a subsidiary of the same corporate parent of the generator.

(B) Any discharges to air from the treatment of the material by the procedures specified in subparagraph (C) do not contain constituents that are hazardous wastes pursuant to the regulations of the department and the discharges are in compliance with applicable air pollution control laws.

(C) The material is not being treated, except by one or more of the following procedures:

(i) Filtering.

(ii) Screening.

(iii) Sorting.

(iv) Sieving.

(v) Grinding.

(vi) Physical or gravity separation without the addition of external heat or any chemicals.

(vii) pH adjustment.

(viii) Viscosity adjustment.

(7) The material is a chlorofluorocarbon or hydrochlorofluorocarbon compound or a combination of chlorofluorocarbon or hydrochlorofluorocarbon compounds, is being reused or recycled, and is used in heat transfer equipment, including, but not limited to, mobile air-conditioning systems, mobile refrigeration, and commercial and industrial air-conditioning and refrigeration systems, used in fire extinguishing products, or contained within foam products.

(e) Notwithstanding subdivisions (b), (c), and (d), all of the following recyclable materials are hazardous wastes and subject to full regulation under this chapter, even if the recycling involves use, reuse, or return to the original process as described in subdivision (b), and even if the recycling involves activities or materials described in subdivisions (c) and (d):

(1) Materials that are a RCRA hazardous waste, as defined in Section 25120.2, used in a manner constituting disposal, or used to produce products that are applied to the land, including, but not limited to, materials used to produce a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance.

(2) Materials that are a non-RCRA hazardous waste, as defined in Section 25117.9, and used in a manner constituting disposal or used to produce products that are applied to the land as a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance. The department may adopt regulations to exclude materials from regulation pursuant to this paragraph.

(3) Materials burned for energy recovery, used to produce a fuel,

or contained in fuels, except materials exempted under paragraph (1) of subdivision (c) or excluded under subparagraph (B), (C), or (D) of paragraph (2) of subdivision (d).

(4) Materials accumulated speculatively.

(5) Materials determined to be inherently wastelike pursuant to regulations adopted by the department.

(6) Used or spent etchants, stripping solutions, and plating solutions that are transported to an offsite facility operated by a person other than the generator and either of the following applies:

(A) The etchants or solutions are no longer fit for their originally purchased or manufactured purpose.

(B) If the etchants or solutions are reused, the generator and the user cannot document that they are used for their originally purchased or manufactured purpose without prior treatment.

(7) Used oil, as defined in subdivision (a) of Section 25250.1, unless one of the following applies:

(A) The used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d), paragraph (4) of subdivision (d), subdivision (b) of Section 25250.1, or Section 25250.3, and is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

(B) The used oil is used or reused on the site where it was generated or is excluded under paragraph (3) of subdivision (d), is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations, and is not any of the following:

(i) Used in a manner constituting disposal or used to produce a product that is applied to land.

(ii) Burned for energy recovery or used to produce a fuel unless the used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(iii) Accumulated speculatively.

(iv) Determined to be inherently wastelike pursuant to regulations adopted by the department.

(f) (1) Any person who manages a recyclable material under a claim that the material qualifies for exclusion or exemption pursuant to this section shall provide, upon request, to the department, the California Environmental Protection Agency, or any local agency or official authorized to bring an action as provided in Section 25180, all of the following information:

(A) The name, street and mailing address, and telephone number of the owner or operator of any facility that manages the material.

(B) Any other information related to the management by that person of the material requested by the department, the California Environmental Protection Agency, or the authorized local agency or official.

(2) Any person claiming an exclusion or an exemption pursuant to this section shall maintain adequate records to demonstrate to the satisfaction of the requesting agency or official that there is a known market or disposition for the material, and that the requirements of any exemption or exclusion pursuant to this section are met.

(3) For purposes of determining that the conditions for exclusion from classification as a waste pursuant to this section are met, any person, facility, site, or vehicle engaged in the management of a material under a claim that the material is excluded from classification as a waste pursuant to this section is subject to Section 25185.

(g) For purposes of Chapter 6.8 (commencing with Section 25300), recyclable materials excluded from classification as a waste pursuant to this section are not excluded from the definition of hazardous substances in subdivision (g) of Section 25316.

(h) Used oil that fails to qualify for exclusion pursuant to subdivision (d) solely because the used oil is a RCRA hazardous waste may be managed pursuant to subdivision (d) if the used oil is also managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

(Amended by Stats. 2001, Ch. 866, Sec. 1. Effective January 1, 2002.)

25143.3. The Environmental Protection Agency regulations regarding spent sulfuric acid as set forth in Section 261.4(a)(7) of Title 40 of the Code of Federal Regulations (50 Fed. Reg. 665) are the regulations of the department and shall remain in effect until the department adopts regulations regarding this subject. It is the intent of the Legislature that the regulations adopted by the department be at least equivalent to, and in substantial conformance with that Section 261.4(a)(7). Further, it is the intent of the Legislature that the department may define in the regulations the term "spent sulfuric acid" as it deems necessary to avoid sham recycling, as described on page 638 of Volume 50 of the Federal Register by the Environmental Protection Agency.

(Added by Stats. 1985, Ch. 1594, Sec. 7.)

25143.4. (a) The department shall adopt regulations pursuant to this section, which authorize the reuse of pulping liquors that are reclaimed in a pulping liquor recovery furnace, and which are equivalent to the regulations in Section 261.4 (a)(6) of Title 40 of the Code of Federal Regulations.

Until the department adopts these regulations, the regulations adopted by the Environmental Protection Agency regarding pulping liquors that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, as set forth in Section 261.4 (a)(6) of Title 40 of the Code of Federal Regulations, shall be deemed to be the regulations of the department.

(b) To the extent consistent with the federal act, and notwithstanding any other provision of law, organic materials, including, but not limited to, crude sulfate turpentine and methanol, that are derived from wood processed at kraft pulping mills to produce wood pulp, may be burned as a fuel by the mill which produced the materials, without obtaining a hazardous waste facilities permit or other grant of authorization from the department, if all of the following requirements are met:

(1) The materials exhibit only the characteristics listed in Section 66261.21 of, and paragraph (6) of subdivision (a) of Section 66261.24 of, Title 22 of the California Code of Regulations.

(2) The materials have heating values comparable to that of commercially available fuels.

(3) The materials are not contaminated or mixed with hazardous constituents from other processes.

(4) The combustion of the materials is regulated by an air pollution control district or air quality management district.

(Added by Stats. 1995, Ch. 401, Sec. 1. Effective January 1, 1996.)

25143.5. (a) Except as provided in subdivisions (d), (e) and (f), the department shall classify as nonhazardous waste any fly ash, bottom ash, and flue gas emission control residues, generated from a biomass combustion process, as defined in subdivision (g), if the combustion process will be adequately monitored and controlled so as to prevent the handling or the disposal of any waste in a manner prohibited by law, unless the department determines that the ash or residue is hazardous, by testing a representative sample of the ash or residue pursuant to criteria adopted by the department.

(b) The fly ash, bottom ash, and flue gas emission control residues that are classified as nonhazardous by the department are exempt from this chapter.

(c) An operator of a biomass facility which converts biomass into energy for which the department has classified the ash or residue as hazardous shall notify the department whenever there has been a significant change in the waste entering the combustion process, the combustion process itself, or in the management of the ash or residues generated by the facility. An operator of a biomass facility that converts biomass into energy, with regard to which the department has classified the ash or residue as nonhazardous, shall notify the department when there has been a significant change in the waste entering the combustion process or in the combustion process itself.

(d) For purposes of classifying fly ash, bottom ash, and flue gas emission control residues generated by the combustion of municipal solid waste in a facility, with regard to which the department classified the ash or residue as nonhazardous, on or before January 1, 1985, the sampling of the ash or residue, for purposes of classification by the department, shall occur at the point in the process following onsite treatment of the ash or residue.

(e) Notwithstanding any other provision of law, this section applies only to fly ash, bottom ash, and flue gas emission control residues which are not RCRA hazardous waste.

(f) Notwithstanding any other provision of law, the test specified in the regulations adopted by the department with regard to a waste exhibiting the characteristic of corrosivity if representative samples of the waste are not aqueous and produce a solution with a pH that is less than, or equal to, two or greater than, or equal to, 12.5, as specified in paragraph (3) of subdivision (a) of Section 66261.22 of Title 22 of the California Code of

Regulations, as that section read on January 1, 1996, shall not apply to ash generated from a biomass combustion process that is managed in accordance with
applicable regulations administered by the California regional water quality control board, is used beneficially in a manner that results in lowering the pH below 12.5 but above 2.0, is not accumulated speculatively, and is available for commercial use.

(g) For purposes of this section, the following definitions shall apply:

(1) "Biomass combustion process" means a combustion process that has a primary energy source of biomass or biomass waste, and of which 75 percent of the total energy input is from those sources during any calendar year, and of which 25 percent or less of the other energy sources do not include sewage sludge, industrial sludge, medical waste, hazardous waste, radioactive waste, or municipal solid waste.

(2) "Biomass" or "biomass waste" means any organic material not derived from fossil fuels, such as agricultural crop residues, bark, lawn, yard and garden clippings, leaves, silvicultural residue, tree and brush pruning, wood and wood chips, and wood waste, including these materials when separated from other waste streams. "Biomass" or "biomass waste" does not include material containing sewage sludge, industrial sludge, medical waste, hazardous waste, or radioactive waste.

(Amended by Stats. 1996, Ch. 962, Sec. 2. Effective January 1, 1997.)

25143.6. On or before February 15, 1988, the following California regional water quality control boards shall prepare a list of class III landfills, as specified in Section 2533 of Title 23 of the California Administrative Code, including at least one landfill in each specified water quality control region which is authorized to accept and dispose of shredder waste in accordance with State Water Resources Control Board Resolution No. 87-22: San Francisco Bay Region, Central Valley Region, Los Angeles Region, Santa Ana Region, and San Diego Region.

(Amended by Stats. 1987, Ch. 1483, Sec. 1.)

25143.7. Waste containing asbestos may be disposed of at any landfill which has waste discharge requirements issued by the regional water quality control board which allow the disposal of such waste, provided that the wastes are handled and disposed of in accordance with the Toxic Substances Control Act (P.L. 94-469) and all applicable laws and regulations.

(Added by Stats. 1986, Ch. 1451, Sec. 8. Effective September 30, 1986.)

25143.8. (a) For purposes of this section, "cementitious material" means cement, cement kiln dust, clinker, and clinker dust.

(b) The test specified in the regulations adopted by the department with regard to a waste exhibiting the characteristic of corrosivity if representative samples of the waste are not aqueous and produce a solution with a pH less than or equal to 2 or greater than or equal to 12.5, as specified in paragraph (3) of subdivision (a) of Section 66261.22 of Title 22 of the California Code of Regulations, as that section read on January 1, 1996, shall not apply to waste cementitious material which is managed in accordance with applicable regulations administered by the California regional water quality control board at the cement manufacturing facility where it was generated.

(c) Cementitious material which is a nonaqueous waste, is managed in accordance with applicable regulations administered by the regional water quality control board at the cement manufacturing facility where it was generated, and would otherwise be classified as a hazardous waste based solely on the test specified in paragraph (3) of subdivision (a) of Section 66261.22 of Title 22 of the California Code of Regulations, as that section read on January 1, 1996, is excluded from classification as a hazardous waste pursuant to this chapter.

(Added by Stats. 1995, Ch. 847, Sec. 1. Effective January 1, 1996.)

25143.9. A recyclable material shall not be excluded from classification as a waste pursuant to subdivision (b) or (d) of Section 25143.2, unless all of the following requirements are met:

(a) If the material is held in a container or tank, the container or tank is labeled, marked, and placarded in accordance with the department's hazardous waste labeling, marking, and placarding requirements which are applicable to generators, except that the container or tank shall be labeled or marked clearly with the words "Excluded Recyclable Material" instead of the words "Hazardous Waste," and manifest document numbers are not applicable. If the material is used oil, the containers, aboveground tanks, and fill pipes used to transfer oil into underground storage tanks shall also be labeled or clearly marked with the words "Used Oil" .

(b) The owner or operator of the business location where the material is located has a business plan that meets the requirements of Section 25504, including, but not limited to, emergency response plans and procedures, as described in subdivision (b) of Section 25504, which specifically address the material or that meet the department's emergency response and contingency requirements which are applicable to generators of hazardous waste.

(c) The material shall be stored and handled in accordance with all local ordinances and codes, including, but not limited to, fire codes, governing the storage and handling of the hazardous material. If a local jurisdiction does not have an ordinance or code regulating the storage of the material, including, but not limited to, an ordinance or code requiring secondary containment for hazardous material storage areas, the material shall be stored in tanks, waste piles, or containers meeting the department's interim status regulations establishing design standards applicable to tanks, waste piles, or containers storing hazardous waste.

(d) If the material is being exported to a foreign country, the person exporting the material shall meet the requirements of Section 25162.1.

(Amended by Stats. 1994, Ch. 1154, Sec. 2. Effective January 1, 1995.)

25143.10. (a) Except as provided in subdivisions (e) and (f), any person who recycles more than 100 kilograms per month of recyclable material under a claim that the material qualifies for exclusion or exemption pursuant to Section 25143.2 shall, on or before July 1, 1992, and every two years thereafter, provide to the local officer or agency authorized to enforce this section pursuant to subdivision (a) of Section 25180, all of the following information, using the format established pursuant to subdivision (d), in writing:

(1) The name, site address, mailing address, and telephone number of the owner or operator of any facility that recycles the material.

(2) The name and address of the generator of the recyclable material.

(3) Documentation that the requirements of any exemptions or exclusions pursuant to Section 25143.2 are met, including, but not limited to, all of the following:

(A) Where a person who recycles the material is not the same person who generated the recyclable material, documentation that there is a known market for disposition of the recyclable material and any products manufactured from the recyclable material.

(B) Where the basis for the exclusion is that the recyclable material is used or reused to make a product or as a safe and effective substitute for a commercial product, a general description of the material and products, identification of the constituents or group of constituents, and their approximate concentrations, that would render the material or product hazardous under the regulations adopted pursuant to Sections 25140 and 25141, if it were a waste, and the means by which the material is beneficially used.

(b) Except as provided in Section 25404.5, the governing body of a city or county may adopt an ordinance or resolution pursuant to Section 101325 to pay for the actual expenses of the activities carried out by local officers or agencies pursuant to subdivision (a).

(c) If a person who recycles material under a claim that the material qualifies for exclusion or exemption pursuant to Section 25143.2 is not the same person who generated the recyclable material, the person who recycles the material shall, on or before July 1, 1992, and every two years thereafter, provide a copy of the information required to be submitted pursuant to subdivision (a) to the generator of the recyclable material.

(d) The person providing the information required by subdivision (a) shall use a format developed by the California Conference of Directors of Environmental Health in consultation with the department. The department shall distribute the format to local officers and agencies authorized to enforce this section pursuant to subdivision (a) of Section 25180.

(e) A recyclable material generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste treatment manufacturing unit is not subject to the requirements of this section, until the recyclable material exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the material remains in the unit for more than 90 days after the unit ceases to be operated for manufacturing, storage, or transportation of the product or raw material.

(f) A local officer or agency authorized to enforce this section pursuant to subdivision (a) of Section 25180 may exempt from subdivision (a) any person who operates antifreeze recycling units or solvent distillation units, where the recycled material is returned to productive use at the site of generation, or may require less information than that required under subdivision (a) from the person.

(Amended (as amended by Stats. 1995, Ch. 639) by Stats. 1996, Ch. 1023, Sec. 230. Effective September 29, 1996.)

25143.11. (a) The department shall, on or before January 1, 1997, to the extent that it is consistent with the federal act and the protection of the public health, safety, and the environment, adopt regulations exempting secondary materials from this chapter. Those regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. In adopting the regulations, the department shall consider the restrictions listed in paragraph (8) of subsection (a) of Section 261.4 of Title 40 of the Code of Federal Regulations which apply to the exclusion of secondary materials from regulation under the federal act.

(b) For purposes of this section, "secondary materials" means materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process.

(Added by Stats. 1995, Ch. 625, Sec. 1. Effective January 1, 1996.)

25143.12. Notwithstanding any other provision of law, debris that is contaminated only with crude oil or any of its fractions is exempt from regulation under this chapter if all of the following conditions are met:

(a) The debris consists exclusively of wood, paper, textile materials, concrete rubble, metallic objects, or other solid manufactured objects.

(b) The debris is not subject to regulation as a hazardous waste or used oil under federal law.

(c) The debris does not contain any free liquids, as determined by the paint filter test specified in the regulations adopted by the department.

(d) The debris, if not contaminated with crude oil or any of its fractions, would not be regulated as a hazardous waste under this chapter or the regulations adopted pursuant to this chapter.

(e) The debris is not a container or tank that is subject to regulation as hazardous waste under this chapter or the regulations adopted pursuant to this chapter.

(f) The debris is disposed of in a composite lined portion of a waste management unit that is classified as either a Class I or Class II waste management unit in accordance with Article 3 (commencing with Section 2530) of Chapter 15 of Division 3 of Title 23 of the California Code of Regulations, the disposal is made in accordance with the applicable requirements of the California regional water quality control board and the California Integrated Waste Management Board, and, if the waste management unit is a Class II landfill, it is sited, designed, constructed, and operated in accordance with the minimum standards applicable on or after October 9, 1993, to new or expanded municipal solid waste landfills, that are contained in Part 258 (commencing with Section 258.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations read on January 1, 1996.

(Amended by Stats. 2001, Ch. 605, Sec. 3. Effective October 9, 2001. Operative January 1, 2002, by Sec. 18 of Ch. 605.)

25143.13. (a) Notwithstanding any other provision of law, except as provided in subdivision (c), wastes containing silver or silver compounds that are RCRA hazardous wastes solely due to the presence of silver in the waste are subject to regulation under this chapter solely to the extent that these wastes are subject to regulation under the federal act. This subdivision does not apply to wastes that are classified as non-RCRA hazardous wastes due to the presence of constituents or characteristics other than silver.

(b) Notwithstanding any other provision of law, wastes containing silver or silver compounds are exempt from regulation under this chapter if the wastes are not subject to regulation under the federal act as RCRA hazardous waste, and the wastes would otherwise be subject to regulation under this chapter solely due to the presence of silver in the waste.

(c) With respect to treatment of a hazardous waste, subdivision (a) applies only to the removal of silver from photoimaging solutions and photoimaging solution wastewaters. Any other treatment of wastes containing silver or silver compounds that are RCRA hazardous wastes is subject to all of the applicable requirements of this chapter.

(d) The department shall amend its regulations, as necessary, to conform to this section. Until the department amends these regulations, the applicable regulations adopted by the Environmental Protection Agency pursuant to the federal act pertaining to the regulation of wastes containing silver or silver compounds, which are regulated as RCRA hazardous wastes solely due to the presence of silver in the waste, shall be deemed to be the regulations of the department, except as otherwise provided in subdivision (c).

(e) This section shall not be construed to limit or abridge the powers or duties granted to any state or local agency pursuant to any law, other than this chapter, to regulate wastes containing silver or silver compounds.

(Amended by Stats. 2000, Ch. 343, Sec. 6.6. Effective January 1, 2001.)

25143.14. (a) Except as otherwise provided in subdivisions (c) and (d), residues that are removed from equipment for the purpose of cleaning the equipment for continued use are subject to regulation under this chapter only after the residues have been removed from the equipment.

(b) Except as otherwise provided in subdivisions (c) and (d), the act of removing residues from equipment for the purpose of cleaning the equipment for continued use constitutes generation, and not treatment, of a hazardous waste.

(c) Subdivisions (a) and (b) only apply to equipment that is not being used to manage hazardous waste.

(d) Residues that are not hazardous waste, as defined in Section 25117, including residues that are not discarded materials pursuant to subdivision (c) of Section 25124, are not subject to regulation under this chapter.

(Added by Stats. 1998, Ch. 506, Sec. 2. Effective January 1, 1999.)

25144. (a) For purposes of this section, the following terms have the following meaning:

(1) "Oil" means crude oil, or any fraction thereof, that is liquid at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute pressure. "Oil" does not include any of the following, unless it is exempt from regulation under paragraph (1) of subdivision (g) of Section 279.10 of, or paragraph (5) of subdivision (g) of Section 279.10 of, Part 279 of Title 40 of the Code of Federal Regulations:

(A) Spent lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, heavy equipment, or machinery powered by an internal combustion engine.

(B) Spent industrial oils, including compressor, turbine, and bearing oil, hydraulic oil, metal-working oil, refrigeration oil, and railroad drainings.

(2) "Oil-bearing materials" means any liquid or semisolid material containing oil, partially refined petroleum products, or petroleum products. "Oil-bearing materials" do not include either of the following:

(A) Soil from remediation projects.

(B) Contaminated groundwater that is generated at, or originating from the operation, maintenance, or cleanup of, service stations, as defined in Section 13650 of the Business and Professions Code.

(3) "Oil recovery operations" means the physical separation of oil from oil-bearing materials by means of gravity separation, centrifugation, filter pressing, or other dewatering processes, with or without the addition of heat, chemical flocculants, air, or natural gas to enhance separation.

(4) "Petroleum refinery" means an establishment that has the Standard Industrial Classification Code 2911 and that is not subject to the permit requirements for the recycling of used oil imposed pursuant to Article 9 (commencing with Section 25200).

(5) "Subsidiary" means a corporate entity engaged in the exploration, production, transportation, refining, marketing, or distribution of crude oil or petroleum products.

(b) (1) Except as provided in paragraph (2), a biological process on the property of the producer treating oil, its products, and water, that meets the definition of a non-RCRA waste, and that produces an effluent that is continuously discharged to navigable waters in compliance with a permit issued pursuant to Section 402 of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1342), is exempt from this chapter.

(2) Residues produced in the treatment process and subsequently removed that conform to any criterion for the identification of a hazardous waste adopted pursuant to Section 25141 are not exempt from this chapter.

(c) To the extent consistent with the applicable provisions of the

federal act, units, including associated piping, that are part of a system used for the recovery of oil from oil-bearing materials, and the associated storage of oil-bearing materials and the recovered oil, are exempt from this chapter, if all of the following conditions are met:

(1) The oil recovery operations are conducted at a petroleum refinery, or at another facility owned or operated by the corporate entity that owns or operates the refinery, or a corporate parent or subsidiary of the corporate entity.

(2) The oil-bearing materials are generated at the refinery or at another facility owned or operated by the corporate entity that owns or operates the refinery, or a corporate parent or subsidiary, including a sister subsidiary, of the corporate entity, or are generated in the course of oil or gas exploration or production operations conducted by an unrelated entity and placed in a common pipeline.

(3) The recovered oil is inserted into petroleum refinery process units to produce fuel or other refined petroleum products. This paragraph does not allow the direct blending, into final petroleum products, of oil-bearing materials or recovered oil that contain constituents that render these materials hazardous under the regulations adopted pursuant to Sections 25140 and 25141, other than those for which the material is being recycled.

(4) The recovered oil is not stored in a surface impoundment or accumulated speculatively at the refinery or at an offsite facility.

(5) Any residual materials removed from a unit that is exempt under this subdivision are managed in accordance with all other applicable laws.

(6) The oil-bearing materials would be excluded from classification as a waste pursuant to, or would otherwise meet the requirements for an exemption under, Section 25143.2, except that the following provisions do not apply to those oil-bearing materials:

(A) The prohibitions against prior reclamation in paragraphs (1), (2), and (3) of subdivision (b) of Section 25143.2.

(B) Subparagraph (C) of paragraph (2) of subdivision (c) of Section 25143.2.

(C) Paragraph (3) of subdivision (e) of Section 25143.2.

(D) Sections 25143.9 and 25143.10.

(E) The exceptions for wastewater containing more than 75 parts per million of total petroleum hydrocarbons, as provided by subparagraph (A) of paragraph (5) of, and subparagraph (A) of paragraph (6) of, subdivision (d) of Section 25143.2.

(Amended by Stats. 2001, Ch. 866, Sec. 2. Effective January 1, 2002.)

25144.6. (a) As used in this section, "reusable soiled textile materials" means textile items, including, but not limited to, shop towels, uniforms, gloves, and linens and towels which may become soiled with hazardous waste during commercial or industrial use, and are made reusable by laundering or comparable methods of cleaning.

(b) Reusable soiled textile materials which meet all of the following requirements are exempt from Section 25205.5 and from Article 6 (commencing with Section 25160) and Article 6.5 (commencing with Section 25167.1):

(1) The materials or the management of the materials are not otherwise regulated by the Environmental Protection Agency pursuant to the federal act.

(2) The materials are not used to clean up or control a spill or release that is required to be reported to any state or federal agency.

(3) No hazardous waste has been added after the materials' original use.

(4) No free liquids, as defined by Section 22-66260.10 of Title 26 of the California Code of Regulations, are released during transportation or storage of the materials.

(5) The facility laundering or cleaning the materials maintains records of the date, type, and quantities by piecework or weight of the materials collected and laundered.

(6) The facility laundering or cleaning the materials prepares a contingency plan which specifies procedures for handling both onsite and offsite emergencies involving the materials, and employees are trained in the execution of the plan.

(c) Notwithstanding Sections 25201 and 25245, a facility laundering or using comparable methods of cleaning reusable soiled textile materials and performing the pretreatment necessary to remove metals and organics from the wastewater that results from the wash process is not required to obtain a hazardous waste facilities permit or other grant of authorization, and is exempt from the requirements of Article 12 (commencing with Section 25245), if the facility meets all of the following requirements:

(1) Management procedures are in place to ensure that the reusable soiled textile materials are managed in accordance with all the requirements specified in subdivision (b).

(2) The waste washwater conveyances and containers are constructed of materials to ensure that they are impervious under the conditions of use, and are visually inspected at least twice a year to ensure that waste washwater is not leaking into the underlying soil. A facility which is in compliance with this paragraph is not subject to the requirements of Section 22-66264.193 of Title 26 of the California Code of Regulations.

(3) The sludge collected from the washing process is managed in accordance with this chapter.

(4) The facility has a training program in place that ensures that the facility personnel are able to safely and properly handle and clean the reusable soiled textile materials and to respond effectively to emergencies by familiarizing them with emergency procedures, equipment, and systems.

(5) The facility is in compliance with the requirements of paragraphs (2) to (6), inclusive, and paragraphs (8) and (10), of subdivision (d) of Section 25201.5.

(6) (A) The facility complies with the notification requirements of paragraph (7) of subdivision (d) of Section 25201.5.

(B) Except as provided in Section 25404.5, the generator submits a fee in the amount required by Section 25205.14. The generator shall submit that fee within 30 days of the date that the fee is assessed by the State Board of Equalization, in the manner specified by Section 43152.10 of the Revenue and Taxation Code.

(d) This section does not affect the application of Section 25143.2 to reusable soiled textile materials.

(Amended by Stats. 1995, Ch. 639, Sec. 11. Effective January 1, 1996.)

25144.7. Notwithstanding this chapter, including, but not limited to, Section 25123.5, and any regulations adopted pursuant to this chapter, the draining of used fuel filters that are removed from fuel dispensers is not treatment, for purposes of this chapter, if all of the following requirements are met:

(a) The person draining the filters complies with the requirements of the air pollution control district or air quality management district , with the requirements of the State Water Resources Control Board and the California regional water quality control boards, and with the requirements of local ordinances, that apply to that activity.

(b) The drained fuels are used or otherwise managed in accordance with applicable law.

(c) The housing for the filter and the drained filter medium are managed in accordance with applicable law.

(Added by Stats. 1998, Ch. 532, Sec. 1. Effective January 1, 1999.)

25145. (a) This chapter shall not be construed to limit or abridge the powers or duties granted to the State Water Resources Control Board and each regional water quality control board by Division 7 (commencing with Section 13000) of the Water Code.

(b) Subdivision (a) shall not be construed to limit the power or authority of the department, or any agency or official authorized to enforce this chapter pursuant to subdivision (a) of Section 25180, to take any action necessary to ensure compliance with this chapter or with any regulation adopted pursuant to this chapter, or to limit the duty of any person to comply with this chapter or with any regulation, order, or permit issued pursuant to this chapter. An action taken pursuant to the powers and duties specified in subdivision (a) is not a defense to any action taken to enforce this chapter or any regulation, order, or permit issued pursuant to this chapter.

(Amended by Stats. 1995, Ch. 639, Sec. 12. Effective January 1, 1996.)

25145.4. No provision of this chapter, or any ruling of the department or director, shall be construed to limit or abridge the power of the Attorney General, at the request of the department or director, or upon his or her own motion, to bring an action in the name of the people of the State of California to enjoin any violation of the provisions of this chapter, seek necessary remedial action by any person who violates any of the provisions of this chapter, or seek civil and criminal penalties against any person who violates any of the provisions of this chapter.

(Added by Stats. 1982, Ch. 496, Sec. 2. Effective July 12, 1982.)

Article 4.5. State Regulation of Existing Hazardous Waste Facilities
(Article 4.5 added by Stats. 1981, Ch. 244.)

25146. The Legislature finds and declares that the number of hazardous waste disposal facilities is decreasing in the face of increasing demand, and that under present circumstances and law, imbalance between supply and demand is likely to further increase in the foreseeable future. This problem is general in nature, and does and will continue to exist in urban, suburban, and rural areas.
(Added by Stats. 1981, Ch. 244.)

25146.5. The Legislature further finds and declares that:
(a) It is a matter of urgent public necessity and statewide concern that the number of existing hazardous waste facilities be retained to the extent feasible.
(b) The availability of land suitable and capable of being developed as hazardous waste disposal sites is decreasing.
(c) Any decrease in the number of existing hazardous waste facilities increases the distance that it is necessary to transport hazardous waste in order to properly dispose of it.
(d) An increase in the distance which it is necessary to travel in order to properly dispose of hazardous waste encourages illegal disposal.
(Added by Stats. 1981, Ch. 244.)

25147. Except as expressly provided in Section 25149, it is not the intent of this article to preempt local land use regulation of existing hazardous waste facilities.
(Added by Stats. 1981, Ch. 244.)

25147.5. The definitions contained in this article shall govern the construction of only this article.
(Added by Stats. 1981, Ch. 244.)

25148. (a) Except as otherwise provided in subdivision (b), "existing hazardous waste facility" means a Class I disposal site, as defined in Section 2510 of Title 23 of the California Administrative Code on the effective date of this article, and which, in addition, is either:
(1) A facility operating as of May 1, 1981, pursuant to a valid hazardous waste facility permit issued by the department pursuant to Section 25200.
(2) A facility operating as of May 1, 1981, pursuant to a grant of interim status by the department pursuant to Section 25200.5.
(b) An "existing hazardous waste facility" does not include a facility which treats, disposes, stores, or recycles on the production site only hazardous wastes produced by the owner or lessee of such a facility.
(Added by Stats. 1981, Ch. 244.)

25148.5. "Solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, but shall not include hazardous waste as defined in Section 25117.
(Added by Stats. 1981, Ch. 244.)

25149. (a) Notwithstanding any other provision of law, except as provided in Section 25149.5 or 25181 of this code or Section 731 of the Code of Civil Procedure, no city or county, whether chartered or general law, or district may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit relating to an existing hazardous waste facility so as to prohibit or unreasonably regulate the disposal, treatment, or recovery of resources from hazardous waste or a mix of hazardous and solid wastes at that facility, unless, after public notice and hearing, the director determines that the operation of the facility may present an imminent and substantial endangerment to health and the environment. However, nothing in this section authorizes an operator of that facility to violate any term or condition of a local land use permit or any other provision of law not in conflict with this section.
(b) The director shall, pursuant to subdivision (c), conduct the hearing specified in subdivision (a) to determine whether the operation of an existing hazardous waste facility may present an imminent and substantial endangerment to health and the environment whenever any of the following occurs:
(1) A state or federal public agency requires any person to evacuate a residence or requires the evacuation of a school, place of employment, commercial establishment, or other facility to which the public has access, because of the release of a hazardous substance from the facility.
(2) For more than five days in any month, the air emissions from the facility result in the violation of an emission standard for a hazardous air pollutant established pursuant to Section 7412 of Title 42 of the United States Code or the threshold exposure level for a toxic air contaminant, as defined in Section 39655.
(3) A state or federal public agency requires that the use of a source of drinking water be discontinued because of the contamination of the source by a release of hazardous waste, hazardous substances, or leachate from the facility.
(4) A state agency, or the board of supervisors of the county in which the facility is located, upon recommendation of its local health officer, makes a finding that the public health has been affected by a release of hazardous wastes from the facility. The finding shall be based on statistically significant data developed in a health effects study conducted according to a study design, and using a methodology, that are developed after considering the suggestions on study design and methodology made by interested
parties and that are approved by the Epidemiological Studies Section in the Epidemiology and Toxicology Branch of the State Department of Health Services before beginning the study.
(5) The owner or operator of the facility is in violation of an order issued pursuant to Section 25187 that requires one or both of the following:
(A) The correction of a violation or condition that has resulted, or threatens to result, in an unauthorized release of hazardous waste or a constituent of hazardous waste from the facility into either the onsite or offsite environment.
(B) The cleanup of a release of hazardous waste or a constituent of hazardous waste, the abatement of the effects of the release, and any other necessary remedial action.
(6) The facility is in violation of an order issued pursuant to Article 1 (commencing with Section 13300) of, or Article 2 (commencing with Section 13320) of, Chapter 5 of Division 7 of the Water Code or in violation of a temporary restraining order, preliminary injunction, or permanent injunction issued pursuant to Article 4 (commencing with Section 13340) of Chapter 5 of Division 7 of the Water Code.
(c) Whenever the director determines that a hearing is required, as specified in subdivision (b), the director shall immediately request the Office of Administrative Hearings to assign an administrative law judge to conduct the hearing, pursuant to this subdivision.
(1) After an administrative law judge is assigned by the Office of Administrative Hearings, the director shall transmit to the administrative law judge and to the operator of the existing hazardous waste facility, all relevant documents, information, and data that were the basis for the director's determination. The director shall also prepare a notice specifying the time and place of the hearing. The notice shall also include a clear statement of the reasons for conducting the hearing, a description of the facts, data, circumstances, or occurrences that are the cause for conducting the hearing, and the issues to be addressed at the hearing. The hearing shall be held as close to the location of the existing hazardous waste facility as is practicable and shall commence no later than 30 days following the director's request to the Office of Administrative Hearings to assign an administrative law judge to the case.
(2) The hearing specified in paragraph (1) shall be conducted in accordance with Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and Sections 11511 to 11515, inclusive, of, the Government Code. The administrative law judge's proposed decision shall be transmitted to the director within 30 days after the case is submitted.
(3) The director may adopt the proposed decision of the administrative law judge in its entirety or may decide the case upon the record, as provided in Section 11517 of the Government Code. The director's decision shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision is subject to judicial review in accordance with Section 11523 of the Government Code.
(Amended by Stats. 2000, Ch. 343, Sec. 7. Effective January 1, 2001.)

25149.1. (a) No city, county, or city and county, whether general law or chartered, which has issued a conditional use permit for a hazardous waste facility shall thereafter adopt an ordinance, rule, or regulation, or issue or amend any permit, which adoption, issuance, or amendment imposes additional restrictions on the types of hazardous waste which previously have been authorized to be accepted for disposal, treatment, or storage under the terms and conditions of any previously issued conditional use permit for that facility.

(b) This section does not apply to a modification or revocation of a use permit which is necessary to enforce the terms and conditions of the use permit, or to abate a nuisance, or to prevent an immediate threat to the public health or safety. Modification or revocation of an existing use permit may only occur after the city, county, or city and county orders the facility operator to abate the nuisance or correct the threat to the public health or safety, the facility operator has been afforded adequate opportunity to abate the nuisance or correct the threat to the public health or safety, and the facility operator has failed to comply with the enforcement or abatement order.

(c) This section does not apply to an existing hazardous waste facility, as defined in Section 25148.

(Added by Stats. 1982, Ch. 1357, Sec. 1.)

25149.3. (a) Upon the request of any interested person, the department shall examine and determine whether or not the use of any property for any one of the purposes set forth in paragraph (1) of subdivision (b) of Section 25232 constitutes a significant existing or potential hazard to present or future health or safety because of the proximity of the property to an existing hazardous waste facility as defined in this article. If the department determines that a significant existing or potential hazard to present or future public health or safety exists on the property, it shall give notice and hold a public hearing. If a significant disposal of hazardous waste has occurred on that property or if the property is within 2,000 feet of a significant disposal of hazardous waste, the department shall hold this public hearing pursuant to Article 11 (commencing with Section 25220) and the director may make a designation of that property pursuant to that article. If the department determines that there is no significant existing or potential hazard to present or future public health or safety on the property, it shall so notify the person who requested the determination and the local jurisdiction.

(b) All costs incurred by the department pursuant to this section, including the costs of any hearing, shall be borne by the person making the request. The authority conferred on the department, pursuant to this section, shall be in addition to its authority with respect to the regulation of hazardous waste property and border zone property. A special account administered by the department shall be established for each request made to the department for the examination and determination specified in subdivision (a). The department shall provide the requesting person an estimate of the amount of money which would be necessary to accomplish the examination, determination, and any subsequent hearing by the department pursuant to that request. The estimated amount, which shall be paid to the department before the department undertakes any activity pursuant to subdivision (a), shall be deposited in the special account. Expenditures from this special account shall not be made in excess of the total amount of money in that special account at any time. Expenditures in excess of the initial deposit may be made only when additional money is received from the requesting person and deposited into the account.

Notwithstanding any other provision of law, the department may enter into contracts for any action taken, or to be taken, pursuant to subdivision (a). These contracts do not require approval by the Department of General Services pursuant to Article 1 (commencing with Section 14780) of Chapter 6 of Part 5.5 of Division 3 of Title 2 of the Government Code.

(c) A local jurisdiction shall not take any action with respect to the uses of land for any of those purposes, including, but not limited to, a general plan amendment, zoning change, or the imposition of conditions on the use of property, which land is subject to an existing zoning classification which permits the uses set forth in paragraph (1) of subdivision (b) of Section 25232 for which an examination and determination has been requested pursuant to subdivision (a), solely on the basis of a health hazard due to the property's proximity to an existing hazardous waste facility, unless the department has made a determination, pursuant to subdivision (a), that those uses of the property constitute a significant existing or potential hazard to present or future public health or safety.

(d) No application for a building permit or for the use of property which is the subject of a request pursuant to subdivision (a) shall be acted upon pending a determination by the department, unless the permit or use is not for a purpose set forth in paragraph (1) of subdivision (b) of Section 25232.

The department shall act upon the request within 90 days.

(e) This section does not apply to any land or property which is more than one mile from a significant disposal of hazardous waste within an existing hazardous waste facility, as defined in this article.

(Amended by Stats. 1984, Ch. 1736, Sec. 2. Effective September 30, 1984.)

25149.5. (a) A general law city or county may impose and enforce, for revenue purposes, a license tax on the operation of an existing hazardous waste facility; provided that, the license tax imposed shall not exceed 10 percent of the annual gross receipts of the existing hazardous waste disposal facility.

(b) A state agency shall not include the expenditure of revenues received by a city or county pursuant to this section in calculating the level of financial support that a city or county is required to maintain under any other provision of law, including, but not limited to, Section 77204 of the Government Code and Section 16990 of the Welfare and Institutions Code. However, this subdivision does not apply to subdivision (c) of Section 2105 of the Streets and Highways Code.

(Amended by Stats. 1991, Ch. 1073, Sec. 1.)

25149.6. A city, county, or city and county in which an existing hazardous waste facility is located may at any time recommend to the director any new or additional permit or interim status conditions as the local agency deems necessary to protect against hazards within its boundaries to the public health, domestic livestock, wildlife, or the environment.

(Added by Stats. 1981, Ch. 244.)

25149.7. No provision of this article, or any ruling by the department or director, shall be construed as a limitation on the right of any person to maintain a civil action to enjoin or abate a nuisance pursuant to Section 731 of the Code of Civil Procedure.

(Added by Stats. 1981, Ch. 244.)

Article 5. Standards

(Article 5 added by Stats. 1972, Ch. 1236.)

25150. (a) The department shall adopt, and revise when appropriate, standards and regulations for the management of hazardous wastes to protect against hazards to the public health, to domestic livestock, to wildlife, or to the environment.

(b) The department and the local officers and agencies authorized to enforce this chapter pursuant to subdivision (a) of Section 25180 shall apply the standards and regulations adopted pursuant to subdivision (a) to the management of hazardous waste.

(c) Except as provided in subdivision (d), the department may limit the application of the standards and regulations adopted or revised pursuant to subdivision (a) at facilities operating pursuant to a hazardous waste facilities permit or other grant of authorization issued by the department in any manner that the department determines to be appropriate, including, but not limited to, requiring these facilities to apply for, and receive, a permit modification prior to the application of the standards and regulations.

(d) The department shall not adopt or revise standards and regulations which result in the imposition of any requirement for the management of a RCRA waste that is less stringent than a corresponding requirement adopted by the Environmental Protection Agency pursuant to the federal act.

(e) The department shall adopt, and revise when appropriate, regulations for the recycling of hazardous waste to protect against hazards to the public health, domestic livestock, wildlife, or to the environment, and to encourage the best use of natural resources.

(f) Before the adoption of regulations, the department shall notify all agencies of interested local governments, including, but not limited to, certified unified program agencies, local governing bodies, local planning agencies, local health authorities, local building inspection departments, the Department of Pesticide Regulation, the Department of the California Highway Patrol, the Department of Fish and Game, the Department of Industrial Relations, the Division of Industrial Safety, the State Air Resources Board,

the State Water Resources Control Board, the State Fire Marshal, regional water quality control boards, the State Building Standards Commission, the Office of Environmental Health Hazard Assessment, and the California Integrated Waste Management Board.

(Amended by Stats. 2000, Ch. 343, Sec. 8. Effective January 1, 2001.)

25150.1. The requirements in Sections 25290.1, 25290.2, 25291, and 25292 apply to the construction, operation, maintenance, monitoring, and testing of underground storage tanks, as defined in subdivision (y) of Section 25281, that are required to obtain hazardous waste facilities permits from the department. The department shall adopt regulations implementing the requirements of Sections 25290.1, 25290.2, 25291, and 25292, for regulating the construction, operation, maintenance, monitoring, and testing of underground storage tanks used for the storage of hazardous wastes that are necessary to protect against hazards to the public health, domestic livestock, wildlife, or the environment.

(Amended by Stats. 2003, Ch. 42, Sec. 2. Effective July 7, 2003.)

25150.2. (a) The department shall adopt regulations, consistent with federal law, concerning the transportation of hazardous waste from this state across international boundaries. These regulations shall include, but are not limited to, both of the following:

(1) All applicable federal regulations adopted pursuant to the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.).

(2) Procedures to carry out Section 25160 for the purpose of monitoring international transboundary shipments of hazardous waste.

(b) The department shall adopt procedures for the purpose of receiving information collected by the Environmental Protection Agency pursuant to Section 262.50 of Title 40 of the Code of Federal Regulations concerning the transportation of hazardous waste across international boundaries.

(Added by Stats. 1987, Ch. 288, Sec. 1.)

25150.3. The department shall adopt emergency regulations pursuant to Section 11346.1 of the Government Code which ensure protection for the public and the environment concerning hazardous waste held or handled at transfer facilities.

(Amended by Stats. 1990, Ch. 216, Sec. 66.)

25150.4. Not later than July 1, 1994, the administrator for oil spill response in the Department of Fish and Game and the Director of Toxic Substances Control shall jointly develop a preincident process for the handling and transport of materials used or recovered during an oil spill response. The preincident process shall ensure, through advance approvals or other suitable advance procedures, that materials can be expeditiously removed from cleanup areas consistent with existing law. The process shall provide for, but not be limited to, all of the following:

(a) Transport of materials to destinations where they may be utilized in the manufacture of petroleum or other products.

(b) Transport of materials to locations which have already been permitted for hazardous waste storage, treatment, transfer, resource recovery, or disposal so that material categorization and destination can be expeditiously determined.

(c) Transport of recyclable materials to appropriate locations in a timely manner.

(d) Preapproved procedures for the temporary storage of materials.

(Added by Stats. 1993, Ch. 704, Sec. 1. Effective January 1, 1994.)

25150.5. On or before July 1, 1995, the department shall revise any standard or regulation it has adopted that requires the preparation of a contingency plan, as that term is defined in Section 66260.10 of Title 22 of the California Code of Regulations, to allow the person preparing the contingency plan to use the format adopted pursuant to Section 25503.4, if that person elects to use that format.

(Repealed and added by Stats. 1993, Ch. 630, Sec. 3. Effective January 1, 1994.)

25150.6. (a) Except as provided in subdivisions (e) and (f), the department, by regulation, may exempt a hazardous waste management activity from one or more of the requirements of this chapter, if the department does all of the following:

(1) Prepares an analysis of the hazardous waste management activity to which the exemption will apply pursuant to subdivision (b). The department shall first prepare the analysis as a preliminary analysis and make it available to the public at the same time that the department gives notice, pursuant to Section 11346.4 of the Government Code, that it proposes to adopt a regulation exempting the hazardous waste management activity from one or more of the requirements of this chapter. The department shall include, in the notice, a reference that the department has prepared a preliminary analysis and a statement concerning where a copy of the preliminary analysis can be obtained. The information in the preliminary analysis shall be updated and the department shall make the analysis available to the public as a final analysis not less than 10 working days prior to the date that the regulation is adopted.

(2) Demonstrates that one of the conclusions required by subdivision (c) is valid.

(3) Imposes, as may be necessary, conditions and limitations on the exemption that ensure that the exempted activity will not pose a significant potential hazard to human health or safety or to the environment.

(b) Before the department gives notice of a proposal to adopt a regulation exempting a hazardous waste management activity from one or more of the requirements of this chapter pursuant to subdivision (a), and before the department adopts the regulation, the department shall evaluate the hazardous waste management activity and prepare, as required by paragraph (1) of subdivision (a), an analysis that addresses all of the following aspects of the activity, to the extent that the requirement or requirements from which the activity will be exempted can affect these aspects of the activity:

(1) The types of hazardous waste streams and the estimated amounts of hazardous waste that are managed as part of the activity and the hazards to human health or safety or to the environment posed by reasonably foreseeable mismanagement of those hazardous wastes and their hazardous constituents. The estimate of the amounts of hazardous waste that are managed as part of the activity shall be based upon information reasonably available to the department.

(2) The complexity of the activity, and the amount and complexity of operator training, equipment installation and maintenance, and monitoring that are required to ensure that the activity is conducted in a manner that safely and effectively manages the particular hazardous waste stream.

(3) The chemical or physical hazards that are associated with the activity and the degree to which those hazards are similar to, or differ from, the chemical or physical hazards that are associated with the production processes that are carried out in the facilities that produce the hazardous waste that is managed as part of the activity.

(4) The types of accidents that might reasonably be foreseen to occur during the management of particular types of hazardous waste streams as part of the activity, the likely consequences of those accidents, and the actual reasonably available accident history associated with the activity.

(5) The types of locations at which the activity may be carried out, an estimate of the number of these locations, and the types of hazards that may be posed by proximity to the land uses described in subdivision (b) of Section 25232. The estimate of the number of locations at which the activity may be carried out shall be based upon information reasonably available to the department.

(c) The department shall not give notice proposing the adoption of, and the department may not adopt, a regulation pursuant to subdivision (a) unless it first demonstrates, using the information developed in the analysis prepared pursuant to subdivision (b), that one of the following is valid:

(1) The requirement from which the activity is exempted is not significant or important in either of the following:

(A) Preventing or mitigating potential hazards to human health or safety or to the environment posed by the activity.

(B) Ensuring that the activity is conducted in compliance with other applicable requirements of this chapter and the regulations adopted pursuant to this chapter.

(2) A requirement is imposed and enforced by another public agency that provides protection of human health and safety and the environment that is as effective as, and equivalent to, the protection provided by the requirement, or requirements, from which the activity is being exempted.

(3) Conditions or limitations imposed on the exemption will provide protection of human health and safety and the environment equivalent to the requirement, or requirements, from which the activity is exempted.

(4) Conditions or limitations imposed on the exemption accomplish the same regulatory purpose as the requirement, or requirements, from which

the activity is being exempted but at less cost or greater administrative convenience and without increasing potential risks to human health or safety or to the environment.

(d) A regulation adopted pursuant to this section shall not be deemed to meet the standard of necessity, pursuant to Section 11349.1 of the Government Code, unless the department has complied with subdivisions (b) and (c).

(e) The department shall not exempt a hazardous waste management activity from a requirement of this chapter or the regulations adopted by the department if the requirement is also a requirement for that activity under the federal act.

(f) (1) On and after January 1, 2002, the department may, by regulation, exempt a hazardous waste management activity from one or more of the requirements of this chapter pursuant to this section only if the regulations govern the management of one of the hazardous wastes listed in subparagraphs (A) to (E), inclusive, of paragraph (2), the regulations identify the hazardous waste as a universal waste, and the regulations amend the standards for universal waste management set forth in Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(2) The regulations that the department may adopt pursuant to paragraph (1) shall govern only the following types of hazardous waste:

(A) Electronic hazardous wastes, as the department may describe in the regulations adopted pursuant to this subdivision.

(B) Hazardous waste batteries.

(C) Hazardous wastes containing mercury.

(D) Hazardous waste lamps.

(E) Lead-based painted debris that is a hazardous waste.

(g) The authority of the department to adopt regulations pursuant to this section shall remain in effect only until January 1, 2008, unless a later enacted statute, which is enacted before January 1, 2008, deletes or extends that date. This subdivision does not invalidate any regulation adopted pursuant to this section prior to the expiration of the department's authority.

(Amended by Stats. 2004, Ch. 175, Sec. 1. Effective January 1, 2005.)

25150.7. (a) The Legislature finds and declares that this section is intended to address the unique circumstances associated with the generation and management of treated wood waste. The Legislature further declares that this section shall not be construed as setting a precedent applicable to the management, including disposal, of other hazardous wastes.

(b) For purposes of this section, the following definitions shall apply:

(1) "Treated wood" means wood that has been treated with a chemical preservative for purposes of protecting the wood against attacks from insects, microorganisms, fungi, and other environmental conditions that can lead to decay of the wood and the chemical preservative is registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 and following).

(2) "Wood preserving industry" means business concerns, other than retailers, that manufacture or sell treated wood products in the state.

(c) This section applies only to treated wood waste that is a hazardous waste, solely due to the presence of a preservative in the wood, and to which both of the following requirements apply:

(1) The treated wood waste is not subject to regulation as a hazardous waste under the federal act.

(2) Section 25143.1.5 does not apply to the treated wood waste.

(d) (1) Notwithstanding Sections 25157.8, 25189.5, and 25201, treated wood waste shall be disposed of in either a class I hazardous waste landfill, or in a composite-lined portion of a solid waste landfill unit that meets all requirements applicable to disposal of municipal solid waste in California after October 9, 1993, and that is regulated by waste discharge requirements issued pursuant to Division 7 (commencing with Section 13000) of the Water Code for discharges of designated waste, as defined in Section 13173 of the Water Code, or treated wood waste.

(2) A solid waste landfill that accepts treated wood waste shall comply with all of the following requirements:

(A) Manage the treated wood waste so as to prevent scavenging.

(B) Ensure that any management of the treated wood waste at the solid waste landfill prior to disposal, or in lieu of disposal, complies with the applicable requirements of this chapter, except as otherwise provided pursuant to subdivision (e) or regulations adopted pursuant to subdivision (g).

(C) If monitoring at the composite-lined portion of a landfill unit at which treated wood waste has been disposed of indicates a verified release, then treated wood waste shall no longer be discharged to that landfill unit until corrective action results in cessation of the release.

(e) (1) Treated wood waste is exempt from the requirements of this chapter if all of the following requirements are met:

(A) The treated wood waste is managed so as to prevent scavenging.

(B) The treated wood waste is not disposed of, except as allowed pursuant to subdivision (d).

(C) The treated wood waste is not burned, recycled, reclaimed, or reused, except in accordance with the applicable requirements of this chapter and the regulations adopted pursuant to this chapter.

(D) On and after July 1, 2005, the treated wood waste is not stored for more than 90 days and, when stored, is protected from run-on and run-off, and placed on a surface sufficiently impervious to prevent, to the extent practical, contact with and any leaching to soil or water.

(E) The treated wood waste is not mixed with other wood waste prior to disposal.

(F) The treated wood waste is handled in a manner consistent with all applicable requirements of the California Occupational Safety and Health Act of 1973 (Chapter 1 (commencing with Section 6300) of Part 1 of Division 5 of the Labor Code), including all rules, regulations, and orders relating to hazardous waste.

(2) The exemption provided by this subdivision shall remain in effect until January 1, 2007, and as of that date is inoperative.

(f) (1) Each wholesaler and retailer of treated wood and treated wood-like products in this state shall conspicuously post information at or near the point of display or customer selection of treated wood and treated wood-like products used for fencing, decking, retaining walls, landscaping, outdoor structures, and similar uses. The information shall be provided to wholesalers and retailers by the wood preserving industry in 22-point font, or larger, and contain the following message:

Warning--Potential Danger

These products are treated with wood preservatives registered with the United States Environmental Protection Agency and the California Department of Pesticide Regulation and should only be used in compliance with the product labels.

This wood may contain chemicals classified by the State of California as hazardous and should be handled and disposed of with care. Check product label for specific preservative information and Proposition 65 warnings concerning presence of chemicals known to the State of California to cause cancer or birth defects.

Anyone working with treated wood, and anyone removing old treated wood, needs to take precautions to minimize exposure to themselves, children, pets, or wildlife, including:

/ / Avoid contact with skin. Wear gloves and long sleeved shirts when working with treated wood. Wash exposed areas thoroughly with mild soap and water after working with treated wood.

/ / Wear a dust mask when machining any wood to reduce the inhalation of wood dusts. Avoid frequent or prolonged inhalation of sawdust from treated wood. Machining operations should be performed outdoors whenever possible to avoid indoor accumulations of airborne sawdust.

/ / Wear appropriate eye protection to reduce the potential for eye injury from wood particles and flying debris during machining.

/ / If preservative or sawdust accumulates on clothes, launder before reuse. Wash work clothes separately from other household clothing.

/ / Promptly clean up and remove all sawdust and scraps and dispose of appropriately.

/ / Do not use treated wood under circumstances where the preservative may become a component of food or animal feed.

/ / Only use treated wood that's visibly clean and free from surface residue for patios, decks, or walkways.

/ / Do not use treated wood where it may come in direct or indirect contact with public drinking water, except for uses involving incidental contact such as docks and bridges.

/ / Do not use treated wood for mulch.

/ / Do not burn treated wood. Preserved wood should not be burned in open fires, stoves, or fireplaces.

For further information, go to (Web site) or call (toll free number).

In addition to the above listed precautions, treated wood waste shall be managed in compliance with applicable hazardous waste control laws.

(2) On or before July 1, 2005, the wood preserving industry shall, jointly and in consultation with the department, make information available to generators of treated wood waste, including fencing, decking and landscape contractors, solid waste landfills, and transporters, that describes how to best handle, dispose of, and otherwise manage treated wood waste, through the use either of a toll-free telephone number, Internet Web site, information labeled on the treated wood, information accompanying the sale of the treated wood, or by mailing if the department determines that mailing is feasible and other methods of communication would not be as effective. A treated wood manufacturer or supplier to a wholesaler or retailer shall also provide the information with each shipment of treated wood products to a wholesaler or retailer, and the wood preserving industry shall provide it to fencing, decking, and landscaping contractors, by mail, using the Contractor's State Licensing Board's available listings, and license application packages. The department may provide guidance to the wood preserving industry, to the extent resources permit.

(g) (1) On or before January 1, 2007, the department, in consultation with the California Integrated Waste Management Board, the State Water Resources Control Board, and the Office of Environmental Health Hazard Assessment, and after consideration of any known health hazards associated with treated wood waste, shall adopt and may subsequently revise as necessary, regulations establishing management standards for treated wood waste as an alternative to the requirements specified in this chapter and the regulations adopted pursuant to this chapter.

(2) The regulations adopted pursuant to this subdivision shall, at a minimum, ensure all of the following:

(A) Treated wood waste is properly stored, treated, transported, tracked, disposed of, and otherwise managed so as to prevent, to the extent practical, releases of hazardous constituents to the environment, prevent scavenging, and prevent harmful exposure of people, including workers and children, aquatic life, and animals to hazardous chemical constituents of the treated wood waste.

(B) Treated wood waste is not reused, with or without treatment, except for a purpose that is consistent with the approved use of the preservative with which the wood has been treated. For purposes of this subparagraph, "approved uses" means a use approved at the time the treated wood waste is reused.

(C) Treated wood waste is managed in accordance with all applicable laws.

(D) Any size reduction of treated wood waste is conducted in a manner that prevents the uncontrolled release of hazardous constituents to the environment, and that conforms to applicable worker health and safety requirements.

(E) All sawdust and other particles generated during size reduction are captured and managed as treated wood waste.

(F) All employees involved in the acceptance, storage, transport, and other management of treated wood waste are trained in the safe and legal management of treated wood waste, including, but not limited to, procedures for identifying and segregating treated wood waste.

(3) This subdivision does not authorize the department to adopt a regulation that does one or more of the following:

(A) Imposes a requirement as an addition to, rather than as an alternative to, one or more of the requirements of this chapter.

(B) Supersedes subdivision (d) concerning the disposal of treated wood waste.

(C) Supersedes any other provision of this chapter that provides a conditional or unconditional exclusion, exemption, or exception to a requirement of this chapter or the regulations adopted pursuant to this chapter, except the department may adopt a regulation pursuant to this subdivision that provides an alternative condition for a requirement specified in this chapter for an exclusion, exemption, or exception and that allows an affected person to choose between complying with the requirements specified in this chapter or complying with the alternative conditions set forth in the regulation.

(h) (1) A person managing treated wood waste who is subject to a requirement of this chapter, including a regulation adopted pursuant to this chapter, shall comply with either the alternative standard specified in the regulations adopted pursuant to subdivision (g) or with the requirements of this chapter.

(2) A person who is in compliance with the alternative standard specified in the regulations adopted pursuant to subdivision (g) is deemed to be in compliance with the requirement of this chapter for which the regulation is identified as being an alternative, and the department and any other entity authorized to enforce this chapter shall consider that person to be in compliance with that requirement of this chapter.

(i) On January 1, 2005, all variances granted by the department before January 1, 2005, governing the management of treated wood waste are inoperative and have no further effect.

(j) Nothing in this section may be construed to limit the authority or responsibility of the department to adopt regulations under any other provision of law.

(k) On or before June 1, 2011, the department shall prepare and post on its Web site a report that makes a determination regarding the successful compliance with, and implementation of, this section.

(l) (1) This section shall become inoperative on June 1, 2012, and, as of January 1, 2013 is repealed, unless a later enacted statute that becomes operative on or before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) Notwithstanding paragraph (1), any regulations adopted pursuant to this section on or before June 1, 2012 shall continue in force and effect after that date, until repealed or revised by the department.

(Added by Stats. 2004, Ch. 597, Sec. 1. Effective January 1, 2005. Inoperative June 1, 2012. Repealed as of January 1, 2013, by its own provisions. Note: Regulations adopted on or before June 1, 2012, pursuant to this section continue in effect after its termination.)

25150.8. If treated wood waste is accepted by a solid waste landfill that manages and disposes of the treated wood waste in accordance with Section 25143.1.5 or paragraphs (1) and (2) of subdivision (d) of Section 25150.7, the treated wood waste, upon acceptance by the solid waste landfill, shall thereafter be deemed to be a solid waste, and not a hazardous waste, for purposes of this chapter and Section 40191 of the Public Resources Code.

(Added by Stats. 2004, Ch. 597, Sec. 2. Effective January 1, 2005.)

25151. The department may adopt varying regulations pursuant to Section 25150, other than building standards for different areas of the state depending on population density, climate, geology, types and volumes of hazardous waste generated in the area, types of waste treatment technology available in the area, and other factors relevant to hazardous waste handling, processing, storing, recycling, and disposal.

(Amended by Stats. 1982, Ch. 89, Sec. 9. Effective March 2, 1982.)

25152. Before adopting building standards or adopting or revising other standards and regulations for the handling, processing, storing, use, recycling, and disposal of hazardous and extremely hazardous wastes, the department shall hold at least one public hearing in Sacramento, or in a city within the area of the state to be affected by the proposed regulations. Except as provided in Section 18930, the department shall adopt the proposed regulations after making changes or additions that are appropriate in view of the evidence and testimony presented at the public hearing or hearings.

(Amended by Stats. 1982, Ch. 89, Sec. 10. Effective March 2, 1982.)

25152.5. (a) For purposes of this section, the following definitions apply:

(1) "Unusual circumstances" means only the following:

(A) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(B) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a

single request.

(C) The need to consult with another agency having a substantial interest in the determination of whether to respond to the request.

(2) "Public records" means any public record, as defined in Section 6252 of the Government Code, of the department relating to this chapter, Chapter 6.7 (commencing with Section 25280), or Chapter 6.8 (commencing with Section 25300). "Public records" includes unprinted information relating to this chapter, Chapter 6.7 (commencing with Section 25280), or Chapter 6.8 (commencing with Section 25300) which is stored in data or word processing equipment either owned by an employee and located on premises under control of the department or owned by the department.

(b) Notwithstanding any other provision of law, the department shall not limit the hours during the normal working day or limit the number of working days during which public records are open for inspection.

(c) Notwithstanding any other provision of law, the department shall make public records which are not exempt from disclosure by law, including Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, promptly available to any person, within the time limits specified in Section 6256 of the Government Code, upon payment of a fee established by the department to cover the direct costs of duplication, as specified in subdivision (f). In addition, a person requesting copies by mail may be required to pay the mailing costs.

If any portion of a record is exempt from disclosure, that part which is not exempt shall be provided as prescribed in this section.

(d) Any person may request access to, or copies of, public records of the department in person or by mail. A request shall reasonably describe an identifiable record or information to be produced therefrom.

(e) If the department determines that an unusual circumstance exists, the department shall comply with the notification procedures and the time limits specified in Section 6256.1 of the Government Code.

(f) The department shall, upon request, provide any person with the facts upon which it bases its determination of the direct costs of copying for each page which is requested. The department shall not impose a minimum fee for a copy of a public record which is greater than its direct per page copying costs and the department shall not impose limits on the types or amounts of public records which the department will provide to persons requesting these records, upon payment of any fees covering the direct costs of duplication by the department.

(g) This section does not authorize the department, or any employee of the department, to delay access for purposes of inspecting or obtaining copies of public records, unless there are unusual circumstances.

(h) Any denial of a request for records shall set forth in writing the reasons for the denial and the names and titles or positions of each person responsible for the denial. This written response shall be provided to the requester within five working days of the denial.

(Added by Stats. 1986, Ch. 1140, Sec. 2.)

25153. The offsite storage, treatment, transportation, and disposal of extremely hazardous waste is subject to the same requirements specified in this chapter that are applicable to hazardous waste and the department shall not require any special or additional permits for the offsite handling or management of extremely hazardous waste.

(Repealed and added by Stats. 1993, Ch. 1145, Sec. 2. Effective January 1, 1994.)

25153.6. (a) Any person generating or managing a RCRA hazardous waste shall comply with subsection (a) of Section 3010 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6930(a)).

(b) Any person generating or managing a non-RCRA hazardous waste shall comply with any notification requirements for non-RCRA hazardous waste which the department adopts by regulation.

(Amended by Stats. 1990, Ch. 1686, Sec. 7.)

25154. It shall be unlawful for any person to manage any hazardous waste except as provided for in this chapter or regulations adopted by the department pursuant to this chapter.

(Amended by Stats. 1988, Ch. 1631, Sec. 18.)

25155. No extremely hazardous waste may be disposed of without prior processing to remove its harmful properties or as specified by the regulations of the department for the handling and disposal of the particular extremely hazardous waste.

(Amended by Stats. 1977, Ch. 1039.)

25155.8. (a) The operator of a landfill, land farm, or surface impoundment, which is used for disposing or treating hazardous waste which contains volatile organic compounds in concentrations of more than 1 percent by weight, shall do both of the following:

(1) Monitor air emissions from the facility and report the monitoring results semiannually to the department.

(2) Unless the department adopts regulations specifying monitoring procedures and requirements, comply with the regulations adopted by the Environmental Protection Agency pursuant to Section 6924(n) of Title 42 of the United States Code.

(b) If the operator makes the reports specified in paragraph (1) of subdivision (a) and complies with the federal regulations specified in paragraph (2) of subdivision (a), the operator is in compliance with subdivision (a).

(Added by Stats. 1985, Ch. 1338, Sec. 7.)

25155.10. (a) The owner or operator of every commercial offsite multiuser hazardous waste disposal facility shall develop a proposed monitoring plan, in writing, for the monitoring of the ambient air downwind and upwind from the facility. The plan shall include all of the following:

(1) An identification of the constituents of hazardous wastes accepted in the past and present which will be monitored. These constituents shall be selected on the basis of pertinent factors, which may include degree of toxicity, relative and absolute volume, the potential for the constituent to volatilize or otherwise become airborne, and the method by which the constituent is or was handled, treated, and disposed.

(2) The type, procedures, and location of air sampling equipment and the type and procedures of analytical equipment.

(3) The duration of each sampling period in hours, and the number and time of sampling periods over a 12-month period.

(b) The proposed monitoring plan developed pursuant to subdivision (a) shall be submitted to the department on or before October 1, 1987, and shall be updated as required by the department.

(c) The department, in consultation with the applicable air pollution control district or air quality management district, shall review and approve or require modification of the proposed monitoring plan submitted pursuant to this section. The department shall provide, in writing, a notice of any deficiencies in the plan to the person who submitted the plan, who shall revise the plan to address the noted deficiencies within 60 days after receiving the department's comments.

(d) If the department determines that a hazardous waste facility which is required to develop a plan pursuant to subdivision (a) is the source of a substance in the ambient air which poses a significant threat to the public health or affects the quality of the environment in such a way that could significantly threaten public health, the department shall, pursuant to Section 25187, require the facility operator to do both of the following:

(1) Develop a corrective action plan and submit the plan to the department for approval or modification, within a schedule specified by the department.

(2) Implement the corrective action plan, as approved by the department, within the period specified by the department.

(Amended by Stats. 1988, Ch. 1387, Sec. 1.)

25156. The department shall develop and adopt regulations and standards to implement Article 11 (commencing with Section 25220), including, but not limited to, regulations which specify appropriate procedural requirements for the hearings conducted pursuant to that article. The department shall seek recommendations of the hazardous waste technical advisory committee on the wording of proposed regulations.

(Amended by Stats. 1984, Ch. 1736, Sec. 3. Effective September 30, 1984.)

25157. Regulations adopted pursuant to this chapter may require the treatment of extremely hazardous waste at the site of production prior to any transportation, if the director determines that treatment is necessary to provide safe transportation of the extremely hazardous waste. No provision of this chapter shall be construed to require disposal of hazardous waste at the site of production, provided, that the transportation of the extremely hazardous waste conforms to all applicable regulations.

(Added by Stats. 1982, Ch. 89, Sec. 11. Effective March 2, 1982.)

25158. (a) Except as provided in subdivision (f), any person generating hazardous waste, or owning or operating a facility for the treatment, storage, or disposal of hazardous waste, shall file with the director, or the director's designee, on a form provided by the director, or the director's designee, a hazardous waste notification statement. An amended statement shall be filed with the department whenever there has been a substantial change in the information provided on the previously filed notification statement. A person shall not generate, treat, store, or dispose of hazardous waste, unless the person files a notification statement with the director pursuant to this section, unless exempted pursuant to subdivision (f).

(b) A hazardous waste notification statement shall include all of the following information:

(1) The name and address of the person owning the facility or conducting the activity specified in subdivision (a).

(2) The address and location of the activity or facility, including the city and county.

(3) The name and 24-hour telephone number of the contact person in the event of an emergency involving the facility or activity.

(4) The quantities of hazardous waste annually handled pursuant to the activity or at the facility.

(5) A description of the hazardous waste activity being conducted, such as generation, treatment, storage, or disposal.

(6) A general description of the hazardous waste being handled.

(c) The department shall prepare and distribute the hazardous waste notification statement forms. The form shall include a statement which clearly states who is required to file the form. The form shall also include a statement that the form is not a substitute for the federal notification required by the Environmental Protection Agency pursuant to subsection (a) of Section 6930 of Title 42 of the United States Code.

(d) Any person who is required to submit a hazardous waste notification statement to the director pursuant to subdivision (a) and who fails to do so is subject to a civil penalty of not less than fifty dollars ($50) and not more than five hundred dollars ($500) for each day for which the department does not receive a statement. Any person who knowingly submits false information to the department is subject to a civil penalty of not less than two thousand dollars ($2,000) and not more than twenty thousand dollars ($20,000) for each day that the false information goes uncorrected.

(e) The director shall compile and organize the statements by the city and county within which each activity and facility are located, and shall transmit the compiled statements to the appropriate regional offices, the California regional water quality control boards, and the officers and agencies authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.

(f) Subdivision (a) does not apply to any of the following:

(1) A person who has filed notification with the Administrator of the Environmental Protection Agency pursuant to subsection (a) of Section 6930 of Title 42 of the United States Code.

(2) A person who only produces household hazardous waste, as defined in subdivision (d) of Section 25218.1.

(3) Any person who owns property on which a cleanup of, or other removal of, or remedial action to, a hazardous waste site is taking place, or who is engaged in any of those activities on a hazardous waste site.

(Amended by Stats. 1995, Ch. 639, Sec. 14. Effective January 1, 1996.)

Article 5.5. Coordination with Federal Acts

(Article 5.5 added by Stats. 1982, Ch. 89, Sec. 12.5. Effective March 2, 1982.
See another Article 5.5, commencing with Section 25159.10.)

25159. The department shall adopt and revise when necessary regulations that will allow the state to receive and maintain authorization to administer a state hazardous waste program in lieu of the federal program pursuant to Section 6926 of the federal act. When reviewing a regulation adopted pursuant to this section, the Office of Administrative Law shall not review the regulation for nonduplication, notwithstanding paragraph (6) of subdivision (a) of Section 11349.1 of the Government Code.

(Amended by Stats. 2001, Ch. 605, Sec. 5. Effective October 9, 2001. Operative January 1, 2002, by Sec. 18 of Ch. 605.)

25159.1. (a) The Office of Administrative Law shall deem any regulation proposed for adoption by the department to maintain authorization pursuant to Section 25159 to be a nonsubstantive change without regulatory effect for the purposes of Section 100 of Title 1 of the California Code of Regulations, provided that the regulation, as applied in this state, is not more stringent and is not broader in scope than the corresponding federal regulations.

(Added by Stats. 1995, Ch. 640, Sec. 4. Effective January 1, 1996.)

25159.5. (a) In adopting or revising standards and regulations pursuant to this chapter, the department shall, insofar as practicable, make the standards and regulations conform with corresponding regulations adopted by the Environmental Protection Agency pursuant to the federal act. This section does not prohibit the department from adopting standards and regulations that are more stringent or more extensive than federal regulations.

(b) Until the state program is granted final authorization by the Environmental Protection Agency pursuant to Section 6926 of Title 42 of the United States Code, all regulations adopted pursuant to the federal act shall be deemed to be the regulations of the department, except that any state statute or regulation which is more stringent or more extensive than a federal regulation shall supersede the federal regulation.

(Amended by Stats. 2001, Ch. 605, Sec. 6. Effective October 9, 2001. Operative January 1, 2002, by Sec. 18 of Ch. 605.)

25159.6. Until the department adopts standards and regulations corresponding to, and equivalent to, or more stringent or extensive than, regulations adopted by the Environmental Protection Agency pursuant to Sections 6922 to 6926, inclusive, of Title 42 of the United States Code, the following shall apply:

(a) Any person who produces a waste that is a hazardous waste as defined by Section 25117 shall comply with this chapter and regulations adopted pursuant to this chapter and, in addition, to the extent that the waste is both hazardous, as defined by regulations adopted pursuant to Section 6921 of Title 42 of the United States Code, and has not been excluded from regulation pursuant to that section, the person shall also comply with federal regulations adopted pursuant to Section 6922 of Title 42 of the United States Code.

(b) Any person who transports a waste that is a hazardous waste shall comply with this chapter and regulations adopted pursuant to this chapter and, in addition, to the extent that the waste is both hazardous, as defined by regulations adopted pursuant to Section 6921 of Title 42 of the United States Code, and has not been excluded from regulation pursuant to that section, the person shall also comply with federal regulations adopted pursuant to Section 6923 of Title 42 of the United States Code.

(c) Any person who owns or operates a hazardous waste facility shall comply with this chapter and regulations adopted pursuant to this chapter and, in addition, to the extent that the facility is defined as a hazardous waste facility in regulations adopted under the federal act, and to the extent that the waste is both hazardous, as defined by regulations adopted pursuant to Section 6921 of Title 42 of the United States Code, and has not been excluded from regulation pursuant to that section, that person shall also comply with federal regulations adopted pursuant to Sections 6924 and 6925 of Title 42 of the United States Code.

(Amended by Stats. 2001, Ch. 605, Sec. 7. Effective October 9, 2001. Operative January 1, 2002, by Sec. 18 of Ch. 605.)

25159.7. The department is authorized to carry out all hazardous waste management responsibilities imposed or authorized by the federal act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), including any subsequent amendments of these federal acts, and any regulations adopted pursuant to these federal acts.

(Amended by Stats. 2001, Ch. 605, Sec. 8. Effective October 9, 2001. Operative January 1, 2002, by Sec. 18 of Ch. 605.)

25159.8. Nothing in this chapter shall be construed as prohibiting the furnishing of trade secret information to the Environmental Protection Agency to the extent required by law to obtain and maintain interim and final authorization to implement the state hazardous waste program in lieu of the federal program under the federal act. If the department has received a written claim that particular information furnished to the Environmental

Protection Agency is trade secret information, the department shall so inform the Environmental Protection Agency.

(Amended by Stats. 2001, Ch. 605, Sec. 9. Effective October 9, 2001. Operative January 1, 2002, by Sec. 18 of Ch. 605.)

25159.9. Notwithstanding any other provision of law, the department may make available to the Environmental Protection Agency, or any other federal agency, any and all information necessary to be furnished to these agencies in order to comply with the federal act in order to obtain and maintain authorization to administer the state hazardous waste program in lieu of the federal program. The sharing of information between the department and a federal agency pursuant to this section shall not constitute a waiver by the department or any affected person of any privilege or confidentiality of the information provided by law.

(Amended by Stats. 2001, Ch. 605, Sec. 10. Effective October 9, 2001. Operative January 1, 2002, by Sec. 18 of Ch. 605.)

Article 5.5. The Toxic Injection Well Control Act of 1985

(Article 5.5 added by Stats. 1985, Ch. 1591, Sec. 1.
See another Article 5.5, commencing with Section 25159.)

25159.10. The Legislature hereby finds and declares all of the following:

(a) Specific state laws and regulations have been enacted to prevent leaks and hazardous waste discharges to land, such as those from underground storage tanks, surface impoundments, pits, ponds, or lagoons.

(b) The present federal law which regulates the discharge of hazardous waste to land in injection wells is inadequate to fully protect California's water supplies from contamination. As a result, underground injection of hazardous waste presents a serious short-term and long-term threat to the quality of waters in the state.

(c) State-of-the-art design and operation safeguards of injection wells without adequate groundwater monitoring, specific geological information, and other system safeguards cannot guarantee that migration of hazardous wastes into underground sources of drinking water will not occur.

(d) Monitoring requirements specified in federal law are not adequate to detect all leaks from injection wells and there are no requirements in federal law for monitoring the movement of wastes in the substrata to ensure that wastes have not escaped the injection zone or are not reacting with, or have not breached the confining strata.

(e) Injecting wastes into wells deep in the geological substrata is an unproven method for the containment of wastes because, among other things, hazardous wastes can react with geological substrata, rendering these containment barriers ineffective, pressure of the injected wastes can breach containment layers, and active or abandoned wells in the vicinity of waste injection can serve as a conduit for the wastes to migrate to drinking water supplies.

(f) Restoring contaminated groundwater to its original state after the fact and removal or cleanup of wastes once injected to these depths are formidable tasks which are not typically economically feasible.

(g) It is in the public interest to establish a continuing program for the purpose of preventing contamination from underground injection of waste. It is the intent of the Legislature to prohibit any injection of hazardous wastes into or above drinking water in the state, and to prohibit any injection of hazardous waste below drinking water in the state which is not properly permitted and monitored so as to prevent hazardous wastes from migrating to drinking water or otherwise endangering the environment of the state.

(h) It is the intent of the Legislature that the Legislature will provide a process for the public and industry to appeal the actions or inactions of the department under this article. However, the specific process cannot be developed until the Legislature determines the general organization of the department with regard to administration of hazardous waste management programs.

(Added by Stats. 1985, Ch. 1591, Sec. 1.)

25159.11. This article shall be known and may be cited as the Toxic Injection Well Control Act of 1985.

(Added by Stats. 1985, Ch. 1591, Sec. 1.)

25159.12. For purposes of this article, the following definitions apply:

(a) "Annulus" means the space between the outside edge of the injection tube and the well casing.

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

(c) "Compatibility" means that waste constituents do not react with each other, with the materials constituting the injection well, or with fluids or solid geologic media in the injection zone or confining zone in a manner as to cause leaching, precipitation of solids, gas or pressure buildup, dissolution, or any other effect that will impair the effectiveness of the confining zone or the safe operation of the injection well.

(d) "Confining zone" means the geological formation, or part of a formation, that is intended to be a barrier to prevent the migration of waste constituents from the injection zone.

(e) "Constituent" means an element, chemical, compound, or mixture of compounds that is a component of a hazardous waste or leachate and that has the physical or chemical properties that cause the waste to be identified as hazardous waste by the department pursuant to this chapter.

(f) "Discharge" means to place, inject, dispose of, or store hazardous wastes into, or in, an injection well owned or operated by the person who is conducting the placing, disposal, or storage.

(g) "Drinking water" has the same meaning as "potential source of drinking water," as defined in subdivision (t) of Section 25208.2.

(h) "Facility" means the structures, appurtenances, and improvements on the land, and all contiguous land, that are associated with an injection well and are used for treating, storing, or disposing of hazardous waste. A facility may consist of several waste management units, including, but not limited to, surface impoundments, landfills, underground or aboveground tanks, sumps, pits, ponds, and lagoons that are associated with an injection well.

(i) "Groundwater" means water, including, but not limited to, drinking water, below the land surface in a zone of saturation.

(j) "Hazardous waste" means any hazardous waste specified as hazardous waste or extremely hazardous waste, as defined in this chapter. Any waste mixture formed by mixing any waste or substance with a hazardous waste shall be considered hazardous waste for the purposes of this article.

(k) "Hazardous waste facilities permit" means a permit issued for an injection well pursuant to Sections 25200 and 25200.6.

(l) "Injection well" or "well" means any bored, drilled, or driven shaft, dug pit, or hole in the ground the depth of which is greater than the circumference of the bored hole and any associated subsurface appurtenances, including, but not limited to, the casing. For the purposes of this article, injection well does not include either of the following:

(1) Wells exempted pursuant to Section 25159.24.

(2) Wells that are regulated by the Division of Oil and Gas in the Department of Conservation pursuant to Division 3 (commencing with Section 3000) of the Public Resources Code and Subpart F (commencing with Section 147.250) of Subchapter D of Chapter 1 of Part 147 of Title 40 of the Code of Federal Regulations and are in compliance with that division and Subpart A (commencing with Section 146.1) of Part 147 of Subchapter D of Chapter 1 of Title 40 of the Code of Federal Regulations.

(m) "Injection zone" means that portion of the receiving formation that has received, is receiving, or is expected to receive, over the lifetime of the well, waste fluid from the injection well. "Injection zone" does not include that portion of the receiving formation that exceeds the horizontal and vertical extent specified pursuant to Section 25159.20.

(n) "Owner" means a person who owns a facility or part of a facility.

(o) "Perched water" means a localized body of groundwater that overlies, and is hydraulically separated from, an underlying body of groundwater.

(p) "pH" means a measure of a sample's acidity expressed as a negative logarithm of the hydrogen ion concentration.

(q) "Qualified person" means a person who has at least five years of full-time experience in hydrogeology and who is a professional geologist registered pursuant to Section 7850 of the Business and Professions Code, or a registered petroleum 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.

(r) "Receiving formation" means the geologic strata that are

hydraulically connected to the injection well.

(s) "Regional board" means the California regional water quality control board for the region in which the injection well is located.

(t) "Report" means the hydrogeological assessment report specified in Section 25159.18.

(u) "Safe Drinking Water Act" means Subchapter XII (commencing with Section 300f) of Chapter 6A of Title 42 of the United States Code.

(v) "Strata" means a distinctive layer or series of layers of earth materials.

(w) "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. 378. Effective January 1, 2007.)

25159.15. (a) Notwithstanding any other provision of law, on or after January 1, 1986, a person shall not discharge hazardous waste into an injection well which commences operation on or after January 1, 1986, and after January 1, 1988, a person shall not discharge hazardous waste into an injection well which commenced operation before January 1, 1986, unless all of the following conditions are met:

(1) Unless granted an exemption pursuant to subdivision (b), no point along the length of the injection well, as measured either horizontally or vertically, is located within one-half mile of drinking water.

(2) The person has received a hazardous waste facilities permit for the well issued pursuant to Section 25200.6.

(3) The injection well does not discharge hazardous waste into or above a formation which contains a source of drinking water within one-half mile of the well.

(b) A person may apply to the department to exempt an injection well from paragraph (1) of subdivision (a) if the person has received a hazardous waste facilities permit and the person has filed a report pursuant to Section 25159.18 with the department on or before January 1, 1987, which has been approved by the department, pursuant to Section 25159.18. If the person proposes to commence operation of an injection well on or after January 1, 1986, the person shall file the request for an exemption and the report at least one year before any proposed discharge or injection.

(c) The department shall either grant or deny an exemption from paragraph (1) of subdivision (a) on or before December 31, 1987, or within one year after receipt of the application for a proposed injection well. The department may grant an exemption from paragraph (1) of subdivision (a) only if the department makes all of the following written findings, and supports these findings by citing specific evidence presented in the report or provided to the department:

(1) The hydrogeology report prepared pursuant to Section 25159.18 is current, accurate, and complete.

(2) No hazardous waste constituents have migrated from that portion of the injection well located above the injection zone or have migrated from the injection zone.

(3) Practical alternative technologies, other than well injection, do not exist to reduce, treat, or dispose of the hazardous wastes which are to be discharged.

(4) Continuing or commencing the operation of the injection well does not pose a potential of hazardous waste constituents migrating from that portion of the injection well located above the injection zone or migrating from the injection zone and a monitoring program pursuant to subdivision (c) of Section 25159.17 has been installed, or for a proposed injection well, the monitoring program has been designed and will be installed before any discharge or injections into the well.

(d) An exemption granted pursuant to subdivision (c) 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 schedules adopted by the department pursuant to Section 25159.19. The department shall not renew the exemption unless it makes all of the findings in subdivision (c).

(e) The department shall revoke an exemption granted pursuant to subdivision (c) if the department determines that there is migration of hazardous wastes, or a threat of migration of hazardous wastes, from the well into any strata or the waters of the state outside the injection zone. The department shall then prohibit the discharge of any hazardous waste into the injection well, require appropriate removal and remedial actions by the person granted the exemption, and require the responsible parties to take appropriate removal and remedial actions.

(f) The state board, the regional boards, and the department shall establish procedures providing for the interagency transfer and review of applications for exemption received pursuant to subdivision (b).

(g) This section applies only to injection wells into which hazardous waste is discharged.

(Amended by Stats. 1986, Ch. 1013, Sec. 1. Effective September 23, 1986.)

25159.16. (a) If the department or regional board determines that there is migration of hazardous waste constituents, or a threat of migration of hazardous waste constituents, from an injection well into any strata or waters of the state outside the injection zone, the department shall prohibit the discharge of any hazardous waste into the injection well until removal and remedial actions have been conducted to abate the migration or threat.

(b) The department shall determine, after the remedial and removal actions required pursuant to subdivision (a) are completed, whether the injection well should be continued to be used for the discharge of hazardous wastes. The department shall not approve the continued use of the injection well for the discharge of hazardous waste unless the department makes both of the following determinations:

(1) The removal or remedial action abated the contamination, or threat of contamination, from the migration or threat of migration.

(2) There is no potential, in continuing the operation of the injection well, for any future migration of hazardous waste constituents, from that portion of the injection well located above the injection zone, or from the injection zone.

The department shall make these determinations pursuant to a public hearing for which the department shall provide notice to all residents in the affected area, as determined by the department, and by mail to all persons listed on any mailing lists compiled by the department, using any appropriate mailing lists compiled by the regional board.

(c) If the department determines, pursuant to subdivision (b), that an injection well should not continue to be used for the discharge of hazardous wastes, the department shall require that all hazardous waste discharges be permanently terminated at the well and that the owner of the well take all actions necessary to prepare the injection well for closure pursuant to subdivision (d) and for postclosure maintenance which are required pursuant to the Federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.), the regulations adopted by the United States Environmental Protection Agency pursuant to the Safe Drinking Water Act for proper closure, plugging, and monitoring of injection wells, and the regulations adopted by the state board and the department for closure of hazardous waste management units.

(d) Before any injection well used for the discharge of hazardous waste is closed, the department shall require the owner to certify that the well is in a state of static equilibrium, all defects or damages in the well casing are corrected prior to closure, that closure is sufficient to prevent the movement of fluids from the injection zone, and that all closure will commence within six months from the date the department orders closure. The injection well shall also be closed in accordance with the following requirements:

(1) Fluids and gases shall be confined to the stratum in which they occur by the use of cement grout or other suitable material. The amount, type, kind of material, and method of placement shall be approved by the department and the well shall be filled from bottom to top with the approved material.

(2) No well shall be sealed without the prior approval of the department. The person responsible for well closure shall submit a sealing plan to the department at least 90 days prior to the proposed date of sealing. The department may require that a representative of the department observe that sealing.

(e) The department shall consult with the regional board and the Division of Oil and Gas, where necessary, to fulfill the requirements of subdivision (d).

(f) This section applies only to injection wells into which hazardous waste is discharged.

(Amended by Stats. 1986, Ch. 1013, Sec. 2. Effective September 23, 1986.)

25159.17. (a) The department shall make an inspection at least once each year of all facilities with injection wells into which hazardous waste is discharged. The owner shall tabulate the monitoring data recovered, pursuant to subdivision (c), monthly. The department shall review the data specified in paragraphs (1), (2), and (3), of subdivision (c) monthly and the data specified in paragraph (4) of subdivision (c) quarterly to ensure that all injection wells into which hazardous waste is discharged comply with this chapter and that any equipment or programs required pursuant to this article are operating properly.

(b) The department shall require complete mechanical integrity testing of the well bore at least once a year and shall require pressure tests at least once every six months. The testing program shall be designed to detect defects, damage, and corrosion in the well, well casings, injection tube, packer, cement, and the screened or perforated portion of the well.

(c) The operator of an injection well into which hazardous waste is discharged shall conduct monitoring of the surface equipment, the well, and the movement of injected wastes, in the following manner:

(1) Injection fluids shall be sampled and analyzed at least monthly to yield representative data of their characteristics at all injection wells located at onsite facilities. If the injection well is located at an offsite facility, the fluids shall be sampled and analyzed every time the composition of the hazardous waste discharged into the injection well is different than the waste discharged immediately prior to the new discharge.

(2) Pressure gauges shall be installed and maintained in proper operating condition at all times on the injection tubing and annulus.

(3) Continuous recording devices shall be installed and maintained in proper operating condition at all times to record injection temperatures and pressures, injection flow rates, injection volumes, and annulus pressure.

(4) The monitoring system, including all monitoring wells, shall be constructed and operated in accordance with the standards specified in subdivision (p) of Section 25159.18. The design of the monitoring system and location and number of monitoring wells shall be approved by the department. Monitoring wells shall be sufficient in number and location for compliance with the monitoring requirements specified in subdivision (p) of Section 25159.18, the federal regulations adopted pursuant to the Safe Drinking Water Act, and for determining all of the following:

(A) The direction and rate of regional groundwater movement.

(B) Any upward migration of hazardous wastes and changes in water quality in the water bearing formation immediately above the injection zone.

(C) Any changes in water quality of drinking water within at least one-half mile of the well.

(D) The direction, rate, hydraulic effects, alteration, and characteristics of wastes injected into the injection zone, and any changes of pressure within or above the injection zone.

(d) The operator of an injection well shall equip the surface facilities of an injection well into which hazardous waste is discharged with shutoff devices, alarms, and fencing.

(e) The department shall require all abandoned water wells within three miles of a facility to be closed in accordance with standards at least as stringent as those set forth in the Department of Water Resources Bulletin No. 74-81.

(f) The department may require any subsurface structure or hole which is contaminated, may become contaminated, provides a potential conduit for contamination, or penetrates a formation containing drinking water to be closed in accordance with standards at least as stringent as those set forth in the Department of Water Resources Bulletin No. 74-81. If the subsurface structure or hole is an oil or gas well, the well shall be closed in accordance with standards at least as stringent as the regulations adopted by the Division of Oil and Gas. If the subsurface structure is an injection well into which hazardous waste is discharged, the injection well shall be closed in accordance with the procedures specified in subdivision (d) of Section 25159.16.

(g) The regional board shall revise any existing waste discharge requirements, issued for any injection well into which hazardous waste is discharged, pursuant to Section 13263 of the Water Code, based upon a review of the report.

(h) This section applies only to injection wells into which hazardous waste is discharged.

(Amended by Stats. 1986, Ch. 1013, Sec. 3. Effective September 23, 1986.)

25159.18. Any person who applies to the department for a hazardous waste facilities permit, or for the renewal or revision of a hazardous waste facilities permit, for the discharge of hazardous wastes into an injection well, including any proposed injection well, shall submit a hydrogeological assessment report to the department and to the appropriate regional board six months before making that application. A qualified person shall be responsible for the preparation of the report and shall certify its completeness and accuracy. The department shall not approve the report unless the department finds that the report is current, accurate, and complete, and that no hazardous waste constituents have migrated from the portion of the injection well located above the injection zone or have migrated from the injection zone. The report shall be accompanied by the fee established pursuant to Section 25159.19. The report shall contain, for each injection well, including any proposed injection well, any information required by the department, and all of the following information:

(a) A description of the injection well, including all of the following:

(1) Physical characteristics.

(2) A log of construction activities, including dates and methods used.

(3) A description of materials used in the injection well, including tubing, casing, packers, seals, and grout.

(4) Design specifications and a drawing of the well as completed.

(5) An analysis of the chemical and physical compatibility of the materials used with the wastes injected.

(6) Annulus fluid composition, level, and pressure at the time of well completion through the present time.

(b) A description of both of the following:

(1) The volume, temperature, pH, and radiological characteristics, and composition of hazardous waste constituents placed in the well, based on a statistically significant representative chemical analysis of each specific hazardous waste type, so that any variations in hazardous waste constituents over time are documented.

(2) The pressure and rate at which fluid is injected into the well.

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

(d) Tabular data from each surface water body and spring shown on the map specified in subdivision (c), within one mile from the facility's perimeter, which indicate its flow and a representative water analysis. The report shall include an evaluation and characterization of seasonal changes and, if substantive changes occur from season to season, the tabular data shall reflect these seasonal changes.

(e) A map showing the location of all existing and abandoned wells, dry holes, mines, and quarries within the facility and within three miles of the facility's perimeter. The report shall include, for each well shown on the map, a description of the present use of the well, a representative water analysis from any existing wells, any known physical characteristics, and a determination as to whether the well, if abandoned, has been closed in accordance with standards at least as stringent as those set forth in the Department of Water Resources Bulletin No. 74-81, or, if the well is an oil or gas well, in accordance with standards at least as stringent as the regulations of the Division of Oil and Gas. The report also shall include, when possible, the water well driller's report or well log.

(f) A map showing the structural geology and stratigraphy within three miles of the facility's perimeter that can influence the direction of the groundwater flow or the movement of the discharged wastes. The report shall include a description of folds, domes, basins, faults, seismic activity, fractures, and joint patterns, and a geologic cross section and general description of the subsurface rock units, including stratigraphic position, lithology, thickness, and areal distribution.

(g) An analysis for all of the following:

(1) The vertical and lateral extent of any water-bearing strata that could be affected by leakage from the injection well.

(2) The vertical and lateral extent of any strata through which the well is drilled.

(3) The vertical and lateral limits of the confining beds above, below, and adjacent to, the injection well.

(h) The analysis specified in subdivision (g) shall include all of the following:

(1) A map and cross section of all hydrogeologic units.

(2) 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.

(3) An estimate of the flow, and flow direction, of the water in all water-bearing formations shown on both the maps and the subsurface geologic cross sections.

(4) An estimate of the transmissivity, permeability, porosity, and storage coefficient for each perched zone of water and water-bearing formations identified on the maps specified in paragraph (1).

(5) A determination of the water quality of each zone of the water-bearing formations and perched water that is identified on the maps specified in paragraph (1) and is under, or above and adjacent to, the well. This determination shall be conducted by taking samples either upgradient of the injection well or from another location that has not been affected by leakage from the injection well.

(i) A determination as to whether the groundwater is contiguous with regional bodies of groundwater and the depth measured from the injection zone and well casing to the groundwater, including the depth measured to perched water and water-bearing strata identified on the maps specified in subdivision (h).

(j) All of the following information for the receiving formation:

(1) A description of the chemical and physical properties of the receiving formation, including its lithology, thickness, composition, structure, porosity, storage capacity, permeability, compressibility, density, subsurface stress, vertical and lateral continuity and extent, fluid temperature, pressure, composition, and the measurement of the minimum pressure that would fracture the receiving formation.

(2) The effect of the injection pressure on the receiving formation.

(3) The geologic stability and long-term integrity of the receiving formation.

(4) An assessment of compatibility of waste, formation fluids, and formation lithology. This shall include a description of short-range and long-range changes anticipated in the physical and chemical state of the receiving formation in its fluids through chemical reaction and interaction with injection fluids.

(k) All of the following information for the confining zone:

(1) A description of its chemical and physical properties, including its age, composition, thickness, vertical and lateral continuity, unconformities, permeability, transmissivity, compressibility, porosity, density, and subsurface stress.

(2) The minimum amount of pressure that would fracture the confining zone, calculated specifically for the particular confining zone, a description of the number and types of existing fractures, faults, and cavities, and an analysis as to whether fractures were created or enlarged by past injection of wastes.

(3) The geologic stability and long-term integrity of the confining zone.

(4) Anticipated short-range and long-range changes in the physical state of the confining zone through chemical reaction and interaction with injection fluids.

(5) An estimate of the rate of migration of the hazardous waste constituents through the confining zone.

(l) A geologic cross section and description of the composition of each stratum through which the injection well is drilled. This description shall include a physical, chemical, and hydrogeological characterization of both the consolidated and unconsolidated rock material, including lithology, mineralogy, texture, bedding, thickness, and permeability. It shall also include an analysis for pollutants, including those constituents discharged into the injection well. The report shall arrange all monitoring data in a tabular form so that the dates, the constituents, and the concentrations are readily discernible.

(m) A description of surface facilities, including, but not limited to, pressure gauges, automatic shutoff devices, alarms, fencing, specifications for valves and pipe fittings, and operator training and requirements.

(n) A description of contingency plans for well failures and shutdowns to prevent migration of contaminants from the well.

(o) A description of the monitoring being conducted to detect migration of hazardous waste constituents, including the number and positioning of the monitoring wells, the monitoring wells' distances from the injection well, the monitoring wells' design data, the monitoring wells' installation, the monitoring development procedures, the sampling and analytical methodologies, the sampling frequency, and the chemical constituents analyzed. 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.

(p) Documentation demonstrating that the monitoring system and methods used at the facility can detect any seepage, including any leaks, cracks, or malfunctions in the well or a breach of the confining zone, before the hazardous waste constituents migrate from the well above the injection zone or from the confining zone. This documentation shall include, but is not limited to, substantiation of all of the following:

(1) The monitoring system is effective enough, and includes a sufficient number of monitoring wells in the major water-bearing zones, which are located close enough to the injection well casing and to the injection zone, to verify that no lateral and vertical migration of any constituents discharged into the well is occurring outside of the injection zone.

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

(3) Monitoring wells are only screened in the aquifer to be monitored and are monitored for both pressure and water quality.

(4) The chosen casing material does not adversely react with 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) Monitoring wells are constructed so as not to provide potential conduits for migration of pollution, and the wells' construction features, including annular seals, prevent pollutants from migrating up or down the monitoring well.

(7) The methods of water sample collection require 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 and any additional procedures specified by the department. For all monitoring wells, except those extending into the injection zone, the sample shall be collected after at least five well volumes have been removed 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 discharged into the injection well. 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 migration of hazardous waste constituents 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 surface water bodies or any strata outside the injection zone, including water-bearing strata.

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

(q) This section applies only to injection wells into which hazardous waste is discharged.

(Amended by Stats. 1994, Ch. 146, Sec. 108. Effective January 1, 1995.)

25159.19. (a) On or before July 1, 1986, the department shall, by emergency regulation, adopt a fee schedule that assesses a fee upon any person discharging any hazardous wastes into an injection well. The department shall include in this fee schedule the fees charged for filing a hazardous waste injection statement specified in former Section 25159.13, as added by Chapter 1591 of the Statutes of 1985, the report specified in Section 25159.18, and applications for, and renewals of, the exemptions specified in Section 25159.15. The department shall also include provisions in the fee schedule for assessing a penalty pursuant to subdivision (c). These fees shall be based on the reasonable anticipated costs that will be incurred by the department to implement and administer this article. The department may also request an appropriation to be used in combination with these fees to perform the monitoring, inspections, review of reports, or any other implementation and administrative actions required by this article.

(b) The emergency regulations that set the fee schedule shall be adopted by the department 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 department 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 department.

(c) The department 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 department shall require the person to pay an additional penalty fee. The department 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 department shall collect and deposit the fees and penalties collected pursuant to this section in the Hazardous Waste Injection Well Account, which is hereby created in the General Fund. The money within the Hazardous Waste Injection Well Account is available, upon appropriation by the Legislature, to the department for purposes of administering this article.

(e) This section applies only to injection wells into which hazardous waste is discharged.

(Amended by Stats. 2004, Ch. 193, Sec. 96. Effective January 1, 2005.)

25159.20. (a) The department shall specify, for purposes of paragraph (4) of Section 25200.6, the horizontal and vertical extent of any injection zone for an injection well. The department shall cite specific information presented in the report prepared pursuant to Section 25159.18 as the basis for specifying the extent of the injection zone and shall make a finding as to whether the injection wells' hydrogeological and operating conditions ensure that there is no potential for any migration of any hazardous waste constituents to any strata or waters of the state outside the injection zone.

(b) This section applies only to injection wells into which hazardous waste is discharged.

(Added by Stats. 1985, Ch. 1591, Sec. 1.)

25159.21. (a) The state board, a regional board, or the department may enter and inspect a facility for determining compliance with this article, including, for this purpose, inspecting, at a reasonable time, records, files, papers, processes, and controls.

(b) Nothing in this article shall prevent the department from enforcing existing permit conditions for the land disposal of hazardous wastes that are more stringent than the restrictions of this article or prohibit the department, the state board, or the regional boards from imposing more stringent restrictions on the discharge of hazardous wastes at any particular hazardous waste disposal facility.

(Added by Stats. 1985, Ch. 1591, Sec. 1.)

25159.22. 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 Chapter 6.8 (commencing with Section 25300) or to the state board or any regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code, to the Division of Oil and Gas pursuant to Division 3 (commencing with Section 3000) of the Public Resources Code, or the authority of any city, county, or district to act pursuant to the local agency's ordinances or regulations.

(Added by Stats. 1985, Ch. 1591, Sec. 1.)

25159.23. The State Oil and Gas Supervisor shall promptly report to the department and the state board any injection well regulated by the Division of Oil and Gas pursuant to Subpart F of Part 147 of Title 40 of the Code of Federal Regulations that is not in compliance with these regulations because fluids not authorized by these regulations are discharged into the well.

(Added by Stats. 1985, Ch. 1591, Sec. 1.)

25159.24. (a) Any injection well used to inject contaminated groundwater that has been treated and is being reinjected into the same formation from which it was drawn for the purpose of improving the quality of the groundwater in the formation is exempt from this article if this method is part of a remedial program initiated in response to an order, requirement, or other action of a federal or state agency.

(b) Any injection well used for the reinjection of geothermal resources, as defined in Section 6903 of the Public Resources Code, is exempt from this article if the well is in compliance with Chapter 4 (commencing with Section 3700) of Division 3 of the Public Resources Code.

(Added by Stats. 1985, Ch. 1591, Sec. 1.)

25159.25. Any action taken by the department pursuant to this article shall comply with and incorporate any waste discharge requirements issued by the state board or a regional board, and the action shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code and with the state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, and any amendments made to these plans, policies, or requirements. The department may also include any more stringent requirement which the department determines is necessary or appropriate to protect water quality.

(Added by Stats. 1985, Ch. 1591, Sec. 1.)

Article 6. Transportation

(Article 6 added by Stats. 1972, Ch. 1236.)

25160. (a) For purposes of this chapter, the following definitions apply:

(1) "Manifest" means a shipping document originated and signed by a generator of hazardous waste that contains all of the information required by the department and that complies with all applicable federal and state regulations.

(2) "California Uniform Hazardous Waste Manifest" means either of the following:

(A) A manifest document printed and supplied by the state for a shipment initiated on or before September 4, 2006.

(B) The Uniform Hazardous Waste Manifest printed by a source registered with the United States Environmental Protection Agency for a shipment initiated on or after September 5, 2006.

(3) For purposes of this section and Section 25205.15, a shipment is initiated on the date when the manifest is signed by the first transporter and the hazardous waste leaves the site where it is generated.

(b) (1) Except as provided in Section 25160.2 or as otherwise authorized by a variance issued by the department, any person generating hazardous waste that is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, shall complete a manifest prior to the time the waste is transported or offered for transportation, and shall designate on that manifest the facility to which the waste is to be shipped for the handling, treatment, storage, disposal, or combination thereof. The manifest shall be completed as required by the department. The generator shall provide the manifest to the person who will transport the hazardous waste, who is the driver, if the hazardous waste will be transported by vehicle, or the person designated by the railroad corporation or vessel operator, if the hazardous waste will be transported by rail or vessel.

(A) The generator shall use the standard California Uniform Hazardous Waste Manifest supplied by the department for all shipments of hazardous waste initiated on and before September 4, 2006, for which a manifest is required, except as provided in paragraph (2).

(B) The generator shall use the Uniform Hazardous Waste Manifest printed by a source registered with the United States Environmental Protection Agency for all shipments of hazardous waste initiated on and after September 5, 2006, for which a manifest is required.

(C) A manifest shall only be used for the purposes specified in this chapter, including, but not limited to, identifying materials that the person completing the manifest reasonably believes are hazardous waste.

(D) Within 30 days from the date of transport, or submission for transport, of hazardous waste, each generator of that hazardous waste shall submit to the department a legible copy of each manifest used. The copy

submitted to the department shall contain the signatures of the generator and the transporter.

(E) In lieu of submitting a copy of each manifest used, a generator may submit an electronic report to the department meeting the requirements of Section 25160.3.

(2) Except as provided in Section 25160.2 or as otherwise authorized by a variance issued by the department, any person generating hazardous waste that is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, outside of the state, shall complete, whether or not the waste is determined to be hazardous by the importing country or state, a manifest in accordance with the following conditions:

(A) The generator shall use the standard California Uniform Hazardous Waste Manifest or the manifest required by the receiving state for all shipments of hazardous waste initiated on and before September 4, 2006, for which a manifest is required.

(B) The generator shall use the Uniform Hazardous Waste Manifest printed by a source registered with the United States Environmental Protection Agency for all shipments of hazardous waste initiated on and after September 5, 2006, for which a manifest is required.

(C) The generator shall submit a copy of the manifest specified in subparagraph (A) or (B), as applicable, to the department within 30 days from the date of the transport, or submission for transport, of the hazardous waste. In lieu of submitting a copy of each manifest used, a generator may submit an electronic report to the department meeting the requirements of Section 25160.3.

(3) Within 30 days from the date of transport, or submission for transport, of hazardous waste out of state, each generator of that hazardous waste shall submit to the department a legible copy of each manifest used. The copy submitted to the department shall contain the signatures of the generator, all transporters, excepting intermediate rail transporters, and the out-of-state facility operator. If within 35 days from the date of the initial shipment, or for exports by water to foreign countries 60 days after the initial shipment, the generator has not received a copy of the manifest signed by all transporters and the facility operator, the generator shall contact the owner or operator of the designated facility to determine the status of the hazardous waste and to request that the owner or operator immediately provide a signed copy of the manifest to the generator. Except as provided otherwise in paragraph (2) of subdivision (h) of Section 25123.3, if within 45 days from the date of the initial shipment or, for exports by water to foreign countries, 90 days from the date of the initial shipment, the generator has not received a copy of the signed manifest from the facility owner or operator, the generator shall submit an exception report to the department.

(4) For shipments of waste that do not require a manifest pursuant to Title 40 of the Code of Federal Regulations, the department, by regulation, may establish manifest requirements that differ from the requirements of this section. The requirements for an alternative form of manifest shall ensure that the hazardous waste is transported by a registered hazardous waste transporter, that the hazardous waste is tracked, and that human health and safety and the environment are protected.

(5) (A) Notwithstanding any other provision of this section, except as provided in subparagraph (B), the generator copy of the manifest is not required to be submitted to the department for any waste transported in compliance with the consolidated manifest procedures in Section 25160.2 or when the transporter is operating pursuant to a variance issued by the department pursuant to Section 25143 authorizing the use of a consolidated manifest for waste not listed in Section 25160.2, if the generator, transporter, and facility are all identified as the same company on the hazardous waste manifest. If multiple identification numbers are used by a single company, all of the company's identification numbers shall be included in its annual transporter registration application, if those numbers will be used with the consolidated manifest procedure. Nothing in this paragraph affects the obligation of a facility operator to submit to the department a copy of a manifest pursuant to this section.

(B) If the waste subject to subparagraph (A) is transported out of state, the generator shall either ensure that the facility operator submits to the department a copy of the manifest or the generator shall submit a copy to the department that contains the signatures of the generator, all transporters, excepting intermediate rail transporters, and the out-of-state facility operator pursuant to paragraph (3).

(c) (1) The department shall determine the form and manner in which a manifest shall be completed and the information that the manifest shall contain. The information requested on the manifest shall serve as the data dictionary for purposes of the developing of an electronic reporting format pursuant to Section 71062 of the Public Resources Code. The form of each manifest and the information requested on each manifest shall be the same for all hazardous wastes, regardless of whether the hazardous wastes are also regulated pursuant to the federal act or by regulations adopted by the United States Department of Transportation. However, the form of the manifest and the information required shall be consistent with federal regulations.

(2) Pursuant to federal regulations, the department may require information on the manifest in addition to the information required by federal regulations.

(d) (1) Any person who transports hazardous waste in a vehicle shall have a manifest in his or her possession while transporting the hazardous waste. The manifest shall be shown upon demand to any representative of the department, any officer of the California Highway Patrol, any local health officer, any certified unified program agency, or any local public officer designated by the director. If the hazardous waste is transported by rail or vessel, the railroad corporation or vessel operator shall comply with Subchapter C (commencing with Section 171.1) of Chapter 1 of Subtitle B of Title 49 of the Code of Federal Regulations and shall also enter on the shipping papers any information concerning the hazardous waste that the department may require.

(2) Any person who transports any waste, as defined by Section 25124, and who is provided with a manifest for that waste shall, while transporting that waste, comply with all requirements of this chapter, and the regulations adopted pursuant thereto, concerning the transportation of hazardous waste.

(3) Any person who transports hazardous waste shall transfer a copy of the manifest to the facility operator at the time of delivery, or to the person who will subsequently transport the hazardous waste in a vehicle. Any person who transports hazardous waste and then transfers custody of that hazardous waste to a person who will subsequently transport that waste by rail or vessel shall transfer a copy of the manifest to the person designated by the railroad corporation or vessel operator, as specified by Subchapter C (commencing with Section 171.1) of Chapter 1 of Subtitle B of Title 49 of the Code of Federal Regulations.

(4) Any person transporting hazardous waste by motor vehicle, rail, or water shall certify to the department, at the time of initial registration and at the time of renewal of that registration pursuant to this article, that the transporter is familiar with the requirements of this section, the department regulations, and federal laws and regulations governing the use of manifests.

(e) (1) Any facility operator in the state who receives hazardous waste for handling, treatment, storage, disposal, or any combination thereof, which was transported with a manifest pursuant to this section, shall submit a copy of the manifest to the department within 30 days from the date of receipt of the hazardous waste. The copy submitted to the department shall contain the signatures of the generator, all transporters, excepting intermediate rail transporters, and the facility operator. In instances in which the generator or transporter is not required by the generator's state or federal law to sign the manifest, the facility operator shall require the generator and all transporters, excepting intermediate rail transporters, to sign the manifest before receiving the waste at any facility in this state. In lieu of submitting a copy of each manifest used, a facility operator may submit an electronic report to the department meeting the requirements of Section 25160.3.

(2) Any treatment, storage, or disposal facility receiving hazardous waste generated outside this state may only accept the hazardous waste for treatment, storage, disposal, or any combination thereof, if the hazardous waste is accompanied by a completed standard California Uniform Hazardous Waste Manifest.

(3) A facility operator may accept hazardous waste generated offsite that is not accompanied by a properly completed and signed standard California Uniform Hazardous Waste Manifest if the facility operator meets both of the following conditions:

(A) The facility operator is authorized to accept the hazardous waste pursuant to a hazardous waste facilities permit or other grant of authorization from the department.

(B) The facility operator is in compliance with the regulations adopted by the department specifying the conditions and procedures applicable to the receipt of hazardous waste under these circumstances.

(4) This subdivision applies only to shipments of hazardous waste for which a manifest is required pursuant to this section and the regulations adopted pursuant to this section.

(f) A generator, transporter, or facility operator may comply with the requirements of Sections 66262.40, 66263.22, 66264.71, and 66265.71 of Title 22 of the California Code of Regulations by storing manifest information electronically. A generator, transporter, or facility operator who stores manifest information electronically shall use the standardized electronic format and protocol for the exchange of electronic data established by the Secretary for Environmental Protection pursuant to Part 2 (commencing with Section 71050) of Division 34 of the Public Resources Code and the stored information shall include all the information required to be retained by the department, including all signatures required by this section.

(g) The department shall make available for review, by any interested party, the department's plans for revising and enhancing its system for tracking hazardous waste for the purposes of protecting human health and the environment, enforcing laws, collecting revenue, and generating necessary reports.

(Amended by Stats. 2006, Ch. 77, Sec. 9. Effective July 18, 2006.)

25160.1. (a) The department shall revise the hazardous waste code identification system established in Appendix XII of Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations. The revised hazardous waste code identification system shall meet the requirements of subdivision (b).

(b) The revised hazardous waste code identification system adopted pursuant to subdivision (a) shall meet all of the following requirements:

(1) RCRA hazardous wastes shall be identified by the same hazardous waste code identification designations that are given to those hazardous wastes by the RCRA hazardous waste code system adopted pursuant to the federal act.

(2) Non-RCRA hazardous wastes shall be identified by hazardous waste code identification designations that are consistent with the federal waste code identification designations and shall be based on the criteria that causes the waste to be regulated as a hazardous waste in this state. The identification code system shall not require the hazardous wastes subject to this paragraph to be identified by a RCRA hazardous waste code identification.

(3) Notwithstanding the requirements of paragraphs (1) and (2), the department may propose and adopt additional modifications to the hazardous waste code identification system if the department determines that those additional modifications are necessary and essential to provide any one of the following:

(A) Significant benefit to the protection of human health or the environment.

(B) Significant benefit to compliance and enforcement activities.

(C) Significant additional assurance that hazardous wastes are properly managed.

(c) To facilitate implementation of the revised hazardous waste code identification system adopted pursuant to this section, the department shall do all of the following:

(1) Determine an operative date for the regulations establishing the revised hazardous waste code identification system in order to allow for a reasonable transition period, which shall not exceed three years after the date the revised waste code regulations are adopted. If the department determines, prior to the end of that three-year period, that additional time is necessary for the new waste code system to become operative, the department may revise the regulations to extend the transition period and the operative date for up to an additional two years.

(2) Adopt a regulatory procedure for the amendment of existing permits, registrations, licenses, certifications, and other authorizations that have been issued by the department to allow the revised hazardous waste code identification system to be used by facilities with existing authorizations that refer to, or incorporate, the old hazardous waste code identification system, subject to all of the following limitations:

(A) The regulatory procedure will not change the type or amount of hazardous waste that persons are authorized to treat, store, transfer, dispose of, or otherwise handle in accordance with this chapter.

(B) To the extent consistent with the federal act, the regulatory procedure will not require individual modification to individual facility permits, registrations, licenses, certifications, or other authorizations solely for the purpose of reflecting the revised hazardous waste code identification system.

(C) The regulatory procedure for the amendment of existing permits, registrations, licenses, certifications, or other authorizations shall apply to all applicable facilities on the operative date of the revised hazardous waste code identification system, as determined by the department pursuant to paragraph (1) of subdivision (c).

(3) Conduct a public education, outreach, and notification program to ensure that users of the hazardous waste code identification system are reasonably notified of and understand the changes made to the system pursuant to this section.

(Amended by Stats. 1999, Ch. 401, Sec. 1. Effective January 1, 2000.)

25160.2. (a) In lieu of the procedures prescribed by Sections 25160 and 25161, transporters and generators of hazardous waste meeting the conditions in this section may use the consolidated manifesting procedure set forth in subdivision (b) to consolidate shipments of waste streams identified in subdivision (c) collected from multiple generators onto a single consolidated manifest.

(b) The following consolidated manifesting procedure may be used only for non-RCRA hazardous waste or for RCRA hazardous waste that is not required to be manifested pursuant to the federal act or the federal regulations adopted pursuant to the federal act and transported by a registered hazardous waste transporter, and used only with the consent of the generator:

(1) A separate manifest shall be completed by each vehicle driver, with respect to each transport vehicle operated by that driver for each date.

(2) The transporter shall complete both the generator's and the transporter's section of the manifest using the transporter's name, identification number, terminal address, and telephone number. The generator's and transporter's sections shall be completed prior to commencing each day's collections. The driver shall sign and date the generator's and transporter's sections of the manifest.

(3) The transporter shall attach to the front of the manifest legible receipts for each quantity of hazardous waste that is received from a generator. The receipts shall be used to determine the total volume of hazardous waste in the vehicle. After the hazardous waste is delivered, the receipts shall be affixed to the transporter's copy of the manifest. The transporter shall leave a copy of the receipt with the generator of the hazardous waste. The generator shall retain each receipt for at least three years. This period of retention is extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department or a certified unified program agency.

(4) All copies of each receipt shall contain all of the following information:

(A) The name, address, identification number, contact person, and telephone number of the generator, and the signature of the generator or the generator's representative.

(B) The date of the shipment.

(C) The manifest number.

(D) The volume or quantity of each waste stream received, its California and RCRA waste codes, the waste stream type listed in subdivision (c), and its proper shipping description, including the hazardous class and United Nations/North America (UN/NA) identification number, if applicable.

(E) The name, address, and identification number of the authorized facility to which the hazardous waste will be transported.

(F) The transporter's name, address, and identification number.

(G) The driver's signature.

(H) A statement, signed by the generator, certifying that the generator has established a program to reduce the volume or quantity and toxicity of the hazardous waste to the degree, as determined by the generator, to be economically practicable.

(5) The transporter shall enter the total volume or quantity of each waste stream transported on the manifest at the change of each date, change of driver, or change of transport vehicle. The total volume or quantity shall be the cumulative amount of each waste stream collected from the generators listed on the individual receipts. In lieu of submitting a copy of each manifest used, a facility operator may submit an electronic report to the department meeting the requirements of Section 25160.3.

(6) The transporter shall submit the generator copy of the manifest to the department within 30 days of each shipment.

(7) The transporter shall retain a copy of the manifest and all receipts for each manifest at a location within the state for three years. This period of retention is extended automatically during the course of any

unresolved enforcement action regarding the regulated activity or as requested by the department or a certified unified program agency.

(8) The transporter shall submit all copies of the manifest to the designated facility. A representative of the designated facility that receives the hazardous waste shall sign and date the manifest, return two copies to the transporter, retain one copy, and send the original to the department within 30 days.

(9) All other manifesting requirements of Sections 25160 and 25161 shall be complied with unless specifically exempted under this section. If an out of state receiving facility is not required to submit the signed manifest copy to the department, the consolidated transporter, acting as generator, shall submit a copy of the manifest signed by the receiving facility to the department pursuant to paragraph (3) of subdivision (b) of Section 25160.

(10) Each generator using the consolidated manifesting procedure shall have an identification number, unless exempted from manifesting requirements by action of Section 25143.13 for generators of photographic waste less than 100 kilograms per calendar month.

(c) The consolidated manifesting procedure set forth in subdivision (b) may be used only for the following waste streams and in accordance with the conditions specified below for each waste stream:

(1) Used oil and the contents of an oil/water separator, if the separator is a catch basin, clarifier, or similar collection device that is used to collect water containing residual amounts of one or more of the following: used oil, antifreeze, or other substances and contaminants associated with activities that generate used oil and antifreeze.

(2) The wastes listed in subparagraph (A) may be manifested under the procedures specified in this section only if all of the requirements specified in subparagraphs (B) and (C) are satisfied.

(A) Wastes eligible for consolidated manifesting:

(i) Solids contaminated with used oil.

(ii) Brake fluid.

(iii) Antifreeze.

(iv) Antifreeze sludge.

(v) Parts cleaning solvents, including aqueous cleaning solvents.

(vi) Hydroxide sludge contaminated solely with metals from a wastewater treatment process.

(vii) "Paint-related" wastes, including paints, thinners, filters, and sludges.

(viii) Spent photographic solutions.

(ix) Dry cleaning solvents (including percholoroethylene, naphtha, and silicone based solvents).

(x) Filters, lint, and sludges contaminated with dry cleaning solvent.

(xi) Asbestos and asbestos-containing materials.

(xii) Inks from the printing industry.

(xiii) Chemicals and laboratory packs collected from K-12 schools.

(xiv) Absorbents contaminated with other wastes listed in this section.

(xv) Filters from dispensing pumps for diesel and gasoline fuels.

(xvi) Disabled vehicle wastes, as defined in subdivision (a) of Section 25163.2.

(xvii) Any other waste, as specified in regulations adopted by the department.

(B) The generator does not generate more than 1,000 kilograms per calendar month of hazardous waste and meets the conditions of paragraph (1) of subdivision (h) of Section 25123.3. For the purpose of calculating the 1,000 kilograms per calendar month limit described in this section, the generator may exclude the volume of used oil and the contents of the oil/water separator that is managed pursuant to paragraph (1) of subdivision (c).

(C) (i) The generator enters into an agreement with the transporter in which the transporter agrees that the transporter will submit a confirmation to the generator that the hazardous waste was transported to an authorized hazardous waste treatment facility for appropriate treatment. The agreement may provide that the hazardous waste will first be transported to a storage or transfer facility in accordance with the applicable provisions of law.

(ii) The treatment requirement specified in clause (i) does not apply to asbestos, asbestos-containing materials, and chemicals and laboratory packs collected from K-12 schools, or any other waste stream for which the department determines there is no reasonably available treatment methodology or facility. These wastes shall be transported to an authorized facility.

(d) Transporters using the consolidated manifesting procedure set forth in this section shall submit quarterly reports to the department 30 days after the end of each quarter. The first quarterly report shall be submitted on October 31, 2002, covering the July to September 2002 period, and every three months thereafter. Except as otherwise specified in paragraph (1), the quarterly report shall be submitted in an electronic format provided by the department.

The department shall make all of the information in the quarterly reports submitted pursuant to this subdivision available to the public, through its usual means of disclosure, except the department shall not disclose the association between any specific transporter and specific generator. The list of generators served by a transporter shall be deemed to be a trade secret and confidential business information for purposes of Section 25173 and Section 66260.2 of Title 22 of the California Code of Regulations.

(1) Transporters that use the consolidated manifesting procedure for less than 1,000 tons per calendar year may submit the report in a paper format through October 31, 2003. After that date, they may apply to the department to continue submitting paper format reports.

(2) For each transporter's name, terminal address, and identification number, the quarterly report shall include the following information for each generator for each consolidated manifest:

(A) The name, address, and identification number, the contact persons's name, and the telephone number of each generator.

(B) The date of the shipment.

(C) The manifest number.

(D) The volume or quantity of each waste stream received, its California and RCRA waste code, and the waste stream category listed in subdivision (c).

(e) It is the intent of the Legislature that upon the effective date of the act adding this statute, that Section 66263.42 of Title 22 of the California Code of Regulations, relating to specific requirements for milkrun operations, and subdivision (d) of Section 66262.12, relating to identification numbers for generators, be repealed. The department shall repeal these provisions pursuant to Section 100 of Title 1 of the California Code of Regulations.

(Added by Stats. 2001, Ch. 319, Sec. 4. Effective January 1, 2002. Note: Clause (xvi), of (c)(2)(A), is nonoperative pursuant to Sec. 9 of Ch. 319; AB 1708 of 2001-02 was not enacted.)

25160.3. (a) Any person generating hazardous waste that is transported or submitted for transportation, for offsite handling, treatment, storage, disposal, or a combination thereof, subject to the manifest requirements of Section 25160, and any facility operator in the state who receives hazardous waste for handling, treatment, storage, disposal, or any combination thereof, that was transported subject to the manifest requirements of Section 25160, may submit an electronic report to the department in lieu of the copy of the manifests required by subdivision (b) or (e) of Section 25160. The electronic report shall contain the information required by the department pursuant to subdivision (c) of Section 25160, and shall be provided no more than five business days after the end of the previous calendar month, or, if submitted bimonthly, no more than 10 business days after the previous two calendar weeks. The electronic report shall utilize the standardized electronic format and protocol for the exchange of electronic data established by the Secretary for Environmental Protection pursuant to Part 2 (commencing with Section 71050) of Division 34 of the Public Resources Code.

(b) The signatures required by Section 25160 and retained through the electronic reporting authorized by this section shall conform with the electronic signature techniques prescribed pursuant to Section 71066 of the Public Resources Code. Notwithstanding any other provision of law, printed representations of signatures and other information submitted in an electronic report pursuant to this section shall not be rendered inadmissible in any civil or criminal action by the best evidence rule and shall be deemed to meet the requirements of Section 1507 of the Evidence Code.

(Added by Stats. 1998, Ch. 880, Sec. 4. Effective January 1, 1999.)

25160.4. (a) On and after January 1, 2005, and except as provided in subdivision (b), if an offsite hazardous waste facility operator either rejects a partial shipment of hazardous waste, or rejects an entire shipment of hazardous waste after signing the manifest accompanying the shipment, the facility operator shall prepare a new manifest to accompany the rejected hazardous waste when it is returned to the generator or shipped to an alternate facility designated by the generator.

(b) To the extent that the United States Environmental Protection Agency adopts regulations under the federal act that preempt or are more stringent than the requirements of this section, an offsite hazardous waste facility, generator, and transporter shall instead comply with those regulations on and after the date those federal regulations become effective in California, or on and after the effective date of regulations adopted by the department in accordance with those federal regulations, whichever date occurs first.

(Added by Stats. 2003, Ch. 362, Sec. 1. Effective January 1, 2004.)

25160.5. If any person submits an incomplete or improperly completed manifest, and the department returns the manifest to the person who completed or submitted the manifest, the person to whom it was returned shall, within 30 days from the date of receipt of the returned manifest, submit a fee of twenty dollars ($20) to the department to accompany the resubmitted manifest. The department shall deposit the fees collected pursuant to this section into the Hazardous Waste Control Account, for expenditure by the department, upon appropriation by the Legislature.

(Amended by Stats. 1997, Ch. 870, Sec. 3. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25160.6. (a) (1) If a hazardous waste shipment is rejected in its entirety before the original manifest is signed by an offsite hazardous waste facility operator, the original manifest shall be used to transport the rejected load to either the generator or an alternate facility designated by the generator.

(2) An offsite hazardous waste facility operator is not required to sign a manifest pursuant to this subdivision until the hazardous waste listed on the manifest is fully unloaded at the facility. If the transporter leaves a loaded or partially loaded trailer at the facility, the facility operator shall sign the manifest before the transporter departs the facility.

(3) The hazardous waste facility operator shall, when preparing a manifest to accompany a rejected load of hazardous waste, enter the number of the original manifest in Box 19 on the new manifest, and the facility operator shall enter the number of the new manifest in Box 19 on those copies of the original manifest still in the facility operator's possession. The facility operator shall enter this information elsewhere on the manifest if required by regulations adopted by the department. The facility operator shall also use Box 19 on the new manifest, or any other box that is required by the department's regulations, to identify the shipment as a rejected load.

(4) After an offsite hazardous waste facility operator rejects a shipment of hazardous waste, the transporter shall transport the hazardous waste, accompanied by the original manifest or a new manifest, to either the generator or an alternate facility designated by the generator. The transporter shall obtain a signature on the manifest from the operator of the alternate designated facility or the generator, whichever receives the rejected shipment.

(b) For purposes of receiving hazardous waste rejected by an offsite hazardous waste facility operator, the generator of the hazardous waste shall be considered a designated facility for the receipt of hazardous waste generated by that generator. For purposes of this section, "designated facility" has the same meaning as that term is defined in Section 66260.10 of Title 22 of the California Code of Regulations, including any amendments thereto.

(c) (1) An offsite hazardous waste facility operator that rejects an entire shipment or a partial shipment of hazardous waste pursuant to this section is not the generator of that hazardous waste for purposes of this chapter, including any regulations adopted pursuant to this chapter, nor an arranger for disposal of the waste, nor a transporter who chooses the location for disposal of waste.

(2) (A) An offsite hazardous waste facility operator that rejects an entire shipment or a partial shipment of hazardous waste pursuant to this section is the offeror of the rejected hazardous waste.

(B) For purposes of this chapter and regulations adopted pursuant to this chapter, "offeror" means a person who ships hazardous waste and is responsible for ensuring that the hazardous waste is properly prepared for shipment but who is not an arranger for disposal or a transporter who chooses the location for disposal of the waste.

(3) An offsite hazardous waste facility operator that rejects an entire shipment or a partial shipment of hazardous waste pursuant to this section shall comply with the department's regulations concerning manifest use, container condition and management, and container packaging, labeling, marking, and placarding with respect to the rejected hazardous waste.

(d) Except as provided in subdivision (e), the generator of hazardous waste who receives a rejected shipment of that hazardous waste may accumulate the rejected hazardous waste onsite for 90 days or less, in accordance with the requirements of paragraph (1) of subdivision (a) of Section 66262.34 of Title 22 of the California Code of Regulations. The generator of the rejected hazardous waste shall label or mark the hazardous waste in a manner that indicates that it is rejected hazardous waste and shall include the date it was received by the generator. If the generator of the rejected hazardous waste commingles it with other hazardous wastes, the shorter of any applicable accumulation time limits shall apply to the commingled hazardous waste.

(e) A transporter of hazardous waste, that consolidates shipments of waste pursuant to Section 25160.2 and whose consolidated shipment is rejected by an offsite hazardous waste facility, may hold that shipment on the transport vehicle at the transporter's facility for no more than 10 days from the date the shipment is rejected, consistent with paragraph (3) of subdivision (b) of Section 25123.3. The transporter may not commingle the consolidated shipment with any other waste.

(f) A generator of hazardous waste who receives a shipment of rejected waste shall comply with the requirements of Sections 66265.71 and 66265.72 of Title 22 of the California Code of Regulations.

(g) To the extent that the United States Environmental Protection Agency adopts regulations under the federal act that preempt or are more stringent than the requirements of this section, offsite hazardous waste facilities, generators, and transporters shall instead comply with those regulations on and after the date those federal regulations become effective in California, or on and after the effective date of regulations adopted by the department in accordance with those federal regulations, whichever date occurs first.

(Amended by Stats. 2004, Ch. 183, Sec. 201. Effective January 1, 2005.)

25160.7. An authorized representative of the generator or facility operator that is responsible for loading hazardous waste into a transport vehicle shall, prior to that loading, ensure that the driver of the transport vehicle is in possession of the appropriate class of driver's license and any endorsement required to lawfully operate the transport vehicle with its intended load.

(Added by Stats. 2002, Ch. 610, Sec. 1. Effective January 1, 2003.)

25161. (a) The department may adopt and enforce those regulations, regarding a uniform program for hazardous waste transportation, that are necessary and appropriate to achieve consistency with the findings made by the Federal Highway Administration and the federal Department of Transportation pursuant to Chapter 51 (commencing with Section 5101) of Title 49 of the United States Code.

(b) The department shall adopt and enforce all rules and regulations that are necessary and appropriate to accomplish the purposes of Section 25160.

(c) The department shall develop a data base that tracks all hazardous waste shipped in and out of state for handling, treatment, storage, disposal, or any combination thereof, which includes all of the following information:

(1) The state or country receiving the waste.

(2) Month and year of shipment.

(3) Type of hazardous waste shipped.

(4) The manner in which the hazardous waste was handled at its final destination, such as incineration, treatment, recycling, land disposal, or a combination thereof.

(d) The department shall include in the biennial report specified in Section 25178 all of the following information:

(1) The total volume in tons of hazardous waste generated in the state and shipped offsite for handling, treatment, storage, disposal, or any combination thereof.

(2) The total volume in tons of hazardous waste generated in the state and shipped in and out of the state for handling, treatment, storage, disposal, or any combination thereof, including all of the following information:

(A) The state or country receiving the hazardous waste.

(B) Month and year of shipment.

(C) Type of hazardous waste shipped.

(D) The manner in which the hazardous waste was handled at its

final destination, such as incineration, treatment, recycling, land disposal, or a combination thereof.

(Amended by Stats. 1997, Ch. 945, Sec. 1. Effective January 1, 1998.)

25162. (a) No person shall transport any hazardous waste on the highways of this state, or deliver to a railroad or vessel any hazardous waste for transport, if the final destination of the transported hazardous waste is a facility in a state other than this state or in a territory of the United States, unless one of the following applies:

(1) The facility has been issued a permit pursuant to subsection (c) or (g), or has been granted authority to operate pursuant to subsection (e), of Section 3005 of the federal act (42 U.S.C. Sec. 6925) by either of the following:

(A) The Environmental Protection Agency.

(B) The state in which the facility is located, if the state has authorization to operate a hazardous waste program pursuant to Section 3006 of the federal act (42 U.S.C. Sec. 6926).

(2) The facility is authorized by the state in which it is located, pursuant to the applicable laws or regulations of that state, to accept the transported hazardous waste for transfer, handling, recycling, storage, treatment, or disposal.

(b) No person shall transport any hazardous waste on the highways of this state, or deliver to a railroad or vessel any hazardous waste for transport, if the final destination of the transported hazardous waste is a facility which is located on a site which has been listed on the National Priorities List established pursuant to subparagraph (B) of paragraph (8) of Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9605 (8)(B)).

(c) Any person who knowingly transports or causes the transportation of, or who reasonably should have known that the person was causing the transportation of, any hazardous waste in violation of subdivision (a) or (b) shall, upon conviction, be subject to the penalties specified in subdivision (a) of Section 25191.

(d) Any person who knowingly delivers, or arranges the delivery of, any hazardous waste to another person for transport in violation of subdivision (a) or (b) shall, upon conviction, be subject to the penalties specified in subdivision (a) of Section 25191.

(e) No person shall transport any hazardous waste which is subject to the requirements of Section 3017 of the federal act (42 U.S.C. Sec. 6938) on the highways of this state or deliver to a railroad or vessel any of this hazardous waste for transport, if the final destination of the transported hazardous waste is a foreign country, unless the shipment is in compliance with the applicable regulations adopted pursuant to Section 25150.2 and either of the following conditions is met:

(1) A copy of the foreign country's written consent to receive the hazardous waste, or a copy of the EPA Acknowledgement of Consent, as defined in Section 262. 51 of Title 40 of the Code of Federal Regulations, is attached to the manifest required by this article.

(2) The hazardous waste shipment is in compliance with the terms of an international agreement between the United States and the receiving foreign country, as provided in subsection (f) of Section 3017 of the federal act (42 U.S.C. Sec. 6938 (f)).

(f) Any person who knowingly violates, or who reasonably should have known that the person was violating, subdivision (e) shall, upon conviction, be subject to the penalties specified in subdivision (a) of Section 25191.

(Added by Stats. 1988, Ch. 1061, Sec. 2.)

25162.1. A recyclable material that is to be exported to a foreign country is not excluded from classification as a waste pursuant to subdivision (b) or (d) of Section 25143.2, unless the requirements of Sections 25143.2 and 25143.9 are met, and the person exporting the material has complied with all of the following requirements:

(a) The person notifies the department, in writing, four weeks before the initial shipment. This notification may cover export activities extending over a 12-month or lesser period and shall include all of the following information:

(1) The generator's name, site address, mailing address, telephone number, Environmental Protection Agency or state identification number, if applicable, contact person, and signature of exporter.

(2) Each transporter's name, address, telephone number, Environmental Protection Agency or state identification number, if applicable, name of contact person, mode of transportation, and container type used during transport.

(3) A description of the material and, if applicable, its United States Department of Transportation proper shipping name, hazard class, and shipping identification number (UN/NA).

(4) The estimated frequency of shipments and total quantity of material to be exported.

(5) All points of departure from the state and intended destinations.

(6) Each receiving facility's name and address.

(7) A description of the end use of the material, and the basis for the specific exemption provided in Section 25143.2 which is applicable to the material.

(b) For each individual shipment, submit to the department, within 90 days of shipment date, a copy of the waybill, shipping paper, or any document which includes all of the following information specific to that shipment:

(1) Each generator's name and address.

(2) Each receiving facility's name and address.

(3) The date of shipment.

(4) The type, quantity, and value of the material.

(Added by Stats. 1991, Ch. 1173, Sec. 3.)

25163. (a) (1) Except as otherwise provided in subdivisions (b), (c), (e), and (f), it is unlawful for any person to carry on, or engage in, the transportation of hazardous wastes unless the person holds a valid registration issued by the department, and it is unlawful for any person to transfer custody of a hazardous waste to a transporter who does not hold a valid registration issued by the department. A person who holds a valid registration issued by the department pursuant to this section is a registered hazardous waste transporter for purposes of this chapter. Any registration issued by the department to a transporter of hazardous waste is not transferable from the person to whom it was issued to any other person.

(2) Any person who transports hazardous waste in a vehicle shall have a valid registration issued by the department in his or her possession while transporting the hazardous waste. The registration certificate shall be shown upon demand to any representative of the department, officer of the Department of the California Highway Patrol, any local health officer, or any public officer designated by the department. Any person registered pursuant to this section may obtain additional copies of the registration certificate from the department upon the payment of a fee of two dollars ($2) for each copy requested, in accordance with Section 12196 of the Government Code.

(3) The hazardous waste information required and collected for registration pursuant to this subdivision shall be recorded and maintained in the management information system operated by the Department of the California
Highway Patrol.

(b) Persons transporting only septic tank, cesspool, seepage pit, or chemical toilet waste that does not contain a hazardous waste originating from other than the body of a human or animal and who hold an unrevoked registration issued by the health officer or the health officer's authorized representative pursuant to Article 1 (commencing with Section 117400) of Chapter 4 of Part 13 of Division 104 are exempt from the requirements of subdivision (a).

(c) Except as provided in subdivision (f), persons transporting hazardous wastes to a permitted hazardous waste facility for transfer, treatment, recycling, or disposal, which wastes do not exceed a total volume of five gallons or do not exceed a total weight of 50 pounds, are exempt from the requirements of subdivision (a) and from the requirements of Section 25160 concerning possession of the manifest while transporting hazardous waste, upon meeting all of the following conditions:

(1) The hazardous wastes are transported in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during the transporting.

(2) Different hazardous waste materials are not mixed within a container during the transporting.

(3) If the hazardous waste is extremely hazardous waste or acutely hazardous waste, the extremely hazardous waste or acutely hazardous waste was not generated in the course of any business, and is not more than 2.2 pounds.

(4) The person transporting the hazardous waste is the producer of that hazardous waste, and the person produces not more than 100 kilograms of

hazardous waste in any month.

(5) The person transporting the hazardous waste does not accumulate more than a total of 1,000 kilograms of hazardous waste onsite at any one time.

(d) Any person registered as a hazardous waste transporter pursuant to subdivision (a) is not subject to the registration requirements of Chapter 6 (commencing with Section 25000), but shall comply with those terms, conditions, orders, and directions that the health officer or the health officer's authorized representative may determine to be necessary for the protection of human health and comfort, and shall otherwise comply with the requirements for statements as provided in Section 25007. Violations of those requirements of Section 25007 shall be punished as provided in Section 25010. Proof of registration pursuant to subdivision (a) shall be submitted by mail or in person to the local health officer in the city or county in which the registered hazardous waste transporter will be conducting the activities described in Section 25001.

(e) Any person authorized to collect solid waste, as defined in Section 40191 of the Public Resources Code, who unknowingly transports hazardous waste to a solid waste facility, as defined in Section 40194 of the Public Resources Code, incidental to the collection of solid waste is not subject to subdivision (a).

(f) Any person transporting household hazardous waste or a conditionally exempt small quantity generator transporting hazardous waste to an authorized household hazardous waste collection facility pursuant to Section 25218.5 is exempt from subdivision (a) and from paragraph (1) of subdivision (d) of Section 25160 requiring possession of the manifest while transporting hazardous waste.

(Amended by Stats. 2000, Ch. 343, Sec. 9.5. Effective January 1, 2001.)

25163.1. The department shall not adopt any regulations requiring a person hauling hazardous wastes, who is not in the business of hauling hazardous wastes or who is not hauling these wastes as a part of, or incidental to, any business, to obtain the registration specified in subdivision (a) of Section 25163 if that person meets the conditions specified in subdivision (c) of Section 25163.

(Added by Stats. 1983, Ch. 1037, Sec. 3. Effective September 22, 1983.)

25163.3. A person who initially collects hazardous waste at a remote site and transports that hazardous waste to a consolidation site operated by the generator and who complies with the notification requirements of subdivision (d) of Section 25110.10 shall be exempt from the manifest and transporter registration requirements of Sections 25160 and 25163 with regard to the hazardous waste if all of the following conditions are met:

(a) The hazardous waste is a non-RCRA hazardous waste, or the hazardous waste or its transportation is otherwise exempt from, or is not otherwise regulated pursuant to, the federal act.

(b) The conditions and requirements of Section 25121.3 are met.

(c) The regulations adopted by the department pertaining to personnel training requirements for generators are complied with for all personnel handling the hazardous waste during transportation from the remote site to the consolidation site.

(d) The hazardous waste is transported by employees of the generator or by trained contractors under the control of the generator, in vehicles which are under the control of the generator, or by registered hazardous waste transporters. The generator shall assume liability for a spill of hazardous waste being transported under this section by the generator, or a contractor in a vehicle under the control of the generator or contractor. Nothing in this subdivision bars any agreement to insure, hold harmless, or indemnify a party to the agreement for any liability under this section or otherwise bars any cause of action a generator would otherwise have against any other party.

(e) The hazardous waste is not held at any interim location, other than another remote site operated by the same generator, for more than eight hours, unless that holding is required by other provisions of law.

(f) Not more than 275 gallons or 2,500 pounds, whichever is greater, of hazardous waste is transported in any single shipment, except for the following:

(1) A generator who is a public utility, local publicly owned utility, or municipal utility district may transport up to 1,600 gallons of hazardous wastewater from the dewatering of one or more utility vaults, or up to 500 gallons of any other liquid hazardous waste in a single shipment.

(2) A generator who is a public utility, local publicly owned utility, or municipal utility district may transport up to 5,000 gallons of mineral oil from a transformer, circuit breakers, or capacitors, owned by the generator, in a single shipment if the oil does not exhibit the characteristic of toxicity pursuant to the test specified in subparagraph (B) of paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations.

(g) A shipping paper containing all of the following information accompanies the hazardous waste while in transport, except as provided in subdivision (h):

(1) A list of the hazardous wastes being transported.

(2) The type and number of containers being used to transport each type of hazardous waste.

(3) The quantity, by weight or volume, of each type of hazardous waste being transported.

(4) The physical state, such as solid, powder, liquid, semiliquid, or gas, of each type of hazardous waste being transported.

(5) The location of the remote site where the hazardous waste is initially collected.

(6) The location of any interim site where the hazardous waste is held en route to the consolidation site.

(7) The name, address, and telephone number of the generator, and, if different, the address and telephone number of the consolidation site to which the hazardous waste is being transported.

(8) The name and telephone number of an emergency response contact, for use in the event of a spill or other release.

(9) The name of the individual or individuals who transport the hazardous waste from the remote site to the consolidation site.

(10) The date that the generator first begins to actively manage the hazardous waste at the remote site, the date that the shipment leaves the remote site where the hazardous waste is initially collected, and the date that the shipment arrives at the consolidation site.

(h) A shipping paper is not required if the total quantity of the shipment does not exceed 10 pounds of hazardous waste, except that a shipping paper is required to transport any quantity of extremely or acutely hazardous waste.

(i) All shipments conform with all applicable requirements of the United States Department of Transportation for hazardous materials shipments.

(Amended by Stats. 2002, Ch. 327, Sec. 1. Effective January 1, 2003.)

25165. (a) A hazardous waste transporter's application for original and renewal registration shall be on a form provided by the department. Any application for an original or renewal registration received on or after January 1, 2002, from a transporter that transports, or intends to transport, any waste stream pursuant to the consolidated manifesting procedure specified in subdivision (c) of Section 25160.2, shall include a statement by the transporter notifying the department of that transportation and shall list the specific category or categories of waste streams to be transported using the consolidated manifesting procedure.

(b) Any application for registration under this section shall be filed with the department.

(c) Following the procedures specified in subdivision (a) of Section 25186.1, the department may revoke or suspend a transporter's authorization to operate pursuant to the consolidated manifesting procedure exemption specified in subdivision (c) of Section 25160.2. The department shall base that decision to revoke or suspend an authorization upon either of the following:

(1) Any factor set forth in Section 25186.

(2) A finding that the transporter operation will endanger human health, domestic livestock, wildlife, or the environment.

(Amended by Stats. 2001, Ch. 319, Sec. 5. Effective January 1, 2002.)

25166. (a) A person who is registered as a hazardous waste transporter may voluntarily surrender a registration by submitting a letter signed and dated by the registered hazardous waste transporter indicating that the transporter no longer wishes to transport hazardous waste.

(b) A person whose registration has expired for a period of more than 90 days shall be considered an applicant for an original registration when the person applies for registration.

(Amended by Stats. 1997, Ch. 870, Sec. 5. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25166.5. Notwithstanding any other provision of law, the department may, by regulation, provide for the issuance and renewal of a hazardous waste transporter registration on a two-year basis.

(Amended by Stats. 1997, Ch. 870, Sec. 6. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

Article 6.5. Hazardous Waste Haulers

(Article 6.5 added by Stats. 1979, Ch. 1097.)

25167.1. This article may be cited and shall be known as the Hazardous Waste Haulers Act. It is not the intent of the Legislature in enacting these provisons to preempt or weaken any state or federal law or regulation specifically relating to the handling or transportation of radioactive materials or nuclear waste.

(Added by Stats. 1979, Ch. 1097.)

25167.2. The Legislature finds and declares that increasing quantities of hazardous waste are being produced in this state and that adequate and reasonable safeguards in handling hazardous wastes, particularly in transporting hazardous wastes to disposal sites, are necessary to protect the public health and environment.

(Added by Stats. 1979, Ch. 1097.)

25167.3. It is the intent of the Legislature that this article preempt all local regulations and all conflicting state regulations concerning the transportation of hazardous waste, including all inspection, licensing, and registration of trucks, trailers, semitrailers, vacuum tanks, cargo tanks, and containers used to transport all types of hazardous wastes. No state or local agency, including, but not limited to, a chartered city or county, shall adopt or enforce any ordinance or regulation which is inconsistent with the rules and regulations adopted by the Department of Toxic Substances Control, the Department of the California Highway Patrol, or the State Fire Marshal pursuant to this article.

(Amended by Stats. 1996, Ch. 539, Sec. 6. Effective January 1, 1997.)

25167.4. For purposes of this article, the following terms have the following meaning:

(a) "Vehicle" means a truck, trailer, semitrailer, or cargo tank. "Vehicle" does not include a truck tractor unless it is capable of containing a portion of the cargo.

(b) "Container" means a portable tank, intermediate bulk container, or rolloff bin.

(Amended by Stats. 1997, Ch. 945, Sec. 2. Effective January 1, 1998.)

25168.1. The department shall adopt regulations for containers used to transport hazardous waste that are not subject to the federal regulations contained in Title 49 of the Code of Federal Regulations.

(Added by Stats. 1997, Ch. 945, Sec. 3. Effective January 1, 1998.)

25169. (a) Every transporter of hazardous waste shall maintain ability to respond in damages resulting from the operation of that business. The ability to respond in damages includes the ability to respond to public liability, as provided in subdivision (c). For purposes of this section only, "public liability" means liability for bodily injury, including injury to the body, sickness, or disease to any person, and death resulting from any such injury, sickness, or disease; for property damage, including damage to, or loss of use of, tangible property; and for environmental restoration, including restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release, or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This liability includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage or potential for damage to human health, the natural environment, fish, shellfish, and wildlife.

(b) The department shall, within 15 working days of being informed of any violation of subdivision (a), transmit a notice of violation to the transporter suspected of the violation. If the transporter so notified does not present proof of compliance with subdivision (a) to the department's satisfaction within 30 days of transmittal of the notice, the department shall immediately, notwithstanding Section 25186, suspend the transporter's registration. If proof of compliance is not submitted within 60 days, the registration shall immediately be revoked, notwithstanding Section 25186. A transporter whose registration is revoked pursuant to this subdivision may apply again for registration upon furnishing proof of compliance with subdivision (a).

(c) The ability to respond to public liability means having a policy of insurance coverage issued by an insurer or a surety bond issued by a surety, which meets both of the following requirements:

(1) The policy or bond has the liability limits specified for carriers of hazardous wastes by the Department of Transportation in Part 387 (commencing with Section 387.1) of Subchapter B of Chapter 111 of Title 49 of the Code of Federal Regulations, except that coverage shall be in the amount of one million two hundred thousand dollars ($1,200,000) for waste petroleum in bulk shipments, and six hundred thousand dollars ($600,000) for vehicles under 10,000 pounds gross vehicle weight rating.

(2) The policy's or bond's terms conform to Form MCS-90 or MCS-82, respectively, as defined and set forth in Sections 387.7 to 387.15, inclusive, of Title 49 of the Code of Federal Regulations, or a written decision, order, or authorization to self-insure that complies with paragraph (3) of subsection (d) of Section 387.7 of Title 49 of the Code of Federal Regulations, adopted pursuant to Section 30 of the Motor Carrier Act of 1980 (49 U.S.C. Sec. 10927).

(d) As proof of compliance with subdivision (a), an insurer or surety which provides the insurance coverage or surety bond required by this section shall agree to provide the department with proof of the transporter's ability to respond in damages. An insurer or surety may demonstrate the ability of the transporter to respond to public liability by submitting a completed certificate of insurance on a form provided by the department or a Form MCS-90 or MCS-82, as specified in Section 387.15 of Title 49 of the Code of Federal Regulations, to the department.

(e) An insurer or surety who has agreed to provide the department with proof of ability to respond in damages, as required by subdivision (d), shall also provide the department with a written or facsimile notice within 24 hours after loss of insurance providing ability to respond in damages, as required by subdivision (d).

(Amended by Stats. 1995, Ch. 628, Sec. 4. Effective January 1, 1996.)

25169.3. Before hazardous waste is transported from an abandoned site to another disposal site, all of the following conditions shall be met:

(a) The department shall conduct such tests, or cause such tests to be completed by the responsible party, as are necessary to determine the general chemical and mineral composition of hazardous waste that is being transported.

(b) The hazardous waste hauler shall prepare a transportation and safety plan outlining safety features and procedures to be used by the hauler to protect the public during the transportation process.

(c) The department shall review and approve the transportation and safety plan.

(d) The hazardous waste hauler shall, under penalty of perjury, certify that he or she will follow the provisions of the transportation and safety plan.

(e) The department shall issue a certificate to the hazardous waste hauler certifying that the transportation and safety plan has been approved by the department. The person transporting the waste shall have the certificate in his or her possession while transporting the waste. Such certificate shall be shown upon demand to any department official, officer of the California Highway Patrol, or any local health officer.

The term "abandoned site" , as used in this section, means an inactive waste disposal, treatment, or storage facility which cannot, with reasonable effort, be traced to a specific owner; a site whose owner has been determined bankrupt or who has not taken corrective action on or before the date specified in an order issued pursuant to Section 25187; or a location where hazardous waste has been illegally disposed.

(f) The requirements of this section shall not apply when the hazardous waste disposal is the direct result of an accidental spill or the department determines that emergency action is needed to protect the environment or the public health.

(Added by Stats. 1982, Ch. 294, Sec. 1. Effective June 22, 1982.)

Article 6.6. Hazardous Waste of Concern and Public Safety Act
(Article 6.6 added by Stats. 2002, Ch. 607, Sec. 2.
Effective January 1, 2003.)

25169.5. For purposes of this article, the following definitions shall apply:

(a) "Background check" means a criminal history background check obtained from fingerprint images submitted by the person or persons identified in the disclosure statement, pursuant to Section 25112.5. The background check shall include any previous name or names of the person submitting the fingerprint images.

(b) "Hazardous waste of concern" means a hazardous waste listed as a hazardous waste of concern by the department pursuant to Section 25169.6.

(Added by Stats. 2002, Ch. 607, Sec. 2. Effective January 1, 2003.)

25169.6. (a) On or before July 1, 2003, the department shall adopt by regulation, and revise as appropriate, a list of hazardous wastes of concern and, for purposes of subdivision (a) of Section 25169.7, the minimum quantity of the hazardous waste of concern that is required to be reported when missing. The list shall include, at a minimum, any hazardous waste that the department, in consultation with the other agencies described in subdivision (b), determines requires special handling restrictions and requirements, beyond those restrictions and requirements generally applicable to hazardous wastes, because of the potential for a hazardous waste of concern to be intentionally and effectively used to harm the public in a terrorist or other criminal act.

(b) The department shall develop the list of hazardous wastes of concern and associated reportable quantities, in consultation with other affected local, state, and federal agencies that have technical expertise on the storage, transportation, and potential hazards of those hazardous wastes.

(Added by Stats. 2002, Ch. 607, Sec. 2. Effective January 1, 2003.)

25169.7. Except as specified otherwise in subdivision (b), on and after July 1, 2003, all of the following requirements, including any regulations adopted by the department pursuant to Section 25169.8, shall apply to any person handling any hazardous waste of concern:

(a) (1) If a hazardous waste transporter or the owner or operator of a hazardous waste facility discovers that a hazardous waste of concern is missing during transportation or storage, and the amount of waste missing equals or exceeds the reportable quantity specified in the regulations adopted pursuant to Section 25169.6, the hazardous waste transporter or the owner or operator shall immediately, as specified in the regulations adopted by the department, provide a verbal notification to the department and report the discrepancy to the department in writing by letter within five days after the discovery. The transporter or the owner or operator shall also comply with the applicable manifest discrepancy reporting requirements specified in the regulations adopted by the department pursuant to this chapter.

(2) Within 24 hours after receiving a notification of a missing hazardous waste of concern pursuant to paragraph (1), the department shall make a preliminary determination whether there is a potential risk to public safety. If, after making that preliminary determination, or at any time thereafter, the department determines the missing hazardous waste of concern presents a significant potential risk to public safety from its use in a terrorist or other criminal act, the department shall notify the Office of Emergency Services and the Department of the California Highway Patrol.

(3) The Department of the California Highway Patrol may enter and inspect any hazardous waste facility at the department's request to perform an investigation of any hazardous waste that the department determines may be missing.

(b) (1) Notwithstanding Section 25200.4, any person applying for a hazardous waste facilities permit or other grant of authorization to use and operate a hazardous waste facility that would handle hazardous waste of concern shall submit to the department a disclosure statement containing the information specified in Section 25112.5.

(2) On or before January 1, 2004, and at any time upon the request of the department, any person owning or operating a hazardous waste facility that handles any hazardous waste of concern shall submit to the department a disclosure statement containing the information specified in Section 25112.5.

(3) (A) Except as provided in subparagraph (B), on and after January 1, 2004, any person applying for registration as a hazardous waste transporter who will transport hazardous waste of concern shall submit to the department a disclosure statement containing the information specified in Section 25112.5.

(B) Subparagraph (A) does not apply to a transporter who has submitted a disclosure statement to the department within the two-year period immediately preceding the application for registration, unless there has been a change in the information required to be contained in the disclosure statement or the department requests the transporter to submit a disclosure statement.

(4) At any time upon the request of the department, any registered hazardous waste transporter who transports any hazardous waste of concern shall submit to the department a disclosure statement containing the information specified in Section 25112.5.

(5) Whenever any change pertaining to the information required to be contained in a disclosure statement filed pursuant to paragraphs (1) to (4), inclusive, occurs after the date of the filing of the disclosure statement, the transporter or the facility owner or operator shall provide the updated information in writing to the department within 30 days of the change.

(6) On or before 180 days after receiving a disclosure statement pursuant to this subdivision, the department shall conduct a background check, as defined in subdivision (a) of Section 25169.5.

(7) This subdivision does not apply to any federal, state, or local agency or any person operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption.

(Added by Stats. 2002, Ch. 607, Sec. 2. Effective January 1, 2003.)

25169.8. (a) On or before July 1, 2003, the department shall adopt emergency regulations to implement this article, with the concurrence of the California Highway Patrol.

(b) The regulations adopted by the department pursuant to this section shall be adopted as emergency regulations 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, including subdivision (e) of Section 11349.1 of the Government Code, any emergency regulations adopted 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 department.

(c) Except as provided in subdivision (d), in adopting regulations pursuant to this section, the department shall ensure that the regulations are consistent with the Hazardous Materials Transportation Authorization Act of 1994 (Chapter 51 (commencing with Section 5101) of Title 49 of the United States Code, and thereafter amended.

(d) If the department determines that a requirement imposed pursuant to Section 25169.7 could be preempted by the Hazardous Materials Transportation Authorization Act of 1994 pursuant to Section 5125 of Title 49 of the Code of Federal Regulations, the department shall apply to the Secretary of Transportation for a waiver of preemption pursuant to subsection (e) of Section 5125 of Title 49 of the United States Code.

(Added by Stats. 2002, Ch. 607, Sec. 2. Effective January 1, 2003.)

Article 7. Treatment, Recycling, and Disposal Technology
(Heading of Article 7 amended by Stats. 1982, Ch. 89, Sec. 13.
Effective March 2, 1982.)

25170. The department, in performing its duties under this chapter, shall do all of the following:

(a) Coordinate research and development regarding methods of hazardous waste handling, storage, use, processing, and disposal and may conduct appropriate studies relating to hazardous wastes.

(b) Maintain a technical reference center on hazardous waste management practices, including, but not limited to, hazardous waste disposal, recycling practices, and related information for public and private use.

(c) Establish and maintain a toll-free Toxic Substances Hotline, operating during the regular working hours of the department, to provide information on hazardous waste or appropriate referrals on other toxic substances to the regulated community and the public. The department shall coordinate the Toxic Substances Hotline program with other programs that provide information on hazardous wastes and other toxic substances, including, but not limited to, the technical reference center established pursuant to

subdivision (b).

(d) Provide statewide planning for hazardous waste facility site identification and assessment and render technical assistance to state and local agencies in the planning and operation of hazardous waste programs.

(e) Provide for appropriate surveillance of hazardous waste processing, use, handling, storage, and disposal practices in the state.

(f) Coordinate research and study in the technical and managerial aspects of management and use of hazardous wastes, and recycling and recovery of resources from hazardous wastes.

(g) Determine existing and expected rates of production of hazardous waste.

(h) Investigate market potential and feasibility of use of hazardous wastes and recovery of resources from hazardous wastes.

(i) Promote recycling and recovery of resources from hazardous wastes.

(j) Conduct studies for the purpose of improving departmental operations.

(k) Encourage the reduction or exchange, or both, of hazardous waste, including, but not limited to, publishing and distributing both of the following:

(1) Lists of hazardous wastes for the purpose of enabling persons to match the constituents of hazardous waste streams with needs for hazardous materials resources.

(2) Directories of known and permitted commercial hazardous waste recyclers in the state.

(l) Establish and maintain an information clearinghouse, which shall consist of a record of wastes which may be recyclable. Every producer of hazardous waste shall supply the department with information for the clearinghouse. Each producer shall not be required to supply any more information than is required by the manifests provided for in Section 25160. The department shall make this information available to persons who desire to recycle the wastes. The information shall be made available in such a way that the trade secrets of the producer are protected.

(m) Conduct pilot projects, as appropriate, to document the technical performance of emerging technologies which offer potential for ameliorating California's hazardous waste disposal problems.

(n) Develop and implement an industry education program which shall emphasize small business education and shall include, but not be limited to, all of the following elements:

(1) Preparation of a synopsis of laws and regulations relating to hazardous waste, which the department shall publish by January 1 of each year.

(2) Publication of educational pamphlets for selected types of business explaining selected areas of the law, regulations, or programs concerning hazardous waste.

(3) Audio-visual training programs, as needed.

(4) An annual California Hazardous Waste Management Symposium.

(Amended by Stats. 1986, Ch. 1308, Sec. 1.)

25172.6. The department shall enter into contracts or agreements with educational, professional, or trade associations, using a competitive bidding process, to establish specialized training programs with a statewide focus to instruct businesses and other entities on compliance with statutes and regulations governing the handling, disposal, transportation, and storage of hazardous waste.

(Amended by Stats. 1992, Ch. 1344, Sec. 5. Effective January 1, 1993.)

25173. The department shall establish procedures to ensure that trade secrets used by a person regarding methods of hazardous waste handling and disposal are utilized by the director, the department, or any authorized representative of the department only in connection with the responsibilities of the department pursuant to this chapter and that such trade secrets are not otherwise disseminated by the director, the department, or any authorized representative of the department without the consent of the person. However, any information shall be made available to governmental agencies for use in making studies and for use in judicial review or enforcement proceedings involving the person furnishing the information.

"Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(Amended by Stats. 1986, Ch. 1187, Sec. 6.)

25173.5. (a) Except as provided in subdivision (b), the legislative body of a city or county may impose and enforce a tax, for general purposes, or may impose a user fee on the operation of an offsite, multiuser hazardous waste facility located within the jurisdiction of the city or county. The tax or the user fee imposed shall not exceed 10 percent of the facility's annual gross receipts for the treatment, storage, or disposal of hazardous waste at the facility.

If a city or county imposes a tax pursuant to this section, the city or county may use the revenues collected from the tax to fund those activities reasonably necessary for the city or county to carry out its duties related to the operation of the hazardous waste facility upon which the tax is imposed and for support of the city's or county's fire and emergency response capabilities and emergency medical services, to the extent the city or county determines that this funding should be given priority.

(b) A city or county shall not impose a tax or a user fee adopted pursuant to subdivision (a) upon any of the following:

(1) An existing hazardous waste facility for which a tax is authorized pursuant to Section 25149.5.

(2) That portion of the gross receipts of the hazardous waste facility that derives from the recycling of hazardous wastes or the treatment of medical wastes or wastes which meets the definition of medical wastes.

(c) A state agency shall not include the expenditure of revenues received by a city or county pursuant to this section in calculating the level of financial support that a city or county is required to maintain under any other provision of law, including, but not limited to, Section 77204 of the Government Code and Section 16990 of the Welfare and Institutions Code. However, this subdivision does not apply to subdivision (c) of Section 2105 of the Streets and Highways Code.

(Amended by Stats. 1991, Ch. 1073, Sec. 2.)

25173.6. (a) There is in the General Fund the Toxic Substances Control Account, which shall be administered by the director. In addition to any other money that may be appropriated by the Legislature to the Toxic Substances Control Account, all of the following shall be deposited in the account:

(1) The fees collected pursuant to Section 25205.6.

(2) The fees collected pursuant to Section 25187.2, to the extent that those fees are for oversight of a removal or remedial action taken under Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(3) Fines or penalties collected pursuant to this chapter, Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396), except as directed otherwise by Section 25192.

(4) Interest earned upon money deposited in the Toxic Substances Control Account.

(5) All money recovered pursuant to Section 25360, except any amount recovered on or before June 30, 2006, that was paid from the Hazardous Substance Cleanup Fund.

(6) All money recovered pursuant to Section 25380.

(7) Reimbursements for funds expended from the Toxic Substances Control Account for services provided by the department, including, but not limited to, reimbursements required pursuant to Sections 25201.9 and 25343.

(8) Money received from the federal government pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(9) Money received from responsible parties for remedial action or removal at a specific site, except as otherwise provided by law.

(b) The funds deposited in the Toxic Substances Control Account may be appropriated to the department for the following purposes:

(1) The administration and implementation of the following:

(A) Chapter 6.8 (commencing with Section 25300), except that funds shall not be expended from the Toxic Substances Control Account for purposes of Section 25354.5.

(B) Chapter 6.85 (commencing with Section 25396).

(C) Article 10 (commencing with Section 7710) of Chapter 1 of Division 4 of the Public Utilities Code, to the extent the department has been delegated responsibilities by the secretary for implementing that article.

(2) The administration of the following units within the department:

(A) The Human and Ecological Risk Division.

(B) The Hazardous Materials Laboratory.

(C) The Office of Pollution Prevention and Technology Development.

(3) For allocation to the Office of Environmental Health Hazard Assessment, pursuant to an interagency agreement, to assist the department as needed in administering the programs described in subparagraphs (A) and (B) of paragraph (1).

(4) For allocation to the State Board of Equalization to pay refunds of fees collected pursuant to Section 43054 of the Revenue and Taxation Code.

(5) For the state share mandated pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

(6) For the purchase by the state, or by a local agency with the prior approval of the director, of hazardous substance response equipment and other preparations for response to a release of hazardous substances. However, all equipment shall be purchased in a cost-effective manner after consideration of the adequacy of existing equipment owned by the state or the local agency, and the availability of equipment owned by private contractors.

(7) For payment of all costs of removal and remedial action incurred by the state, or by any local agency with the approval of the director, in response to a release or threatened release of a hazardous substance, to the extent the costs are not reimbursed by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(8) For payment of all costs of actions taken pursuant to subdivision (b) of Section 25358.3, to the extent that these costs are not paid by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(9) For all costs incurred by the department in cooperation with the Agency for Toxic Substances and Disease Registry established pursuant to subsection (i) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(i)) and all costs of health effects studies undertaken regarding specific sites or specific substances at specific sites. Funds appropriated for this purpose shall not exceed five hundred thousand dollars ($500,000) in any single fiscal year. However, these actions shall not duplicate reasonably available federal actions and studies.

(10) For repayment of the principal of, and interest on, bonds sold pursuant to Article 7.5 (commencing with Section 25385) of Chapter 6.8.

(11) For the reasonable and necessary administrative costs and expenses of the Hazardous Substance Cleanup Arbitration Panel created pursuant to Section 25356.2.

(12) Direct site remediation costs.

(13) For the department's expenses for staff to perform oversight of investigations, characterizations, removals, remediations, or long-term operation and maintenance.

(14) For the administration and collection of the fees imposed pursuant to Section 25205.6.

(15) For allocation to the office of the Attorney General, pursuant to an interagency agreement or similar mechanism, for the support of the Toxic Substance Enforcement Program in the office of the Attorney General, in carrying out the purposes of Chapter 6.8 (commencing with Section 25300) and Chapter 6.85 (commencing with Section 25396).

(16) For funding the California Environmental Contaminant Biomonitoring Program established pursuant to Chapter 8 (commencing with Section 105440) of Part 5 of Division 103.

(c) The funds deposited in the Toxic Substances Control Account may be appropriated by the Legislature to the Office of Environmental Health Hazard Assessment and the State Department of Public Health for the purposes of carrying out their duties pursuant to the California Environmental Contaminant Biomonitoring Program (Chapter 8 (commencing with Section 105440) of Part 5 of Division 103).

(d) The director shall expend federal funds in the Toxic Substances Control Account consistent with the requirements specified in Section 114 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9614), upon appropriation by the Legislature, for the purposes for which they were provided to the state.

(e) Money in the Toxic Substances Control Account shall not be expended to conduct removal or remedial actions if any significant portion of the hazardous substances to be removed or remedied originated from a source outside the state.

(f) The Director of Finance, upon request of the director, may make a loan from the General Fund to the Toxic Substances Control Account to meet cash needs. The loan shall be subject to the repayment provisions of Section 16351 of the Government Code and the interest provisions of Section 16314 of the Government Code.

(g) The Toxic Substances Control Account established pursuant to subdivision (a) is the successor fund of all of the following:

(1) The Hazardous Substance Account established pursuant to Section 25330, as that section read on June 30, 2006.

(2) The Hazardous Substance Clearing Account established pursuant to Section 25334, as that section read on June 30, 2006.

(3) The Hazardous Substance Cleanup Fund established pursuant to Section 25385.3, as that section read on June 30, 2006.

(4) The Superfund Bond Trust Fund established pursuant to Section 25385.8, as that section read on June 30, 2006.

(h) On and after July 1, 2006, all assets, liabilities, and surplus of the accounts and funds listed in subdivision (g), shall be transferred to, and become a part of, the Toxic Substances Control Account, as provided by Section 16346 of the Government Code. All existing appropriations from these accounts, to the extent encumbered, shall continue to be available for the same purposes and periods from the Toxic Substances Control Account.

(i) The department, on or before February 1 of each year, shall report to the Governor and the Legislature on the prior fiscal year's expenditure of funds within the Toxic Substances Control Account for the purposes specified in subdivision (b).

(Amended by Stats. 2008, Ch. 760, Sec. 7. Effective September 30, 2008.)

25173.7. (a) It is the intent of the Legislature that funds deposited in the Toxic Substances Control Account shall be appropriated in the annual Budget Act each year in the following manner:

(1) Not less than six million seven hundred fifty thousand dollars ($6,750,000) to the Site Remediation Account in the General Fund for direct site remediation costs, as defined in Section 25337. The amount specified in this paragraph shall be increased in any fiscal year by the amount of increased revenues specified by the Legislature in the Budget Act for that fiscal year pursuant to subdivision (g) of Section 25205.6.

(2) Not less than four hundred thousand dollars ($400,000) to the Expedited Site Remediation Trust Fund in the State Treasury, created pursuant to subdivision (a) of Section 25399.1, for purposes of paying the orphan share of response costs pursuant to Chapter 6.85 (commencing with Section 25396).

(3) An amount that does not exceed the costs incurred by the State Board of Equalization, a private party, or other public agency, to administer and collect the fees imposed pursuant to Article 9.1 (commencing with Section 25205.1) and deposited into the Toxic Substances Control Account, for the purpose of reimbursing the State Board of Equalization, public agency, or private party, for those costs.

(4) Commencing with the 1999-2000 fiscal year and annually thereafter, not less than one million fifty thousand dollars ($1,050,000) for purposes of establishing and implementing a program pursuant to Sections 25244.15.1, 25244.17.1, 25244.17.2, 25244.22, and 25244.24 to encourage hazardous waste generators to implement pollution prevention measures.

(5) Funds not appropriated as specified in paragraphs (1) to (4), inclusive, may be appropriated for any of the purposes specified in subdivision (b) of Section 25173.6, except the purposes specified in subparagraph (C) of paragraph (1) of, and paragraph (14) of, subdivision (b) of Section 25173.6.

(b) (1) The amounts specified in paragraphs (1) to (3), inclusive, of subdivision (a) are the amounts that the Legislature intends to appropriate for the 1998-99 fiscal year for the purposes specified in those paragraphs, and the amount specified in paragraph (4) of subdivision (a) is the amount the Legislature intends to appropriate for the 1999-2000 fiscal year for the purposes specified in that paragraph. Beginning with the 1999-2000 fiscal year, and for each fiscal year thereafter, the amounts specified in paragraphs (1) to (3), inclusive, of subdivision (a), and beginning with the 2000-01 fiscal year, and for each fiscal year thereafter, the amount specified in paragraph (4) of subdivision (a) shall be adjusted annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.

(2) Notwithstanding paragraph (1), the department may, upon the approval of the Legislature in a statute or the annual Budget Act, take either of the following actions:

(A) Reduce the amounts specified in paragraphs (1) to (4),

inclusive, of subdivision (a), if there are insufficient funds in the Toxic Substances Control Account.

(B) Suspend the transfer specified in paragraph (2) of subdivision (a), if there are no orphan shares pending payment pursuant to Chapter 6.85 (commencing with Section 25396).

(Amended by Stats. 2007, Ch. 178, Sec. 6. Effective August 24, 2007.)

25174. (a) There is in the General Fund the Hazardous Waste Control Account, which shall be administered by the director. In addition to any other money that may be deposited in the Hazardous Waste Control Account, pursuant to statute, all of the following amounts shall be deposited in the account:

(1) The fees collected pursuant to Sections 25174.1, 25205.2, 25205.5, 25205.15, and 25205.16.

(2) The fees collected pursuant to Section 25187.2, to the extent that those fees are for the oversight of corrective action taken under this chapter.

(3) Any interest earned upon the money deposited in the Hazardous Waste Control Account.

(4) Any money received from the federal government pursuant to the federal act.

(5) Any reimbursements for funds expended from the Hazardous Waste Control Account for services provided by the department pursuant to this chapter, including, but not limited to, the reimbursements required pursuant to Sections 25201.9 and 25205.7.

(b) The funds deposited in the Hazardous Waste Control Account may be appropriated by the Legislature, for expenditure as follows:

(1) To the department for the administration and implementation of this chapter.

(2) To the department for allocation to the State Board of Equalization to pay refunds of fees collected pursuant to Sections 43051 and 43053 of the Revenue and Taxation Code and for the administration and collection of the fees imposed pursuant to Article 9.1 (commencing with Section 25205.1) that are deposited into the Hazardous Waste Control Account.

(3) To the department for the costs of performance or review of analyses of past, present, or potential environmental public health effects related to toxic substances, including extremely hazardous waste, as defined in Section 25115, and hazardous waste, as defined in Section 25117.

(4) (A) To the department for allocation to the office of the Attorney General for the support of the Toxic Substance Enforcement Program in the office of the Attorney General, in carrying out the purposes of this chapter.

(B) On or before October 1 of each year, the Attorney General shall report to the Legislature on the expenditure of any funds allocated to the office of the Attorney General for the preceding fiscal year pursuant to this paragraph and paragraph (15) of subdivision (b) of Section 25173.6. The report shall include all of the following:

(i) A description of cases resolved by the office of the Attorney General through settlement or court order, including the monetary benefit to the department and the state.

(ii) A description of injunctions or other court orders benefiting the people of the state.

(iii) A description of any cases in which the Attorney General's Toxic Substance Enforcement Program is representing the department or the state against claims by defendants or responsible parties.

(iv) A description of other pending litigation handled by the Attorney General's Toxic Substance Enforcement Program.

(C) Nothing in subparagraph (C) shall require the Attorney General to report on any confidential or investigatory matter.

(5) To the department for administration and implementation of Chapter 6.11 (commencing with Section 25404).

(c) (1) Expenditures from the Hazardous Waste Control Account for support of state agencies other than the department shall, upon appropriation by the Legislature to the department, be subject to an interagency agreement or similar mechanism between the department and the state agency receiving the support.

(2) The department shall, at the time of the release of the annual Governor's Budget, describe the budgetary amounts proposed to be allocated to the State Board of Equalization, as specified in paragraph (2) of subdivision (b) and in paragraph (3) of subdivision (b) of Section 25173.6, for the upcoming fiscal year.

(3) It is the intent of the Legislature that moneys appropriated in the annual Budget Act each year for the purpose of reimbursing the State Board of Equalization, a private party, or other public agency, for the administration and collection of the fees imposed pursuant to Article 9.1 (commencing with Section 25205.1) and deposited in the Hazardous Waste Control Account, shall not exceed the costs incurred by the State Board of Equalization, the private party, or other public agency, for the administration and collection of those fees.

(d) With respect to expenditures for the purposes of paragraphs (1) and (3) of subdivision (b) and paragraphs (1) and (2) of subdivision (b) of Section 25173.6, the department shall, at the time of the release of the annual Governor's Budget, also make available the budgetary amounts and allocations of staff resources of the department proposed for the following activities:

(1) The department shall identify, by permit type, the projected allocations of budgets and staff resources for hazardous waste facilities permits, including standardized permits, closure plans, and postclosure permits.

(2) The department shall identify, with regard to surveillance and enforcement activities, the projected allocations of budgets and staff resources for the following types of regulated facilities and activities:

(A) Hazardous waste facilities operating under a permit or grant of interim status issued by the department, and generator activities conducted at those facilities. This information shall be reported by permit type.

(B) Transporters.

(C) Response to complaints.

(3) The department shall identify the projected allocations of budgets and staff resources for both of the following activities:

(A) The registration of hazardous waste transporters.

(B) The operation and maintenance of the hazardous waste manifest system.

(4) The department shall identify, with regard to site mitigation and corrective action, the projected allocations of budgets and staff resources for the oversight and implementation of the following activities:

(A) Investigations and removal and remedial actions at military bases.

(B) Voluntary investigations and removal and remedial actions.

(C) State match and operation and maintenance costs, by site, at joint state and federally funded National Priority List Sites.

(D) Investigation, removal and remedial actions, and operation and maintenance at the Stringfellow Hazardous Waste Site.

(E) Investigation, removal and remedial actions, and operation and maintenance at the Casmalia Hazardous Waste Site.

(F) Investigations and removal and remedial actions at nonmilitary, responsible party lead National Priority List Sites.

(G) Preremedial activities under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(H) Investigations, removal and remedial actions, and operation and maintenance at state-only orphan sites.

(I) Investigations and removal and remedial actions at nonmilitary, non-National Priority List responsible party lead sites.

(J) Investigations, removal and remedial actions, and operation and maintenance at Expedited Remedial Action Program sites pursuant to Chapter 6.85 (commencing with Section 25396).

(K) Corrective actions at hazardous waste facilities.

(5) The department shall identify, with regard to the regulation of hazardous waste, the projected allocation of budgets and staff resources for the following activities:

(A) Determinations pertaining to the classification of hazardous wastes.

(B) Determinations for variances made pursuant to Section 25143.

(C) Other determinations and responses to public inquiries made by the department regarding the regulation of hazardous waste and hazardous substances.

(6) The department shall identify projected allocations of budgets and staff resources needed to do all of the following:

(A) Identify, remove, store, and dispose of, suspected hazardous substances or hazardous materials associated with the investigation of clandestine drug laboratories.

(B) Respond to emergencies pursuant to Section 25354.

(C) Create, support, maintain, and implement the railroad accident

prevention and immediate deployment plan developed pursuant to Section 7718 of the Public Utilities Code.

(7) The department shall identify projected allocations of budgets and staff resources for the administration and implementation of the unified hazardous waste and hazardous materials regulatory program established pursuant to Chapter 6.11 (commencing with Section 25404).

(8) The department shall identify the total cumulative expenditures of the Regulatory Structure Update and Site Mitigation Update projects since their inception, and shall identify the total projected allocations of budgets and staff resources that are needed to continue these projects.

(9) The department shall identify the total projected allocations of budgets and staff resources that are necessary for all other activities proposed to be conducted by the department.

(e) Notwithstanding this chapter, or Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, for any fees, surcharges, fines, penalties, and funds that are required to be deposited into the Hazardous Waste Control Account or the Toxic Substances Control Account, the department, with the approval of the Secretary for Environmental Protection, may take any of the following actions:

(1) Assume responsibility for, or enter into a contract with a private party or with another public agency, other than the State Board of Equalization, for the collection of any fees, surcharges, fines, penalties and funds described in subdivision (a) or otherwise described in this chapter or Chapter 6.8 (commencing with Section 25300), for deposit into the Hazardous Waste Control Account or the Toxic Substances Control Account.

(2) Administer, or by mutual agreement, contract with a private party or another public agency, for the making of those determinations and the performance of functions that would otherwise be the responsibility of the State Board of Equalization pursuant to this chapter, Chapter 6.8 (commencing with Section 25300), or Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, if those activities and functions for which the State Board of Equalization would otherwise be responsible become the responsibility of the department or, by mutual agreement, the contractor selected by the department.

(f) If, pursuant to subdivision (e), the department, or a private party or another public agency, pursuant to a contract with the department, performs the determinations and functions that would otherwise be the responsibility of the State Board of Equalization, the department shall be responsible for ensuring that persons who are subject to the fees specified in subdivision (e) have equivalent rights to public notice and comment, and procedural and substantive rights of appeal, as afforded by the procedures of the State Board of Equalization pursuant to Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code. Final responsibility for the administrative adjustment of fee rates and the administrative appeal of any fees or penalty assessments made pursuant to this section may only be assigned by the department to a public agency.

(g) If, pursuant to subdivision (e), the department, or a private party or another public agency, pursuant to a contract with the department, performs the determinations and functions that would otherwise be the responsibility of the State Board of Equalization, the department shall have equivalent authority to make collections and enforce judgments as provided to the State Board of Equalization pursuant to Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code. Unpaid amounts, including penalties and interest, shall be a perfected and enforceable state tax lien in accordance with Section 43413 of the Revenue and Taxation Code.

(h) The department, with the concurrence of the Secretary for Environmental Protection, shall determine which administrative functions should be retained by the State Board of Equalization, administered by the department, or assigned to another public agency or private party pursuant to subdivisions (e), (f), and (g).

(i) The department may adopt regulations to implement subdivisions (e) to (h), inclusive.

(j) The Director of Finance, upon request of the director, may make a loan from the General Fund to the Hazardous Waste Control Account to meet cash needs. The loan shall be subject to the repayment provisions of Section 16351 of the Government Code and the interest provisions of Section 16314 of the Government Code.

(k) The department shall establish, within the Hazardous Waste Control Account, a reserve of at least one million dollars ($1,000,000) each year to ensure that all programs funded by the Hazardous Waste Control Account will not be adversely affected by any revenue shortfalls.

(Amended by Stats. 2008, Ch. 760, Sec. 8. Effective September 30, 2008.)

25174.1. (a) Each person who disposes of hazardous waste in this state shall pay a fee for the disposal of hazardous waste to land, based on the type of waste placed in a disposal site, in accordance with this section and Section 25174.6.

(b) "Disposal fee" means the fee imposed by this section.

(c) For purposes of this section, "dispose" and "disposal" include "disposal," as defined in Section 25113, including, but not limited to, "land treatment," as defined in subdivision (n) of Section 25205.1.

(d) Each operator of an authorized hazardous waste facility, at which hazardous wastes are disposed, shall collect a fee from any person submitting hazardous waste for disposal and shall transmit the fees to the State Board of Equalization for the disposal of those wastes. The operator shall be considered the taxpayer for purposes of Section 43151 of the Revenue and Taxation Code. The facility operator is not required to collect and transmit the fee for a hazardous waste if the operator maintains written evidence that the hazardous waste is eligible for the exemption provided by Section 25174.7 or otherwise exempted from the fees pursuant to this chapter. The written evidence may be provided by the operator or by the person submitting the hazardous waste for disposal, and shall be maintained by the operator at the facility for a minimum of three years from the date that the waste is submitted for disposal. If the operator submits the hazardous waste for disposal, the operator shall pay the same fee as would any other person.

(e) Notwithstanding subdivision (d), the disposal facility shall not be liable for the underpayment of any disposal fees for hazardous waste submitted for disposal by a person other than the operator, if the person submitting the hazardous waste to the disposal facility has done either of the following:

(1) Mischaracterized the hazardous waste.

(2) Misrepresented any exemptions pursuant to Section 25174.7 or any other exemption from the disposal fee provided pursuant to this chapter.

(f) (1) Any additional payment of disposal fees that are due to the State Board of Equalization as a result of a mischaracterization of a hazardous waste, a misrepresentation of an exemption, or any other error, shall be the responsibility of the person making the mischaracterization, misrepresentation, or error.

(2) In the event of a dispute regarding the responsibility for a mischaracterization, misrepresentation, or other error, for which additional payment of disposal fees are due, the State Board of Equalization shall assign responsibility for payment of the fee to that person, or those persons, it determines responsible for the mischaracterization, misrepresentation, or other error, provided that the person, or persons, has the right to a public hearing and comment, and the procedural and substantive rights of appeal pursuant to Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(3) Any generator, transporter, or owner or operator of a disposal facility shall report to the department and the State Board of Equalization any information regarding any such mischaracterization, misrepresentation, or error, which could affect the disposal fee, within 30 days of that information first becoming known to that person.

(g) The State Board of Equalization shall deposit the fees collected pursuant to this section in the Hazardous Waste Control Account, for expenditure by the department, upon appropriation by the Legislature.

(h) The operator of the facility that disposes of the hazardous waste to land shall provide to every person who submits hazardous waste for disposal at the facility a statement showing the amount of hazardous waste fees payable pursuant to this section.

(i) Any person who disposes of hazardous waste at any site that is not an authorized hazardous waste facility shall be responsible for payment of fees pursuant to this section and shall be the taxpayer for purposes of Section 43151 of the Revenue and Taxation Code.

(j) Any administrative savings that are derived by the state as a result of changes made to this section during the 1995-96 Regular Session of the Legislature shall be made available to the department and reflected in the annual Budget Act.

(Amended by Stats. 1997, Ch. 870, Sec. 10. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25174.2. (a) The base rate for the hazardous wastes specified in Section 25174.6 which are disposed of or submitted for disposal in the state is eighty-five dollars and twenty-four cents ($85.24) per ton for disposal of hazardous waste to land.

(b) The base rate specified in subdivision (a) is the base rate for the period of January 1, 1997, to December 31, 1997. Beginning with calendar year 1998, and for each year thereafter, the State Board of Equalization shall adjust the base rate annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or a successor agency.

(c) This section shall become operative on January 1, 2001.

(Repealed (Jan. 1, 1998) and added by Stats. 1997, Ch. 870, Sec. 11.5. Effective January 1, 1998. Added section operative January 1, 2001, by its own provisions and by Sec. 54 (subd. (c)) of Ch. 870.)

25174.6. (a) The fee provided pursuant to Section 25174.1 shall be determined as a percentage of the base rate, as adjusted by the State Board of Equalization, pursuant to Section 25174.2, or as otherwise provided by this section. The procedure for determining these fees is as follows:

(1) The following fees shall be paid for each ton, or fraction thereof for up to the first 5,000 tons of the following hazardous wastes disposed of, or submitted for disposal, in the state at each specific offsite facility by each producer, or at each specific onsite facility, per month, if the hazardous wastes are not otherwise subject to the fee specified in paragraph (3) or (4) and are not otherwise exempt from the fees imposed pursuant to this article:

(A) For non-RCRA hazardous waste, excluding asbestos, generated in a remedial action, a removal action, or a corrective action taken pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), or Chapter 6.8 (commencing with Section 25300), or generated in any other required or voluntary cleanup, removal, or remediation of a hazardous substance or non-RCRA hazardous waste, a fee of five dollars and seventy-two cents ($5.72) per ton.

(B) For all other non-RCRA hazardous waste, a fee of 16.31 percent of the base rate for each ton.

(2) Thirteen percent of the base rate for each ton, or fraction thereof, shall be paid for up to the first 5,000 tons of hazardous waste disposed of, or submitted for disposal, in the state, at each specific offsite facility by each producer, or at each specific onsite facility, per month, which result from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and the overburden from the mining of uranium ore and which is not otherwise subject to the fee specified in paragraph (3) or (4).

(3) Two hundred percent of the base rate shall be paid for each ton, or fraction thereof, of extremely hazardous waste disposed of, or submitted for disposal, in the state.

(4) Two hundred percent of the base rate shall be paid for each ton, or fraction thereof, of restricted hazardous wastes listed in subdivision (b) of Section 25122.7 disposed of, or submitted for disposal, in the state.

(5) Forty and four-tenths percent of the base rate shall be paid for each ton, or fraction thereof, of hazardous waste disposed of, or submitted for disposal, in the state, which is not otherwise subject to the fees specified in paragraph (1), (2), (3), (4), or (6).

(6) Five percent of the base rate shall be paid for each ton, or fraction thereof, of hazardous waste disposed of, or submitted for disposal, in the state, that is a solid hazardous waste residue resulting from incineration or dechlorination. No fees shall be imposed pursuant to this paragraph on a solid hazardous waste residue resulting from incineration or dechlorination which is disposed of, or submitted for disposal, outside of the state.

(7) Fifty percent of the fee that would otherwise be paid for each ton, or fraction thereof, of hazardous waste disposed of in the state, that is a solid hazardous waste residue resulting from treatment of a treatable waste by means of a designated treatment technology, as defined in Section 25179.2. No fees shall be imposed pursuant to this paragraph on a solid hazardous waste residue resulting from treatment of a treatable waste by means of a designated treatment technology that is not a hazardous waste or which is disposed of, or submitted for disposal, outside of the state.

(b) The amount of fees payable to the State Board of Equalization pursuant to this section shall be calculated using the total wet weight, measured in tons or fractions thereof, of the hazardous waste in the form in which the hazardous waste existed at the time of disposal, submission for disposal, or application to land using a land disposal method, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, if all of the following apply:

(1) The weight of any nonhazardous reagents or treatment additives added to the waste, after it has been submitted for disposal, for purposes of rendering the waste less hazardous, shall not be included in those calculations.

(2) Except as provided by paragraph (7) of subdivision (a), any RCRA hazardous waste received, treated, and disposed at the disposal facility shall be subject to a disposal fee pursuant to this section as if it were a non-RCRA hazardous waste, if the waste, due to treatment, is no longer a RCRA hazardous waste at the time of disposal.

(c) All fees imposed by this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(d) This section shall become operative on January 1, 2001.

(Repealed (in Sec. 12.3) and added by Stats. 1997, Ch. 870, Sec. 12.5. Effective January 1, 1998. Added section operative January 1, 2001, by its own provisions and by Sec. 54 (subd. (c)) of Ch. 870.)

25174.7. (a) The fees provided for in Sections 25174.1 and 25205.5 do not apply to any of the following:

(1) Hazardous wastes which result when a government agency, or its contractor, removes or remedies a release of hazardous waste in the state caused by another person.

(2) Hazardous wastes generated or disposed of by a public agency operating a household hazardous waste collection facility in the state pursuant to Article 10.8 (commencing with Section 25218), including, but not limited to, hazardous waste received from conditionally exempt small quantity commercial generators, authorized pursuant to Section 25218.3.

(3) Hazardous wastes generated or disposed of by local vector control agencies which have entered into a cooperative agreement pursuant to Section 116180 or by county agricultural commissioners, if the hazardous wastes result from their control or regulatory activities and if they comply with the requirements of this chapter and regulations adopted pursuant thereto.

(4) Hazardous waste disposed of, or submitted for disposal or treatment, by any person, which is discovered and separated from solid waste as part of a load checking program.

(b) Notwithstanding paragraph (1) of subdivision (a), any person responsible for a release of hazardous waste, which has been removed or remedied by a government agency, or its contractor, shall pay the fee pursuant to Section 25174.1.

(c) Any person who acquires land for the sole purpose of owner-occupied single-family residential use, and who acquires that land without actual or constructive notice or knowledge that there is a tank containing hazardous waste on or under that property, is exempt from the fees imposed pursuant to Sections 25174.1, 25205.5, and 25345, in connection with the removal of the tank.

(Amended by Stats. 1996, Ch. 1023, Sec. 233. Effective September 29, 1996.)

25174.9. The Hazardous Waste Control Account is the successor fund of the Federal Receipts Account that was established pursuant to Section 25174.8, as that section read on January 1, 1999. All assets, liabilities, and surplus of the Federal Receipts Account shall, as of June 30, 1999, be transferred to, and become a part of the Hazardous Waste Control Account, as provided by Section 16346 of the Government Code. All existing appropriations from the Federal Receipts Account, to the extent encumbered, and also those which had been made for particular projects from the Federal Receipts Account, shall continue to be available for the same purposes and periods from the Hazardous Waste Control Account.

(Added by Stats. 1998, Ch. 882, Sec. 5. Effective January 1, 1999.)

25174.11. Section 25174.1 does not apply to the previous disposal of mining waste that is subsequently classified as nonhazardous pursuant to the department's California Assessment Manual criteria regulations set forth in Article 2 (commencing with Section 66300) of Chapter 30 of Division 4 of Title 22 of the California Administrative Code, which became effective October 27, 1984, and disposal fees shall not be assessed pursuant to Section 25174.1 for that waste if the waste previously disposed of is not significantly different from the waste classified as nonhazardous.

(Amended by Stats. 1989, Ch. 269, Sec. 10. Effective August 3, 1989.)

25175. (a) (1) The department shall prepare and adopt, by regulation, a list, and on or before January 1, 2002, and when appropriate thereafter, shall revise, by regulation, that list, of specified hazardous wastes that the department finds are economically and technologically feasible to recycle either onsite or at an offsite commercial hazardous waste recycling facility in the state, taking into consideration various factors that shall include, but are not limited to, the quantities of, concentrations of, and potential contaminants in, these hazardous wastes, the number and location of recycling facilities, and the proximity of these facilities to hazardous waste generators.

(2) Whenever any hazardous waste on the list adopted or revised pursuant to paragraph (1) is transported offsite for disposal, the department may request, in writing, by certified mail with return receipt requested, and the generator of that waste shall supply the department with a formal, complete, and detailed statement justifying why the waste was not recycled, in writing, by certified mail with return receipt requested, within 30 calendar days of receipt of the department's request. This statement shall include the generator's assessment of the economic and technological feasibility of recycling the wastes and may include, but is not required to be limited to, the generator's good faith determination that sending the hazardous waste to any recycling facility where it is feasible to recycle that hazardous waste would constitute an unacceptable environmental or business risk. This determination by the generator shall be based upon an environmental audit or other reasonably diligent investigation of the environmental and other relevant business practices of the recycling facility or facilities where it would otherwise be feasible to recycle the waste. If the request is made of any entity listed in Section 25118 other than an individual, the statement shall be issued by the responsible management of that entity. The department shall keep confidential any trade secrets contained in that statement.

(3) On or before January 1, 2002, the department shall establish a procedure for the department to independently verify whether any hazardous waste identified in the list adopted pursuant to paragraph (1) is disposed of, rather than recycled. The department shall, on or before January 1, 2002, prepare and adopt those regulations that the department finds necessary to ensure that it can fully perform its duties pursuant to subdivisions (k) and (l) of Section 25170 to encourage the exchange of hazardous waste and to establish and maintain an information clearinghouse of hazardous wastes that may be recyclable.

(4) On or before July 1, 2000, the department shall establish an advisory committee to advise the department on the development of the regulations required or authorized by this section and on the department's implementation of this section. The advisory committee shall consist of representatives of generators, hazardous waste facility operators, environmental organizations, the Legislature, and other interested parties.

(5) In determining to which generators the department will send the request specified in paragraph (2), the department shall give priority to notifying generators transporting offsite for disposal more than 1000 pounds per year of the type of hazardous waste that would be the subject of the request, to the extent this prioritization is feasible within the information management capabilities of the department.

(b) (1) If, after the department receives a statement from a generator pursuant to paragraph (2) of subdivision (a), the department finds the recycling of a hazardous waste to be economically and technologically feasible, the department shall inform the generator, in writing, by certified mail, return receipt requested, that 30 days after the date the generator receives notice of the department's finding, any of the generators' hazardous waste transported offsite to which the department's finding applies shall, after that date, be recycled. The department may establish procedures for rescinding or modifying any finding made by the department pursuant to this paragraph if there is a pertinent change in circumstances related to that finding.

(2) Notwithstanding paragraph (1), the department shall not find the recycling of a hazardous waste to be economically and technologically feasible if a generator includes a good faith determination in the statement submitted pursuant to paragraph (2) of subdivision (a) that sending its hazardous waste to any recycling facility where it is otherwise feasible to recycle the hazardous waste constitutes an unacceptable environmental or business risk.

(c) A generator who does not recycle a hazardous waste after the generator receives a notice of the departments' findings pursuant to subdivision (b) that the hazardous waste is economically and technologically feasible to recycle is subject to five times the disposal fee that would otherwise apply to the disposal of that hazardous waste pursuant to Section 25174.1.

(d) For purposes of this section, "recycle" and "recycling" shall have the same meaning as set forth in subdivision (a) of Section 25121.1.

(Amended by Stats. 1999, Ch. 745, Sec. 3. Effective January 1, 2000.)

25177. The department may report findings and results of an investigation which the department undertakes pertaining to subject matter governed by this chapter, except for trade secrets as provided in Section 25173. The department may distribute such information as it considers necessary for the protection of the public or for the protection of human health, domestic livestock, wildlife, and the environment and to ensure the best use of natural resources. The department may publish reports summarizing or containing any order of the director or any judgment or court order which has been rendered pursuant to this chapter, including the nature of the charge and its disposition.

(Amended by Stats. 1982, Ch. 89, Sec. 22. Effective March 2, 1982.)

25178. On or before January 1 of each odd-numbered year, the department shall post on its Web site, at a minimum, all of the following:

(a) The status of the regulatory and program developments required pursuant to legislative mandates.

(b) (1) The status of the hazardous waste facilities permit program that shall include all of the following information:

(A) A description of the final hazardous waste facilities permit applications received.

(B) The number of final hazardous waste facilities permits issued to date.

(C) The number of final hazardous waste facilities permits yet to be issued.

(D) A complete description of the reasons why the final hazardous waste facilities permits yet to be issued have not been issued.

(2) For purposes of paragraph (1), "hazardous waste facility" means a facility that uses a land disposal method, as defined in subdivision (d) of Section 25179.2, and that disposes of wastes regulated as hazardous waste pursuant to the federal act.

(c) The status of the hazardous waste facilities siting program.

(d) The status of the hazardous waste abandoned sites program.

(e) A summary of enforcement actions taken by the department pursuant to this chapter and any other actions relating to hazardous waste management.

(f) Summary data on annual quantities and types of hazardous waste generated, transported, treated, stored, and disposed.

(g) Summary data regarding onsite and offsite disposition of hazardous waste.

(h) Research activity initiated by the department.

(i) Regulatory action by other agencies relating to hazardous waste management.

(j) A revised listing of recyclable materials showing any additions or deletions to the list prepared pursuant to Section 25175 that have occurred since the last report.

(k) Any other data considered pertinent by the department to hazardous waste management.

(l) The information specified in subdivision (c) of Section 25161, paragraph (4) of subdivision (a) of Section 25197.1, subdivision (c) of Section 25354, and Sections 25334.7, and 25356.5.

(m) A status report on the cleanup of the McColl Hazardous Waste Disposal Site in Orange County.

(Amended by Stats. 2004, Ch. 644, Sec. 8. Effective January 1, 2005.)

25178.1. The State Board of Equalization shall provide quarterly reports to the Legislature on the fees collected pursuant to Sections 25174.1, 25205.2, and 25205.5. The reports shall be due on the 15th day of the second month following each quarter.

(Amended by Stats. 1997, Ch. 870, Sec. 13. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25178.3. (a) The director shall notify the Republic of Mexico and every state which is contiguous to this state whenever any of the following

occurs:

(1) Any hazardous wastes listed pursuant to Section 25140 is restricted as to land disposal in the state.

(2) A hazardous waste regulated under the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), is restricted as to land disposal in the state on a more accelerated schedule than that implemented by the Environmental Protection Agency.

(3) The state takes any other action to restrict wastes as to land disposal, including banning or increasing disposal fees on specific categories of hazardous waste.

(4) The department or a state or federal agency requires the closure of, or curtailment of operations at, any offsite hazardous waste land disposal facility currently operating pursuant to a grant of interim status issued pursuant to Section 25200.5 or a final permit issued pursuant to Section 25200.

(b) When providing a notice pursuant to subdivision (a), the director shall send a letter by registered mail to a public official in the Republic of Mexico and in each state who the director determines to have responsibility for hazardous waste regulation. The letter shall include all of the following:

(1) A description of the action taken in the state and documentation as to why this state felt it necessary to take the action to protect the public health and the environment.

(2) Specific information on treatment alternatives available to reduce, recycle, treat, or destroy the hazardous wastes affected by the action.

(3) The availability of the treatment capacity in this state, and the costs of that treatment.

(4) Information as to how the state or Mexico could develop comparable treatment systems.

(5) A statement that it is not the intent of the citizens of this state to transfer their hazardous waste problems to the Republic of Mexico or to other states.

(Added by Stats. 1986, Ch. 452, Sec. 1.)

25179. (a) A city or county or an agency or entity established by a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code may enter into a contract or contracts with a business entity for the purpose of planning, financing, constructing, and operating an offsite hazardous waste facility to transfer or treat hazardous waste.

(b) The authority granted by this section to a city, county, agency, or entity is in addition to any other authority granted by law.

(c) For purposes of this section, "business entity" means any private organization or enterprise operated for profit, including, but not limited to, a proprietorship, partnership, firm, business, trust, joint venture, syndicate, corporation, or association.

(Added by Stats. 1985, Ch. 1338, Sec. 8.)

Article 7.7. Hazardous Waste Treatment Reform Act of 1995

(Article 7.7 repealed and added by Stats. 1995, Ch. 638, Sec. 15. Effective January 1, 1996.)

25179.1. (a) This article shall be known, and may be cited, as the Hazardous Waste Treatment Reform Act of 1995.

(b) It is the intent of the Legislature, in enacting this article, to adopt reasonable and realistic methods for addressing the environmental risks associated with land disposal of hazardous waste and to encourage the treatment of hazardous waste to remove or reduce hazards to human health and the environment. However, it is not the Legislature's intent to impose hazardous waste management requirements upon hazardous waste generators and hazardous waste storage, treatment, and disposal facilities located within the state which could, if so imposed, encourage illegal disposal practices or force California generators to seek hazardous waste disposal solutions in other states or countries, thereby shifting the state's hazardous waste treatment and disposal burdens to other jurisdictions.

(c) The Legislature hereby finds and declares the following:

(1) The hazardous waste treatment industry is important to California's economy and future environmental protection.

(2) Treatment of hazardous waste, the generation of which cannot otherwise be prevented through waste minimization and recycling of hazardous constituents, is preferable to disposal of that waste by means of incineration or land disposal without treatment.

(3) To improve California's economic and environmental well-being, the development and implementation of new hazardous waste treatment technologies in California that reduce or eliminate the hazards to human health and the environment of hazardous waste generated in California should be encouraged where these technologies can be practically utilized in California to substantially reduce or eliminate these hazards.

(Repealed and added by Stats. 1995, Ch. 638, Sec. 15. Effective January 1, 1996.)

25179.2. For purposes of this article, the following definitions apply:

(a) "Agricultural drainage water" means subsurface water or perched groundwater which is drained from beneath agricultural lands and which results from agricultural irrigation.

(b) "Free liquids" mean liquids which readily separate from the solid portion of a hazardous waste under ambient temperature and pressure.

(c) "Hazardous waste landfill" means a disposal facility, or part of a facility, where hazardous waste is placed in or onto land and which is not a land treatment facility, a surface impoundment, or an injection well.

(d) "Land disposal" means placement in or on the land, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or concrete vault or bunker intended for disposal purposes.

(e) Notwithstanding Section 25123.5, and for purposes of this article only, "treatment" means any method, technique, or process, including incineration, occurring at authorized facilities that changes the physical, chemical, or biological character or composition of any hazardous waste and, by that change, the waste becomes nonhazardous, significantly less hazardous, or more suitable for land disposal because of removal or substantial reduction of undesirable properties, such as toxicity, mobility, persistence, reactivity, bioaccumulation, flammability, or corrosivity. "Treatment" does not include any of the following, to the extent that one or more of the following are the only methods which are used:

(1) Solidification of hazardous waste by the addition of absorbent material that produces a change only in the physical character of the waste, without a corresponding change in the chemical character of the waste.

(2) Treatment occurring directly in or on the land, such as land treatment, except that treatment may include in situ treatment necessary for site mitigation.

(3) Dilution of hazardous waste by the addition of nonhazardous material.

(4) Evaporation in a surface impoundment.

(f) "Treated hazardous waste" means a hazardous waste that has been subject to treatment, as specified in subdivision (e), that meets treatment standards established by the department pursuant to Section 25179.6, and applicable treatment standards adopted by the Environmental Protection Agency pursuant to Section 3004(m) of the federal act (42 U.S.C. Sec. 6924(m)). "Treated hazardous waste" also includes a hazardous waste that meets all applicable treatment standards without prior treatment.

(g) "Designated treatment technology" means a hazardous waste environmental technology certified by the department in accordance with Section 25200.1.5 that the department has also designated, pursuant to Section 25179.7, as a method which will treat specified types of hazardous waste to substantially reduce or eliminate the risk to human health and the environment posed by that waste.

(h) "Treatable waste" means a type or category of hazardous waste, specified by the department, for which there is a designated treatment technology. A waste becomes a treatable waste one year after designation of the first treatment technology found by the department to be suitable for treatment of that type or category of hazardous waste pursuant to Section 25179.7.

(Repealed and added by Stats. 1995, Ch. 638, Sec. 15. Effective January 1, 1996.)

25179.3. Notwithstanding any other provision of law, except as provided in Section 26179.9, no person shall dispose of liquid waste, liquid hazardous waste, or hazardous waste containing free liquids in a hazardous waste landfill.

(Repealed and added by Stats. 1995, Ch. 638, Sec. 15. Effective January 1, 1996.)

25179.4. In developing new programs and carrying out this chapter, the department shall promote the following waste management practices in order of priority:

(a) Reduction of hazardous waste generated.

(b) Recycling of hazardous waste.

(c) Treatment of hazardous waste.

(d) Land disposal of residuals from hazardous waste recycling and treatment.

(Repealed and added by Stats. 1995, Ch. 638, Sec. 15. Effective January 1, 1996.)

25179.5. (a) Notwithstanding any other provision of law, except as provided in this article, any hazardous waste restricted from land disposal by the federal act, or by the Environmental Protection Agency pursuant to the federal act, or by the department pursuant to Section 25179.6, is prohibited from land disposal in the state, unless one of the following circumstances apply:

(1) The hazardous waste, or the producer of the hazardous waste is granted a variance, extension, exclusion, or exemption by the administrator of the Environmental Protection Agency or by the department.

(2) The waste is treated in accordance with an applicable treatment standard.

(3) The federal restriction is stayed or otherwise conditioned by an appropriate court of law.

(4) It is a solid hazardous waste generated in the cleanup or decontamination of any site contaminated only by hazardous waste that has not been restricted or prohibited by the federal act or prohibited by the Environmental Protection Agency pursuant to the federal act, and which does not meet the treatment standards established by the department pursuant to Section 25179.6, if the department or other federal, state, or local agency with authority to approve the cleanup or decontamination has approved the disposal of the waste.

(b) (1) Any treatment standard that is adopted or amended by the Environmental Protection Agency pursuant to subsection (m) of Section 6924 of the federal act, for a hazardous waste prohibited from land disposal pursuant to subdivision (a) and that is in effect, is the treatment standard required to be met before the hazardous waste may be disposed of, using land disposal, in the state. Any land disposal restriction, including any treatment standard, notification requirement, or recordkeeping requirement that is adopted or amended by the Environmental Protection Agency shall become effective in the state upon the effective date of that adoption or amendment, as specified in the final rule published in the Federal Register, and shall, as of that date, supersede any corresponding land disposal restriction specified in the department's regulations, unless one or more of the following conditions exist:

(A) A more stringent statutory requirement is applicable.

(B) A land disposal restriction previously adopted by the department expressly states, in that regulation, that the land disposal restriction is intended to supersede any less stringent land disposal restrictions which may be subsequently adopted by the Environmental Protection agency.

(C) The department subsequently adopts a more stringent land disposal restriction pursuant to subdivision (c) of Section 25179.6.

(2) Except as provided in Section 25179.6, any extension, variance, or exemption from the treatment standard granted by the Administrator of the Environmental Protection Agency shall also apply in this state.

(c) Subdivision (b) applies only to hazardous waste land disposal restrictions, standards, or criteria enforced by the department and does not limit or affect the standards adopted by any other local, state, or federal agency.

(d) Any hazardous waste or treated hazardous waste that meets all applicable treatment standards pursuant to this section may be disposed of to land at a hazardous waste disposal facility that has been issued a hazardous waste facilities permit allowing that disposal, if the disposal is conducted in compliance with this chapter, the applicable regulations adopted by the department, and the requirements of the permit issued by the department.

(Amended by Stats. 1998, Ch. 880, Sec. 5. Effective January 1, 1999.)

25179.6. (a) (1) A land disposal restriction, treatment standard, or land disposal criteria adopted by the department pursuant to former Article 7.7 (commencing with Section 25179.1), which article was repealed by the act adding this section, pursuant to this section, shall remain in effect on and after January 1, 1996, except as provided in paragraph (2), only if both of the following conditions apply to that adopted restriction, treatment standard, or land disposal criteria:

(A) The land disposal of hazardous waste was actually prohibited or otherwise limited by those disposal restrictions, treatment standards, or land disposal criteria on and before December 31, 1995.

(B) The implementation date of those disposal restrictions, treatment standards, or land disposal criteria were not suspended until January 1, 1996, by any provision of former Article 7.7 (commencing with Section 25179.1).

(2) Those land disposal restrictions, treatment standards, or land disposal criteria that remain in effect on and after January 1, 1996, pursuant to paragraph (1), may be repealed or amended by the department by regulation to maintain consistency with this article or pursuant to a determination by the department that any such land disposal restriction, treatment standard, or land disposal criteria is not necessary to protect public health and safety or the environment.

(b) On and after January 1, 1996, any land disposal restriction, treatment standard, or land disposal criteria that is not required pursuant to Section 25179.5 and that was adopted by the department pursuant to the former Article 7.7 (commencing with Section 25179.1) specified in subdivision (a), but that did not prohibit land disposal prior to January 1, 1996, or was otherwise suspended until January 1, 1996, by any provision of former Article 7.7 shall not prohibit land disposal on or after January 1, 1996, and shall be deemed repealed, including any land disposal restriction, treatment standard, or land disposal criteria for any of the following categories of hazardous waste:

(1) Any RCRA hazardous waste for which a treatment standard has not been adopted or for which the United States Environmental Protection Agency has granted a delay of the effective date of the standard pursuant to Section 6924 of the federal act.

(2) Any non-RCRA hazardous waste subject to treatment standards based upon incineration, solvent extraction, or biological treatment.

(3) Any non-RCRA hazardous waste subject to a treatment standard adopted pursuant to paragraph (3) of subdivision (a) of Section 66268.106 of Title 22 of the California Code of Regulations.

(c) Except as provided in subdivision (a) with regard to repealing or limiting the effect of restrictions, standards or criteria that prohibited land disposal as of December 31, 1995, the department, by regulation, may adopt new land disposal restrictions, treatment standards, or land disposal criteria in addition to, or more stringent than, those restrictions, standards, or criteria required pursuant to the federal act, or required by the United States Environmental Protection Agency pursuant to the federal act, or for those hazardous wastes not subject to restrictions, standards, or criteria required pursuant to the federal act, or required by the United States Environmental Protection Agency pursuant to the federal act, if the department determines, after holding a public hearing, that both of the following conditions exist:

(1) A new state land disposal restriction, treatment standard, or criteria is necessary to protect public health and safety and the environment, as indicated by evidence on the record.

(2) Attainment of the additional restriction, standard, or criteria can be practically achieved in this state and is consistent with the intent language of this article, as provided in Section 25179.1.

(d) On or before January 1, 2001, the department shall review and, as deemed necessary, revise the hazardous waste land disposal restrictions, treatment standards, and land disposal criteria that were adopted by the department before January 1, 1996, pursuant to former Article 7.7 (commencing with Section 25179.1) and that remain in effect after that date, to maintain consistency with this section. Any treatment standards adopted by the department on or after January 1, 1996, pursuant to this section, shall be reviewed and revised, as deemed necessary, by the department.

(e) Nothing in this section exempts the department from compliance with Section 57005 and with Sections 11346.2, 11346.3, and 11346.5 of the Government Code.

(Amended by Stats. 2000, Ch. 343, Sec. 9.6. Effective January 1, 2001.)

25179.7. (a) The department may, upon receipt of a petition, designate treatment technologies certified pursuant to Section 25200.1.5 in accordance with this article. For each designated treatment technology, the

department shall specify the types or categories of hazardous wastes that can be satisfactorily treated. The department may specify more than one certified treatment technology for a category of waste and the department may determine more than one category of waste to be suitable for treatment by a certified treatment technology. When listing a designated treatment technology, the department shall provide sufficient specificity in the listing of the treatable wastes to ensure that the definition of each type or category of waste is clearly defined. When designating a treatment technology for one or more types or categories of hazardous waste, the department shall ensure that all of the following criteria are met:

(1) The treatment technology is appropriate for each of the types or categories of hazardous waste for which it is designated.

(2) The treatment technology is technically feasible for each of the types or categories of hazardous waste for which it is designated.

(3) The treatment technology is environmentally desirable for each of the types or categories of hazardous waste for which it is designated. In determining if treatment of a hazardous waste is environmentally desirable, the department shall consider whether there is a viable public health and safety or environmental benefit to be gained by treating the hazardous waste using a designated treatment technology in this state rather than otherwise disposing of the hazardous waste, and whether conducting that treatment in this state provides a benefit beyond that achieved by meeting the land disposal treatment standard, if any, specified for that hazardous waste pursuant to Section 25179.5.

(b) Upon designation of a certified treatment technology, the department shall notify the public of the types or categories of waste that can be treated by the designated treatment technology. The notice shall specify whether these types or categories represent new treatable wastes, and if not, what other designated treatment technologies also exist for that type or category of treatable waste. The notice shall include explanation of the potential changes in the payment of hazardous waste fees that may result from this designation.

(c) The department shall not impose any requirement or mandate on any person who generates, stores, treats, or disposes of hazardous waste to use a designated treatment technology. However, the department may provide incentives for the use of designated treatment technologies in this state consistent with authority granted the department pursuant to this chapter.

(d) The department may adopt regulations establishing standards for designated treatment technologies.

(e) When determining the fees specified in subdivision (h) of Section 25200.1.5, the department shall include the amounts sufficient to recover the actual costs of the department in reviewing and designating treatment technologies pursuant to this section.

(Repealed and added by Stats. 1995, Ch. 638, Sec. 15. Effective January 1, 1996.)

25179.8. (a) Except as provided in subdivision (d), the department may grant a variance from the requirements of Sections 25179.5 and 25179.6 for a hazardous waste, consistent with Section 25143.

(b) The department may grant a variance from the requirements of Section 25179.6 for agricultural drainage waters that meet the criteria established by the department pursuant to Section 25141 if a person demonstrates, to the satisfaction of the department, that all of the following conditions apply to the waste:

(1) There are no technically and economically feasible treatment, reuse, or recycling alternatives available to render the agricultural drainage water nonhazardous.

(2) The applicant can demonstrate that the continued disposal of agricultural drainage waters does not pose an immediate or significant long-term risk to public health or the environment.

(3) The disposal of the agricultural drainage waters is in compliance with the requirements of Section 25179.3.

(c) A variance granted by the department pursuant to subdivision (b) shall remain in effect for a period not longer than three years and may be renewed for additional three-year periods.

(d) When granting a variance pursuant to this section, the department may specify, where appropriate, any treatment that shall be required prior to land disposal of the waste, and may impose requirements that may be necessary to protect the public health and the environment.

(e) The department shall not grant a variance pursuant to subdivision (a) for hazardous waste that is restricted or prohibited by the Environmental Protection Agency pursuant to the federal act, unless either of the following applies:

(1) The waste has been granted a variance by the Administrator of the Environmental Protection Agency and the variance granted by the department does not permit less stringent management than that required pursuant to the federal variance.

(2) The Environmental Protection Agency has delegated the authority to grant variances to the department pursuant to the federal act.

(Amended by Stats. 1997, Ch. 17, Sec. 69. Effective January 1, 1998.)

25179.9. Lab packs which contain hazardous waste that has not been restricted or prohibited by the Environmental Protection Agency pursuant to Section 3004 of the federal act, are exempt from the requirements of Sections 25179.3 and 25179.6 if they are disposed of in accordance with the requirements established by the department, by regulation.

(Repealed and added by Stats. 1995, Ch. 638, Sec. 15. Effective January 1, 1996.)

25179.10. (a) The department may grant an exemption from the requirements of Section 25179.6 pursuant to subdivision (b) for either of the following:

(1) Any special waste which meets the criteria and requirements established for special waste in the regulations adopted by the department and has been classified as a special waste pursuant to the regulations adopted by the department but does not meet the treatment standards established by the department pursuant to Section 25179.6.

(2) Any hazardous waste generated in the extraction, beneficiation, or processing of ores and minerals.

(b) The department may grant an exemption for a waste specified in subdivision (a) if a person, upon application, demonstrates to the satisfaction of the department that no economically and technologically feasible alternatives exist to recycle, reuse, or treat the waste to meet the treatment standards adopted by the department pursuant to Section 25179.6 and that there will be no migration of hazardous constituents in concentrations which pollute or threaten to pollute the waters of the state from the disposal unit where the waste is to be disposed. An exemption granted pursuant to this subdivision shall remain in effect for five years. The department may renew the exemption if, upon application, it determines that the findings required by the subdivision still apply.

(Repealed and added by Stats. 1995, Ch. 638, Sec. 15. Effective January 1, 1996.)

25179.11. (a) A person discharging a hazardous waste into a surface impoundment that was constructed before July 1, 1986, and for which an application for waste discharge requirements was submitted on or before September 1, 1986, is exempt from the requirements of Sections 25179.5 and 25179.6 if all of the following conditions apply to the surface impoundment:

(1) The surface impoundment, the management of the hazardous waste discharged into the surface impoundment, and any residue resulting from the treatment of the hazardous waste meet the requirements of Section 3005(j) of the federal act and Section 268.4 of Title 40 of the Code of Federal Regulations, if applicable.

(2) The surface impoundment is in compliance with Article 9.5 (commencing with Section 25208).

(3) Hazardous waste is discharged into the surface impoundment for purposes of treating the hazardous waste to comply with any treatment standard in effect pursuant to Section 25179 or adopted by the department pursuant to Section 25179.6 for that hazardous waste, and the residues that result from the treatment of the hazardous waste which do not meet that treatment standard are removed for subsequent management within one year from the date of placement of the hazardous waste into the surface impoundment.

(b) A person discharging a hazardous waste into a surface impoundment that was constructed after July 1, 1986, and for which an application for waste discharge requirements was submitted after September 1, 1986, is exempt from the requirements of Sections 25179.5 and 25179.6 if all of the following conditions apply to the surface impoundment:

(1) The surface impoundment, the management of the hazardous waste discharged into the surface impoundment, and any residue resulting from the treatment of the hazardous waste meet the requirements of Section 3005(j) of the federal act and Section 268.4 of Title 40 of the Code of Federal Regulations, if applicable.

(2) The surface impoundment is in compliance with Article 9.5 (commencing with Section 25208).

(3) Hazardous waste is discharged into the surface impoundment for purposes of treating the hazardous waste to comply with any treatment standard in effect pursuant to Section 25179.5 or adopted by the department pursuant to Section 25179.6 for that hazardous waste, and the residues that result from the treatment of the hazardous waste which do not meet that treatment standard are removed for subsequent management within one year from the date of placement of the hazardous waste into the surface impoundment.

(4) The department determines that the use of the surface impoundment to treat the hazardous waste is the only means by which the hazardous waste can be treated using the best demonstrated available technology.

(Amended by Stats. 1996, Ch. 632, Sec. 3. Effective January 1, 1997.)

25179.12. (a) Except as provided in subdivisions (b) and (c), a person operating a land treatment facility is exempt from the requirements of Sections 25179.5 and 25179.6 if the facility is in compliance with the requirements of all state and federal statutes and regulations applicable to land treatment facilities, including, but not limited to, subdivision (b), and the facility has either been issued a final hazardous waste facilities permit or is operating under, and in compliance with, the requirements of interim status and the facility operator has submitted an application for a final permit.

(b) Land treatment facilities at which hazardous constituents have migrated from the treatment zone shall not be eligible for an exemption pursuant to subdivision (a) until the contamination has been removed to the satisfaction of the department. In order for the department to determine whether hazardous constituents have migrated from the treatment zone, the owner or operator of the land treatment facility shall provide data to the department on at least all of the following:

(1) Soil cores taken from below the treatment zone.

(2) Groundwater monitoring.

(3) Unsaturated zone monitoring.

(4) Waste analysis.

(5) Historical activities at the facility.

(c) A land treatment facility may not treat hazardous waste which has been restricted or prohibited by the Environmental Protection Agency pursuant to Section 3004 of the federal act unless the land treatment has been authorized by the Administrator of the Environmental Protection Agency.

(Amended by Stats. 1996, Ch. 632, Sec. 4. Effective January 1, 1997.)

Article 8. Enforcement

(Article 8 added by Stats. 1972, Ch. 1236.)

25180. (a) (1) Except as provided in paragraph (2), the standards in this chapter and the regulations adopted by the department to implement this chapter shall be enforced by the department, and by any local health officer or any local public officer designated by the director.

(2) The standards of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, and the regulations adopted to implement the standards of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, shall be enforced by the department and one of the following:

(A) If there is no CUPA, the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(B) Within the jurisdiction of a CUPA, the unified program agencies, to the extent provided by this chapter and Sections 25404.1 and 25404.2. Within the jurisdiction of a CUPA, the unified program agencies shall be the only local agencies authorized to enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(b) (1) In addition to the persons specified in subdivision (a), any traffic officer, as defined by Section 625 of the Vehicle Code, and any peace officer specified in Section 830.1 of the Penal Code, may enforce Section 25160, subdivision (a) of Section 25163, and Sections 25250.8, 25250.18, 25250.19, and 25250.23. Traffic officers and peace officers are authorized representatives of the department for purposes of enforcing the provisions set forth in this subdivision.

(2) A peace officer specified in subdivision (a) of Section 830.37 of the Penal Code may, upon approval of the local district attorney, enforce the standards in this chapter and regulations adopted by the department to implement this chapter. A peace officer authorized to enforce those standards and regulations pursuant to this paragraph shall perform these duties in coordination with the appropriate local officer or agency authorized to enforce this chapter pursuant to subdivision (a), and shall complete a training program which is equivalent to that required by the department for local officers and agencies authorized to enforce this chapter pursuant to subdivision (a).

(c) Notwithstanding any limitations in subdivision (b), a member of the California Highway Patrol may enforce Sections 25185, 25189, 25189.2, 25189.5, 25191, and 25195, and Article 6 (commencing with Section 25160) and Article 6.5 (commencing with Section 25167.1), as those provisions relate to the transportation of hazardous waste.

(d) In enforcing this chapter, including, but not limited to, the issuance of orders imposing administrative penalties, the referral of violations to prosecutors for civil or criminal prosecution, the settlement of cases, and the adoption of enforcement policies and standards related to those matters, the department and the local officers and agencies authorized to enforce this chapter pursuant to subdivision (a) shall exercise their enforcement authority in such a manner that generators, transporters, and operators of storage, treatment, transfer, and disposal facilities are treated equally and consistently with regard to the same types of violations.

(Amended by Stats. 1996, Ch. 539, Sec. 18. Effective January 1, 1997.)

25180.1. For purposes of this chapter, "permit" includes matters deemed to be permits pursuant to subdivision (c) of Section 25198.6.

(Amended by Stats. 1992, Ch. 113, Sec. 1. Effective July 2, 1992.)

25180.5. (a) The department, the State Water Resources Control Board, and the California regional water quality control boards shall notify the local health officer and director of environmental health of a county, city, or district, and the CUPA for the jurisdiction as specified in subdivision (b), within 15 days after any of the following occur:

(1) The department's or board's employees are informed or discover that a disposal of hazardous waste has occurred within that county, city, or district and that the disposal violates a state or local law, ordinance, regulation, rule, license, or permit or that the disposal is potentially hazardous to the public health or the environment.

(2) The department or board proposes to issue an abatement order or a cease and desist order, to file a civil or criminal action, or to settle a civil or criminal action, concerning a disposal of hazardous waste within that county, city, or district.

(b) The notice given by the department or board pursuant to subdivision (a) shall include all test results and any relevant information which the department or board has obtained and which do not contain trade secrets, as defined by Section 25173, as determined by the department or board. If the department or board determines that the test results or information cannot be disseminated because of current or potential litigation, the department or board shall inform the local health officer, the director of environmental health, and the CUPA for the jurisdiction that the test results and information shall be used by the local health officer, the director of environmental health, and the unified program agencies, only in connection with their statutory responsibilities and shall not otherwise be released to the public.

(c) The department, the State Water Resources Control Board, and the California regional water quality control boards shall coordinate with the unified program agencies regarding violations of this chapter, or violations of regulations adopted pursuant to this chapter, at a unified program facility.

(Amended by Stats. 1995, Ch. 639, Sec. 19. Effective January 1, 1996.)

25180.7. (a) Within the meaning of this section, a "designated government employee" is any person defined as a "designated employee" by Government Code Section 82019, as amended.

(b) Any designated government employee who obtains information in the course of his or her official duties revealing the illegal discharge or threatened illegal discharge of a hazardous waste within the geographical area of his or her jurisdiction and who knows that the discharge or threatened discharge is likely to cause substantial injury to the public health or safety must, within 72 hours, disclose that information to the local Board of Supervisors and to the local health officer. No disclosure of information is required under this subdivision when otherwise prohibited by law, or when law enforcement personnel have determined that this disclosure would adversely

affect an ongoing criminal investigation, or when the information is already general public knowledge within the locality affected by the discharge or threatened discharge.

(c) Any designated government employee who knowingly and intentionally fails to disclose information required to be disclosed under subdivision (b) shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment in the state prison. The court may also impose upon the person a fine of not less than five thousand dollars ($5000) or more than twenty-five thousand dollars ($25,000). The felony conviction for violation of this section shall require forfeiture of government employment within thirty days of conviction.

(d) Any local health officer who receives information pursuant to subdivision (b) shall take appropriate action to notify local news media and shall make that information available to the public without delay.

(Amended by Stats. 2006, Ch. 347, Sec. 8.5. Effective January 1, 2007. Note: This section was added Nov. 4, 1986, by initiative Prop. 65. Prop. 65 allows the Legislature to directly amend its provisions by 2/3 vote.)

25181. (a) When the department determines that any person has engaged in, is engaged in, or is about to engage in any acts or practices which constitute or will constitute a violation of this chapter, or any rule, regulation, permit, covenant, standard, requirement, or order issued, promulgated, or executed thereunder, and when requested by the department, the city attorney of the city in which those acts or practices occur, occurred, or will occur, the district attorney of the county in which those acts or practices occur, occurred, or will occur, or the Attorney General may apply to the superior court for an order enjoining those acts or practices, or for an order directing compliance, and upon a showing by the department that the person has engaged in or is about to engage in those acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

(b) When the unified program agency determines that any person has engaged in, is engaged in, or is about to engage in any acts or practices which constitute or will constitute a violation of this chapter, or any rule, regulation, permit, covenant, standard, requirement, or order issued, promulgated, or executed thereunder, and when requested by the unified program agency, the city attorney of the city in which those acts or practices occur, occurred, or will occur, the district attorney of the county in which those acts or practices occur, occurred, or will occur, or the Attorney General, may apply to the superior court for an order enjoining those acts or practices, or for an order directing compliance, and upon a showing by the unified program agency that the person has engaged in or is about to engage in those acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

(Amended by Stats. 1998, Ch. 357, Sec. 1. Effective January 1, 1999.)

25181.5. A registered waste transporter transporting medical waste who is not subject to Section 25097 shall be subject to penalties for violations pursuant to this article.

(Added by Stats. 1993, Ch. 813, Sec. 16. Effective January 1, 1994.)

25182. Every civil action brought under this chapter at the request of the department or a unified program agency shall be brought by the city attorney, the county attorney, the district attorney, or the Attorney General in the name of the people of the State of California, and any such actions relating to the same processing or disposal of hazardous wastes may be joined or consolidated.

(Amended by Stats. 1995, Ch. 639, Sec. 21. Effective January 1, 1996.)

25183. Any civil action brought pursuant to this chapter shall be brought in the county in which the processing or disposal of hazardous waste is made or proposed to be made, the county in which the principal office of the defendant is located, or the county in which the Attorney General has an office nearest to the county in which the principal office of the defendants, or any of them, is located in this state.

(Amended by Stats. 1982, Ch. 496, Sec. 8. Effective July 12, 1982.)

25184. In any civil action brought pursuant to this chapter in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued; or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction, or permanent injunction shall issue without such allegations and without such proof.

(Added by Stats. 1972, Ch. 1236.)

25184.1. If any administrative order or decision that imposes a penalty is issued pursuant to this chapter or Chapter 6.8 (commencing with Section 25300), the administrative order or decision has become final, and, if applicable, a petition for judicial review of the final order or decision has not been filed within the time limits prescribed in Section 11523 of the Government Code, the department may apply to the clerk of the appropriate court for a judgment to collect the administrative penalty. The department's application, which shall include a certified copy of the final administrative order or decision, constitutes a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

(Amended by Stats. 2004, Ch. 183, Sec. 202. Effective January 1, 2005.)

25185. (a) In order to carry out the purposes of this chapter, any authorized representative of the department or the local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180, may, at any reasonable hour of the day, or as authorized pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, do any of the following:

(1) Enter and inspect a factory, plant, construction site, disposal site, transfer facility, or any establishment or any other place or environment where hazardous wastes are stored, handled, processed, disposed of, or being treated to recover resources.

(2) Carry out any sampling activities necessary to carry out this chapter, including obtaining samples from any individual or taking samples from the property of any person or from any vehicle in which any authorized representative of the department or the local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180 reasonably believes has transported or is transporting hazardous waste. However, upon request, split samples shall be given to the person from whom, or from whose property or vehicle, the samples were obtained.

(3) Stop and inspect any vehicle reasonably suspected of transporting hazardous wastes when accompanied by a uniformed peace officer in a clearly marked vehicle.

(4) Inspect and copy any records, reports, test results, or other information required to carry out this chapter.

(5) Photograph any waste, waste container, waste container label, vehicle, waste treatment process, waste disposal site, or condition constituting a violation of law found during an inspection.

(b) During the inspection, the inspector shall comply with all reasonable security, safety, and sanitation measures. In addition, the inspector shall comply with reasonable precautionary measures specified by the operator.

(c) (1) At the conclusion of the inspection, the inspector shall deliver to the operator of the facility or site a written summary of all violations alleged by the inspector. The inspector shall, prior to leaving the facility or site, deliver the written summary to the operator and shall discuss any questions or observations that the operator might have concerning the inspection.

(2) (A) The department or the local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180 shall prepare an inspection report which shall fully detail all observations made at the facility or site, all alleged violations, the factual basis for alleging those violations, and any corrective actions that should be taken by the operator of the facility or site. The department or the local officer or agency shall provide a copy of the inspection report to the operator within five days from the date of the preparation of the inspection report, and, in any event, not later than 65 days from the date of the inspection. The inspection report shall include all pertinent information, including, but not limited to, documents, photographs, and sampling results concerning the alleged violations. The department or the local officer or agency shall provide this information to the operator with the inspection report, including all photographs taken by the department in the course of the inspection and all laboratory results obtained as a result of the inspection. If sampling or laboratory results are not available at the time that the inspection report is

prepared, that fact shall be contained in the report. Those results shall be provided to the operator within 10 working days of their receipt by the department or the local officer or agency.

(B) The time period required by subparagraph (A) may be extended as a result of a natural disaster, inspector illness, or other circumstances beyond the control of the department, or the local officer or agency, if the department or the local officer or agency so notifies the operator within 70 days from the date of the inspection and provides the inspection report to the operator in a timely manner after the reason for the delay is ended.

(C) Information from the inspection report, or the report itself, may be withheld by the department or the local officer or agency if necessary to a criminal investigation or other ongoing investigation in which the department or the local officer or agency determines, in writing, that disclosure of the information will result in a substantial probability of destruction of evidence, intimidation of witnesses, or other obstruction of justice.

(D) The department or the local officer or agency shall, at the operator's request, discuss the inspection report with the operator and shall, upon the request of the operator, review the inspection report and determine whether the operator's responses and documented or proposed corrective actions would be sufficient to comply with this chapter, or if any allegation of a violation is unwarranted.

(3) The operator of the site or facility which receives an inspection report pursuant to paragraph (2) shall submit a written response to the department or the local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180 within 60 days of receipt of the inspection report, or within a shorter time as the department or the local officer or agency may reasonably require, which shall include a statement documenting corrective actions taken by the operator or proposing corrective actions which will be taken by the operator, for purposes of compliance with this chapter, or disputing the existence of the violation. Upon receiving the written response from the operator, the department or the local officer or agency shall, upon the request of the operator, meet and confer with the operator regarding any questions, concerns, or comments that the operator may have concerning the inspection report. The department or the local officer or agency shall, within 30 working days from the date of receipt of a response which documents or proposes corrective action, or which disputes the existence of a violation, determine whether the corrective actions documented or proposed to be taken by the operator, if implemented as stated or proposed, will achieve compliance with this chapter, or whether a violation is still alleged, as applicable, and shall submit a written copy of that determination to the operator, in the form of a report of violation or other appropriate document. If the department or the local officer or agency fails to make the determination and submit a copy of the determination within 30 working days from the date of receipt of the operator's response, the department or the local officer or agency may not seek penalties for continuing violations or any alleged new violations caused by the corrective actions taken by the operator, until the department or the local officer or agency submits the determination to the operator and provides the operator with a reasonable time in which to make necessary operational modifications which differ from those proposed to the department or local officer or agency.

(d) Whenever information, including, but not limited to, documents, photographs, and sampling results, has been gathered pursuant to subdivision (a), the department or the local officer or agency shall comply with all procedures established pursuant to Section 25173 and shall notify the person whose facility was inspected prior to public disclosure of the information, and, upon request of that person, shall submit a copy of any information to that person for the purpose of determining whether trade secret information, as defined in Section 25173, or facility security would be revealed by the information. "Public disclosure," as used in this section, shall not include review of the information by a court of competent jurisdiction or an administrative law judge. That review may be conducted in camera at the discretion of the court or judge.

(Amended by Stats. 1995, Ch. 639, Sec. 22. Effective January 1, 1996.)

25185.5. In order to carry out the purposes of Article 11 (commencing with Section 25220), any authorized representative of the department may, at any reasonable hour of the day, or as authorized pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, enter and inspect any real property which is within 2,000 feet of a deposit of hazardous waste or a hazardous waste property and do any of the following:

(a) Obtain samples of the soil, vegetation, air, water, and biota on or beneath the land.

(b) Set up and maintain monitoring equipment for the purpose of assessing or measuring the actual or potential migration of hazardous wastes on, beneath, or toward the land.

(c) Survey and determine the topography and geology of the land.

(d) Photograph any equipment, sample, activity, or environmental condition described in subdivision (a), (b), or (c). The photographs shall be subject to the requirements of subdivision (d) of Section 25185.

(e) This section does not apply to any hazardous waste facility which is required to be permitted pursuant to this chapter and which is subject to inspection pursuant to Section 25185.

(f) An inspector who inspects pursuant to this section shall make a reasonable effort to inform the owner or his or her authorized representative of the inspection and shall provide split samples to the owner or representative upon request and shall comply with the provisions of subdivision (b) of Section 25185.

(Amended by Stats. 1986, Ch. 1187, Sec. 8.)

25185.6. (a) The department or any local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180, in connection with any action authorized by this chapter, may require any of the following persons to furnish and transmit to the designated offices of the department or the local officer or agency any existing information relating to hazardous substances, hazardous wastes, or hazardous materials:

(1) Any person who owns or operates any hazardous waste facility.

(2) Any person who generates, stores, treats, transports, disposes of, or otherwise handles hazardous waste.

(3) Any person who has generated, stored, treated, transported, disposed of, or otherwise handled hazardous waste.

(4) Any person who arranges, or has arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste.

(5) Any person who applies, or has applied, for any permit, registration, or certification under this chapter.

(b) Any person required to furnish this information shall pay any costs of photocopying or transmitting this information.

(c) When requested by the person furnishing this information the department or the local officer or agency shall follow the procedures established under Section 25173.

(Amended by Stats. 1995, Ch. 639, Sec. 23. Effective January 1, 1996.)

25186. The department may deny, suspend, or revoke any permit, registration, or certificate applied for, or issued, pursuant to this chapter in accordance with the procedures specified in Sections 25186.1 and 25186.2, where the applicant or holder of the permit, registration, or certificate, or in the case of a business concern, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in or debt liability of that business concern, has engaged in any of the following:

(a) Any violation of, or noncompliance with, this chapter, Chapter 6.7 (commencing with Section 25280), Chapter 6.8 (commencing with Section 25300), the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), the Resource Conservation and Recovery
Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Sec. 1801 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.) or any other equivalent federal or state statute or any requirement or regulation adopted pursuant thereto relating to the generation, transportation, treatment, storage, recycling, disposal or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in Section 25316, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or noncompliance shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(b) The aiding, abetting, or permitting of any violation of, or noncompliance with, this chapter, Chapter 6.7 (commencing with Section 25280), Chapter 6.8 (commencing with Section 25300), the Porter-Cologne Water Quality Act (Division 7 (commencing with Section 13000) of the Water Code), the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Act (49

U.S.C. Sec. 1801 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state statute or any requirement or regulation adopted pursuant thereto relating to the generation, transportation, treatment, storage, recycling, disposal or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in Section 25316, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or noncompliance shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(c) Any violation of, or noncompliance with, any order issued by a state or local agency or by a hearing officer or a court relating to the generation, transportation, treatment, storage, recycling, disposal or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in Section 25316, or a hazardous material, as defined in Section 353 of the Vehicle Code.

(d) Any misrepresentation or omission of a significant fact or other required information in the application for the permit, registration, or certificate, or in information subsequently reported to the department or to a local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.

(e) Activities resulting in any federal or state conviction which are significantly related to the fitness of the applicant or holder of the permit, registration, or certificate to perform the applicant's duties or activities under the permit, registration, or certificate. For the purposes of this subdivision, "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the department may take pursuant to this subdivision relating to the denial, suspension or revocation of a permit, registration, or certificate may be based upon a conviction for which any of the following has occurred:

(1) The time for appeal has elapsed.

(2) The judgment of conviction has been affirmed on appeal.

(3) Any order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Section 1203.4 of the Penal Code permitting that person to withdraw the person's plea of guilty, and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(f) Activities resulting in the revocation or suspension of any license, permit, registration or certificate held by the applicant or holder of the permit, registration or certificate or, if the applicant or holder of the permit, registration, or certificate is a business concern, by any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in, or debt liability of that business concern relating to, the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in Section 25316, or a hazardous material, as defined in Section 353 of the Vehicle Code.

(Amended by Stats. 1995, Ch. 639, Sec. 24. Effective January 1, 1996.)

25186.1. (a) Except as specified in Section 25186.2, proceedings for the suspension or revocation of a permit, registration, or certificate under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted by those provisions. In the event of a conflict between this chapter and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the provisions of the Government Code shall prevail.

(b) (1) Proceedings to determine whether to grant, issue, modify, or deny a permit, registration, or certificate shall be conducted in accordance with the regulations adopted by the department.

(2) The petition for judicial review of a final decision of the department to grant, issue, modify, or deny a permit, registration, or certificate shall not be filed later than 90 days after the date that the notice of the final decision is served.

(Amended by Stats. 2000, Ch. 343, Sec. 9.7. Effective January 1, 2001.)

25186.2. The department may temporarily suspend any permit, registration or certificate issued pursuant to this chapter prior to any hearing if the department determines that the action is necessary to prevent or mitigate an imminent and substantial danger to the public health or safety or the environment. The department shall notify the holder of the permit, registration, or certificate of the temporary suspension and the effective date thereof and at the same time shall serve the person with an accusation. Upon receipt by the department of a notice of defense to the accusation from the holder of the permit, registration, or certificate, the department shall, within 15 days, set the matter for a hearing, which shall be held as soon as possible, but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the hearing is completed and the department has made a final determination on the merits, which shall be made within 60 days after the completion of the hearing. If the determination is not transmitted within this period, the temporary suspension shall be of no further effect.

(Added by Stats. 1986, Ch. 1187, Sec. 12.)

25186.3. (a) The department shall prepare a written report pursuant to subdivision (b) whenever the department proposes to issue a hazardous waste facilities permit applied for pursuant to Section 25200 and the department has information that the applicant, or the applicant under any previous name or names, or, if the applicant is a business concern, any officer, director, or partner of the business concern, has been named as a party in any action involving violation of any statute, regulation, or requirement specified in Section 25186, excluding civil and administrative penalties of one thousand dollars ($1,000) or less at any hazardous waste facility issued a permit pursuant to this chapter, and that a conviction, judgment, or settlement has been entered during a three-year period preceding the date of application.

(b) The report shall list all convictions, judgments, and settlements relating to violations of any statutes, regulations, or requirements specified in Section 25186, excluding civil and administrative penalties of one thousand dollars ($1,000) or less at any hazardous waste facility issued a permit pursuant to this chapter, that occurred during the three-year period preceding the date of application. The listing of settlements shall include the following statement: "Settlements may or may not include admissions of guilt." The report shall separately list all criminal convictions and those violations resulting in penalties of fifty thousand dollars ($50,000) or more and shall be included in the administrative record for the proposed permit.

(c) For the purposes of this section, the department may use criminal history information obtained from the Department of Justice to the extent that the information is necessary to list all convictions, judgments, and settlements as required by subdivision (b).

(d) This section does not apply to facilities that meet the requirements necessary to operate pursuant to the department's permit-by-rule regulations.

(Added by Stats. 1991, Ch. 1209, Sec. 1.)

25186.5. (a) In making a determination pursuant to Section 25186, the director may contact the district attorney, local agencies, the Attorney General, the United States Department of Justice, the Environmental Protection Agency, or other agencies outside of the state which have, or have had, regulatory or enforcement jurisdiction over the applicant in connection with any hazardous waste or hazardous materials activities.

(b) Every hazardous waste licenseholder or applicant, other than a federal, state, or local agency, who is not otherwise required to file a disclosure statement on or before January 1, 1989, shall file a disclosure statement with the department on or before January 1, 1989.

(c) If changes or additions of information regarding majority ownership, the business name, or the information required by paragraphs (6) and (8) of subdivision (a) of Section 25112.5 occur after the filing of the statement, the licenseholder or applicant shall provide that information to the department, in writing, within 30 days of the change or addition.

(d) Any person submitting a disclosure statement shall pay a fee set by the department in an amount adequate to defray the costs of implementing this section, per person, officer, director, or partner required to be listed in the disclosure statement, in addition to any other fees required. The department shall deposit these fees in the Hazardous Waste Control Account. The fees shall be made available, upon appropriation by the Legislature, to cover the costs of conducting the necessary background searches.

(e) Any person who knowingly makes any false statement or misrepresentation in a disclosure statement filed pursuant to the requirements of this chapter is, upon conviction, subject to the penalties specified in Sections 25189 and 25189.2 and subdivision (a) of Section 25191.

(f) The disclosure statement submitted pursuant to subdivision (b) is exempt from the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(Amended by Stats. 1995, Ch. 639, Sec. 25. Effective January 1, 1996.)

25186.6. (a) In any case filed in any court or administrative tribunal, including, but not limited to, the Office of Administrative Hearings, which alleges any violations of this chapter or any statute, regulation, or requirement specified in Section 25186, the prosecuting attorney shall, within 30 days of the date of filing, forward, to the office of Attorney General located in the City of Los Angeles, a summary of the case which provides all of the following information:

(1) The case name and court or administrative number.

(2) The court or administrative tribunal in which the case is being prosecuted.

(3) The agency prosecuting the case.

(4) The name, business address, and telephone number of the prosecuting attorney.

(5) The statutes, regulations, or requirements which are alleged to have been violated.

(6) The date of filing and date or dates of alleged violations.

(7) A brief summary of the action.

(8) The names, addresses, and telephone numbers of all respondents or defendants in the action.

(9) The status of the case.

(b) Within 30 days of the conclusion of a case specified in subdivision (a) by verdict, award, judgment, dismissal, or settlement, the prosecuting attorney shall forward, to the office of the Attorney General located in the City of Los Angeles, an update of the information required by subdivision (a), including a statement describing the final outcome of the case.

(c) The cases subject to this section shall include those cases which are brought for purposes of clarifying, enforcing, limiting, or overturning any case which arose out of a violation of this chapter or statute, regulation, or requirement specified in Section 25186, including, but not limited to, appeals, actions for contempt, and revocations of probation.

(Added by Stats. 1989, Ch. 1257, Sec. 5.)

25186.7. The department may suspend or revoke any grant of authorization to operate pursuant to a permit-by-rule or authorization to conduct treatment pursuant to subdivision (a) or (c) of Section 25201.5, in accordance with the procedures specified in Sections 25186.1 and 25186.2, for any of the grounds specified in Section 25186 and may suspend or revoke any grant of conditional authorization granted pursuant to Section 25200.3 in accordance with the procedures specified in Sections 25186.1 and 25186.2, for any of the grounds specified in Section 25186 or as specified in subdivision (j) of Section 25200.3.

(Added by Stats. 1992, Ch. 1345, Sec. 6. Effective January 1, 1993.)

25187. (a) (1) The department or a unified program agency, in accordance with subdivision (l), may issue an order requiring that the violation be corrected and imposing an administrative penalty, for any violation of this chapter or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, whenever the department or Unified Program Agency determines that a person has violated, is in violation of, or threatens, as defined in subdivision (e) of Section 13304 of the Water Code, to violate, this chapter or Chapter 6.8 (commencing with Section 25300), or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter or Chapter 6.8 (commencing with Section 25300).

(2) In an order proposing a penalty pursuant to this section, the department or Unified Program Agency shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed penalty, and the prophylactic effect that the imposition of the proposed penalty would have on both the violator and the regulated community as a whole.

(b) The department or a unified program agency, in accordance with subdivision (l), may issue an order requiring corrective action whenever the department or Unified Program Agency determines that there is or has been a release, as defined in Chapter 6.8 (commencing with Section 25300), of hazardous waste or constituents into the environment from a hazardous waste facility.

(1) In the case of a release of hazardous waste or constituents into the environment from a hazardous waste facility that is required to obtain a permit pursuant to Article 9 (commencing with Section 25200), the department shall pursue the remedies available under this chapter, including the issuance of an order for corrective action pursuant to this section, before using the legal remedies available pursuant to Chapter 6.8 (commencing with Section 25300), except in any of the following circumstances:

(A) Where the person who is responsible for the release voluntarily requests in writing that the department issue an order to that person to take corrective action pursuant to Chapter 6.8 (commencing with Section 25300).

(B) Where the person who is responsible for the release is unable to pay for the cost of corrective action to address the release. For purposes of this subparagraph, the inability of a person to pay for the cost of corrective action shall be determined in accordance with the policies of the Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United States Code.

(C) Where the person responsible for the release is unwilling to perform corrective action to address the release. For purposes of this subparagraph, the unwillingness of a person to take corrective action shall be determined in accordance with the policies of the Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United States Code.

(D) Where the release is part of a regional or multisite groundwater contamination problem that cannot, in its entirety, be addressed using the legal remedies available pursuant to this chapter and for which other releases that are part of the regional or multisite groundwater contamination problem are being addressed using the legal remedies available pursuant to Chapter 6.8 (commencing with Section 25300).

(E) Where an order for corrective action has already been issued against the person responsible for the release, or the department and the person responsible for the release have, prior to January 1, 1996, entered into an agreement to address the required cleanup of the release pursuant to Chapter 6.8 (commencing with Section 25300).

(F) Where the hazardous waste facility is owned or operated by the federal government.

(2) The order shall include a requirement that the person take corrective action with respect to the release of hazardous waste or constituents, abate the effects thereof, and take any other necessary remedial action.

(3) If the order requires corrective action at a hazardous waste facility, the order shall require that corrective action be taken beyond the facility boundary, where necessary to protect human health or the environment.

(4) The order shall incorporate, as a condition of the order, any applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board, and shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code and state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code existing at the time of the issuance of the order, to the extent that the department or Unified Program Agency determines that those plans and policies are not less stringent than this chapter and regulations adopted pursuant to this chapter. The order may include any more stringent requirement that the department or Unified Program Agency determines is necessary or appropriate to protect water quality.

(5) Persons who are subject to an order pursuant to this subdivision include present and prior owners, lessees, or operators of the property where the hazardous waste is located, present or past generators, storers, treaters, transporters, disposers, and handlers of hazardous waste, and persons who arrange, or have arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste.

(6) For purposes of this subdivision, "hazardous waste facility" includes the entire site that is under the control of an owner or operator engaged in the management of hazardous waste.

(c) Any order issued pursuant to this section shall be served by personal service or certified mail and shall inform the person so served of the right to a hearing. If the Unified Program Agency issues the order pursuant to this section, the order shall state whether the hearing procedure

specified in paragraph (2) of subdivision (f) may be requested by the person receiving the order.

(d) Any person served with an order pursuant to this section who has been unable to resolve any violation or deficiency on an informal basis with the department or Unified Program Agency may, within 15 days after service of the order, request a hearing pursuant to subdivision (e) or (f) by filing with the department or Unified Program Agency a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(e) Any hearing requested on an order issued by the department shall be conducted within 90 days after receipt of the notice of defense by an administrative law judge of the Office of Administrative Hearings of the Department of General Services in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the authority granted to an agency by those provisions.

(f) Except as provided in subparagraph (B) of paragraph (2), a person requesting a hearing on an order issued by a unified program agency may select the hearing process specified in either paragraph (1) or (2) in the notice of defense filed with the Unified Program Agency pursuant to subdivision (d). Within 90 days of receipt of the notice of defense by the Unified Program Agency, the hearing shall be conducted using one of the following procedures:

(1) An administrative law judge of the Office of Administrative Hearings of the Department of General Services shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) (A) A hearing officer designated by the Unified Program Agency shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the Unified Program Agency shall have all the authority granted to an agency by those provisions. When a hearing is conducted by a unified program agency pursuant to this paragraph, the Unified Program Agency shall, within 60 days of the hearing, issue a decision.

(B) A person requesting a hearing on an order issued by a unified program agency may select the hearing process specified in this paragraph in a notice of defense filed pursuant to subdivision (d) only if the Unified Program Agency has, as of the date the order is issued pursuant to subdivision (c), selected a designated hearing officer and established a program for conducting a hearing in accordance with this paragraph.

(g) The hearing decision issued pursuant to subdivision (f) shall be effective and final upon issuance. Copies of the decision shall be served by personal service or by certified mail upon the party served with the order and upon other persons who appeared at the hearing and requested a copy.

(h) Any provision of an order issued under this section, except the imposition of an administrative penalty, shall take effect upon issuance by the department or Unified Program Agency if the department or Unified Program Agency finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment, and a request for a hearing shall not stay the effect of that provision of the order pending a hearing decision. However, if the department or Unified Program Agency determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, then the order as a whole, except the imposition of an administrative penalty, shall take effect upon issuance by the department or Unified Program Agency. A request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.

(i) A decision issued pursuant to this section may be reviewed by the court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this section, the court shall uphold the decision of the department or Unified Program Agency if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(j) All administrative penalties collected from actions brought by the department pursuant to this section shall be placed in a separate subaccount in the Toxic Substances Control Account and shall be available only for transfer to the Site Remediation Account or the Expedited Site Remediation Trust Fund and for expenditure by the department upon appropriation by the Legislature.

(k) All administrative penalties collected from an action brought by a unified program agency pursuant to this section shall be paid to the Unified Program Agency that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the activities of the Unified Program Agency in enforcing this chapter pursuant to Section 25180.

(l) The authority granted under this section to a unified program agency is limited to both of the following:

(1) The issuance of orders to impose penalties and to correct violations of the requirements of this chapter and its implementing regulations, only when the violations are violations of requirements applicable to hazardous waste generators and persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, when the violations occur at a unified program facility within the jurisdiction of the CUPA.

(2) The issuance of orders to require corrective action when there has been a release of hazardous waste or constituents only when the Unified Program Agency is authorized to do so pursuant to Section 25404.1.

(m) The CUPA shall annually submit a summary report to the department on the status of orders issued by the unified program agencies under this section and Section 25187.1.

(n) The CUPA shall consult with the district attorney for the county on the development of policies to be followed in exercising the authority delegated pursuant to this section and Section 25187.1, as they relate to the authority of unified program agencies to issue orders.

(o) The CUPA shall arrange to have appropriate legal representation in administrative hearings that are conducted by an administrative law judge of the Office of Administrative Hearings of the Department of General Services, and when a decision issued pursuant to this section is appealed to the superior court.

(p) The department may adopt regulations to implement this section and paragraph (2) of subdivision (a) of Section 25187.1 as they relate to the authority of unified program agencies to issue orders. The regulations shall include, but not be limited to, all of the following requirements:

(1) Provisions to ensure coordinated and consistent application of this section and Section 25187.1 when both the department and the Unified Program Agency have or will be issuing orders under one or both of these sections at the same facility.

(2) Provisions to ensure that the enforcement authority granted to the unified program agencies will be exercised consistently throughout the state.

(3) Minimum training requirements for staff of the Unified Program Agency relative to this section and Section 25187.1.

(4) Procedures to be followed by the department to rescind the authority granted to a unified program agency under this section and Section 25187.1, if the department finds that the Unified Program Agency is not exercising that authority in a manner consistent with this chapter and Chapter 6.11 (commencing with Section 25404) and the regulations adopted pursuant thereto.

(q) Except for an enforcement action taken pursuant to this chapter or Chapter 6.8 (commencing with Section 25300), this section does not otherwise affect the authority of a local agency to take any action under any other provision of law.

(Amended by Stats. 2002, Ch. 999, Sec. 9. Effective January 1, 2003.)

25187.1. (a) (1) If the department or a unified program agency authorized pursuant to paragraph (2) determines, upon receipt of any information, that the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or the release of any hazardous waste from the facility or site may present a substantial hazard to human health or the environment, the department or authorized unified program agency may issue an order requiring the owner or operator of the facility or site to conduct monitoring, testing, analysis, and reporting with respect to the facility or site which the department or authorized unified program agency deems reasonable to ascertain the nature and extent of the hazard.

(2) The authority granted under this section to a unified program agency is limited to the issuance of orders pursuant to paragraph (1) to a unified program facility within the jurisdiction of the CUPA, and is subject

to Section 25404.1.

(b) If a facility or site subject to subdivision (a) is not in operation at the time the determination is made and the department finds that the owner of the facility or site, could not reasonably be expected to have actual knowledge of the presence of hazardous waste at the facility or site and of its potential for release, the department may issue an order requiring the most recent previous owner or operator of the facility or site who could reasonably be expected to have the actual knowledge to carry out the actions specified in subdivision (a).

(c) Any order issued pursuant to subdivision (a) or (b) shall require the person to whom the order is issued to submit to the department or authorized unified program agency, within 30 days from the issuance of the order, a proposal for carrying out the required monitoring, testing, analysis, and reporting. The department or authorized unified program agency may, after providing the person with an opportunity to confer with the department or authorized unified program agency concerning the proposal, require the person to carry out the monitoring, testing, analysis, and reporting in accordance with the proposal, and with any modifications in the proposal as the department or authorized unified program agency deems reasonable to ascertain the nature and extent of the hazard.

(d) If the department or authorized unified program agency determines that there is no owner or operator specified in subdivision (a) or (b) to conduct monitoring, testing, analysis, or reporting satisfactory to the department or authorized unified program agency, if the department or authorized unified program agency deems the action carried out by an owner or operator is unsatisfactory, or if the department or authorized unified program agency cannot initially determine that there is an owner or operator specified in subdivision (a) or (b) who is able to conduct monitoring, testing, analysis, or reporting, the department or authorized unified program agency may do either of the following:

(1) Conduct monitoring, testing, or analysis, or any combination of these actions, which the department or authorized unified program agency deems reasonable, to ascertain the nature and extent of the hazard associated with the site.

(2) Authorize a local authority or other person to carry out the action, and require, by order, the owner or operator specified in subdivision (a) or (b) to reimburse the department or authorized unified program agency or other authority or person for the costs of the activity.

(e) The department or authorized unified program agency shall not issue an order pursuant to this section which requires the department or authorized unified program agency to be reimbursed for the costs of any action carried out by the department or authorized unified program agency to conduct monitoring, testing, and analysis to determine the results of the actions carried out by a person pursuant to an order issued pursuant to subdivision (a) or (b).

(f) For purposes of carrying out this section, the department, an authorized unified program agency, any other local agency, or other person authorized under paragraph (2) of subdivision (d), may take action pursuant to Section 25185.

(Amended by Stats. 1995, Ch. 639, Sec. 27. Effective January 1, 1996.)

25187.2. If a removal or remedial action order issued pursuant to Section 25187 to a potentially responsible party requires a person to take corrective action with respect to hazardous waste, that person shall pay for oversight of the removal or remedial action. This section does not prohibit the department or unified program agency from assessing any other penalty or recovering any costs for oversight of a removal or remedial action, pursuant to any other provision. Nothing in this section limits the due process requirements of Section 25187.

(Amended by Stats. 1996, Ch. 576, Sec. 1. Effective January 1, 1997.)

25187.5. (a) If corrective action is not taken on or before the date specified in an order issued pursuant to Section 25187, or if in the judgment of the department immediate corrective action is necessary to remedy or prevent an imminent substantial danger to the public health, domestic livestock, wildlife, or the environment, the department may take, or contract for the taking of, that corrective action and recover the cost thereof as provided in subdivision (c).

(b) (1) The department may expend up to one hundred thousand dollars ($100,000) in a 12-month period of available moneys in the Hazardous Waste Control Account in the General Fund to take corrective action pursuant to subdivision (a).

(2) Notwithstanding any other provision of law, the department may enter into written contracts for corrective action taken or to be taken pursuant to subdivision (a).

(3) Notwithstanding any other provision of law, the department may enter into oral contracts, not to exceed ten thousand dollars ($10,000) in obligation, when in the judgment of the department immediate corrective action is necessary to remedy or prevent an imminent substantial danger to the public health, domestic livestock, wildlife, or the environment.

(4) The contracts entered into pursuant to this subdivision, whether written or oral, may include provisions for the rental of tools or equipment, either with or without operators furnished, and for the furnishing of labor and materials necessary to accomplish the work.

(5) Any contract entered into by the department pursuant to this subdivision shall be exempt from approval by the Department of General Services pursuant to Section 10295 of the Public Contract Code.

(c) If corrective action is taken pursuant to subdivision (a), the person or persons who were subject to the order issued pursuant to Section 25187, or any person or persons whose violation resulted in the imminent and substantial danger to health or the environment shall be liable to the department for the reasonable cost actually incurred in taking corrective action. In addition, the person or persons shall be liable to the department for administrative costs in an amount equal to 10 percent of the reasonable cost actually incurred or five hundred dollars ($500), whichever is greater. The amount of cost determined pursuant to this subdivision shall be recoverable in a civil action by the department, in addition to any other fees or penalties. Persons who may be liable pursuant to this subdivision shall include, but not be limited to, present or prior owners, lessees, or operators of the property where the hazardous waste is located and producers, transporters or disposers of the hazardous waste.

(d) Neither the department, nor any person authorized by the department to enter upon any lands for the purpose of taking corrective action pursuant to subdivision (a) is liable to civil or criminal action for trespass for any acts that are necessary to carry out the corrective action.

(e) This section does not impose any new liability associated with acts that occurred before January 1, 1981, if the acts were not in violation of existing law or regulations at the time they occurred.

(Amended by Stats. 1998, Ch. 882, Sec. 6. Effective January 1, 1999.)

25187.6. (a) If an authorized agent of the department has probable cause to believe that any hazardous waste, or any material which the authorized agent reasonably believes to be a hazardous waste, is stored, transported, disposed of, or handled in violation of this chapter or in a manner that will constitute a violation of this chapter, and that the violation may threaten public health and safety, or the environment, the agent may issue an order of quarantine by affixing a tag or other appropriate marking to the container containing, or to the vehicle transporting, the hazardous waste.

(b) Upon issuing an order of quarantine pursuant to subdivision (a), the authorized agent shall notify the person who owns the hazardous waste, or the owner or lessee of the vehicle in which the wastes are transported, of all of the following:

(1) The hazardous waste has been subject to a quarantine order because the hazardous waste is, or is suspected of being, stored, transported, disposed of, or handled in violation of this chapter.

(2) No person shall remove, transfer, or dispose of the hazardous waste until permission for removal, transfer, or disposal is given by an authorized agent of the department or by a court.

(3) The person so notified may request, and shall be granted, an immediate hearing before a person designated by the director to review the validity of the authorized agent's order. For purposes of this section, an immediate hearing shall be held within 24 hours after a hearing is requested by the person subject to the order.

(c) Any order of quarantine issued pursuant to subdivision (a) shall take effect upon issuance and shall remain effective for 30 days thereafter, until an authorized agent removes the quarantine order pursuant to subdivision (d), or until the quarantine order is revoked pursuant to a hearing conducted in accordance with paragraph (3) of subdivision (b), whichever event occurs first.

(d) If an authorized agent of the department determines that a hazardous waste subject to a quarantine order is not being stored, handled, transported, or disposed of in violation of this chapter, or does not threaten public health and safety or the environment, the authorized agent shall revoke

the order of quarantine.

(e) If an authorized agent of the department has probable cause to believe that a hazardous waste subject to a quarantine order will, or is likely to, be removed, transferred or disposed of in violation of this section, the authorized agent may remove the hazardous waste to a place of safekeeping.

(f) A hazardous waste in transit for which a quarantine order has been issued pursuant to subdivision (a) shall be stored or held at one of the following locations, which the authorized agent determines will represent the least risk to the public health and safety or the environment:

(1) The facility owned or operated by the producer of the waste, except when the producer is located outside the state.

(2) The transporter's yard, facility, or terminal.

(3) The treatment, storage, or disposal facility to which the hazardous waste is to be transported.

(4) Any other site designated by the authorized agent.

(g) All fees for storage and any other expenses incurred in carrying out subdivision (e) or (f) shall be a charge against the person who owns the hazardous waste or the owner or lessee of the vehicle in which the wastes are transported.

(h) For purposes of this section, "authorized agent of the department" includes any representative of a local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.

(Amended by Stats. 1995, Ch. 639, Sec. 30. Effective January 1, 1996.)

25187.8. (a) An authorized representative of the department or local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180, who, in the course of conducting an inspection of a facility, detects a minor violation of any permit conditions, rule, regulation, standard, or other requirement, shall issue a notice to comply before leaving the site in which the minor violation is alleged to have occurred.

(b) A facility which receives a notice to comply pursuant to subdivision (a) shall have not more than 30 days from the date of receipt of the notice to comply in which to achieve compliance with the permit conditions, rule, regulation, standard, or other requirement cited on the notice to comply. Within five working days of achieving compliance, an appropriate person who is an owner or operator of, or an employee at, the facility shall sign the notice to comply and return it to the department representative or to the authorized local officer or agency, as the case may be, which states that the facility has complied with the notice to comply. A false statement that compliance has been achieved is a violation of this chapter pursuant to Section 25191.

(c) A single notice to comply shall be issued for all minor violations cited during the same inspection and the notice to comply shall separately list each of the cited minor violations and the manner in which each of the minor violations may be brought into compliance.

(d) A notice to comply shall not be issued for any minor violation which is corrected immediately in the presence of the inspector. Immediate compliance in that manner may be noted in the inspection report, but the facility shall not be subject to any further action by the department representative or by the authorized local officer or agency.

(e) Except as otherwise provided in subdivision (g), a notice to comply shall be the only means by which the department representative or the authorized local officer or agency shall cite a minor violation. The department representative or the authorized local officer or agency shall not take any other enforcement action specified in this chapter against a facility which has received a notice to comply if the facility complies with this section.

(f) If a facility that receives a notice to comply pursuant to subdivision (a) disagrees with one or more of the alleged violations listed on the notice to comply, the owner shall give the person who issued the notice to comply written notice of disagreement. If the issuing agency takes administrative enforcement action on the basis of the disputed violation, that action may be appealed in the same manner as for other alleged violations under subdivisions (d) to (j), inclusive, of Section 25187.

(g) (1) Notwithstanding any other provision of this section, if a facility fails to comply with a notice to comply within the prescribed period, or if the department, or an authorized local officer or agency, determines that the circumstances surrounding a particular minor violation or combination of minor violations are such that immediate enforcement is warranted to prevent harm to the public health or safety or to the environment, the department or authorized local officer or agency may take any needed enforcement action authorized by this chapter.

(2) Notwithstanding any other provision of this section, if the department, or an authorized local officer or agency, determines that the circumstances surrounding a particular minor violation or combination of minor violations are such that the assessment of a civil penalty pursuant to this chapter is warranted or is required by the federal act, in addition to issuance of a notice to comply, the department or authorized local officer or agency shall assess that civil penalty in accordance with this chapter, if the department or authorized local officer or agency makes written findings that set forth the basis for the department's or authorized local officer's or agency's determination.

(h) A notice to comply issued to a facility pursuant to this section shall contain an explicit statement that the facility may be subject to reinspection at any time by the department or authorized local officer or agency that issued the notice to comply. Nothing in this section shall be construed as preventing the reinspection of a facility to ensure compliance with this chapter or to ensure that minor violations cited in a notice to comply have been corrected and that the facility is in compliance with this chapter.

(i) Nothing in this section shall be construed as preventing the department, or authorized local officer or agency, on a case-by-case basis, from requiring a facility to submit reasonable and necessary documentation to support the facility's claim of compliance pursuant to subdivision (b).

(Amended by Stats. 1995, Ch. 639, Sec. 32.5. Effective January 1, 1996.)

25188. Any person subject to a schedule for compliance issued pursuant to Section 25187 who does not comply with that schedule shall be subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day of noncompliance.

(Amended by Stats. 1980, Ch. 876.)

25189. (a) A person who intentionally or negligently makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this chapter, shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation or, for continuing violations, for each day that violation continues.

(b) Except as provided in subdivision (c), (d), or (e), a person who intentionally or negligently violates a provision of this chapter or a permit, rule, regulation, standard, or requirement issued or promulgated pursuant to this chapter, shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each violation of a separate provision or, for continuing violations, for each day that violation continues.

(c) A person who intentionally disposes or causes the disposal of a hazardous or extremely hazardous waste at a point that is not authorized according to the provisions of this chapter shall be subject to a civil penalty of not less than one thousand dollars ($1,000) or more than twenty-five thousand dollars ($25,000) for each violation and may be ordered to disclose the fact of this violation or these violations to those persons as the court may direct. Each day on which the deposit remains and the person has knowledge thereof is a separate additional violation, unless the person immediately files a report of the deposit with the department and is complying with an order concerning the deposit issued by the department, a hearing officer, or a court of competent jurisdiction for the cleanup.

(d) A person who negligently disposes or causes the disposal of a hazardous or extremely hazardous waste at a point which is not authorized according to the provisions of this chapter shall be subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation and may be ordered to disclose the fact of this violation or these violations to those persons as the court may direct. Each day on which the deposit remains and the person had knowledge thereof is a separate additional violation, unless the person immediately files a report of the deposit with the department and is complying with an order concerning the deposit issued by the department, a hearing officer, or a court of competent jurisdiction for the cleanup.

(e) A person who intentionally or negligently treats or stores, or causes the treatment or storage of, a hazardous waste at a point that is not authorized according to this chapter, shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation

or, for continuing violations, for each day that the violation continues.

(f) Each civil penalty imposed for a separate violation pursuant to this section shall be separate and in addition to any other civil penalty imposed pursuant to this section or any other provision of law.

(g) A person shall not be liable for a civil penalty imposed under this section and for a civil penalty imposed under Section 25189.2 for the same act or failure to act.

(Amended by Stats. 2007, Ch. 705, Sec. 1. Effective January 1, 2008.)

25189.1. (a) In addition to liability under any other provision of law, any person who is liable for a civil penalty pursuant to subdivision (c) or (d) of Section 25189 or subdivision (c) of Section 25189.2, or is convicted pursuant to subdivision (b) of Section 25189.5, is also civilly liable for all the costs or expenses which may be incurred by the state, or by a local agency, in doing any of the following:

(1) Assess short-term or long-term injury to, degradation or destruction of, or any loss of, any natural resource resulting from the disposal of the hazardous waste which is the subject of the civil penalty or conviction.

(2) Restore, rehabilitate, replace, or acquire the equivalent of, any natural resource injured, degraded, destroyed, or lost as a result of the disposal of the hazardous waste which is the subject of the civil penalty or conviction.

(b) The liability imposed by subdivision (a) is separate and in addition to any civil penalty imposed pursuant to subdivision (c) or (d) of Section 25189 or subdivision (c) of Section 25189.2 or any fine imposed pursuant to subdivision (e) of Section 25189.5.

(c) Any funds collected pursuant to this section are in addition to any other funds which may be collected pursuant to this chapter.

(d) A state or local agency may collect funds pursuant to this section prior to carrying out the actions specified in paragraph (1) or (2) of subdivision (a).

(e) An action brought pursuant to this section may be brought by the trustee of the natural resources specified in subdivision (c) of Section 25352. The action may be prosecuted by the Attorney General or the district attorney. The action may be prosecuted by the district attorney only after the trustee, in consultation with the Office of the Attorney General, approves that prosecution in writing. The trustee shall have 30 days to consider any requested action and approval shall be presumed to have been granted if a written denial is not issued within 30 days. The trustee may not unreasonably withhold approval.

(f) All funds collected pursuant to this section by the trustee of the natural resources shall be deposited, at the discretion of the trustee, in the Fish and Wildlife Pollution Cleanup and Abatement Account in the Fish and Game Preservation Fund or in a special deposit trust fund.

(Added by Stats. 1992, Ch. 1123, Sec. 1. Effective January 1, 1993.)

25189.2. (a) A person who makes a false statement or representation in an application, label, manifest, record, report, permit, or other document, filed, maintained, or used for purposes of compliance with this chapter, is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation or, for continuing violations, for each day that the violation continues.

(b) Except as provided in subdivision (c) or (d), a person who violates a provision of this chapter or a permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

(c) A person who disposes, or causes the disposal of, a hazardous or extremely hazardous waste at a point that is not authorized according to the provisions of this chapter is liable for a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation and may be ordered to disclose the fact of this violation or these violations to those persons as the court or, in the case of an administrative action, a hearing officer, may direct. Each day on which the deposit remains is a separate additional violation, unless the person immediately files a report of the deposit with the department and is complying with an order concerning the deposit issued by the department, a hearing officer, or a court of competent jurisdiction for the cleanup.

(d) A person who treats or stores, or causes the treatment or storage of, a hazardous waste at a point that is not authorized according to this chapter, shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation or, for continuing violations, for each day that the violation continues.

(e) For purposes of subdivisions (c) and (d), a person who offers hazardous waste to a transporter that is registered pursuant to Section 25163 or to a storage, treatment, transfer, resource recovery, or disposal facility that holds a valid hazardous waste facilities permit or other grant of authorization from the department that authorizes the facility to accept the waste being offered shall not be considered to have caused disposal, treatment, or storage of hazardous waste at an unauthorized point solely on the basis of having offered that person's waste, provided the person has taken reasonable steps to determine that the transporter is registered or the facility is authorized by the department to accept the hazardous waste being offered.

(f) A person shall not be liable for a civil penalty imposed under this section and for a civil penalty imposed under Section 25189 for the same act or failure to act.

(g) Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to Section 25187.

(Amended by Stats. 2007, Ch. 705, Sec. 2. Effective January 1, 2008.)

25189.3. (a) For purposes of this section, the term "permit" means a hazardous waste facilities permit, interim status authorization, or standardized permit.

(b) The department shall suspend the permit of any facility for nonpayment of any facility fee assessed pursuant to Section 25205.2 or activity fee assessed pursuant to subdivision (d) of Section 25205.7, if the operator of the facility is subject to the fee, and if the State Board of Equalization has certified in writing to all of the following:

(1) The facility's operator is delinquent in the payment of the fee for one or more reporting periods.

(2) The State Board of Equalization has notified the facility's operator of the delinquency.

(3) The operator has exhausted the administrative rights of appeal provided by Chapter 3 (commencing with Section 43151) of Part 22 of Division 2
of the Revenue and Taxation Code, and the State Board of Equalization has determined that the operator is liable for the fee, or that the operator has failed to assert those rights.

(c) (1) The department shall suspend the permit of any facility for nonpayment of a penalty assessed upon the owner or operator for failure to comply with this chapter or the regulations adopted pursuant to this chapter, if the penalty has been imposed by a trial court judge or by an administrative hearing officer, if the person has agreed to pay the penalty pursuant to a written agreement resolving a lawsuit or an administrative order, or if the penalty has become final due to the person's failure to respond to the lawsuit or order.

(2) The department may suspend a permit pursuant to this subdivision only if the owner or operator is delinquent in the payment of the penalty and the department has notified the owner or operator of the delinquency pursuant to subdivision (d).

(d) Before suspending a permit pursuant to this section, the department shall notify the owner or operator of its intent to do so, and shall allow the owner or operator a minimum of 30 days in which to cure the delinquency.

(e) The department may deny a new permit or refuse to renew a permit on the same grounds for which the department is required to suspend a permit under this section, subject to the same requirements and conditions.

(f) (1) The department shall reinstate a permit that is suspended pursuant to this section upon payment of the amount due, if the permit has not otherwise been revoked or suspended pursuant to any other provision of this chapter or regulation. Until the department reinstates a permit suspended pursuant to this section, if the facility stores, treats, disposes of, or recycles hazardous wastes, the facility shall be in violation of this chapter. If the operator of the facility subsequently pays the amount due, the period of time for which the operator shall have been in violation of this chapter shall be from the date of the activity that is in violation until the day after the owner or operator submits the payment to the department.

(2) Except as otherwise provided in this section, the department is not required to take any other statutory or regulatory procedures governing the suspension of the permit before suspending a permit in compliance with the procedures of this section.

(g) (1) A suspension under this section shall be stayed while an authorized appeal of the fee or penalty is pending before a court or an administrative agency.

(2) For purposes of this subdivision, "an authorized appeal" means any appeal allowed pursuant to an applicable regulation or statute.

(h) The department may suspend a permit under this section based on a failure to pay the required fee or penalty that commenced prior to January 1, 2002, if the failure to pay has been ongoing for at least 30 days following that date.

(i) Notwithstanding Section 43651 of the Revenue and Taxation Code, the suspension of a permit pursuant to this section, the reason for the suspension, and any documentation supporting the suspension, shall be a matter of public record.

(j) (1) This section does not authorize the department to suspend a permit held by a government agency if the agency does not dispute the payment but nonetheless is unable to process the payment in a timely manner.

(2) This section does not apply to a site owned or operated by a federal agency if the department has entered into an agreement with that federal agency regarding the remediation of that site.

(k) This section does not limit or supersede Section 25186.

(Added by Stats. 2001, Ch. 461, Sec. 1. Effective January 1, 2002.)

25189.5. (a) The disposal of any hazardous waste, or the causing thereof, is prohibited when the disposal is at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter.

(b) Any person who is convicted of knowingly disposing or causing the disposal of any hazardous waste, or who reasonably should have known that he or she was disposing or causing the disposal of any hazardous waste, at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment in the state prison.

(c) Any person who knowingly transports or causes the transportation of hazardous waste, or who reasonably should have known that he or she was causing the transportation of any hazardous waste, to a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter, shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment in the state prison.

(d) Any person who knowingly treats or stores any hazardous waste at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter, shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment in the state prison.

(e) The court also shall impose upon a person convicted of violating subdivision (b), (c), or (d), a fine of not less than five thousand dollars ($5,000) nor more than one hundred thousand dollars ($100,000) for each day of violation, except as further provided in this subdivision. If the act which violated subdivision (b), (c), or (d) caused great bodily injury, or caused a substantial probability that death could result, the person convicted of violating subdivision (b), (c), or (d) may be punished by imprisonment in the state prison for one, two, or three years, in addition and consecutive to the term specified in subdivision (b), (c), or (d), and may be fined up to two hundred fifty thousand dollars ($250,000) for each day of violation.

(f) For purposes of this section, except as otherwise provided in this subdivision, "each day of violation" means each day on which a violation continues. In any case where a person has disposed or caused the disposal of any hazardous waste in violation of this section, each day that the waste remains disposed of in violation of this section and the person has knowledge thereof is a separate additional violation, unless the person has filed a report of the disposal with the department and is complying with any order concerning the disposal issued by the department, a hearing officer, or court of competent jurisdiction.

(Amended by Stats. 1999, Ch. 706, Sec. 1. Effective October 10, 1999. Note: The text of subd. (e) originated in subd. (d) as added Nov. 4, 1986, by initiative Prop. 65. Prop. 65 allows the Legislature to directly amend its provisions by 2/3 vote.)

25189.6. (a) Any person who knowingly, or with reckless disregard for the risk, treats, handles, transports, disposes, or stores any hazardous waste in a manner which causes any unreasonable risk of fire, explosion, serious injury, or death is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) nor more than two hundred fifty thousand dollars ($250,000) for each day of violation, or by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison, or by both the fine and imprisonment.

(b) Any person who knowingly, at the time the person takes the actions specified in subdivision (a), places another person in imminent danger of death or serious bodily injury, is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) nor more than two hundred fifty thousand dollars ($250,000) for each day of violation, and by imprisonment in the state prison for 3, 6, or 9 years.

(Amended by Stats. 1999, Ch. 706, Sec. 2. Effective October 10, 1999.)

25189.7. (a) The burning or incineration of any hazardous waste, or the causing thereof, is prohibited when the burning or incineration is at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter.

(b) Any person who is convicted of knowingly burning or incinerating, or causing the burning or incineration of, any hazardous waste, or who reasonably should have known that he or she was burning or incinerating, or causing the burning or incineration of, any hazardous waste, at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter, shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment in the state prison.

(c) The court also shall impose upon a person convicted of violating subdivision (b) a fine of not less than five thousand dollars ($5,000) nor more than one hundred thousand dollars ($100,000) for each day of violation, except as otherwise provided in this subdivision. If the act which violated subdivision (b) caused great bodily injury or caused a substantial probability that death could result, the person convicted of violating subdivision (b) may be punished by imprisonment in the state prison for one, two, or three years, in addition and consecutive to the term specified in subdivision (b), and may be fined up to two hundred fifty thousand dollars ($250,000) for each day of violation.

(Amended by Stats. 1999, Ch. 706, Sec. 3. Effective October 10, 1999.)

25190. Except as otherwise provided in Sections 25189.5, 25189.6, 25189.7, and 25191, any person who violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, is, upon conviction, guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for up to six months in the county jail or by both that fine and imprisonment.

If the conviction is for a second or subsequent violation, the person shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16, 20, or 24 months. The court shall also impose upon the person a fine of not less than five thousand dollars ($5,000) or more than twenty-five thousand dollars ($25,000).

(Amended by Stats. 1990, Ch. 571, Sec. 1.)

25191. (a) (1) Any person who knowingly does any of the acts specified in subdivision (b) shall, upon conviction, be punished by a fine of not less than two thousand dollars ($2,000) or more than twenty-five thousand dollars ($25,000) for each day of violation, or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(2) If the conviction is for a second or subsequent violation of subdivision (b), the person shall be punished by imprisonment in the state prison for 16, 20, or 24 months, or in the county jail for not more than one year, or by a fine of not less than two thousand dollars ($2,000) or more than fifty thousand dollars ($50,000) for each day of violation, or by both that fine and imprisonment.

(3) Each day or partial day that a violation occurs is a separate violation.

(b) A person who does any of the following is subject to the punishment prescribed in subdivision (a):

(1) Makes any false statement or representation in any application, label, manifest, record, report, permit, notice to comply, or other document

filed, maintained, or used for the purposes of compliance with this chapter.

(2) Has in his or her possession any record relating to the generation, storage, treatment, transportation, disposal, or handling of hazardous waste required to be maintained pursuant to this chapter, that has been altered or concealed.

(3) Destroys, alters, or conceals any record relating to the generation, storage, treatment, transportation, disposal, or handling of hazardous waste required to be maintained pursuant to this chapter.

(4) Withholds information regarding a real and substantial danger to the public health or safety when that information has been requested by the department, or by a local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180, and is required to carry out the responsibilities of the department or the authorized local officer or agency pursuant to this chapter in response to a real and substantial danger.

(5) Except as otherwise provided in this chapter, engages in transportation of hazardous waste in violation of Section 25160 or 25161, or subdivision (a) of Section 25163, or in violation of any regulation adopted by the department pursuant to those provisions, including, but not limited to, failing to complete or provide the manifest in the form and manner required by the department.

(6) Except as otherwise provided in this chapter, produces, receives, stores, or disposes of hazardous waste, or submits hazardous waste for transportation, in violation of Section 25160 or 25161 or any regulation adopted by the department pursuant to those sections, including, but not limited to, failing to complete, provide, or submit the manifest in the form and manner required by the department.

(7) Transports any waste, for which there is provided a manifest, if the transportation is in violation of this chapter or the regulations adopted by the department pursuant thereto.

(8) Violates Section 25162.

(c) (1) The penalties imposed pursuant to subdivision (a) on any person who commits any of the acts specified in paragraph (5), (7), or (8) of subdivision (b) shall be imposed only (A) on the owner or lessee of the vehicle in which the hazardous wastes are unlawfully transported, carried, or handled or (B) on the person who authorizes or causes the transporting, carrying, or handling. These penalties shall not be imposed on the driver of the vehicle, unless the driver is also the owner or lessee of the vehicle or authorized or caused the transporting, carrying, or handling.

(2) If any person other than the person producing the hazardous waste prepares the manifest specified in Section 25160, that other person is also subject to the penalties imposed on a person who commits any of the acts specified in paragraph (6) of subdivision (b).

(d) Any person who knowingly does any of the following acts, each day or partial day that a violation occurs constituting a separate violation, shall, upon conviction, be punished by a fine of not more than five hundred dollars ($500) for each day of violation, or by imprisonment in the county jail for not to exceed six months, or by both that fine and imprisonment:

(1) Carries or handles, or authorizes the carrying or handling of, a hazardous waste without having in the driver's possession the manifest specified in Section 25160.

(2) Transports, or authorizes the transportation of, hazardous waste without having in the driver's possession a valid registration issued by the department pursuant to Section 25163.

(e) Whenever any person is prosecuted for a violation pursuant to paragraph (5), (6), (7), or (8) of subdivision (b), subdivision (d), or subdivision (c) of Section 25189.5, the prosecuting attorney may take appropriate steps to make the owner or lessee of the vehicle in which the hazardous wastes are unlawfully transported, carried, or handled, the driver of the vehicle, or any other person who authorized or directed the loading, maintenance, or operation of the vehicle, who is reasonably believed to have violated these provisions, a codefendant. If a codefendant is held solely responsible and found guilty, the court may dismiss the charge against the person who was initially so charged.

(Amended by Stats. 1996, Ch. 539, Sec. 19. Effective January 1, 1997.)

25191.2. Actions pursuant to Sections 25189.5, 25189.6, 25189.7, 25190, and 25191 may be brought by any city attorney.

(Added by Stats. 1990, Ch. 185, Sec. 1.)

25191.7. (a) Any person who provides information which materially contributes to the imposition of a civil penalty or criminal fine against any person for violating this chapter shall be paid a reward pursuant to regulations adopted by the department under subdivision (f). The reward shall be equal to 10 percent of the amount of the civil penalty or criminal fine collected by the department, district attorney, or city attorney. The department shall pay the award to the person who provides information which results in the imposition of a civil penalty, and the county shall pay the award to the person who provides information which results in the imposition of a criminal fine. No reward paid pursuant to this subdivision shall exceed five thousand dollars ($5,000).

(b) No informant shall be eligible for a reward for a violation known to the department, unless the information materially contributes to the imposition of criminal or civil penalties for a violation specified in this section.

(c) If there is more than one informant for a single violation, the first notification received by the department shall be eligible for the reward. If the notifications are postmarked on the same day or telephoned notifications are received on the same day, the reward shall be divided equally among those informants.

(d) Public officers and employees of the United States, the State of California, or counties and cities in California are not eligible for the reward pursuant to subdivision (a), unless reporting those violations does not relate in any manner to their responsibilities as public officers or employees.

(e) An informant who is an employee of a business and who provides information that the business violated this chapter is not eligible for a reward if the employee intentionally or negligently caused the violation or if the employee's primary and regular responsibilities included investigating the violation, unless the business knowingly caused the violation.

(f) The department shall adopt regulations which establish procedures for the receipt and review of claims for payment of rewards. All decisions concerning the eligibility for an award and the materiality of the provided information shall be made pursuant to these regulations. In each case brought under subdivision (a), the department, the office of the city attorney, or the district attorney, whichever office brings the action, shall determine whether the information materially contributed to the imposition of civil or criminal penalties for violations of this chapter.

(g) The department shall continuously publicize the availability of the rewards pursuant to this section for persons who provide information pursuant to this section.

(h) Claims may be submitted only for those referrals made on or after January 1, 1982.

(Amended by Stats. 1986, Ch. 248, Sec. 149.)

25192. (a) All civil and criminal penalties collected pursuant to this chapter shall be apportioned in the following manner:

(1) Fifty percent shall be deposited in the Toxic Substances Control Account in the General Fund.

(2) Twenty-five percent shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action.

(3) Twenty-five percent shall be paid to the department and used to fund the activity of the CUPA, the local health officer, or other local public officer or agency authorized to enforce the provisions of this chapter pursuant to Section 25180, whichever entity investigated the matter that led to the bringing of the action. If investigation by the local police department or sheriff's office or California Highway Patrol led to the bringing of the action, the CUPA, the local health officer, or the authorized officer or agency, shall pay a total of 40 percent of its portion under this subdivision to that investigating agency or agencies to be used for the same purpose. If more than one agency is eligible for payment under this paragraph, division of payment among the eligible agencies shall be in the discretion of the CUPA, the local health officer, or the authorized officer or agency.

(b) If a reward is paid to a person pursuant to Section 25191.7, the amount of the reward shall be deducted from the amount of the civil penalty before the amount is apportioned pursuant to subdivision (a).

(Amended by Stats. 2006, Ch. 77, Sec. 12. Effective July 18, 2006. Note: This section was amended Nov. 4, 1986, by initiative Prop. 65. Prop. 65 allows the Legislature to directly amend its provisions by 2/3 vote.)

25193. The remedies provided by this chapter are cumulative, and shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party, and no judgment under this

chapter shall preclude any party from obtaining additional relief based upon the same facts.

(Added by Stats. 1980, Ch. 876.)

25194. Any action brought pursuant to this chapter against a person shall not abate by reason of a sale or other transfer of ownership, except with the express written consent of the director.

(Amended by Stats. 1995, Ch. 639, Sec. 34. Effective January 1, 1996.)

25194.5. (a) The withdrawal of an application for a permit, registration, or certificate, after it has been filed with the department shall not, unless the department consents in writing to the withdrawal, deprive the department of its authority to institute or continue a proceeding against the applicant for the denial of the permit, registration, or certificate upon any ground provided by law or to enter an order denying the permit, registration, or certificate upon any ground, and a withdrawal shall not affect the authority of the department, or a local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180, to institute or continue a proceeding against the applicant pertaining to any violation of this chapter or any rule, regulation, standard, or requirement issued or promulgated pursuant to this chapter.

(b) The suspension, expiration, or forfeiture by operation of law of a permit, registration, or certificate issued by the department, or its suspension, forfeiture, or cancellation by order of the department or by order of a court, or its surrender or attempted or actual transfer without the written consent of the department shall not affect the authority of the department, or a local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180, to institute or continue a disciplinary proceeding against the holder of a permit, registration, or certificate upon any ground, or the authority of the department to enter an order suspending or revoking the permit, registration, or certificate, or otherwise taking an action against the holder of a permit, registration, or certificate on any ground.

(Amended by Stats. 1995, Ch. 639, Sec. 35. Effective January 1, 1996.)

25195. It is a misdemeanor for any person to do any of the following:

(a) Willfully prevent, interfere with, or attempt to impede in any way the work of any duly authorized representative of the department, or a local officer or agency authorized to enforce this chapter pursuant to subdivision (a) of Section 25180, in the lawful enforcement of any provision of this chapter.

(b) Willfully prevent or attempt to prevent any such representative from examining any relevant books or records in the conduct of his or her official duties under this chapter.

(c) Willfully prevent or interfere with any such representative in the preserving of evidence of any violation of any of the provisions of this chapter or of the rules and regulations promulgated pursuant to this chapter.

(Amended by Stats. 1995, Ch. 639, Sec. 36. Effective January 1, 1996.)

25196. Any person who knowingly violates a provision of subdivision (a) of Section 25221 or subdivision (a) or (b) of Section 25232 shall be subject to a civil penalty not to exceed 25 percent of the fair market value of the land and improvements, 25 percent of the sale price of the land and improvements, or fifty thousand dollars ($50,000), whichever has been established and is greatest.

(Added by Stats. 1980, Ch. 1161.)

Article 8.3. Hazardous Waste Enforcement Coordinator and Strike Force

(Article 8.3 added by Stats. 1984, Ch. 1673, Sec. 2.
Note: Former termination clause was deleted by Stats. 1987, Ch. 984, Sec. 4.)

25197. (a) The Legislature hereby finds and declares as follows:

(1) The United States Environmental Protection Agency has estimated that 90 percent of the 9 to 10 million metric tons of hazardous waste produced in California each year is improperly disposed.

(2) Approximately 50 percent of California's drinking water comes from underground water supplies which are highly susceptible to contamination from hazardous waste.

(3) Prosecution for violators of hazardous waste laws requires a specialized team of investigators and attorneys to detect, investigate, and prosecute these violators.

(b) It is, therefore, the intent of the Legislature in enacting this article to increase the effectiveness of local and state hazardous waste enforcement activities.

(Amended by Stats. 1987, Ch. 984, Sec. 1.)

25197.1. (a) The director shall establish a Hazardous Waste Enforcement Unit within the department and shall appoint an enforcement coordinator to administer that unit and carry out the duties specified in subdivision (b).

(b) The enforcement coordinator shall do all of the following:

(1) Require that information which the department receives concerning a violation of this chapter or any regulation or order issued pursuant to this chapter is routinely and expeditiously transmitted from the department to the appropriate city attorney or district attorney, and to the Attorney General.

(2) Make recommendations of persons to be awarded payment pursuant to Section 25191.7.

(3) Make annual recommendations to the Governor and the Legislature of statutory changes to increase the capability of city attorneys, district attorneys, and the Attorney General to prosecute violations of this chapter and any other law or regulation relating to hazardous waste, including needed training, assistance, and coordination programs.

(4) Report to the Governor and the Legislature, in the biennial report specified in Section 25178, on the actions taken by the enforcement coordinator and the Hazardous Waste Strike Force to carry out this article and the results obtained from those actions in increasing the effectiveness of local and state hazardous waste enforcement activities.

(5) Establish and maintain a toll-free telephone number, operating during the regular working hours of the department, which is available to the public to report information concerning violations of this chapter and any other hazardous waste statutes and regulations. The department shall screen calls for violations and shall refer information concerning potential violations within three working days to the regional office of the department, the office of the city attorney, the district attorney, or the Attorney General, as appropriate.

(6) Establish a program to publicize the toll-free telephone number.

(c) Nothing in this article limits the authority of a city attorney, a district attorney, or the Attorney General to investigate or prosecute violations of hazardous waste laws or regulations.

(d) Nothing in this article limits the authority of the department or any agency specified in subdivision (a) of Section 25197.2 to request that a civil or criminal action be brought by a city attorney, a district attorney, or the Attorney General under any other law or regulation.

(Amended by Stats. 1992, Ch. 321, Sec. 3. Effective January 1, 1993.)

25197.2. (a) The department shall establish a statewide Hazardous Waste Strike Force which shall consist of a representative from each of the following agencies:

(1) The Department of Transportation.
(2) The Department of Industrial Relations.
(3) The Department of Food and Agriculture.
(4) The State Water Resources Control Board.
(5) The State Air Resources Board.
(6) The Department of the California Highway Patrol.
(7) The Office of the State Fire Marshal in the Department of Forestry and Fire Protection.
(8) The California Integrated Waste Management Board.
(9) The Department of Fish and Game.
(10) The Office of Emergency Services.
(11) The Department of Toxic Substances Control.
(12) The Attorney General.
(13) The Department of Pesticide Regulation.

(b) The director, or the director's designee, shall direct and coordinate the activities of the Hazardous Waste Strike Force.

(c) The Hazardous Waste Strike Force shall do all of the following:

(1) Recommend standardized programs among the agencies represented on the Hazardous Waste Strike Force for the purposes of uniformly enforcing state hazardous waste statutes and regulations and reporting violators of these statutes and regulations.

(2) Recommend programs to publicize and improve the statewide telephone number established pursuant to paragraph (5) of subdivision (b) of Section 25197.1.

(3) Recommend local and regional programs to report information concerning violations of this chapter and any other hazardous waste statutes and regulations.

(Amended by Stats. 1996, Ch. 332, Sec. 32. Effective January 1, 1997.)

25197.3. This article shall be funded from the department's existing resources.

(Amended by Stats. 1987, Ch. 984, Sec. 4.)

Article 8.5. Hazardous Waste Testing Laboratories

(Article 8.5 added by Stats. 1982, Ch. 1209, Sec. 2.)

25198. (a) For purposes of this section, "state department" means the State Department of Health Services.

(b) Except as provided in subdivision (c), the analysis of any material required by this chapter shall be performed by a laboratory certified by the state department pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101, except that laboratories previously issued a certificate under this section shall be deemed certified until the time that certification under Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 has been either granted or denied, but not beyond the expiration date shown on the certificate previously issued under this section.

(c) The requirements of subdivision (b) shall not apply to analyses performed by a laboratory pursuant to the facility's waste analysis plan, that is prepared in accordance with the regulations adopted by the Department of Toxic Substances Control pursuant to this chapter, if both of the following conditions are met:

(1) The laboratory is owned or operated by the same person who owns or operates the facility at which the waste will be managed, and the facility is a hazardous waste treatment, storage, or disposal facility that is required to obtain a hazardous waste facilities permit pursuant to Article 9 (commencing with Section 25200).

(2) The analysis is conducted for any of the following purposes:

(A) To determine whether a facility will accept the hazardous waste for transfer, storage, or treatment, as described in paragraph (3) of subdivision (a) of Section 66264.13 of, and paragraph (3) of subdivision (a) of Section 66265.13 of, Title 22 of the California Code of Regulations, as those sections read on January 1, 2001.

(B) To ensure that the analysis used to determine whether a facility will accept the hazardous waste for transfer, storage, or treatment is accurate and up to date, as described in paragraph (4) of subdivision (a) of Section 66264.13 of, and paragraph (4) of subdivision (a) of Section 66265.13 of, Title 22 of the California Code of Regulations, as those sections read on January 1, 2001.

(C) To determine whether the hazardous waste received at the facility for transfer, storage, or treatment matches the identity of the hazardous waste designated on an accompanying manifest or shipping paper, as described in paragraph (5) of subdivision (a) of Section 66264.13 of, and paragraph (5) of subdivision (a) of Section 66265.13 of, the California Code of Regulations, as those sections read on January 1, 2001.

(d) An analysis performed in accordance with subdivision (c) is not an analysis performed for regulatory purposes within the meaning of paragraph (19) of subdivision (c) of Section 100825.

(e) The exemption provided by subdivision (c) does not exempt the analyses of waste for purposes of disposal from the requirements of subdivision (b) requiring certified laboratory analyses. The analyses described in subdivision (c) are not exempt from any other requirement of law, regulation, or guideline governing quality assurance and quality control.

(f) No person or public entity of the state shall contract with a laboratory for environmental analyses for which certification is required pursuant to this chapter, unless the laboratory holds a valid certificate.

(Amended by Stats. 2001, Ch. 866, Sec. 3. Effective January 1, 2002.)

Article 8.6. Development of Hazardous Waste Management Facilities on Indian Country

(Article 8.6 added by Stats. 1991, Ch. 805, Sec. 3.)

25198.1. As used in this article, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Indian country" has the same meaning as set forth in Section 1151 of Title 18 of the United States Code.

(b) "Tribe" means an Indian tribe, band, nation, or other organized group or community, or a tribal agency authorized by a tribe as defined herein, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and is identified on pages 52829 to 52835, inclusive, of Number 250 of Volume 53 (December 29, 1988) of the Federal Register, as that list may be updated or amended from time to time.

(c) "Hazardous waste" has the same meaning as set forth in Sections 25117 and 25117.9.

(d) "Hazardous waste facility" has the same meaning as set forth in Section 25117.1.

(e) "Operator" means a person who operates a hazardous waste facility.

(f) "Owner" means a person who owns a hazardous waste facility.

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

(h) "State" means the State of California and any agency or instrumentality thereof.

(i) "Siting" means the physical suitability of a location proposed for a hazardous waste facility.

(Added by Stats. 1991, Ch. 805, Sec. 3.)

25198.2. (a) Upon receipt of a written request from any tribe considering a proposal to construct each hazardous waste facility in that tribe's Indian country within this state, the secretary shall convene negotiations for purposes of reaching a cooperative agreement pursuant to this article, which will define the respective rights, duties, and obligations of the state and the tribe concerning the approval, development, and operation of the facility. In convening the negotiations, the secretary shall consult with the Department of Toxic Substances Control, the State Water Resources Control Board, the appropriate California regional water quality control board, the State Air Resources Board, and the appropriate air pollution control district or air quality management district.

(b) This article does not apply to any facility located on Indian country within the state if it meets all of the following requirements:

(1) The facility is owned and operated solely by a tribe.

(2) All hazardous waste accepted by the facility is generated by that particular tribe.

(3) The United States Environmental Protection Agency has approved the facility.

(Added by Stats. 1991, Ch. 805, Sec. 3.)

25198.3. (a) The secretary may enter into any cooperative agreement which meets the requirements of this article.

(b) Each cooperative agreement shall include, but shall not be limited to, all requirements determined to be necessary to meet the requirements of subdivision (e) to do all of the following:

(1) Protect water quality, as determined by the State Water Resources Control Board or the appropriate California regional water quality control board.

(2) Protect air quality, as determined by the State Air Resources Board or the appropriate air pollution control officer.

(3) Provide for proper management of hazardous materials and hazardous wastes, as determined necessary by the Department of Toxic Substances Control.

(4) In making these determinations, the state agencies shall consider any applicable federal environmental and public health and safety laws.

(c) A decision by the secretary whether to enter into a cooperative agreement shall be based on a good faith determination concerning whether a proposed cooperative agreement meets the requirements of this article. The secretary shall take this action within 130 days of a written request by the tribe that the secretary approve a draft cooperative agreement. At least 60 days prior to determining whether to enter into a cooperative agreement, the secretary shall provide notice, and make available for public review and comment, drafts of his or her proposed action and drafts of the findings and determinations that are required by this section. The secretary shall hold a public hearing in the affected area on the proposed action within the time period for taking that action, as specified in this section. Within 10 days

after the close of the public review and comment period, the agencies shall complete the determinations required by this section and the secretary shall issue a final decision.

(d) The findings and determinations of the secretary and relevant agencies made pursuant to this section shall explain material differences between state laws and regulations and the proposed tribal or federal functionally equivalent provisions. The findings and determinations do not need to explain each difference between the state and tribal or federal requirements as long as they identify and evaluate whether the material differences meet the requirements of this article, including, but not limited to, providing at least as much protection for public health and safety and the environment as would the state requirements.

(e) Any cooperative agreement executed pursuant to this article shall provide for regulation of the hazardous waste facility through inclusion in the agreement of design, permitting, construction, siting, operation, monitoring, inspection, closure, postclosure, liability, enforcement, and other regulatory provisions applicable to a hazardous waste facility, or which relate to any environmental consequences that may be caused by facility construction or operation, that are functionally equivalent to all of the following:

(1) Article 4 (commencing with Section 13260) of Chapter 4 of, Chapter 5 (commencing with Section 13300) of, and Chapter 5.5 (commencing with Section 13370) of, Division 7 of the Water Code.

(2) Chapter 3 (commencing with Section 41700) of, Chapter 4 (commencing with Section 42300) of, and Chapter 5 (commencing with Section 42700) of, Part 4 of, and Part 6 (commencing with Section 44300) of, Division 26.

(3) This chapter, Chapter 6.6 (commencing with Section 25249.5), Chapter 6.8 (commencing with Section 25300), and Chapter 6.95 (commencing with Section 25500).

(4) All regulations adopted pursuant to the statutes specified in this section.

(5) Any other provision of state environmental, public health, and safety laws and regulations germane to the hazardous waste facility proposed by the tribe.

(f) The tribal organizational structures or other means of implementing the requirements specified in subdivision (e) are not required to be the same as the state organizational structures or means of implementing its system of regulation.

(g) Neither the approval of any cooperative agreement nor amendments to the agreement, nor any determination of sufficiency provided in Section 25198.5, shall constitute a "project" as defined in Section 21065 of the Public Resources Code and shall not be subject to review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(h) Each cooperative agreement shall provide for the incorporation of the standards and requirements germane to the protection of the environment, public health, and safety listed in subdivision (e), as enacted, or as those provisions may be amended after January 1, 1992, or after the effective date of any cooperative agreement, if those standards and requirements meet both of the following requirements:

(1) The standards and requirements do not discriminate against a tribe which has executed a cooperative agreement, or a lessee of the tribe, and are applicable to, or not more stringent than, other rules applicable to other similar or analogous facilities or operations outside Indian country.

(2) Adequate notice and opportunity for comment on the incorporation of new and amended standards or requirements are provided to the tribe, facility owner, and operator to facilitate any physical or operational changes in the facility in accordance with state law.

(Amended by Stats. 1992, Ch. 427, Sec. 101. Effective January 1, 1993.)

25198.4. (a) A tribe shall be eligible for technical assistance to the extent feasible, from the agencies specified in subdivision (b) of Section 25198.3, for the design, establishment, and implementation of a permit system, cooperative monitoring programs, a tribal enforcement system, and implementation of any other regulatory requirement.

(b) Each cooperative agreement shall provide for reasonable compensation to relevant state agencies for costs and expenses incurred by the state in connection with technical assistance provided to the tribe for the regulatory activities provided in this article, including, but not limited to, monitoring, enforcement, permitting, review, and other activities described in this article, and the reviews required by Section 25198.3, on a nondiscriminatory basis when compared with similar services to similar projects outside of Indian country.

(c) Each cooperative agreement shall provide for the sharing of appropriate data and other information between any tribal regulatory body, any federal agency, the owner or operator, and applicable state agencies, including, but not limited to, all monitoring data collected respecting the hazardous waste facility. The agreement shall provide for confidentiality of privileged, proprietary, or trade secret information.

(d) Each cooperative agreement shall include a dispute resolution mechanism for addressing issues of contract interpretation arising out of the cooperative agreement.

(e) The parties to a cooperative agreement executed pursuant to this article may mutually agree to modifications of time periods for actions which are required by this article, except the time periods provided for public notice, review, and comment shall not be eliminated or reduced.

(f) Each cooperative agreement shall require the relevant state agencies to provide detailed comments regarding completeness within 30 days after receiving copies of applications filed for tribal and applicable federal permits with respect to the deficiencies, if any, of the application with respect to the state standards identified in Section 25198.3. The failure of any of these state agencies to provide those comments within that period shall be deemed a finding of completeness of the respective applications.

(g) Each cooperative agreement shall provide for reasonable access by state agency personnel to Indian country governed by a tribe which has executed a cooperative agreement pursuant to this article for purposes of assistance with permit application review, inspection, and monitoring of operation of a hazardous waste facility. The cooperative agreement shall also provide for reasonable access for purposes of permit application review and inspection, to the extent the state can provide that access, by tribal regulatory authorities to transfer stations, or similar facilities, located outside of Indian country and handling waste to be transferred to tribal lands.

(Added by Stats. 1991, Ch. 805, Sec. 3.)

25198.5. (a) Each cooperative agreement shall require the public agencies specified in subdivision (b) of Section 25198.3 to review any draft tribal permit and any applicable federal permit to determine whether it contains all conditions sufficient to do all of the following:

(1) Meet the functionally equivalent standards provided in the cooperative agreement, as required by subdivision (e) of Section 25198.3.

(2) Provide not less than the level of protection for public health, safety, and the environment that would have been the case if that state agency had issued the permit.

(3) Implement all feasible mitigation measures. For purposes of this paragraph, "feasible" has the same meaning as in Sections 21001, 21002.1, and 21004 of the Public Resources Code, and any regulations adopted pursuant to those sections.

(b) Each cooperative agreement shall provide that the tribal or federal permits issued for the hazardous waste facility meet the requirements of this section.

(c) The failure of a party to a cooperative agreement to meet the requirements of this section shall be determined to be an actionable breach of the cooperative agreement.

(d) The election by a party to a cooperative agreement to pursue a contractual remedy shall not limit the ability of a party to assert its respective claims of jurisdiction or sovereign immunity.

(e) Entering into a cooperative agreement shall not be a basis for denying any remedy to which a party is otherwise entitled.

(f) Within 10 days of issuance of a final federal permit or tribal permit, a copy of that permit shall be provided to the California Environmental Protection Agency and the tribe having jurisdiction over the facility.

(Amended by Stats. 1992, Ch. 427, Sec. 102. Effective January 1, 1993.)

25198.6. (a) Nothing in this article shall limit or expand, or be construed to limit or expand, the jurisdiction of any state agency specified in subdivision (b) of Section 25198.3 or any tribal agency with respect to any hazardous waste facility located in Indian country, including, but not limited to, the enforcement powers and procedures available to the state or any tribe with respect to those facilities to the extent not preempted by federal law, including, but not limited to, powers and procedures contained in state or

tribal statutes or regulations.

(b) The cooperative agreement shall provide that the state may exercise its enforcement powers over any hazardous waste facility project on Indian country where a cooperative agreement has been executed, subject to all of the following requirements:

(1) A violation or threatened violation of any standard or requirement set forth in Section 25198.3, or its functional equivalent in the cooperative agreement, or any condition set forth in a cooperative agreement or permit for the facility, has occurred or is occurring. For purposes of this paragraph, "threatened violation" means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources.

(2) The violation or violations have been brought to the attention of the tribe and to the owner and operator of the hazardous waste facility, through written notice from the appropriate agency. The notice shall identify the specific violation or violations which are occurring or have occurred and a specific corrective or enforcement action or range of actions, including sufficient penalties. The notice shall include a specific and reasonable timeframe in which to take appropriate corrective or enforcement action.

(3) The tribe, after receiving the notice, has failed to take the action or actions, or to take other reasonable action to abate or correct the violation or violations, in a reasonable time.

(c) The functionally equivalent provisions of tribal or federal permits, as determined sufficient pursuant to Section 25198.3, together with any cooperative agreement approved pursuant to this article, shall collectively be deemed to constitute permits issued under state law for all purposes of enforcing state law.

(d) Notwithstanding subdivision (b), each of the public agencies specified in subdivision (b) of Section 25198.3 may immediately exercise its enforcement powers over any hazardous waste facility project on Indian country where a cooperative agreement has been executed, if, in the judgment of the public agency, immediate state action is required to avoid an imminent and substantial threat to public health and safety or to the environment. The state shall notify the tribe prior to taking any action pursuant to this subdivision.

(Amended by Stats. 1992, Ch. 113, Sec. 2. Effective July 2, 1992.)

25198.7. (a) The cooperative agreement shall provide that the state or tribe may bring an appropriate civil action in a court of competent jurisdiction to enforce the terms of the cooperative agreement as a contract, and shall not limit the availability to either party of any remedy at law or in equity otherwise available under California law.

(b) The cooperative agreement shall require that the tribe waive its sovereign immunity from any action brought by the state in any court otherwise having jurisdiction over the subject matter, and that the state shall waive its sovereign immunity from any action brought by the tribe, in any court otherwise having jurisdiction over the subject matter, to enforce the terms of the cooperative agreement.

(Added by Stats. 1991, Ch. 805, Sec. 3.)

25198.8. A cooperative agreement executed pursuant to this article shall be executed for the express benefit of the citizens of this state.

(Added by Stats. 1991, Ch. 805, Sec. 3.)

25198.9. Any person may commence a civil action on the person's own behalf against any of the public agencies specified in subdivision (b) of Section 25198.3, or against the secretary, who is alleged to have approved or certified the sufficiency of any cooperative agreement or permit in violation of this article. No action may be commenced under this section more than 60 days after the agency or secretary has approved or certified the sufficiency of any cooperative agreement or permit under this article.

(Added by Stats. 1991, Ch. 805, Sec. 3.)

Article 8.7. Procedures for the Approval of New Facilities

(Article 8.7 added by Stats. 1986, Ch. 1504, Sec. 8.)

25199. (a) The Legislature finds and declares as follows:

(1) Existing laws require numerous permits before a hazardous waste facility can be constructed and operated. The permits are issued by governmental agencies, at both the state and local levels under land use planning, zoning, hazardous waste, air quality, water quality, and solid waste management laws.

(2) The approval of hazardous waste facilities is not currently a coordinated process. The failure to coordinate the issuance of multiple permits, licenses, land use approvals, and other types of authorizations causes lengthy and costly delays. The end result of the process cannot be predicted, with any degree of certainty, by either the proponent of a project to site and construct a facility or by the concerned public.

(3) Present procedures for approving hazardous waste facilities do not provide meaningful opportunities for public involvement and are not suitably structured to allow the public to make its concerns known and to cause these concerns to be taken into consideration.

(4) A formal administrative process for reviewing local discretionary land use decisions on applications to site and construct a hazardous waste facility has not been established and made available to interested persons who wish to appeal these decisions.

(b) The Legislature, therefore, declares that there is a critical need to clarify the requirements that must be met, and the basic procedures that must be followed, in connection with the approval of hazardous waste facilities.

(c) It is the intent of the Legislature, in enacting this article, to establish the means to expedite the approval of needed hazardous waste facilities; to ensure that new hazardous waste facilities are not sited unless the facility operator provides financial assurance that the operator can respond adequately to damage claims arising out of the operation of the facility; to ensure that the facilities comply with applicable laws and regulations; to clarify the procedures to be followed in approving a facility; to establish specific means to give the concerned public a voice in decisions relating to the siting and issuance of permits for hazardous waste facilities; and to establish a process for appealing local decisions on applications for land use approval for hazardous waste facilities.

(Added by Stats. 1986, Ch. 1504, Sec. 8.)

25199.1. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Appeal board" means an appeal board established pursuant to Section 25199.10.

(b) "Hazardous waste facility project" means a project undertaken for the purpose of siting and constructing a new hazardous waste facility that will require a hazardous waste facilities permit issued pursuant to Section 25200, or for the purpose of significantly expanding or modifying an existing hazardous waste facility that is being used or operated under a permit issued pursuant to Section 25200 or a grant of interim status pursuant to Section 25200.5. Unless expressly provided otherwise, "hazardous waste facility project" includes a specified hazardous waste facility project.

(c) "Interested person" means a person who participated in one or more public meetings or hearings held to consider an application for a land use decision for a specified hazardous waste facility project. "Participation" includes, but is not limited to, the giving of oral or written testimony at a meeting or hearing, submission of questions at a meeting or hearing, or attendance at the meeting or hearing.

(d) "Land disposal facility" means a hazardous waste facility where hazardous waste is disposed in, on, under, or to the land.

(e) "Land use decision" means a discretionary decision of a local agency concerning a hazardous waste facility project, including the issuance of a land use permit or a conditional use permit, the granting of a variance, the subdivision of property, and the modification of existing property lines pursuant to Title 7 (commencing with Section 65000) of the Government Code.

(f) "Lead agency" means the public agency that has the principal responsibility for approving a hazardous waste facility project.

(g) "Local agency" means any public agency, other than a state agency.

(h) "Permit" means a permit, license, certificate, requirement, or other entitlement for use required to site or construct a hazardous waste facility. "Permit" includes, but is not limited to, all of the following:

(1) A hazardous waste facility permit issued by the department pursuant to this chapter.

(2) Waste discharge requirements issued by a California regional water quality control board pursuant to Article 4 (commencing with Section 13260) of Chapter 4 of Division 7 of the Water Code.

(3) An authority to construct permit issued by an air pollution control district or air quality management district pursuant to Division 26 (commencing with Section 39000).

(4) A solid waste facilities permit issued by the enforcement agency pursuant to Article 2 (commencing with Section 66796.30) of Chapter 3 of Title 7.3 of the Government Code.

(i) "Proponent" means any person applying to a public agency for a permit or a land use decision concerning a specified hazardous waste facility project.

(j) "Public agency" means any state agency or any local agency.

(k) "Responsible agency" means any public agency, other than the lead agency, which has the authority to issue a permit or make a land use decision.

(l) "Significantly expand or modify" means to expand or modify an existing hazardous waste facility, including a specified hazardous waste facility, in a manner so that a land use decision and an environmental impact report are required.

(m) "Specified hazardous waste facility" means an offsite facility which serves more than one producer of hazardous waste.

(n) "Specified hazardous waste facility project" means a project undertaken for the purpose of siting and constructing a new specified hazardous waste facility or for the purpose of significantly expanding or modifying an existing specified hazardous waste facility that is being used or operated under a permit issued pursuant to Section 25200 or a grant of interim status pursuant to Section 25200.5.

(o) "State agency" means any agency, board, or commission of state government. "State agency" also includes an air pollution control district and an air quality management district.

(p) "Technical review" means the review of an application for a hazardous waste facility project by a state agency to determine if the facility meets the applicable statutes and regulations.

(Amended by Stats. 1988, Ch. 1389, Sec. 4. Effective September 27, 1988.)

25199.2. Except as otherwise provided in this article, Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code applies to all public agencies which make a land use decision or issue a permit for a hazardous waste facility project, as specified in Section 65963.1 of the Government Code. The public agency shall perform the duties and carry out the actions required by Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code in connection with applications submitted to the public agency for a hazardous waste facility project, unless otherwise specified in this article.

(Added by Stats. 1986, Ch. 1504, Sec. 8.)

25199.3. (a) Notwithstanding any other provision of law, an applicant for a hazardous waste facility project may submit applications for a land use decision and for one or more permits to the appropriate public agencies simultaneously. Unless a state agency is prohibited by statute from approving a permit before the granting of a local land use decision, the state agency shall not refuse to issue a permit for a hazardous waste facility project on the grounds that the applicant has not been granted a land use permit, except that the state agency may provide that the permit shall not become effective until the applicant is granted a local land use permit.

(b) Any public agency may request another public agency to jointly review applications for a permit or land use decision for a hazardous waste facility project. A public agency may consolidate, with other public agencies, public meetings and hearings permitted or required by law or regulation for the issuance of a permit or the making of a land use decision for a hazardous waste facility project.

(c) The department shall coordinate the technical review of applications for permits for hazardous waste facility projects that are received by state agencies.

(d) Upon the request of a local agency, the department, and any other state agency that is authorized to issue a permit for a hazardous waste facility project, shall provide technical assistance to a local agency that is reviewing an application for a land use decision for the project.

(Added by Stats. 1986, Ch. 1504, Sec. 8.)

25199.4. The Office of Permit Assistance in the Office of Planning and Research shall, for any proposed hazardous waste facility project, do all of the following:

(a) Assist in identifying state and local permits required for the proposed hazardous waste facility project.

(b) Convene meetings or conferences, as necessary, prior to the submittal of applications for permits to state and local agencies, for the purpose of determining the scope of the hazardous waste facility project, identifying the questions that state and local agencies will have concerning the project, and determining decisionmaking schedules.

(c) Assist state and local agencies in consolidating public meetings and hearings permitted or required by law or regulation for approval of the permits for the project.

(d) Encourage the joint review and processing of applications for permits.

(e) Work with the applicant and public agencies to ensure that decisionmaking deadlines are met.

(f) Call meetings or conferences to resolve questions or mediate disputes arising from applications for a permit for a hazardous waste facility project.

(Added by Stats. 1986, Ch. 1504, Sec. 8.)

25199.5. (a) At the request of an applicant, the legislative body of a local agency shall, within 60 calendar days after the local agency has determined that an application for a land use decision for a hazardous waste facility project is complete, issue an initial written determination on whether the hazardous waste facility project is consistent with both of the following:

(1) The applicable local general plan and zoning ordinances in effect at the time the application was received.

(2) The county hazardous waste management plan authorized by Article 3.5 (commencing with Section 25135), if the plan is in effect at the time of the application.

(b) The local agency shall send a copy of the written determination made pursuant to subdivision (a) to the applicant.

(c) The determination required by subdivision (a) does not prohibit a local agency from making a different determination when the final land use decision is made, if the final determination is based on information which was not considered at the time the initial determination was made.

(Added by Stats. 1986, Ch. 1504, Sec. 8.)

25199.6. (a) Section 65943 of the Government Code does not apply to the department's review of applications for a hazardous waste facilities permit. The department shall review for completeness each application for a hazardous waste facilities permit and notify the applicant in writing whether the application is complete within 30 days from the date of receipt. If the application is incomplete, the department shall require the applicant to provide the information necessary to make the application complete. An application is not deemed to be complete until the department notifies the applicant that the application is complete. After an application is determined to be complete, the department may request additional information only when necessary to clarify, modify, or supplement previously submitted material.

(b) Notwithstanding Section 65952 of the Government Code, any public agency that is a responsible agency for a hazardous waste facility project that is a land disposal facility shall approve or disapprove the project within one of the following periods of time, whichever is longer:

(1) Within one year from the date on which the lead agency approved or disapproved the project.

(2) Within one year from the date on which the completed application for the project has been received, and accepted as complete, by that responsible agency.

(c) Notwithstanding Section 65952 of the Government Code and Section 25199.2, any public agency that is a responsible agency for a hazardous waste facility project that is not a land disposal facility shall approve or disapprove the project within one of the following periods of time, whichever is longer:

(1) Within 180 days from the date on which the lead agency approved or disapproved the project.

(2) Within 180 days from the date on which the completed application for the project has been received, and accepted as complete, by that responsible agency.

(d) Subdivision (b) of Section 65956 of the Government Code does not apply to the failure of a lead agency or responsible agency to approve or disapprove a permit for a hazardous waste facility project within the time limits established by Sections 65950 and 65952 of the Government Code and subdivisions (b) and (c) of this section. If a lead agency or a responsible agency fails to act within those time limits, the applicant may file an action pursuant to Section 1085 of the Code of Civil Procedure to compel the agency

to approve or disapprove the permit for the project within a reasonable time, as the court may determine.

(Amended by Stats. 2000, Ch. 343, Sec. 10. Effective January 1, 2001.)

25199.7. (a) At least 90 days before filing an application for a land use decision for a specified hazardous waste facility project with a local agency, the proponent shall file a notice of intent to make the application with the Office of Permit Assistance in the Office of Planning and Research and with the applicable city or county. The notice of intent shall specify the location to which the notice of intent is applicable and shall contain a complete description of the nature, function, and scope of the project. The Office of Permit Assistance shall immediately notify affected state agencies of the notice of intent. The local agency shall publish a notice in a newspaper of general circulation in the area affected by the proposed project, shall post notices in the location where the proposed project is located, and shall notify, by a direct mailing, the owners of contiguous property, as shown in the latest equalized assessment roll. A notice of intent filed with a local agency shall be accompanied by a fee which shall be set by the local agency in an amount equal to the local agency's cost of processing the notice of intent and carrying out the notification requirements of this subdivision. A notice of intent is not transferable to a location other than the location specified in the notice and shall remain in effect for one year from the date it is filed with a local agency or until it is withdrawn by the proponent, whichever is earlier.

(b) A notice of intent is not effective and a proponent may not file an application for a land use decision for a specified hazardous waste facility project with a local agency unless the proponent has first complied with subdivision (a).

(c) Within 90 days after a notice of intent is filed with the Office of Permit Assistance pursuant to subdivision (a), the office shall convene a public meeting in the affected city or county to inform the public on the nature, function, and scope of the proposed specified hazardous waste facility project and the procedures that are required for approving applications for the project.

(d) The legislative body of the affected local agency shall appoint a seven member local assessment committee to advise it in considering an application for a land use decision for a specified hazardous waste facility project. The members of the local assessment committee may be appointed at any time after the notice of intent is filed with the local agency but shall be appointed not later than 30 days after the application for the land use decision is accepted as complete by the local agency. The local agency shall charge the project proponent a fee to cover the local agency's costs of establishing and convening the local assessment committee. The fee shall accompany the application for a land use decision.

(1) The membership of the committee shall be broadly constituted to reflect the makeup of the community, and shall include three representatives of the community at large, two representatives of environmental or public interest groups, and two representatives of affected businesses and industries. Members of local assessment committees selected pursuant to this subdivision shall have no direct financial interest, as defined in Section 87103 of the Government Code, in the proposed specified hazardous waste facility project.

(2) The local assessment committee shall, as its primary function, advise the appointing legislative body of the affected local agency of the terms and conditions under which the proposed hazardous waste facility project may be acceptable to the community. To carry out this function, the local assessment committee shall do all of the following:

(A) Enter into a dialogue with the proponent for the proposed hazardous waste facility project to reach an understanding with the proponent on both of the following:

(i) The measures that should be taken by the proponent in connection with the operation of the proposed hazardous waste facility project to protect the public health, safety, and welfare, and the environment of the city or county.

(ii) The special benefits and remuneration the facility proponent will provide the city or county as compensation for the local costs associated with the operation of the facility.

(B) Represent generally, in meetings with the project proponent, the interests of the residents of the city or county and the interests of adjacent communities.

(C) Receive and expend any technical assistance grants made available pursuant to subdivision (g).

(D) Adopt rules and procedures which are necessary to perform its duties.

(E) Advise the legislative body of the city or county of the terms, provisions, and conditions for project approval which have been agreed upon by the committee and the proponent, and of any additional information which the committee deems appropriate. The legislative body of the city or county may use this advice for its independent consideration of the project.

(3) The legislative body of the affected jurisdiction shall provide staff resources to assist the local assessment committee in performing its duties.

(4) A local assessment committee established pursuant to this subdivision shall cease to exist after final administrative action by state and local agencies has been taken on the permit applications for the project for which the committee was convened.

(e) A local agency shall notify the Office of Permit Assistance within 10 days after an application for a land use decision for a specified hazardous waste facility project is accepted as complete by the local agency and, within 60 days after receiving this notice, the Office of Permit Assistance shall convene a meeting of the lead and responsible agencies for the project, the proponent, the local assessment committee, and the interested public, for the purpose of determining the issues which concern the agencies that are required to approve the project and the issues which concern the public. The meeting shall take place in the jurisdiction where the application has been filed.

(f) Following the meeting required by subdivision (e), the proponent and the local assessment committee appointed pursuant to subdivision (d) shall meet and confer on the specified hazardous waste facility project proposal for the purpose of establishing the terms and conditions under which the project will be acceptable to the community.

(g) (1) If the local assessment committee finds that it requires assistance and independent advice to adequately review a proposed hazardous waste facility project, it may request technical assistance grants from the local agency to enable the committee to hire a consultant. The committee may use technical assistance grant funds made available to it to hire a consultant to do either, or both, of the following:

(A) Assist the committee in reviewing and evaluating the application for the project, the environmental documents prepared for the project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and any other documents, materials, and information that are required by a public agency in connection with the application for a land use decision or a permit.

(B) Advise the local assessment committee in its meetings and discussions with the facility proponent to seek agreement on the terms and conditions under which the project will be acceptable to the community.

(2) The local agency shall require the proponent of the proposed hazardous waste facility project to pay a fee equal to the amount of any technical assistance grant provided the local assessment committee under paragraph (1). The funds received as a result of the imposition of the fee shall be used to make technical assistance grants exclusively for the purposes described in paragraph (1).

(3) The local agency shall deposit any fee imposed pursuant to paragraph (2) in an account created in the city or county treasury, maintain records of all expenditures from the account, and return any unused funds and accrued interest to the project proponent upon completion of the review of the proposed hazardous waste facility project.

(h) If the local assessment committee and the proponent cannot resolve any differences through the meetings, the Office of Permit Assistance may assist in this resolution pursuant to Section 25199.4.

(i) This section applies only to a specified hazardous waste facility project.

(Amended by Stats. 1990, Ch. 216, Sec. 67.)

25199.8. (a) If an action or proceeding has been commenced in any court to attack, review, set aside, void, or annul the acts or decisions of a lead agency for a specified hazardous waste facility project on the grounds of noncompliance with Division 13 (commencing with Section 21000) of the Public Resources Code, the proponent may, notwithstanding the action or proceeding, request the responsible agencies for the specified hazardous waste facility project to continue to process applications for approval of permits for the project received and accepted as complete by each responsible agency. If a responsible agency receives such a request, the time limits specified in

subdivisions (a), (b), and (c) of Section 25199.6 shall apply.

(b) Except as provided in subdivision (d), if any action or proceeding is commenced to review the acts or decisions of a lead or responsible agency for a specified hazardous waste facility project, the proponent may petition the court to stay the action or proceeding. The court, in its discretion, may stay the action or proceeding until all public agencies for the project have completed reviewing and approving or disapproving the applications for permits for the project. The proponent may, at any time prior to completion of these actions by the lead or responsible agencies, file a petition with the court requesting that the action or proceeding be permitted to proceed and, upon receiving such a petition, the court shall discontinue the stay.

(c) Notwithstanding subdivision (b), a court may enjoin a lead or responsible agency from approving a permit or license if the court finds that the approval would result in an imminent or substantial endangerment of the public health or the environment or if there are other compelling reasons that the action or proceeding should not be stayed.

(d) Subdivision (b) does not apply to an action or proceeding which alleges that a lead or responsible agency has not complied with Division 13 (commencing with Section 21000) of the Public Resources Code.

(Amended by Stats. 1989, Ch. 1354, Sec. 2. Effective October 2, 1989.)

25199.9. (a) A proponent may file an appeal of a land use decision made by a local agency for a specified hazardous waste facility project with the Governor or the Governor's designee pursuant to subdivision (b), (c), or (d) and any interested person may file an appeal of a land use decision made by a local agency for a specified hazardous waste facility project pursuant to subdivision (e). The proponent or an interested person shall file the appeal within 30 calendar days after the date the local agency takes final action on the land use decision. If the proposed project would accept or manage both hazardous waste and solid waste, the appeal shall relate only to the local land use decision concerning the hazardous waste portion of the proposed facility. Any decisions of an appeal board involving the proposed facility shall affect only the hazardous waste portion of the local land use decision.

(b) If an application for a land use decision for a specified hazardous waste facility project is disapproved by a local agency, the proponent for the specified hazardous waste facility project may file an appeal of the disapproval with the Governor or the Governor's designee. The Governor or the Governor's designee shall convene an appeal board pursuant to Section 25199.10 to hear the appeal pursuant to this subdivision if the proponent has applied for, and obtained, all permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies.

(c) (1) Notwithstanding subdivision (b), if an application for a land use decision for a specified hazardous waste facility project is disapproved by a local agency before an environmental impact report for the project is prepared and certified, as specified in Section 21151 of the Public Resources Code, or before a negative declaration for the project is adopted pursuant to subdivision (c) of Section 21080 of the Public Resources Code, the proponent may file an appeal of the disapproval with the Governor or the Governor's designee.

(2) Within 30 days after an appeal is filed pursuant to this subdivision, the Governor or the Governor's designee shall convene an appeal board, pursuant to Section 25199.10. The appeal board shall thereafter be the lead agency for the specified hazardous waste facility project and shall perform the duties specified in, and carry out the actions required by, Division 13 (commencing with Section 21000) of the Public Resources Code. The proponent may apply for those permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies, at any time before or after the appeal board's compliance with actions required by Division 13 (commencing with Section 21000) of the Public Resources Code. The time limits specified in subdivisions (a), (b), and (c) of Section 25199.6 apply to these responsible agencies except that, for the purposes of these time limits, the date when the appeal board has complied with all actions required by Division 13 (commencing with Section 21000) of the Public Resources Code shall be deemed equivalent to the date when a lead agency decides to approve or disapprove a project.

(3) After the proponent has applied for and obtained the permits specified in paragraph (2), the proponent for the specified hazardous waste facility project may request the Governor or the Governor's designee to reconvene the appeal board to hear the appeal. The Governor or the Governor's designee shall reconvene the appeal board pursuant to Section 25199.10 to hear the appeal of a disapproval pursuant to this subdivision if it has been demonstrated to the Governor or the Governor's designee that the proponent has applied for, and obtained, all permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies.

(d) If an application for a land use decision for a specified hazardous waste facility project is approved by a local agency, the proponent for the specified hazardous waste facility project may file an appeal of one or more conditions imposed by the land use decision with the Governor or the Governor's designee. An appeal filed under this subdivision shall specify the particular condition or conditions imposed by the land use decision that are appealed and shall be based solely on the grounds that the condition or conditions imposed on the operation of the facility by the land use decision are so onerous and restrictive that their imposition is the same as a disapproval of the application for a land use decision. The Governor or the Governor's designee shall convene an appeal board pursuant to this subdivision if the proponent has applied for, and obtained, all permits for the specified hazardous waste facility project which can be obtained prior to its construction from those responsible agencies which are state agencies.

(e) If an application for a land use decision for a specified hazardous waste facility project is approved by a local agency, any interested person may file an appeal of the approval with the Governor or the Governor's designee. An appeal may be filed pursuant to this subdivision only if the appeal is based solely on the grounds that the conditions imposed on the project by the land use decision do not adequately protect the public health, safety, or welfare. The Governor or the Governor's designee shall convene an appeal board pursuant to this subdivision if the proponent for the specified hazardous waste facility project has applied for, and obtained, all permits for the project which can be obtained prior to its construction from those responsible agencies which are state agencies. An interested person filing an appeal pursuant to this subdivision shall state in the appeal why the conditions imposed by the land use decision do not adequately protect the public health, safety, or welfare and shall specify the additional condition or conditions which are necessary to provide that protection.

(Amended by Stats. 1989, Ch. 1354, Sec. 3. Effective October 2, 1989.)

25199.10. (a) If an appeal is filed pursuant to subdivision (b), (d), or (e) of Section 25199.9, or paragraph (3) of subdivision (c) of Section 25199.9, the Governor or the Governor's designee shall determine within five working days whether the proponent has obtained all permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies, and which were obtainable when the appeal was filed. If, because the application for the appeal is incomplete, the Governor or the Governor's designee is unable to determine, within five working days, whether or not the appeal board should be convened, the Governor or the Governor's designee shall return the application for appeal to the proponent or interested party who filed the appeal. The proponent or interested party shall resubmit the completed application for an appeal within 20 calendar days after receiving the returned appeal and if the proponent or interested party fails to do so, the Governor or the Governor's designee shall not reconsider whether to convene an appeal board.

(b) If the Governor or the Governor's designee determines, pursuant to subdivision (a), that the proponent has obtained all permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies, or if an appeal is filed pursuant to paragraph (1) of subdivision (c) of Section 25199.9, the Governor or the Governor's designee shall convene an appeal board within 30 days after making that determination or receiving that appeal, by requesting the League of California Cities and the County Supervisors Association of California to each nominate persons for appointment to an appeal board, as specified in paragraphs (6) and (7) of subdivision (c).

(c) An appeal board shall consist of seven members, five of whom shall be the members listed in paragraphs (1) to (5), inclusive, and two of whom shall be separately appointed for each particular appeal, as provided in paragraphs (6) and (7). An appeal board shall consist of the following members:

(1) The Director of Toxic Substances Control.

(2) The Chairperson of the State Air Resources Board.

(3) The Chairperson of the State Water Resources Control Board.

(4) A member of a county board of supervisors appointed by the Senate Committee on Rules who shall be selected from the persons nominated by the County Supervisors Association of California. The appointment shall be for a period of four years, but shall terminate earlier if the appointee does not continue in office as a member of a board of supervisors.

(5) A member of a city council appointed by the Speaker of the Assembly who shall be selected from the persons nominated by the League of California Cities. The appointment shall be for a period of four years, but shall terminate earlier if the appointee does not continue in office as a member of a city council.

(6) A member of a county board of supervisors appointed by the Speaker of the Assembly who shall be selected from the persons nominated by the County Supervisors Association of California. The member shall be from the county in which the specified hazardous waste facility project which is the subject of the appeal is located. However, if the member appointed pursuant to paragraph (4) is from the county in which the specified hazardous waste facility project is located, the member appointed pursuant to this paragraph shall not be from that same county. If the appointee appointed pursuant to this paragraph does not continue in office as a member of a board of supervisors for the duration of the appeal for which the appointment was made, the appointment shall terminate and a new appointment shall be made.

(7) A member of a city council appointed by the Senate Committee on Rules who shall be selected from the persons nominated by the League of California Cities. The member shall be from the city in which the specified hazardous waste facility project which is the subject of the appeal is located, or from the city which the Governor or the Governor's designee determines to be the most directly affected by the project if the project is not located in a city. However, if the member appointed under paragraph (5) is from a city in the county in which the specified hazardous waste facility project is located, the member appointed under this paragraph shall be from a city in a different county. If the appointee appointed pursuant to this paragraph does not continue in office as a member of a city council for the duration of the appeal for which the appointment was made, the appointment shall terminate and a new appointment shall be made.

(d) The appeal board shall issue the final decision upon an appeal in writing and the members of the appeal board shall sign the decision.

(e) The Director of Toxic Substances Control, the Chairperson of the State Air Resources Board, and the Chairperson of the State Water Resources Control Board may designate an alternate to attend any meetings or hearings of an appeal board in that person's place, except that the alternate may not vote on a final decision on an appeal or sign the written decision in place of the person for whom the person serves as alternate.

(f) The Governor or the Governor's designee shall designate staff to serve the appeal board.

(Amended by Stats. 2000, Ch. 343, Sec. 11. Effective January 1, 2001.)

25199.11. (a) An appeal board convened by the Governor or the Governor's designee to hear an appeal pursuant to subdivision (b) or (c) of Section 25199.9 shall follow the procedures and requirements specified in this section.

(b) Within 30 days after the Governor or the Governor's designee determines that an appeal board should be convened pursuant to subdivision (b) of Section 25199.9, or paragraph (3) of subdivision (c) of Section 25199.9, the appeal board shall be convened. Within 15 days after the appeal board has been convened, a public hearing shall be held in the city or county where the specified hazardous waste facility project is located. At the hearing, the proponent, and the local agency whose land use decision is being appealed, shall present arguments and evidence to the appeal board concerning whether or not the appeal should be accepted.

(c) Within 15 days after the date of the public hearing specified in subdivision (b), the appeal board shall decide whether or not to accept the appeal. The appeal board may accept an appeal only by an affirmative vote of four members of the appeal board. The appeal board shall make its decision based upon the arguments and evidence presented at the hearing. The appeal board's decision shall be in writing, shall be signed by the members who voted in favor of the decision, and shall state the reasons for accepting or rejecting the appeal. The appeal board may accept the appeal if the arguments and evidence presented at the hearing tend to show that, when the local agency's reasons for disapproving the application for a land use decision are weighed against statewide, regional, or county hazardous waste management policies, goals, and objectives, there are compelling reasons to review the disapproval of the application.

(d) If the appeal board accepts the appeal, within 30 days after this acceptance, the appeal board shall conduct an informal workshop on the subject of the appeal in the city or county where the specified hazardous waste facility project is proposed to be located. Within 45 days following acceptance of the appeal, the appeal board shall also hold a public hearing in the community to hear the arguments and evidence for the purpose of making a tentative decision on the appeal. In issuing a decision pursuant to the hearing, the appeal board shall adopt a rebuttable presumption that the land use decision of the local agency disapproving the application is supported by substantial reasons and that, when these reasons are weighed against statewide, regional, or county hazardous waste management policies, goals, and objectives, the reasons for reversing the local agency's action are not compelling. In all matters related to the appeal, including, but not limited to, matters related to the findings required by subdivision (f), the burden of proof shall be with the proponent to rebut this presumption and to establish that there are compelling reasons to reverse the local agency's land use decision.

(e) Within 45 days after the public hearing, the appeal board shall, by an affirmative vote of at least four members, issue a written decision on the appeal. If the appeal board agrees with the land use decision of the local agency, the appeal board shall state its reasons for this position. If the appeal board agrees with the proponent's appeal, the appeal board shall issue a tentative decision stating that the local agency's land use decision should be reversed.

(f) The appeal board shall not reverse the local agency's land use decision unless the appeal board makes all of the following findings:

(1) That the significant environmental impacts of the specified hazardous waste facility project will be adequately mitigated.

(2) That the specified hazardous waste facility project was consistent with the applicable city or county general plan when the local agency accepted, as complete, the proponent's application for a land use decision. For the purpose of this finding, a project is consistent with the applicable city or county general plan if the appeal board makes one of the following determinations:

(A) The appeal board may determine that a specified hazardous waste facility project that is not a land disposal facility project is consistent with the general plan if the appeal board makes all of the following findings:

(i) The project is proposed to be located in an area zoned and designated in the applicable general plan for industrial use and substantially developed with other industrial facilities which produce, treat, or dispose of hazardous waste onsite and which are served by the same transportation routes as the proposed facility. In addition, the land uses authorized in the applicable general plan and zoning ordinances in the vicinity of the project are compatible with the project.

(ii) There is no clear and express provision in the general plan which states that such a specified hazardous waste facility project is inconsistent with the general plan, or, if there is such a provision, the provision was adopted after January 1, 1983.

(iii) The specified hazardous waste project is consistent, as determined by the appeal board, with the general plan.

(B) The appeal board may determine that a specified hazardous waste facility project is consistent with the applicable city or county general plan if the project is a land disposal facility project, and if all of the following apply:

(i) There is no clear and express provision in the general plan that states that such a specified hazardous waste facility project is inconsistent with the general plan, or, if there is such a provision, the provision was adopted after January 1, 1983.

(ii) The project is consistent, as determined by the appeal board, with the general plan.

(3) That the specified hazardous waste facility is consistent with the county hazardous waste management plan, if such a plan has been adopted by the county, and approved by the department, pursuant to Article 3.5 (commencing with Section 25135).

(4) That alternative locations for the specified hazardous waste facility project, as identified in the environmental impact report for the project and in the county hazardous waste management plan, if one has been approved by the department, have been adequately considered by the appeal board in determining the appropriateness of the location chosen for the project.

(5) That reversing the local agency's land use decision is consistent with statewide, regional, and county hazardous waste management policies, goals, and objectives. In making this finding, the appeal board shall consider all of the following factors:

(A) Whether or not a need for the specified hazardous waste facility project has been demonstrated.

(B) Whether or not the specified hazardous waste facility project is of a type, and in a location, that conforms to statewide, regional, or local hazardous waste management policies.

(C) Whether or not the specified hazardous waste facility will be operated using the best feasible hazardous waste management technologies.

(g) The local agency whose land use decision is being appealed may reconsider the action and approve the application for the land use decision, consistent with the appeal board's tentative decision, within 60 days after the appeal board issues its tentative decision. If the local agency does not approve the application for the land use decision consistent with the tentative decision within 60 days after the decision is issued, the appeal board shall, by an affirmative vote of at least four members, issue a final decision. If the final decision reverses the local agency's land use decision, the appeal board shall then require the local agency to approve the application for the land use decision and if the local agency does not approve the application for the land use decision, the Attorney General shall bring an action to require the local agency to approve the application for the land use decision for the specified hazardous waste facility project.

(Amended by Stats. 1990, Ch. 557, Sec. 2.)

25199.13. (a) An appeal board convened by the Governor or the Governor's designee to hear an appeal pursuant to subdivision (d) or (e) of Section 25199.9 shall follow the procedures and requirements specified in this section.

(b) Within 30 days after the Governor or the Governor's designee determines that an appeal board should be convened pursuant to subdivision (d) or (e) of Section 25199.9, an appeal board shall be convened and a public hearing held in the city or county where the specified hazardous waste facility project is located. At the hearing, the proponent or the interested party and the local agency whose land use decision is being appealed shall present arguments and evidence to the appeal board concerning whether or not the appeal should be accepted.

The arguments and evidence presented to the appeal board convened pursuant to subdivision (d) of Section 25199.9 shall only concern whether or not a condition or conditions imposed on the operation of the facility by the land use decision are so onerous and restrictive that their imposition is the same as a disapproval of the application for a land use decision. The arguments and evidence presented to the appeal board convened pursuant to subdivision (e) of Section 25199.9 shall only concern whether or not a condition or conditions imposed on the project by the land use decision do not adequately protect the public health, safety, and welfare.

(c) Within 15 days after the date of the public hearing, the appeal board shall decide whether or not to accept the appeal. The appeal board may accept an appeal only by an affirmative vote of five members of the appeal board. The appeal board shall make its decision based upon the arguments and evidence presented at the hearing. The appeal board's decision shall be in writing, shall be signed by the members who voted in favor of the decision, and shall state the reasons for accepting or rejecting the appeal. The appeal board may not accept the appeal unless it finds that the proponent or interested party has demonstrated a substantial likelihood of prevailing on the merits if the appeal is accepted for hearing.

(d) If the appeal board accepts the appeal, within 30 days after this decision, the appeal board shall hold a public hearing in the city or county where the specified hazardous waste facility project is located to hear the arguments and evidence it requires to make a decision on the appeal. The appeal board shall restrict the scope of the hearing to those matters which the appeal board determines are directly related to the subject matter of the appeal. In making a decision pursuant to the hearing, the appeal board shall adopt a rebuttable presumption that the local agency's land use decision is supported by substantial reasons and that there are no compelling reasons to modify it. In all matters related to the appeal, the burden of proof shall be with the proponent or the interested party to rebut this presumption and to establish, by clear and convincing evidence, that there are compelling reasons to modify the local agency's land use decision.

(e) Within 30 days after the public hearing, the appeal board shall, by an affirmative vote of at least five members, issue a decision on the appeal. The decision shall be written, shall be signed by the members in favor of the decision, and shall include the reasons for the decision.

(f) If the appeal board is convened by the Governor or the Governor's designee pursuant to subdivision (d) of Section 25199.9, the appeal board shall not issue a decision modifying the local agency land use decision, unless the appeal board finds that there is clear and convincing evidence that one or more conditions imposed on the facility by the land use decision are so onerous and restrictive that their imposition is the same as a disapproval of the application for a land use decision. If the appeal board agrees with the proponent concerning these conditions, the appeal board shall require the local agency to modify the condition or conditions imposed by the land use decision, as the appeal board deems necessary. If the local agency does not modify the terms of the local land use decision, as required by the appeal board, the Attorney General shall bring an action to require the local agency to modify the local land use decision in accordance with the determination of the appeal board.

(g) If the appeal board is convened by the Governor or the Governor's designee pursuant to subdivision (e) of Section 25199.9, the appeal board shall not issue a decision approving the appeal of the interested person unless the appeal board finds that there is clear and convincing evidence that the land use decision approved by the local agency failed to impose one or more conditions necessary to protect the public health, safety, or welfare. If the appeal board approves the appeal of the interested person concerning these conditions, the appeal board shall require the local agency to modify the land use decision in accordance with the appeal board's decision. If the local agency does not modify the land use decision as required by the appeal board, the Attorney General shall bring an action to require the local agency to modify the land use decision in accordance with the determination of the appeal board.

(Amended by Stats. 1989, Ch. 1354, Sec. 6. Effective October 2, 1989.)

25199.14. The final decision of the appeal board concerning an appeal authorized pursuant to Section 25199.9 shall be deemed to be the final administrative action of the appeal board.

(Added by Stats. 1986, Ch. 1504, Sec. 8.)

Article 9. Permitting of Facilities

(Article 9 added by Stats. 1977, Ch. 1039.)

25200. (a) The department shall issue hazardous waste facilities permits to use and operate one or more hazardous waste management units at a facility that in the judgment of the department meet the building standards published in the State Building Standards Code relating to hazardous waste facilities and the other standards and requirements adopted pursuant to this chapter. The department shall impose conditions on each hazardous waste facilities permit specifying the types of hazardous wastes that may be accepted for transfer, storage, treatment, or disposal. The department may impose any other conditions on a hazardous waste facilities permit that are consistent with the intent of this chapter.

(b) The department may impose, as a condition of a hazardous waste facilities permit, a requirement that the owner or operator of a hazardous waste facility that receives hazardous waste from more than one producer comply with any order of the director that prohibits the facility operator from refusing to accept a hazardous waste based on geographical origin that is authorized to be accepted and may be accepted by the facility without extraordinary hazard.

(c) (1) (A) Any hazardous waste facilities permit issued by the department shall be for a fixed term, which shall not exceed 10 years for any land disposal facility, storage facility, incinerator, or other treatment facility.

(B) Before the fixed term of a permit expires, the owner or operator of a facility intending to extend the term of the facility's permit shall submit a complete Part A application for a permit renewal. At any time following the submittal of the Part A application, the owner or operator of a facility shall submit a complete Part B application, or any portion thereof, as well as any other relevant information, as and when requested by the department. To the extent not inconsistent with the federal act, when a complete Part A renewal application, and any other requested information, has been submitted before the end of the permit's fixed term, the permit is deemed extended until the renewal application is approved or denied and the owner or operator has exhausted all applicable rights of appeal.

(C) This section does not limit or restrict the department's authority to impose any additional or different conditions on an extended permit that are necessary to protect human health and the environment.

(D) In adopting new conditions for an extended permit, the department shall follow the applicable permit modification procedures specified in this chapter and the regulations adopted pursuant to this chapter.

(E) When prioritizing pending renewal applications for processing and in determining the need for any new conditions on an extended permit, the department shall consider any input received from the public.

(2) The department shall review each hazardous waste facilities permit for a land disposal facility five years after the date of issuance or reissuance, and shall modify the permit, as necessary, to assure that the facility continues to comply with the currently applicable requirements of this chapter and the regulations adopted pursuant to this chapter.

(3) This subdivision does not prohibit the department from reviewing, modifying, or revoking a permit at any time during its term.

(d) (1) When reviewing any application for a permit renewal, the department shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations.

(2) Each permit issued or renewed under this section shall contain the terms and conditions that the department determines necessary to protect human health and the environment.

(e) A permit issued pursuant to the federal act by the Environmental Protection Agency in the state for which no state hazardous waste facilities permit has been issued shall be deemed to be a state permit enforceable by the department until a state permit is issued. In addition to complying with the terms and conditions specified in a federal permit deemed to be a state permit pursuant to this section, an owner or operator who holds that permit shall comply with the requirements of this chapter and the regulations adopted by the department to implement this chapter.

(Amended by Stats. 2004, Ch. 779, Sec. 2. Effective January 1, 2005.)

25200.1. Notwithstanding Section 25200, the department shall not issue a hazardous waste facility permit to a facility which commences operation on or after January 1, 1987, unless the department determines that the facility operator is in compliance with regulations adopted by the department pursuant to this chapter requiring that the operator provide financial assurance that the operator can respond adequately to damage claims arising out of the operation of the facility or the facility is exempt from these financial assurance requirements pursuant to this chapter or the regulations adopted by the department to implement this chapter.

(Amended by Stats. 1995, Ch. 640, Sec. 5. Effective January 1, 1996.)

25200.1.5. (a) The department may establish an administrative process to certify hazardous waste environmental technologies that it determines will not pose a significant potential hazard to human health and safety or to the environment if they are used under specified operating conditions. Hazardous waste environmental technologies which may be certified shall include, but are not limited to, hazardous waste management technologies, site mitigation technologies, and waste minimization and pollution prevention technologies. The certification process shall not be used for hazardous waste incineration technologies. The certification shall include all of the following:

(1) A statement of the technical specifications applicable to the technology.

(2) A determination of the composition of the hazardous wastes or chemical constituents for which the technology can appropriately be used.

(3) An estimate of the efficacy and efficiency of the technology in regard to the hazardous wastes or chemical constituents for which it is certified.

(4) A specification of the minimal operational standards the technology is required to meet to ensure that the certified technology is managed properly and used safely.

(b) An applicant for certification of a hazardous waste environmental technology shall provide the department with any information required by the department to make a determination on the application for certification.

(c) The department's proposed decision on an application for certification of a hazardous waste environmental technology shall be published in the California Regulatory Notice Register and shall be subject to a 30-day comment period. The department's final decision on an application for certification of a hazardous waste environmental technology shall become effective not sooner than 30 days from the date of publication of the final decision in the California Regulatory Notice Register.

(d) The department may decertify a hazardous waste environmental technology if it determines, on the basis of any information, that the hazardous waste environmental technology may pose a significant potential hazard to human health and safety or to the environment. The department may decertify a hazardous waste environmental technology in accordance with the procedure set forth in subdivision (c).

(e) The department's decision on an application for certification under this section is exempt from the requirements of Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not be subject to the review and approval of the Office of Administrative Law.

(f) Based on the determination made by the department pursuant to subdivision (a), other local and state government permitting authorities may take this certification process into consideration when making their permitting decisions.

(g) (1) The department shall place appropriate conditions on any certification granted pursuant to this section. Those conditions may include, but are not limited to, all of the following:

(A) Limits on the types, volume, and concentration of waste streams that may be employed with the technology.

(B) Operating requirements.

(C) Monitoring requirements.

(2) Any technology certified by the department pursuant to this section may be eligible for authorization pursuant to permit-by-rule or conditional authorization pursuant to Section 25200.3, or conditional exemption pursuant to Section 25201.5, only if the department determines that the use of that technology to handle the waste stream or streams is demonstrated to be as safe and as effective as the processes that are subject to regulation pursuant to permit-by-rule or conditional authorization pursuant to Section 25200.3 or conditional exemption pursuant to Section 25201.5. A certified technology determined to be eligible for authorization pursuant to permit-by-rule shall, in addition to any conditions placed on the certification pursuant to paragraph (1), operate in accordance with all conditions of the certification and permit-by-rule.

(3) In determining the placement of a technology certified pursuant to this section for operation pursuant to permit-by-rule or pursuant to a grant of conditional authorization under Section 25200.3 or conditional exemption under Section 25201.5, the department shall, to the extent information is available, consider all the following factors in making its determination:

(A) The hazardous waste streams that are treated using the treatment methods and the hazards to human health and safety or the environment posed by those hazardous wastes and their hazardous constituents.

(B) The complexity of the treatment method, the degree of difficulty in carrying it out, and the technology that is used to carry it out.

(C) Chemical or physical hazards that are associated with the use of the treatment process and the degree to which these hazards are similar to, or differ from, the chemical or physical hazards that are associated with the production processes that are carried out in the facilities that produce the hazardous waste that is treated using the treatment methods.

(D) The levels of specialized operator training, equipment maintenance, and monitoring that are required to ensure the safety of the treatment method and its effectiveness in treating particular hazardous waste streams.

(E) The types of accidents that may occur during the treatment of particular types of hazardous waste streams, the likely consequences of those accidents, and the actual accident history associated with use of the treatment method.

(h) The department shall charge fees to review and certify environmental technologies pursuant to this section that are sufficient to recover the actual costs of the department in reviewing and approving the technology.

(i) The department shall implement a program to continually monitor and oversee manufacturers and users of technologies certified pursuant to this section, to ensure that the certified technologies are operating in a manner

which is not hazardous to human health and safety or to the environment.

(j) The department shall adopt regulations to implement the certification process.

(Amended by Stats. 1996, Ch. 999, Sec. 5. Effective January 1, 1997.)

25200.2. (a) The department shall develop a permitting process for transportable hazardous waste treatment units for treating hazardous waste in accordance with the federal act and in accordance with this chapter for hazardous wastes that are not otherwise subject to the federal act. The permitting process shall require the units to be permitted pursuant to the regulations of the department for operation pursuant to a permit-by-rule, a hazardous waste facilities permit, or pursuant to the regulations of the department for operation under a standardized permit adopted pursuant to Section 25201.6, whichever the department determines to be appropriate, by regulation, depending on the nature of the treatment units and the type of hazardous waste to be treated, and without regard to whether the units are determined to be onsite or offsite treatment units.

(b) (1) The operator of a transportable hazardous waste treatment unit shall pay the same annual fee as facilities authorized to operate pursuant to a permit-by-rule specified in subdivision (a) of Section 25205.14. The operator of a unit is exempt from paying the facility fee specified in Section 25205.2 for any year or reporting period during which the unit was operating for any activity authorized under permit, except as specified in subdivision (b) of Section 25205.12.

(2) The department shall report on the actual costs of managing the transportable hazardous waste treatment units in the annual onsite treatment report required pursuant to subparagraph (D) of paragraph (3) of subdivision (a) of Section 25171.5. Notwithstanding paragraph (1), the Legislature may authorize the department to recover the costs to manage the transportable treatment units should the actual costs exceed the revenue raised by the fees specified in Section 25205.14.

(c) A transportable hazardous waste treatment unit operating pursuant to a hazardous waste facilities permit, a standardized permit, or pursuant to the department's regulations for operation under a permit-by-rule may operate at a facility for a period not to exceed one year. If the owner or operator of the transportable hazardous waste treatment unit shows cause, the department may authorize up to two extensions of this period, of six months duration, during which the transportable hazardous waste treatment unit may operate at the facility, if the department reviews the justification for the extension request after the first six-month period.

(d) Notwithstanding any other provision of this section, if, as of March 1, 1996, the department has not issued proposed regulations, or has not adopted emergency regulations, to implement the changes made to this section by the act adding this subdivision, until the department issues or adopts those regulations, the department shall regulate all transportable treatment units operating pursuant to a permit-by-rule on January 1, 1996, pursuant to the regulations adopted by the department with regard to permit-by-rule, and shall regulate all transportable treatment units operating pursuant to a hazardous waste facilities permit on January 1, 1996, pursuant to the regulations providing for a standardized permit.

(Amended by Stats. 1997, Ch. 778, Sec. 1. Effective January 1, 1998.)

25200.3. (a) A generator who uses the following methods for treating RCRA or non-RCRA hazardous waste in tanks or containers, which is generated onsite, and which do not require a hazardous waste facilities permit under the federal act, shall, for those activities, be deemed to be operating pursuant to a grant of conditional authorization without obtaining a hazardous waste facilities permit or other grant of authorization and a generator is deemed to be granted conditional authorization pursuant to this section, upon compliance with the notification requirements specified in subdivision (e), if the treatment complies with the applicable requirements of this section:

(1) The treatment of aqueous wastes which are hazardous solely due to the presence of inorganic constituents, except asbestos, listed in subparagraph (B) of paragraph (1) and subparagraph (A) of paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, and which contain not more than 1400 ppm total of these constituents, using the following treatment technologies:

(A) Phase separation, including precipitation, by filtration, centrifugation, or gravity settling, including the use of demulsifiers and flocculants in those processes.

(B) Ion exchange, including metallic replacement.

(C) Reverse osmosis.

(D) Adsorption.

(E) pH adjustment of aqueous waste with a pH of between 2.0 and 12.5.

(F) Electrowinning of solutions, if those solutions do not contain hydrochloric acid.

(G) Reduction of solutions which are hazardous solely due to the presence of hexavalent chromium, to trivalent chromium with sodium bisulfite, sodium metabisulfite, sodium thiosulfite, ferrous chloride, ferrous sulfate, ferrous sulfide, or sulfur dioxide, provided that the solution contains less than 750 ppm of hexavalent chromium.

(2) Treatment of aqueous wastes which are hazardous solely due to the presence of organic constituents listed in subparagraph (B) of paragraph (1), or subparagraph (B) of paragraph (2), of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and which contain not more than 750 ppm total of those constituents, using either of the following treatment technologies:

(A) Phase separation by filtration, centrifugation, or gravity settling, but excluding supercritical fluid extraction.

(B) Adsorption.

(3) Treatment of wastes which are sludges resulting from wastewater treatment, solid metal objects, and metal workings which contain or are contaminated with, and are hazardous solely due to the presence of, constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, or treatment of wastes which are dusts which contain, or are contaminated with, and are hazardous solely due to the presence of, not more than 750 ppm total of those constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, using any of the following treatment technologies:

(A) Physical processes which constitute treatment only because they change the physical properties of the waste, such as filtration, centrifugation, gravity settling, grinding, shredding, crushing, or compacting.

(B) Drying to remove water.

(C) Separation based on differences in physical properties, such as size, magnetism, or density.

(4) Treatment of alum, gypsum, lime, sulfur, or phosphate sludges, using either of the following treatment technologies:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(5) Treatment of wastes listed in Section 66261.120 of Title 22 of the California Code of Regulations, which meet the criteria and requirements for special waste classification in Section 66261.122 of Title 22 of the California Code of Regulations, using any of the following treatment technologies, if the waste is hazardous solely due to the presence of constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and the waste contains not more than 750 ppm total of those constituents:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(C) Screening to separate components based on size.

(D) Separation based on differences in physical properties, such as size, magnetism, or density.

(6) Treatment of wastes, except asbestos, which have been classified by the department as special wastes pursuant to Section 66261.24 of Title 22 of the California Code of Regulations, using any of the following treatment technologies, if the waste is hazardous solely due to the presence of constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and the waste contains not more than 750 ppm of those constituents:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(C) Magnetic separation.

(7) Treatment of soils which are hazardous solely due to the presence of metals listed in subparagraph (A) of paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, using either of the following treatment technologies:

(A) Screening to separate components based on size.

(B) Magnetic separation.

(8) Except as provided in Section 25201.5, treatment of oil mixed with water and oil/water separation sludges, using any of the following treatment technologies:

(A) Phase separation by filtration, centrifugation, or gravity settling, but excluding supercritical fluid extraction. This phase separation may include the use of demulsifiers and flocculants in those processes, even if the processes involve the application of heat, if the heat is applied in totally enclosed tanks and containers, and if it does not exceed 160 degrees Fahrenheit, or any lower temperature which may be set by the department.

(B) Separation based on differences in physical properties, such as size, magnetism, or density.

(C) Reverse osmosis.

(9) Neutralization of acidic or alkaline wastes that are hazardous only due to corrosivity or toxicity that results only from the acidic or alkaline material, in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, if the wastes contain less than 10 percent acid or base constituents by weight, and are treated in tanks or containers and piping, constructed of materials compatible with the range of temperatures and pH levels, and subject to appropriate pH and temperature controls. If the waste contains more than 10 percent acid or base constituents by weight, the volume treated in a single batch at any one time shall not exceed 500 gallons.

(10) Treatment of spent cleaners and conditioners which are hazardous solely due to the presence of copper or copper compounds, subject to the following:

(A) The following requirements are met, in addition to all other requirements of this section:

(i) The waste stream does not contain more than 5000 ppm total copper.

(ii) The generator does not generate for treatment any more than 1000 gallons of the waste stream per month.

(iii) The treatment technologies employed are limited to those set forth in paragraph (1) for metallic wastes.

(iv) The generator keeps records documenting compliance with this subdivision, including records indicating the volume and concentration of wastes treated, and the management of related solutions which are not cleaners or conditioners.

(B) Cleaners and conditioners, for purposes of this paragraph, are solutions containing surfactants and detergents to remove dirt and foreign objects. Cleaners and conditioners do not include microetch, etchant, plating, or metal stripping solutions or solutions containing oxidizers, or any cleaner based on organic solvents.

(C) A grant of conditional authorization under this paragraph shall expire on January 1, 1998, unless extended by the department pursuant to this section.

(D) The department shall evaluate the treatment activities described in this paragraph and shall designate, by regulation, not later than January 1, 1997, those activities eligible for conditional authorization and those activities subject to permit-by-rule. In adopting regulations under this subparagraph, the department shall consider all of the following:

(i) The volume of waste being treated.

(ii) The concentration of the hazardous waste constituents.

(iii) The characteristics of the hazardous waste being treated.

(iv) The risks of the operation, and breakdown, of the treatment process.

(11) Any waste stream technology combination certified by the department, pursuant to Section 25200.1.5, as suitable for authorization pursuant to this section, that operates pursuant to the conditions imposed on that certification.

(b) Any treatment performed pursuant to this section shall comply with all of the following, except as to generators, who are treating hazardous waste pursuant to paragraph (11) of subdivision (a), who shall also comply with any additional conditions of the specified certification if those conditions are different from those set forth in this subdivision:

(1) The total volume of hazardous waste treated in the unit in any calendar month shall not exceed 5,000 gallons or 45,000 pounds, whichever is less, unless the waste is a dilute aqueous waste described in paragraph (1), (2), or (9) of subdivision (a) or oily wastes as described in paragraph (8) of subdivision (a). The department may, by regulation, impose volume limitations on wastes which have no limitations under this section, as may be necessary to protect human health and safety or the environment.

(2) The treatment is conducted in tanks or containers.

(3) The treatment does not consist of the use of any of the following:

(A) Chemical additives, except for pH adjustment, chrome reduction, oil/water separation, and precipitation with the use of flocculants, as allowed by this section.

(B) Radiation.

(C) Electrical current except in the use of electrowinning, as allowed by this section.

(D) Pressure, except for reverse osmosis, filtration, and crushing, as allowed by this section.

(E) Application of heat, except for drying to remove water or demulsification, as allowed by this section.

(4) All treatment residuals and effluents are managed and disposed of in accordance with applicable federal, state, and local requirements.

(5) The treatment process does not do either of the following:

(A) Result in the release of hazardous waste into the environment as a means of treatment or disposal.

(B) Result in the emission of volatile hazardous waste constituents or toxic air contaminants, unless the emission is in compliance with the rules and regulations of the air pollution control district or air quality management district.

(6) The generator unit complies with any additional requirements set forth in regulations adopted pursuant to this section.

(c) A generator operating pursuant to subdivision (a) shall comply with all of the following requirements:

(1) Except as provided in paragraph (4), the generator shall comply with the standards applicable to generators specified in Chapter 12 (commencing with Section 66262.10) of Division 4.5 of Title 22 of the California Code of Regulations and with the applicable requirements in Sections 66265.12, 66265.14, and 66265.17 of Title 22 of the California Code of Regulations.

(2) The generator shall comply with Section 25202.9 by making an annual waste minimization certification.

(3) The generator shall comply with the environmental assessment procedures required pursuant to subdivisions (a) to (e), inclusive, of Section 25200.14. If that assessment reveals that there is contamination resulting from the release of hazardous waste or constituents from a solid waste management unit or a hazardous waste management unit at the generator's facility, regardless of the time at which the waste was released, the generator shall take every action necessary to expeditiously remediate that contamination, if the contamination presents a substantial hazard to human health and safety or the environment or if the generator is required to take corrective action by the department. If a facility is remediating the contamination pursuant to, and in compliance with the provisions of, an order issued by a California regional water quality control board or other state or federal environmental enforcement agency, that remediation shall be adequate for the purposes of complying with this section, as the remediation pertains to the jurisdiction of the ordering agency. This paragraph does not limit the authority of the department or a unified program agency pursuant to Section 25187 as may be necessary to protect human health and safety or the environment.

(4) The generator unit shall comply with container and tank standards applicable to non-RCRA wastes, unless otherwise required by federal law, specified in subdivisions (a) and (b) of Section 66264.175 of Title 22 of the California Code of Regulations, as the standards apply to container storage and transfer activities, and to Article 9 (commencing with Section 66265.170) and Article 10 (commencing with Section 66265.190) of Chapter 15 of Division 4.5 of Title 22 of the California Code of Regulations, except for Section 66265.197 of Title 22 of the California Code of Regulations.

(A) Unless otherwise required by federal law, ancillary equipment for a tank or container treating hazardous wastes solely pursuant to this section, is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the ancillary equipment's integrity is attested to, pursuant to Section 66265.191 of Title 22 of the California Code of Regulations, every two years from the date that retrofitting requirements would otherwise apply.

(B) (i) The Legislature hereby finds and declares that in the case of underground, gravity-pressured sewer systems, integrity testing is often not feasible.

(ii) The best feasible leak detection measures which are sufficient to ensure that underground gravity-pressured sewer systems, for which it is not feasible to conduct integrity testing, do not leak.

(iii) If it is not feasible for an operator's ancillary equipment, or a portion thereof, to undergo integrity testing, the operator shall not be subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the operator implements the best feasible leak detection measures which are determined to be sufficient by the department in those regulations, and those leak detection measures do not reveal any leaks emanating from the operator's ancillary equipment. Any ancillary equipment found to leak shall be retrofitted by the operator to meet the secondary containment standards of Section 66265.196 of Title 22 of the California Code of Regulations.

(5) The generator shall prepare and maintain a written inspection schedule and a log of inspections conducted.

(6) The generator shall prepare and maintain written operating instructions and a record of the dates, concentrations, amounts, and types of waste treated. Records maintained to comply with the state, federal, or local programs may be used to satisfy this requirement, to the extent that those documents substantially comply with the requirements of this section. The operating instructions shall include, but not be limited to, directions regarding all of the following:

(A) How to operate the treatment unit and carry out waste treatment.

(B) How to recognize potential and actual process upsets and respond to them.

(C) When to implement the contingency plan.

(D) How to determine if the treatment has been efficacious.

(E) How to address the residuals of waste treatment.

(7) The generator shall maintain adequate records to demonstrate to the department and the unified program agency that the requirements and conditions of this section are met, including compliance with all applicable pretreatment standards and with all applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged. The records shall be maintained onsite for a period of five years.

(8) The generator shall treat only hazardous waste which is generated onsite. For purposes of this chapter, a residual material from the treatment of a hazardous waste generated offsite is not a waste that has been generated onsite.

(9) Except as provided in Section 25404.5, the generator shall submit a fee to the State Board of Equalization in the amount required by Section 25205.14, unless the generator is subject to a fee under a permit-by-rule. The generator shall submit that fee within 30 days of the date that the fee is assessed by the State Board of Equalization.

(d) Notwithstanding any other provision of law, the following activities are ineligible for conditional authorization:

(1) Treatment in any of the following units:

(A) Landfills.

(B) Surface impoundments.

(C) Injection wells.

(D) Waste piles.

(E) Land treatment units.

(2) Commingling of hazardous waste with any hazardous waste that exceeds the concentration limits or pH limits specified in subdivision (a), or diluting hazardous waste in order to meet the concentration limits or pH limits specified in subdivision (a).

(3) Treatment using a treatment process not specified in subdivision (a).

(4) Pretreatment or posttreatment activities not specified in subdivision (a).

(5) Treatment of any waste which is reactive or extremely hazardous.

(e) (1) Not less than 60 days prior to commencing the first treatment of hazardous waste under this section, the generator shall submit a notification, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(A) The CUPA, if the generator is under the jurisdiction of a CUPA.

(B) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(2) Upon demonstration of good cause by the generator, the department may allow a shorter time period, than the 60 days required by paragraph (1), between notification and commencement of hazardous waste treatment pursuant to this section.

(3) Each notification submitted pursuant to this subdivision shall be completed, dated, and signed according to the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements that were in effect on January 1, 1996, and apply to hazardous waste facilities permit applications, shall be on a form prescribed by the department, and shall include, but not be limited to, all of the following information:

(A) The name, identification number, site address, mailing address, and telephone number of the generator to whom the conditional authorization is granted.

(B) A description of the physical characteristics and chemical composition of the hazardous waste to which the conditional authorization applies.

(C) A description of the hazardous waste treatment activity to which the conditional authorization applies, including the basis for determining that a hazardous waste facilities permit is not required under the federal act.

(D) A description of the characteristics and management of any treatment residuals.

(E) Documentation of any convictions, judgments, settlements, or orders resulting from an action by any local, state, or federal environmental or public health enforcement agency concerning the operation of the facility within the last three years, as the documents would be available under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of the Civil Code). For purposes of this paragraph, a notice of violation for any local, state, or federal agency does not constitute an order and a generator is not required to report the notice unless the violation is not corrected and the notice becomes a final order.

(f) Any generator operating pursuant to a grant of conditional authorization shall comply with all regulations adopted by the department relating to generators of hazardous waste.

(g) (1) Upon terminating operation of any treatment process or unit conditionally authorized pursuant to this section, the generator conducting treatment pursuant to this section shall remove or decontaminate all waste residues, containment system components, soils, and structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from service shall be conducted in a manner that does both of the following:

(A) Minimizes the need for further maintenance.

(B) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the environment after the treatment process is no longer in operation.

(2) Any generator conducting treatment pursuant to this section who permanently ceases operation of a treatment process or unit that is conditionally authorized pursuant to this section shall, upon completion of all activities required under this subdivision, provide written notification, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(A) The CUPA, if the generator is under the jurisdiction of a CUPA.

(B) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(h) In adopting regulations pursuant to this section, the department may impose any further restrictions or limitations consistent with the conditionally authorized status conferred by this section which are necessary to protect human health and safety and the environment.

(i) The department may revoke any conditional authorization granted pursuant to this section. The department shall base a revocation on any one of the causes set forth in subdivision (a) of Section 66270.43 of Title 22 of the California Code of Regulations or in Section 25186, or upon a finding that operation of the facility in question will endanger human health and safety,

domestic livestock, wildlife, or the environment. The department shall conduct the revocation of a conditional authorization granted pursuant to this section in accordance with Chapter 21 (commencing with Section 66271.1) of Division 4.5 of Title 22 of the California Code of Regulations and as specified in Section 25186.7.

(j) A generator who would otherwise be subject to this section may contract with the operator of a transportable treatment unit who is operating pursuant to a permit-by-rule, a standardized permit, or a full state hazardous waste facilities permit to treat the generator's waste. If treatment of the generator's waste takes place under such a contract, the generator is not otherwise subject to the requirements of this section, but shall comply with all other requirements of this chapter that apply to generators. The operator of the transportable treatment unit that performs onsite treatment pursuant to this subdivision shall comply with all requirements applicable to transportable treatment units operating pursuant to a permit-by-rule, as set forth in the regulations adopted by the department.

(k) (1) Within 30 days of any change in operation which necessitates modifying any of the information submitted in the notification required pursuant to subdivision (e), a generator shall submit an amended notification, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(A) The CUPA, if the generator is under the jurisdiction of a CUPA.

(B) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(2) Each amended notification shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to hazardous waste facilities permit applications.

(l) A person who has submitted a notification to the department pursuant to subdivision (e) shall be deemed to be operating pursuant to this section, and, except as provided in Section 25404.5, shall be subject to the fee set forth in subdivision (a) of Section 25205.14 until that person submits a certification that the generator has ceased all treatment activities of hazardous waste streams authorized pursuant to this section in accordance with the requirements of subdivision (g). The certification required by this subdivision shall be submitted, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(1) The CUPA, if the generator is under the jurisdiction of a CUPA.

(2) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(m) The development and publication of the notification form specified in subdivision (e) is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

(Amended by Stats. 1998, Ch. 309, Sec. 3. Effective January 1, 1999.)

25200.3.1. (a) For purposes of this section, the following definitions apply:

(1) "Laboratory" means a workplace where relatively small quantities of hazardous chemicals are handled or used in a manner that meets all of the following criteria:

(A) Chemical reactions, transfers, and handling are carried out using containers that are designed to be easily and safely manipulated by one person.

(B) Protective laboratory practices and equipment are available and in common use to minimize the potential for laboratory worker exposure to hazardous chemicals.

(C) The chemical procedures conducted in the laboratory meet all of the following criteria:

(i) The chemical procedures are conducted for purposes of education, research, chemical analysis, clinical testing, or product development, testing, or quality control.

(ii) The chemical procedures are not part of the actual commercial production of chemicals or other products, and are not part of production development activities, unless the activities are conducted on the scale of a research laboratory.

(iii) The chemical procedures are not part of the treatment of hazardous waste, other than the treatment of laboratory hazardous waste pursuant to subdivision (c).

(2) "Laboratory accumulation area" means the area where laboratory hazardous wastes are accumulated pursuant to subdivision (b). The laboratory accumulation area may be located in the room in which the accumulated laboratory hazardous wastes are generated or in another onsite location.

(3) "Laboratory hazardous waste" means hazardous waste generated in a laboratory by chemical procedures meeting the criteria specified in subparagraph (C) of paragraph (1).

(b) Notwithstanding paragraph (1) of subdivision (d) of Section 25123.3, and except as otherwise required by the federal act, up to 55 gallons of laboratory hazardous waste, or one quart of laboratory hazardous waste that is acutely hazardous waste, may be accumulated onsite in a laboratory accumulation area that is located as close as is practical to the location where the laboratory hazardous waste is generated, if all of the following conditions are met:

(1) The laboratory accumulation area is managed under the control of one or more designated personnel who have received training commensurate with their responsibilities and authority for managing laboratory hazardous wastes, and unsupervised access to the laboratory accumulation area is limited to personnel who have received training commensurate with their responsibilities and authority for managing laboratory hazardous wastes.

(2) The laboratory hazardous wastes are managed so as to ensure that incompatible laboratory hazardous wastes are not mixed, and are otherwise prevented from coming in contact with each other. However, incompatible laboratory hazardous wastes may be mixed together during treatment meeting the requirements of subdivision (c), if one laboratory hazardous waste is being used to treat another laboratory hazardous waste pursuant to procedures identified in paragraph (1) of subdivision (c).

(3) The amount of laboratory hazardous wastes accumulated in the laboratory accumulation area is appropriate for the space limitations and the need to safely manage the containers and separate incompatible laboratory hazardous wastes.

(4) All of the requirements of subdivision (d) of Section 25123.3 are met, except for the requirements of paragraph (1) of subdivision (d) of Section 25123.3.

(c) Notwithstanding any other provision of law, and except as otherwise required by the federal act, a hazardous waste facilities permit or other grant of authorization from the department is not required for treatment of laboratory hazardous waste generated onsite, if all of the following requirements are met:

(1) The laboratory hazardous waste is treated in containers using recommended procedures and quantities for treatment of laboratory wastes published by the National Research Council or procedures for treatment of laboratory wastes published in peer-reviewed scientific journals.

(2) The laboratory hazardous waste is treated at a location that is as close as is practical to the location where the laboratory hazardous waste is generated, and the treatment is conducted within 10 calendar days after the date the laboratory hazardous waste is generated.

(3) The amount of laboratory hazardous waste treated in a single batch does not exceed the quantity limitation specified in subparagraph (A) or (B), whichever is the smaller quantity:

(A) Five gallons or 18 kilograms, whichever is greater.

(B) (i) Except as otherwise provided in clause (ii), the quantity limit recommended in the procedures published by the National Research Council or in other peer-reviewed scientific journals for the treatment procedure being used.

(ii) Except as otherwise specified in subparagraph (A), the amount of laboratory hazardous waste treated in a single batch may exceed the quantity limit specified in clause (i) if a qualified chemist has demonstrated that the larger quantity can be safely treated, and documentation of the demonstration is maintained onsite. The documentation shall be made available for inspection upon request by a representative of the department or the CUPA, or if there is no CUPA, the agency authorized pursuant to subdivision (f) of Section 25404.3.

(4) The laboratory hazardous waste treated is from a single

procedure, or set of procedures that are part of the same laboratory process.

(5) The person performing the treatment has knowledge of the laboratory hazardous waste being treated, including knowledge of the procedure that generated the laboratory hazardous waste, and has received hazardous waste training, including how to conduct the treatment, manage treatment residuals, and respond effectively to emergency situations.

(6) Training records for all persons performing treatment of laboratory hazardous wastes pursuant to this subdivision are maintained for a minimum of three years.

(7) The laboratory hazardous waste is managed in accordance with applicable requirements for generators accumulating laboratory hazardous waste under this chapter and the regulations adopted by the department, and all treatment residuals and effluents are managed in accordance with applicable federal, state and local requirements.

(8) All records maintained by the laboratory pertaining to treatment conducted pursuant to this subdivision are made available for inspection upon request by a representative of the department or the CUPA, or if there is no CUPA, the agency authorized pursuant to subdivision (f) of Section 25404.3.

(d) For laboratory hazardous wastes that contain radioactive material, the requirements of this section apply in addition to, but do not supercede, applicable federal and state requirements governing the management of radioactive materials.

(e) The department may adopt regulations that specify additional requirements for accumulating laboratory hazardous wastes pursuant to subdivision (b) or treating laboratory hazardous wastes pursuant to subdivision (c), if the department determines these additional requirements are necessary for protection of public health and the environment.

(Added by Stats. 1998, Ch. 506, Sec. 4. Effective January 1, 1999.)

25200.4. (a) Any application for a hazardous waste facilities permit or other grant of authorization to use and operate a hazardous waste facility made pursuant to this article, except for an application made by a federal, state, or local agency, shall include a disclosure statement, as defined in Section 25112.5.

(b) The requirements of this section do not apply to a person operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption.

(c) Notwithstanding subdivision (a), an applicant for a series C standardized permit, as specified in Section 25201.6, shall submit a disclosure statement to the department only upon request.

(Added by Stats. 2001, Ch. 605, Sec. 13. Effective October 9, 2001. Operative January 1, 2002, by Sec. 18 of Ch. 605.)

25200.5. (a) Except as provided in Sections 25200.7 and 25200.9, any person who desires to continue the use or operation of a hazardous waste facility which was in existence on November 19, 1980, or which was in existence on the effective date of any statute or regulation which subjected that facility to hazardous waste facilities permit requirements under this chapter, pending the review and decision of the department on the permit application, may be granted interim status by the department if the person has made application for a permit pursuant to Section 25200, or has made application pursuant to Section 25201.6, and, if treating a waste regulated pursuant to the federal act, has complied with the requirements of subsection (a) of Section 6930 of Title 42 of the United States Code.

(b) The person operating under an interim status pursuant to this section shall not do any of the following acts:

(1) Treat, store, transfer, or dispose of hazardous wastes which are not specified in Part A of the permit application.

(2) Employ processes not described in Part A of the permit application.

(3) Exceed the design capacities specified in Part A of the permit application.

(c) A facility operating under interim status is not subject to civil or criminal penalties for operating without a permit, but is otherwise subject to this chapter and the rules, regulations, standards, and requirements issued or adopted pursuant to this chapter. Interim status may be granted subject to any conditions which the department deems necessary to protect public health or the environment. Interim status shall not be valid beyond the date of the decision of the department on the permit application.

(d) The department shall not grant interim status to any person to operate a hazardous waste facility if the facility has been subject to any of the following actions:

(1) Denial of a hazardous waste facilities permit.

(2) Suspension, revocation, or termination of a hazardous waste facilities permit.

(3) Termination of a grant of interim status.

(e) For purposes of this section, "Part A of the permit application" has the same meaning as defined in Section 66151 of Title 22 of the California Code of Regulations, as that section read on January 1, 1988.

(f) Any land disposal facility, as defined in subdivision (h) of Section 25179.3, which lost interim status pursuant to paragraph (2) or (3) of subsection (e) of Section 6925 of Title 42 of the United States Code is deemed to have lost interim status granted under this section to operate a facility managing hazardous waste regulated pursuant to the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

(g) The termination date for interim status for any land disposal facility, as defined in subdivision (h) of Section 25179.3, which is in existence on the effective date of any statute or the regulation adopted pursuant to that statute which subjects the facility to hazardous waste facilities permit requirements under this chapter, and which is granted interim status under this section, is the date 12 months after the date on which the facility first becomes subject to the hazardous waste facilities permit requirements, unless one of the following applies:

(1) Part A of the facility's permit application specifies that only non-RCRA hazardous waste will be disposed of at the facility, in which case the facility is subject to the termination date specified in Section 25200.11, if the facility is subject to Section 25200.11.

(2) The owner or operator of the facility does both of the following:

(A) Applies for a final determination regarding the issuance of a hazardous waste facilities permit under Section 25200 for the facility before the date 12 months after the date on which the facility first becomes subject to the hazardous waste facilities permit requirements.

(B) Certifies that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(h) The termination date for interim status for any incinerator facility which submitted an application for a hazardous waste facilities permit before November 8, 1984, is November 8, 1989, unless one of the following applies:

(1) Part A of the facility's permit application specifies that only non-RCRA hazardous waste will be incinerated at the facility, in which case the facility is subject to the termination date specified in Section 25200.11, if the facility is subject to Section 25200.11.

(2) The owner or operator of the facility applied for a final determination regarding the issuance of a hazardous waste facilities permit under Section 25200 for the facility on or before November 8, 1986.

(i) The termination date for interim status for any facility, other than a facility specified in subdivision (g) or (h), which submitted an application for a hazardous waste facilities permit before November 8, 1984, is November 8, 1992, unless one of the following applies:

(1) Part A of the facility's permit application specifies that only non-RCRA hazardous waste will be transferred, treated, or stored at the facility, and the facility is in compliance with its Part A application, in which case the facility is subject to the termination date specified in Section 25200.11, if the facility is subject to Section 25200.11.

(2) The owner or operator of the facility applied for a final determination regarding the issuance of a hazardous waste facilities permit under Section 25200 for the facility on or before November 8, 1988.

(j) On or before July 1, 1993, the department shall take final action on each application for a hazardous waste facilities permit, to be issued pursuant to Section 25200, which was filed before November 8, 1984, for an offsite hazardous waste facility subject to subdivision (i), and not subject to Section 25200.7 or 25200.11. In taking final action pursuant to this subdivision, the department shall either issue the hazardous waste facilities permit or make a final denial of the application.

(k) (1) Notwithstanding any other provision of law or regulation, except as provided in paragraph (2), a hazardous waste facility operating pursuant to this section shall comply with the requirements of Article 4 (commencing with Section 66270.40) of Chapter 20 of Division 4.5 of Title 22 of the California Code of Regulations.

(2) The requirements of paragraph (1) do not apply to an inactive facility that is no longer accepting offsite hazardous waste and that has

notified the department of its intent to close.

(Amended by Stats. 1995, Ch. 640, Sec. 7. Effective January 1, 1996.)

25200.6. (a) The department shall not issue a hazardous waste facilities permit for an injection well or for the discharge of hazardous waste into an injection well unless all of the following conditions are met:

(1) A hydrogeological assessment report has been approved pursuant to Section 25159.18.

(2) The groundwater monitoring required by Section 25159.16 is included as a permit condition.

(3) The department finds that the hazardous wastes to be discharged cannot be reasonably and adequately reduced, treated, or disposed of by an alternative method other than well injection. This finding shall be in writing and shall be supported by evidence citing specific evidence presented to the department or evidence that is otherwise made available to the department. The department shall provide public notice and opportunity for comment before making this finding.

(4) The horizontal and vertical extent of the permitted injection zone specified pursuant to Section 25159.20 is included as a permit condition.

(5) The permit complies with and incorporates as a permit condition any waste discharge requirements issued by the state board or a regional board and the permit is consistent with all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code and with the state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, and any amendments made to these plans, policies, or requirements. The department may also include any more stringent requirement that the department determines is necessary or appropriate to protect water quality.

(b) Notwithstanding the requirement to submit a hydrogeological assessment report before application for a hazardous waste facility permit under Section 25159.18, or notwithstanding the requirement to have a hazardous waste facility permit or an approved hydrogeological assessment report before application for an exemption pursuant to subdivision (b) of Section 25159.15, the department shall process any applications for a hazardous waste facility permit to construct a new injection well from any person who has applied between May 15, 1984, and December 31, 1984, for an underground injection control permit from the federal Environmental Protection Agency pursuant to the Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.), and who has received that permit by July 1, 1986, in the following manner:

(1) The department shall accept a concurrent filing of the hydrogeological assessment report required pursuant to Section 25159.18, the application for the hazardous waste facilities permit filed pursuant to this section, and an application for an exemption filed pursuant to subdivision (b) of Section 25159.15.

(2) The department shall grant or deny the hazardous waste facilities permit within six months of the concurrent filing of a completed application as specified in paragraph (1). However, the department shall grant the hazardous waste facilities permit only if the conditions in subdivision (a) are met.

(Amended by Stats. 2006, Ch. 538, Sec. 379. Effective January 1, 2007.)

25200.7. (a) On or before November 8, 1988, the department shall take final action on each application for a hazardous waste facilities permit submitted to the department before January 1, 1988, by either issuing a final permit pursuant to the application or a final denial of the application.

(b) Subdivision (a) applies only to hazardous waste facilities which are operating under a grant of interim status on January 1, 1988, which use a land disposal method, as defined in subdivision (h) of Section 25179.3, and which dispose of wastes regulated as hazardous waste pursuant to the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

(c) On or before November 8, 1989, the department shall take final action on each application for a hazardous waste facilities permit to operate an incinerator facility which was submitted before November 8, 1984, by either issuing a final permit pursuant to the application or a final denial of the application.

(d) On or before November 8, 1992, the department shall take final permit action on each application for a hazardous waste facilities permit to operate any facility not otherwise subject to subdivision (a) or (c) which was submitted before November 8, 1984. The department shall issue a final hazardous waste facilities permit pursuant to the application or issue a final denial of the application.

(e) Interim status granted pursuant to Section 25200.5 to any facility subject to subdivision (c) shall terminate on November 8, 1989, unless the owner or operator of the facility applied for a final determination regarding the issuance of a hazardous waste facilities permit by November 8, 1986.

(f) Interim status granted pursuant to Section 25200.5 to any facility subject to subdivision (d) shall terminate on November 8, 1992, unless the owner or operator of the facility applied for a final determination regarding the issuance of a hazardous waste facilities permit by November 8, 1988.

(g) Subdivisions (c), (d), (e) and (f) do not apply to applications for hazardous waste facilities permits to transfer, treat, store, or dispose of non-RCRA hazardous wastes.

(Amended by Stats. 1989, Ch. 1436, Sec. 26. Effective October 2, 1989.)

25200.8. Any applicant for a final hazardous waste facilities permit pursuant to Section 25200 who receives a notice of deficiency from the department concerning the permit application shall submit the information specified in the notice of deficiency by the date specified in the notice of deficiency or by a later alternative date approved by the department. The department may initiate an enforcement action pursuant to Section 25187 against any hazardous waste facilities permit applicant who does not provide the information specified in the notice of deficiency by the date specified in the notice of deficiency or by a later alternative date approved by the department. If an applicant does not respond to three or more of these notices of deficiency regarding the same or different deficiencies or responds with substantially incomplete or substantially unsatisfactory information on three or more occasions, the department shall, pursuant to regulations adopted by the department, initiate proceedings to deny the permit application. This section does not limit the department's authority to take action concerning the permit application before sending three notices of deficiency.

(Amended by Stats. 1994, Ch. 1112, Sec. 1. Effective January 1, 1995.)

25200.9. The department shall not grant interim status for any hazardous waste facility pursuant to Section 25200.5, unless either of the following applies:

(a) The hazardous waste management activities at the facility were not subject to the hazardous waste facilities permit requirements until on or after January 1, 1990, and the hazardous waste facility had been engaged in these activities before the date that the activities at the facility became subject to hazardous waste facility permit requirements.

(b) The hazardous waste management activities at the facility are eligible for the department's standardized permit application pursuant to Section 25201.6 and the hazardous waste facility was engaged, or authorized to engage, in those activities on September 1, 1992.

(Amended by Stats. 1993, Ch. 411, Sec. 6. Effective September 21, 1993.)

25200.10. (a) For purposes of this section, "facility" means the entire site that is under the control of the owner or operator seeking a hazardous waste facilities permit.

(b) Except as provided in subdivisions (d) and (e), the department, or a unified program agency approved to implement this section pursuant to Section 25404.1, shall require, and any permit issued by the department shall require, corrective action for all releases of hazardous waste or constituents from a solid waste management unit or a hazardous waste management unit at a facility engaged in hazardous waste management, regardless of the time at which waste was released at the facility. Any corrective action required pursuant to this section shall require that corrective action be taken beyond the facility boundary where necessary to protect human health and safety or the environment, unless the owner or operator demonstrates to the satisfaction of the department or the unified program agency, whichever agency required the corrective action, that despite the owner's or operator's best efforts, the owner or operator is unable to obtain the necessary permission to undertake this action. When corrective action cannot be completed prior to issuance of the permit, the permit shall contain schedules of compliance for corrective action and assurances of financial responsibility for completing the

corrective action.

(c) This section does not limit the department's authority, or a unified program agency's authority pursuant to Chapter 6.11 (commencing with Section 25404), to require corrective action pursuant to Section 25187.

(d) This section does not apply to a permit issued to a public agency or person for the operation of a temporary household hazardous waste collection facility pursuant to Article 10.8 (commencing with Section 25218).

(e) Unless otherwise expressly required by another provision of this chapter, the corrective action required by subdivision (a) does not apply to a person who treats hazardous waste pursuant to a conditional exemption pursuant to this chapter, if the person is not otherwise required to obtain a hazardous waste facilities permit or other grant of authorization for any other hazardous waste management activity at the facility. This subdivision does not limit the department's authority, the authority of a local health officer or other local public officer authorized pursuant to Section 25187.7, or the authority of a unified program agency approved pursuant to Section 25404.1, to order corrective action pursuant to Section 25187.

(f) (1) Pursuant to Article 8 (commencing with Section 25180), the department shall require any offsite facility that was granted interim status pursuant to Section 25200.5 prior to January 1, 1992, and which is not subject to Section 25201.6, to comply with subdivisions (a) to (d), inclusive, of Section 25200.14. The grant of interim status of a facility subject to this subdivision which, as of July 1, 1997, has not complied with subdivisions (a) to (d), inclusive, of Section 25200.14, shall terminate on that date.

(2) For purposes of this subdivision, a facility is in compliance with subdivisions (a) to (d), inclusive, of Section 25200.14 only if the facility owner or operator has substantively performed the requirements of subdivisions (a) to (d), inclusive, of Section 25200.14 and the regulations adopted pursuant to those provisions, and the facility owner or operator has not merely agreed to a schedule for future compliance, except insofar as submission of a schedule pursuant to the requirements of subdivision (d) of Section 25200.14 may constitute substantive compliance with that subdivision.

(3) Notwithstanding paragraph (2), a facility shall be deemed to be in compliance with this subdivision if the department or a federal agency has completed a RCRA facility, or equivalent assessment for the facility on or before July 1, 1997.

(Amended by Stats. 1996, Ch. 962, Sec. 3. Effective January 1, 1997.)

25200.11. (a) On or before July 1, 1993, the department shall take final action on each application for a hazardous waste facilities permit to be issued pursuant to Section 25200 for an offsite hazardous waste facility which is not subject to the time limits specified in Section 25200.7 and which has been operating under a grant of interim status pursuant to Section 25200.5 prior to January 1, 1992, if the permit application was submitted to the department before January 1, 1992. In taking final action pursuant to this section, the department shall either issue the hazardous waste facilities permit or make a final denial of the application. The department may extend final action for one year upon its determination that the permit application is complete and that more time is needed for review and evaluation of the application.

(b) On July 1, 1992, interim status granted for any existing offsite hazardous waste facility, which is not subject to the time limits specified in Section 25200.7, shall be terminated, unless the department has received an application for a final hazardous waste facilities permit pursuant to Section 25200 on or before June 30, 1992.

(c) Except for facilities subject to Section 25201.6, for any offsite facility, which facility or portion of facility was first granted interim status pursuant to Section 25200.5 on or after January 1, 1992, the department shall provide public notice for a permit determination to issue or deny a hazardous waste facilities permit for the facility, including a permit modification to incorporate a portion of a facility operating under a grant of interim status, not later than the following dates:

(1) For interim status that was first granted on or after January 1, 1992, but prior to January 1, 1994, not more than four years from the date that interim status was first granted.

(2) For interim status that was first granted on or after January 1, 1994, but prior to January 1, 1996, not more than three years from the date that interim status was first granted.

(3) For interim status that was granted on or after January 1, 1996, not more than two years from the date that interim status was first granted.

(d) For purposes of complying with this section, any change in the owner or operator of the hazardous waste facility shall not affect the applicability of this section with respect to permit determinations required for the facility, including a permit modification to incorporate a portion of the facility operating under a grant of interim status.

(e) (1) Except as provided in paragraph (2), on or before July 1, 1997, for any facility operating under a grant of interim status pursuant to Section 25200.5, based on operations conducted on November 19, 1980, the department shall review the basis for the grant of interim status, including any amendments of that grant, and shall prepare status reports concerning the results of that review. If the department discovers an error in the scope of a grant of interim status made before July 1, 1997, and the error was caused in whole, or in part, by an intentional or negligent false statement or representation in the documents filed for purposes of establishing or obtaining interim status, the department shall take immediate action to correct the error, to the full extent authorized by law. In determining whether the scope of a grant of interim status made before July 1, 1997, complies with this chapter, the department shall require evidence other than facility owner or operator or employee declarations pertaining to previous activities that are the basis for that eligibility for interim status.

(2) Paragraph (1) does not apply to a facility for which, on or before March 1, 1997, a draft permit has been issued by and is being processed by the department, a draft environmental impact report, or other appropriate document prepared pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) has been issued and made available for public comment and the environmental impact report or other document prepared pursuant to the California Environmental Quality Act considers all impacts to the environment from facility operations, including, at a minimum, all changes to operations since November 19, 1980, that were not addressed by a previous finally approved document prepared pursuant to the California Environmental Quality Act. The issuance of an appropriate document under the California Environmental Quality Act shall be deemed to have been issued for purposes of this paragraph if the lead agency has determined in writing that no further document is necessary under that act for purposes of the permit issuance.

(Amended by Stats. 2001, Ch. 745, Sec. 129.7. Effective October 12, 2001.)

25200.12. A modification to an offsite facility operating under interim status pursuant to Section 25200.5 that requires a revised Part A application pursuant to Article 4 (commencing with Section 66270.40) of Chapter 20 of Division 4.5 of Title 22 of the California Code of Regulations, as that article read on January 1, 1992, is a discretionary project for purposes of subdivision (a) of Section 21080 of the Public Resources Code and is subject to the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, unless the modification is otherwise excluded from that division pursuant to paragraphs (2) to (15), inclusive, of subdivision (b) of Section 21080 of the Public Resources Code.

(Amended by Stats. 1995, Ch. 91, Sec. 65. Effective January 1, 1996.)

25200.13. For purposes of Sections 25200.11 and 25200.12, "offsite facility" means a facility that serves more than one generator of hazardous waste.

(Added by Stats. 1991, Ch. 719, Sec. 5.)

25200.14. (a) For purposes of this section, "phase I environmental assessment" means a preliminary site assessment based on reasonably available knowledge of the facility, including, but not limited to, historical use of the property, prior releases, visual and other surveys, records, consultant reports, and regulatory agency correspondence.

(b) (1) Except as provided in paragraph (2) and in subdivision (i), in implementing the requirements of Section 25200.10 for facilities operating pursuant to a permit-by-rule under the regulations adopted by the department regarding transportable treatment units and fixed treatment units, which are contained in Chapter 45 (commencing with Section 67450.1) of Division 4.5 of Title 22 of the California Code of Regulations, or for generators operating pursuant to a grant of conditional authorization under Section 25200.3, the department or the unified program agency authorized to implement this section pursuant to Section 25404.1 shall require the owner or operator of the facility or the generator to complete and file a phase I environmental assessment with the department or the authorized unified program agency not

later than one year from the date of adoption of the checklist specified in subdivision (f), but not later than January 1, 1997, or one year from the date that the facility or generator becomes authorized to operate, whichever date is later. After submitting a phase I environmental assessment, the owner or operator of the facility or the generator shall subsequently submit to the department or the authorized unified program agency, during the next regular reporting period, if any, updated information obtained by the facility owner or operator or the generator concerning releases subsequent to the submission of the phase I environmental assessment.

(2) Paragraph (1) does not apply to a facility owner or operator that is conducting, or has conducted, a site assessment of the entire facility or to a generator that is conducting, or has conducted, a site assessment of the entire facility of the generator in accordance with an order issued by a California regional water quality control board or any other state or federal environmental enforcement agency.

(c) An assessment which would otherwise meet the requirements of this section that is prepared for another purpose and was completed not more than three years prior to the date by which the facility owner or operator or the generator is required to submit a phase I environmental assessment may be used to comply with this section if the assessment is supplemented by any relevant updated information reasonably available to the facility owner or operator or to the generator.

(d) The department or the unified program agency authorized to implement this section pursuant to Section 25404.1 shall not require sampling or testing as part of the phase I environmental assessment. A phase I environmental assessment shall be certified by the facility owner or operator or by the generator, or by their designee, or by a certified professional engineer, or a geologist, or a registered environmental assessor. The phase I environmental assessment shall indicate whether the preparer believes that further investigation, including sampling and analysis, is necessary to determine whether a release has occurred, or to determine the extent of a release from a solid waste management unit or hazardous waste management unit.

(e) (1) If the results of a phase I environmental assessment conducted pursuant to subdivision (b) indicate that further investigation is needed to determine the existence or extent of a release from a solid waste management unit or hazardous waste management unit, the facility owner or operator or the generator shall submit a schedule, within 90 days from the date of submission of the phase I environmental assessment, for that further investigation to the department or to the unified program agency authorized to implement this section pursuant to Section 25404.1. If the department or the authorized unified program agency determines, based upon a review of the phase I environmental assessment or other site-specific information in its possession, that further investigation is needed to determine the existence or extent of a release from a solid waste management unit or hazardous waste management unit, in addition to any further action proposed by the facility owner or operator or the generator, or determines that a different schedule is necessary to prevent harm to human health and safety or to the environment, the department or the authorized unified program agency shall inform the facility owner or operator or the generator of that determination and shall set a reasonable time period in which to accomplish that further investigation.

(2) In determining if a schedule is acceptable for investigation or remediation of any facility or generator subject to this section, the department may require more expeditious action if the department determines that hazardous constituents are mobile and are likely moving toward, or have entered, a source of drinking water, as defined by the State Water Resources Control Board, or determines that more expeditious action is otherwise necessary to protect human health or safety or the environment. To the extent that the department determines that the hazardous constituents are relatively immobile, or that more expeditious action is otherwise not necessary to protect public health or safety or the environment, the department may allow a longer schedule to allow the facility or generator to accumulate a remediation fund, or other financial assurance mechanism, prior to taking corrective action.

(3) If a facility owner or operator or the generator is conducting further investigation to determine the nature or extent of a release pursuant to, and in compliance with, an order issued by a California regional water quality control board or other state or federal environmental enforcement agency, the department or the authorized unified program agency shall deem that investigation adequate for the purposes of determining the nature and extent of the release or releases that the order addressed, as the investigation pertains to the jurisdiction of the ordering agency.

(f) The department shall develop a checklist to be used by facility owners or operators and generators in conducting a phase I environmental assessment. The development and publication of the checklist is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the checklist. The checklist shall not exceed the phase I requirements adopted by the American Society for Testing and Materials (ASTM) for due diligence for commercial real estate transactions. The department shall deem compliance with those ASTM standards, or compliance with the checklist developed and published by the department, as meeting the phase I environmental assessment requirements of this section.

(g) A facility, or to the extent required by the regulations adopted by the department, a transportable treatment unit, operating pursuant to a permit-by-rule shall additionally comply with the remaining corrective action requirements specified in Section 67450.7 of Title 22 of the California Code of Regulations, in effect on January 1, 1992.

(h) A generator operating pursuant to a grant of conditional authorization pursuant to Section 25200.3 shall additionally comply with paragraph (3) of subdivision (c) of Section 25200.3.

(i) The department or the authorized unified program agency shall not require a phase I environmental assessment for those portions of a facility subject to a corrective action order issued pursuant to Section 25187, a cleanup and abatement order issued pursuant to Section 13304 of the Water Code, or a corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(Amended by Stats. 1996, Ch. 999, Sec. 6. Effective January 1, 1997.)

25200.14.1. (a) On or before July 1, 1997, the department shall complete an evaluation of the phase I environmental assessment requirement specified by Section 25200.14, and identify any necessary and appropriate changes to that requirement.

(b) In evaluating the phase I environmental assessment requirement, the department shall, at a minimum, consider the following issues:

(1) Whether the phase I environmental assessment should continue to encompass the entire facility or be limited to a portion of the facility.

(2) The extent to which, and under what conditions, the information contained in the facility's phase I environmental assessment should be maintained as confidential information not available for release to the public or to governmental agencies other than the department.

(Amended by Stats. 2001, Ch. 745, Sec. 130. Effective October 12, 2001.)

25200.15. (a) The owner or operator of a facility that has a hazardous waste facilities permit issued pursuant to Section 25200 or 25201.6 may change facility structures or equipment without modifying the facility's hazardous waste facilities permit, if either of the following apply:

(1) The change to structures or equipment is not within a permitted unit.

(2) Both of the following apply to the change to the structures or equipment:

(A) The change to structures or equipment is within the boundary of a permitted unit, and the structure or equipment is certified by the owner or operator not to be actively related to the treatment, storage, or disposal of hazardous waste, or the secondary containment of those hazardous wastes.

(B) The department, within 30 days from the date of receipt of notice from the owner or operator, does not determine any of the following:

(i) The change is related to the treatment, storage, or disposal of hazardous waste or the secondary containment of those hazardous wastes.

(ii) The change may otherwise significantly increase risks to human health and safety or the environment related to the management of the hazardous wastes.

(iii) The regulations adopted pursuant to the federal act require a permit modification for the change.

(b) (1) To the extent consistent with the federal act, and the regulations adopted pursuant to the federal act, the owner or operator of a facility that has a hazardous waste facilities permit issued pursuant to Section 25200 or 25201.6 may change the facility structure or equipment utilizing the Class 1* permit modification, specified in Chapter 20

(commencing with Section 66270.1) of Division 4.5 of Title 22 of the California Code of Regulations, as adopted by the department, if the department determines that all of the following apply:

(A) The change to the structure or equipment is necessary to comply with requirements or the request of a state or federal agency or an air quality management district or air pollution control district.

(B) The change to the structure or equipment will decrease one or more risks, and will not result in any increased risks to human health and safety or the environment related to the management of the hazardous wastes in the structure or equipment.

(C) The owner or operator has submitted sufficient information for the department to make the determinations required by subparagraphs (A) and (B) to comply with the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, the California Environmental Quality Act.

(2) A change to a facility structure or equipment that is authorized by this subdivision may not result in an increase in the permitted capacity of a hazardous waste management unit affected by the change.

(3) This subdivision does not apply to changes for which no permit modification is required pursuant to subdivision (a) and the regulations adopted to implement that subdivision.

(4) This subdivision does not apply to changes classified as Class 1 or Class 1* under the department's regulations pursuant to Chapter 20 (commencing with Section 66270.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(5) The owner or operator of a facility applying for a "Class 1* permit modification" pursuant to this subdivision shall enter into a written agreement with the department pursuant to which that person shall reimburse the department, pursuant to Article 9.2 (commencing with Section 25206.1), for the costs incurred by the department in processing the application.

(c) (1) To the extent consistent with the federal act, the owner or operator of a facility operating under a hazardous waste facilities permit issued pursuant to Section 25200 or 25201.6 may make a Class 1 permit modification for minor equipment replacement or upgrade with functionally equivalent components of equipment such as pipes, valves, pumps, conveyors, controls, or other similar equipment, as specified in Section (A)(3) of Appendix I of Chapter 20 (commencing with Section 66270.1) of Division 4.5 of Title 22 of the California Code of Regulations, without providing prior notification as long as the modification is exempt from the requirements of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, and if the owner or operator complies with both of the following conditions:

(A) The owner or operator notifies the department concerning the replacement or upgrade by certified mail or other means that establish proof of delivery within seven calendar days after the change is commenced. The notice shall specify the replacement or upgrade being made to the equipment referenced in the permit and shall explain why the replacement or upgrade is necessary.

(B) Except as otherwise specified in this subdivision, the owner or operator complies with the requirements of Chapter 20 (commencing with Section 66270.1) and Chapter 21 (commencing with Section 66271.1) of Division 4.5 of Title 22 of the California Code of Regulations, as adopted by the department, that are applicable to a Class 1 modification.

(2) Misapplication of the Class 1 modification allowed under this subdivision is subject to enforcement by the department under this chapter.

(3) This subdivision shall remain in effect until the time when the department amends its regulations to provide for replacement or upgrade of equipment without prior notification, subject to those conditions and limitations determined to be necessary by the department.

(d) Any determination made pursuant to this section, including, but not limited to, any determination by the department regarding the classification of a permit modification, may be appealed by the owner or operator in the manner provided for appeal of a permit determination pursuant to the regulations adopted by the department.

(Amended by Stats. 2005, Ch. 577, Sec. 1. Effective January 1, 2006.)

25200.16. (a) The department may administratively convert the hazardous waste facilities permit or grant of interim status of a hazardous waste management unit authorized pursuant to such a permit or grant of interim status to authorization to operate under a permit-by-rule, pursuant to the department's regulations, a grant of conditional authorization or conditional exemption pursuant to this chapter, if the hazardous waste management facility meets both of the following criteria:

(1) The unit is not required to obtain a permit under the federal act.

(2) The unit met all applicable conditions and criteria for authorization under a permit-by-rule pursuant to the department's regulations, or a grant of conditional authorization or conditional exemption pursuant to this chapter, on the effective date of the statute or regulation which made the unit eligible for authorization under a permit-by-rule, conditional authorization, or conditional exemption.

(b) This section does not apply to units which become eligible for authorization under a permit-by-rule, conditional authorization, or conditional exemption due to a change in the waste streams or treatment activities described for the unit in the hazardous waste facilities permit or grant of interim status document for the unit.

(c) The owner or operator of a hazardous waste management unit that desires to convert the grant of authorization for the hazardous waste management unit from a hazardous waste facilities permit or grant of interim status pursuant to subdivision (a) shall transmit all of the following documents to the department:

(1) A demonstration that the unit is not required to obtain a permit under the federal act.

(2) A demonstration that the unit is eligible for authorization under a permit-by-rule pursuant to the department's regulations, or a grant of conditional authorization or conditional exemption pursuant to this chapter.

(3) If applicable, a complete and valid notification for the unit for which an authorization status conversion is requested, which complies with the applicable notification requirements for operating under a permit-by-rule, or a grant of conditional authorization or conditional exemption.

(4) One of the following documents:

(A) A written request, signed in accordance with the regulations adopted by the department pertaining to signatories to permit application and reports, to administratively remove the unit from the existing hazardous waste facilities permit or grant of interim status.

(B) A written request, signed in accordance with the regulations adopted by the department pertaining to signatories to permit applications and reports, to administratively terminate the existing hazardous waste facilities permit or grant of interim status if the unit subject to the permit or grant of interim status is the only unit at the facility authorized by that permit or grant of interim status.

(d) Upon receipt of a notification, if applicable, and a request pursuant to paragraphs (3) and (4) of subdivision (c), the department shall do all of the following:

(1) Either approve the request in writing if the department concurs with the demonstrations submitted pursuant to paragraphs (1) and (2) of subdivision (c) and the notification submitted pursuant to paragraph (3) of subdivision (c) is complete and valid; or deny the request in writing if the department does not concur with the demonstrations submitted pursuant to paragraphs (1) and (2) of subdivision (c) or the notification submitted pursuant to paragraph (3) of subdivision (c) is incomplete or invalid.

(2) If not all activities conducted at a facility pursuant to a hazardous waste facilities permit or grant of interim status are eligible for conversion, administratively terminate the authorization under the hazardous waste facilities permit or grant of interim status for the unit or units at the facility conducting treatment activities eligible to be authorized under a permit-by-rule pursuant to the department's regulations, or a grant of conditional authorization or conditional exemption pursuant to this chapter, by doing all of the following:

(A) Placing a letter in the facility permit file maintained by the department acknowledging the change in authorization.

(B) Notifying the facility, in writing, that the authorization under the permit or grant of interim status for the treatment units in question will be terminated when the authorization under a permit-by-rule pursuant to the department's regulations, or a grant of conditional authorization or conditional exemption pursuant to this chapter, becomes effective.

(C) Notifying all persons on the facility mailing list of the change in the authorization status of the units being converted.

(3) If the hazardous waste facilities permit or grant of interim status of a facility is being completely converted to authorization under a permit-by-rule pursuant to the department's regulations, or a grant of conditional authorization or conditional exemption pursuant to this chapter,

administratively terminate the permit or grant of interim status by doing all of the following:

(A) Placing a letter in the facility permit file maintained by the department administratively terminating the permit upon the effective date of authorization for all affected units under a permit-by-rule pursuant to the department's regulations, or a grant of conditional authorization or conditional exemption pursuant to this chapter.

(B) Notifying the facility, in writing, that the permit or grant of interim status will be terminated when the authorization under a permit-by-rule pursuant to the department's regulations, or a grant of conditional authorization or conditional exemption pursuant to this chapter, becomes effective.

(C) Notifying all persons on the facility mailing list of the termination of the hazardous waste facilities permit or grant of interim status.

(Added by Stats. 1995, Ch. 640, Sec. 9. Effective January 1, 1996.)

25200.17. (a) Upon petition, the department may, by regulation, add new treatment activities to the list of activities eligible for operation pursuant to a permit-by-rule, under the regulations adopted by the department, or eligible for authorization under a grant of conditional authorization pursuant to Section 25200.3 or a grant of conditional exemption pursuant to Section 25201.5, if all of the following conditions are met:

(1) The department finds that the new waste stream and treatment process combination poses no greater risk to the public health and safety or environment than those waste stream and treatment process combinations currently eligible for operation pursuant to a permit-by-rule, under the regulations adopted by the department, or for authorization under a grant of conditional authorization pursuant to Section 25200.3 or conditional exemption pursuant to Section 25201.5, whichever is applicable.

(2) The activity does not require a hazardous waste facilities permit under the federal act.

(3) The new activity is not already identified as eligible under a permit-by-rule pursuant to the regulations adopted by the department, or a grant of conditional authorization or conditional exemption pursuant to this chapter.

(b) In making a determination whether to add a new activity, by regulation, to the list of activities eligible for operation under a permit-by-rule pursuant to the department's regulations, conditional authorization pursuant to Section 25200.3, or conditional exemption pursuant to Section 25201.5, the factors which the department shall consider, to the extent that information is available, shall include, but not be limited to, all of the following:

(1) The hazardous waste streams that are treated using the treatment methods and the hazards to public health or safety or to the environment posed by those hazardous wastes and their hazardous constituents.

(2) The complexity of the treatment method, the degree of difficulty in carrying it out, and the technology that is used to carry it out.

(3) Chemical or physical hazards that are associated with the use of the treatment process and the degree to which those hazards are similar to, or differ from, the chemical or physical hazards that are associated with the production processes that are carried out in the facilities that produce the hazardous waste that is treated using the treatment methods.

(4) The levels of specialized operator training, equipment maintenance, and monitoring that are required to ensure the safety of the treatment method and its effectiveness in treating particular hazardous waste streams.

(5) The types of accidents that may occur during the treatment of particular types of hazardous waste streams, the likely consequences of those accidents, and the actual accident history associated with use of the treatment method.

(6) The degree to which those hazardous waste streams or treatment methods are regulated under other provisions of law or regulations, including, but not limited to, process safety management requirements and risk management
and prevention plans.

(7) If the treatment method uses a hazardous waste treatment technology that is certified by the department pursuant to Section 25200.1.5, the information and analyses that were used to determine that the treatment technology does not pose a significant potential hazard to public health or safety or to the environment.

(Amended by Stats. 2001, Ch. 745, Sec. 131. Effective October 12, 2001.)

25200.18. On or before July 1, 1996, or within six months of the adoption of electronic reporting standards by the Secretary for Environmental Protection pursuant to Section 71060 of the Public Resources Code, whichever occurs later, the department shall implement a procedure for the electronic reporting of all hazardous waste facilities permit modifications, to the extent that the secretary determines that the procedure is compatible with the electronic reporting standards adopted by the secretary, as follows:

(a) Permit modifications, at the option of the applicant, may be submitted electronically using the standard file format, transmission protocols, and electronic signature and authentication techniques adopted by the Secretary for Environmental Protection for other environmental data reporting purposes under Part 2 (commencing with Section 71050) of Division 34 of the Public Resources Code.

(b) Section 71063 of the Public Resources Code, which requires a pilot program demonstration and evaluation, does not apply to the electronic permit modification procedures adopted pursuant to this section.

(Added by Stats. 1995, Ch. 638, Sec. 19. Effective January 1, 1996.)

25200.19. (a) A hazardous waste facility that obtains a hazardous waste facilities permit to receive hazardous wastes from offsite locations may conduct bulk, packaged, or containerized hazardous waste unloading operations in accordance with the requirements of this section, except to the extent that the facility is subject to conditions and limitations in the permit concerning the receipt and unloading of hazardous wastes from offsite locations.

(b) A hazardous waste facility that has a hazardous waste facilities permit may conduct bulk, packaged, or containerized hazardous waste loading operations in accordance with the requirements of this section, except to the extent that the facility is subject to conditions and limitations in the permit concerning the shipment and loading for shipment of hazardous wastes to offsite locations.

(c) Unloading and loading operations subject to subdivisions (a) and (b) shall be conducted in accordance with all of the following requirements, unless otherwise specified in the hazardous waste facilities permit:

(1) As part of a loading or unloading operation conducted within the boundary of a hazardous waste facility, the hazardous waste shall not be held longer than 10 days outside of an authorized unit at the facility. The hazardous waste shall be moved directly between the authorized unit and the transport vehicle and shall not be held for any time off the transport vehicle outside of the authorized unit, except for that incidental period of time that is necessary to safely and effectively move the waste from the transport vehicle to the authorized unit or from the authorized unit to the transport vehicle.

(2) All loading and unloading operations shall be conducted within the boundary of the hazardous waste facility.

(3) There shall be adequate capacity within an authorized unit at the hazardous waste facility for all hazardous waste being loaded or unloaded in accordance with this section. Hazardous waste may not be held on any transport vehicle which, if unloaded, would exceed the permitted capacity of the originating or receiving unit at the hazardous waste facility, unless the waste is held on the transport vehicle as part of an authorized transfer operation.

(4) (A) The loading or unloading of bulk hazardous waste shall be conducted within the hazardous waste facility with a containment device or other system capable of collecting and containing leaks and spills that may reasonably be anticipated to occur during loading and unloading operations until the leaked or spilled material is removed, unless otherwise approved by the department in a regulation or permit.

(B) The department may establish specific secondary containment regulations for bulk transfer areas to effectuate the purposes of subparagraph (A). In addition to, or in lieu of, these regulations, the department may specify secondary containment requirements for bulk transfer areas in individual facility permits. Those regulations and permit conditions shall be designed to allow the practical use of trucks and railcars. The standards may include the use of movable containment devices or other systems meeting this criteria.

(d) For purposes of this section, the following definitions apply:

(1) "Loading" means activities associated with removing packaged or containerized hazardous waste from an authorized unit or removing bulk hazardous waste from an authorized container, tank, or unit within a permitted hazardous waste facility, placing it on a transport vehicle within the facility, and shipping the waste offsite to another location in accordance with this chapter.

(2) "Transport vehicle" means a device, including a trailer, to propel, move or draw hazardous wastes by air, rail, highway, or water that is operated pursuant to the requirements of this chapter.

(3) "Unloading" means activities associated with the receipt of bulk, packaged, or containerized hazardous waste at a permitted hazardous waste facility from an offsite location, by means of a transport vehicle, and placing that packaged or containerized hazardous waste into an authorized unit or placing that bulk hazardous waste into an authorized container, tank, or unit within the facility in accordance with this chapter.

(e) The requirements of this section do not apply to hazardous waste being held or transferred pursuant to subparagraph (B) of paragraph (6) of subdivision (b) of Section 25123.3.

(Amended by Stats. 2003, Ch. 362, Sec. 3. Effective January 1, 2004.)

25201. (a) Except as provided in subdivisions (c) and (d), no owner or operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or disposal site shall accept, treat, store, or dispose of a hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous waste facilities permit or other grant of authorization from the department to use and operate the facility, area, or site, or the owner or operator is operating under a permit-by-rule pursuant to the department's regulations, or a grant of conditional authorization or conditional exemption pursuant to this chapter.

(b) Except as necessary to comply with Section 25159.18, any person planning to construct a new hazardous waste facility or a new hazardous waste management unit, which would manage RCRA hazardous waste, shall obtain a hazardous waste facilities permit or a permit amendment from the department prior to commencing construction.

(c) A hazardous waste facilities permit is not required for a recycle-only household hazardous waste collection facility operated in accordance with subdivision (b) of Section 25218.8.

(d) A hazardous waste facilities permit is not required for a facility that meets the requirements of Section 13263.2 of the Water Code.

(Amended by Stats. 1995, Ch. 640, Sec. 11. Effective January 1, 1996.)

25201.1. (a) A solid waste facility, as defined in Section 40194 of the Public Resources Code, or any recycling facility, that accepts and processes empty aerosol cans and de minimis quantities of nonempty aerosol cans collected as an incidental part of the collection of empty cans for recycling, is exempt from the requirement to obtain a hazardous waste facilities permit or other authorization from the department for purposes of conducting that activity if both of the following conditions are met:

(1) The nonempty aerosol cans are from products that are normally intended for household use and were generated by households.

(2) The city, county, or regional agency in the area that the facility serves provides educational information to the public on the safe collection and recycling or disposal of empty and nonempty aerosol cans that encourages, to the maximum extent feasible, the separation and recycling of empty aerosol cans through such programs as curbside, dropoff, and buy-back recycling programs, and the diversion of nonempty aerosol cans into household hazardous waste collection programs. Issues of compliance with this subdivision shall be determined by the California Integrated Waste Management Board or by the appropriate local enforcement agency.

(b) This section is not intended to alter the obligation to manage as a hazardous waste any nonempty aerosol cans that meet the requirements of Section 25117, and that are not subject to the exemption provided in this section.

(c) Nothing in this section exempts a solid waste facility that engages in an activity that requires a hazardous waste facility permit, other than the acceptance and processing of empty aerosol cans and de minimis quantities of nonempty aerosol cans as an incidental part of the collection of empty cans for recycling, from the requirement of obtaining a hazardous waste facilities permit.

(Amended by Stats. 2004, Ch. 183, Sec. 203. Effective January 1, 2005.)

25201.3. (a) A local agency shall not deem any of the following generators performing any of the following treatment activities to be a hazardous waste treatment facility for purposes of making a land use decision, and the department shall not require any of the following generators or facilities performing any of the following treatment activities to publish a notice regarding those activities:

(1) A facility operating pursuant to a permit-by-rule.

(2) A generator granted conditional authorization pursuant to this chapter for specified treatment activities.

(3) A generator performing conditionally exempt treatment pursuant to this chapter.

(b) For purposes of this section, "land use decision" means a discretionary decision of a local agency concerning a hazardous waste facility project, as defined in subdivision (b) of Section 25199.1, including the issuance of a land use permit or conditional use permit, the granting of a variance, the subdivision of property, and the modification of existing property lines pursuant to Title 7 (commencing with Section 65000) of the Government Code, and any local agency decision concerning a hazardous waste facility which is in existence and the enforcement of those decisions. This section does not limit or restrict the existing authority of a local agency to impose conditions on, or otherwise regulate, facilities, transportable treatment units or generators operating pursuant to a permit-by-rule, or a conditional authorization or conditional exemption pursuant to this chapter.

(Amended by Stats. 1995, Ch. 639, Sec. 40. Effective January 1, 1996.)

25201.4. (a) (1) The unified program agency shall develop and implement a program to inspect persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to this chapter or the regulations adopted by the department, for compliance with the applicable statutes and regulations.

(2) If there is not CUPA, the inspection program required pursuant to paragraph (1) shall be developed and implemented by either the department or one of the following:

(A) Before January 1, 1997, by the local health officer or local public officer designated pursuant to Section 25180.

(B) On and after January 1, 1997, to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(b) (1) Any program operated pursuant to this section shall be conducted in accordance with the standards adopted by the department pursuant to subdivision (c).

(2) Any program operated pursuant to this section shall, at a minimum, ensure that within two years of the date that a person submits a notification that it is operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to this chapter of the regulations adopted by the department, a site inspection shall be conducted at the facility, including verification of compliance with applicable generator requirements, container standards, and administrative and recordkeeping requirements, and that a compliance inspection shall be conducted at the facility to verify compliance with all applicable requirements every three years thereafter. Initial verification inspections which are conducted prior to the department's adoption of standards pursuant to subdivision (c) shall not be required to be conducted in accordance with those standards.

(c) The department shall, upon consultation with certified unified program agencies, local health officers, and local public officers designated pursuant to Section 25180, adopt regulations establishing standards which provide criteria for the implementation of a local inspection program to inspect generators, facilities, or transportable treatment units operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to this chapter or the regulations adopted by the department. These standards shall include, but not be limited to, qualification standards, inspection and enforcement standards, and reporting criteria. The development and publication of these standards is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1995, Ch. 639, Sec. 41. Effective January 1, 1996.)

25201.4.1. (a) Except as provided in subdivision (c), any person subject to the notification requirements of Sections 25110.10, 25123.3, 25144.6, 25200.3, 25201.5, or 25201.14 shall only be required to submit the required notification to the CUPA, or, in those jurisdictions where there is no CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(b) Any person required to submit a notice pursuant to subdivision (a) is also required to submit the required notice to the department until (1) regulations promulgated by the Secretary for Environmental Protection establishing a unified program information collection and reporting system and standards are effective, (2) the regulations require a statewide data base system that will enable the department and the public to obtain the required information from all CUPAs or the authorized officers or agencies, and (3) the statewide data base system is in place and fully operational.

(c) A person conducting an activity that is not included within the scope of the hazardous waste element of the unified program, as specified in paragraph (1) of subdivision (c) of Section 25404, is required to submit a notice pursuant to Sections 25110.10, 25123.3, 25144.6, 25200.3, 25201.5, or 25201.14, but shall comply with any regulations that the department may adopt specifying notification requirements for those activities.

(d) Notwithstanding subdivision (l) of Section 25200.3, any person who has submitted a notification to the CUPA, or, in those jurisdictions where there is no CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, pursuant to subdivision (a) of this section and subdivision (e) of Section 25200.3, shall be deemed to be operating pursuant to Section 25200.3, and, except as provided in Section 25404.5, shall be subject to the fee set forth in subdivision (b) of Section 25205.14 until the person submits a certification pursuant to subdivision (l) of Section 25200.3.

(e) Notwithstanding subdivision (j) of Section 25201.5, any person who has submitted a notification to the CUPA, or, in those jurisdictions where there is no CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, pursuant to subdivision (a) of this section and paragraph (7) of subdivision (d) of Section 25201.5, shall be deemed to be operating pursuant to Section 25201.5, and, except as provided in Section 25404.5, shall be subject to the fee set forth in subdivision (c) of Section 25205.14 until the person submits a certification pursuant to subdivision (j) of Section 25201.5.

(Added by Stats. 1997, Ch. 778, Sec. 2. Effective January 1, 1998.)

25201.5. (a) Notwithstanding any other provision of law, a hazardous waste facilities permit is not required for a generator who treats hazardous waste of a total weight of not more than 500 pounds, or a total volume of not more than 55 gallons, in any calendar month, if both of the following conditions are met:

(1) The hazardous waste is not an extremely hazardous waste and is listed in Section 67450.11 of Title 22 of the California Code of Regulations, as in effect on January 1, 1992, as eligible for treatment pursuant to the regulations adopted by the department for operation under a permit-by-rule and the treatment technology used is approved for that waste stream in Section 67450.11 of Title 22 of the California Code of Regulations for treatment under a permit-by-rule.

(2) The generator is not otherwise required to obtain a hazardous waste facilities permit or other grant of authorization for any other hazardous waste management activity at the facility.

(b) Notwithstanding any other provision of law, treatment in the following units is ineligible for exemption pursuant to subdivision (a) or (c):

(1) Landfills.

(2) Surface impoundments.

(3) Injection wells.

(4) Waste piles.

(5) Land treatment units.

(6) Thermal destruction units.

(c) Notwithstanding any other provision of law, a hazardous waste facilities permit or other grant of authorization is not required to conduct the following treatment activities, if the generator treats the following hazardous waste streams using the treatment technology required by this subdivision:

(1) The generator mixes or cures resins mixed in accordance with the manufacturer's instructions, including the mixing or curing of multicomponent and preimpregnated resins in accordance with the manufacturer's instructions.

(2) The generator treats a container of 110 gallons or less capacity, which is not constructed of wood, paper, cardboard, fabric, or any other similar absorptive material, for the purposes of emptying the container as specified by Section 66261.7 of Title 22 of the California Code of Regulations, as revised July 1, 1990, or treats the inner liners removed from empty containers that once held hazardous waste or hazardous material. The generator shall treat the container or inner liner by using the following technologies, if the treated containers and rinseate are managed in compliance with the applicable requirements of this chapter:

(A) The generator rinses the container or inner liner with a suitable liquid capable of dissolving or removing the hazardous constituents which the container held.

(B) The generator uses physical processes, such as crushing, shredding, grinding, or puncturing, that change only the physical properties of the container or inner liner, if the container or inner liner is first rinsed as provided in subparagraph (A) and the rinseate is removed from the container or inner liner.

(3) The generator conducts drying by pressing or by passive or heat-aided evaporation to remove water from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(4) The generator conducts magnetic separation or screening to remove components from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(5) The generator neutralizes acidic or alkaline wastes which are hazardous solely due to corrosivity or toxicity resulting from the presence of acidic or alkaline material from food or food byproducts, and alkaline or acidic waste, other than wastes containing nitric acid, at SIC Code Major Group 20, food and kindred product facilities, as defined in subdivision (p) of Section 25501, if both of the following conditions are met:

(A) The neutralization process does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(B) The neutralization process is required in order to meet discharge or other regulatory requirements.

(6) Except as provided for specific waste streams in Section 25200.3, the generator conducts the separation by gravity of the following, if the activity is conducted in impervious tanks or containers constructed of noncorrosive materials, the activity does not involve the addition of heat or other form of treatment, or the addition of chemicals other than flocculants and demulsifiers, and the activity is managed in compliance with applicable requirements of federal, state, or local agency or treatment works:

(A) The settling of solids from waste where the resulting aqueous stream is not hazardous.

(B) The separation of oil/water mixtures and separation sludges, if the average oil recovered per month is less than 25 barrels.

(7) The generator is a laboratory which is certified by the State Department of Health Services or operated by an educational institution, and treats wastewater generated onsite solely as a result of analytical testing, or is a laboratory which treats less than one gallon of hazardous waste, which is generated onsite, in any single batch, subject to the following:

(A) The wastewater treated is hazardous solely due to corrosivity or toxicity that results only from the acidic or alkaline material, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, or is excluded from the definition of hazardous waste by subparagraph (E) of paragraph (2) of subsection (a) of Section 66261.3 of Title 22 of the California Code of Regulations, or both.

(B) The treatment meets all of the following requirements, in addition to all other requirements of this section:

(i) The treatment complies with all applicable pretreatment requirements.

(ii) Neutralization occurs in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations; wastes to be neutralized do not contain any more than 10 percent acid or base concentration by weight, or any other concentration limit which may be imposed by the department; and vessels and piping for neutralization are constructed

of materials that are compatible with the range of temperatures and pH levels, and subject to appropriate pH temperature controls.

(iii) Treatment does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(8) The hazardous waste treatment is carried out in a quality control or quality assurance laboratory at a facility that is not an offsite hazardous waste facility and the treatment activity otherwise meets the requirements of paragraph (1) of subdivision (a).

(9) Any waste stream technology combination certified by the department, pursuant to Section 25200.1.5, as suitable for authorization pursuant to this section, that operates pursuant to the conditions imposed on that certification.

(10) The generator uses any technology that is certified by the department, pursuant to Section 25200.1.5, as effective for the treatment of formaldehyde or glutaraldehyde solutions used in health care facilities that are operated pursuant to the conditions imposed on the certification and which makes the operation appropriate to this tier. The technology may be certified using a pilot certification process until the department adopts regulations pursuant to Section 25200.1.5. This paragraph shall be operative only until April 11, 1996.

(d) A generator conducting treatment pursuant to subdivision (a) or (c) shall meet all of the following conditions:

(1) The waste being treated is generated onsite, and a residual material from the treatment of a hazardous waste generated offsite is not a waste that has been generated onsite.

(2) The treatment does not require a hazardous waste facilities permit pursuant to the federal act.

(3) The generator prepares and maintains written operating instructions and a record of the dates, amounts, and types of waste treated.

(4) The generator prepares and maintains a written inspection schedule and log of inspections conducted.

(5) The records specified in paragraphs (3) and (4) are maintained onsite for a period of three years.

(6) The generator maintains adequate records to demonstrate that it is in compliance with all applicable pretreatment standards and with all applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged.

(7) (A) Not less than 60 days before commencing treatment of hazardous waste pursuant to this section, the generator shall submit a notification, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(i) The CUPA, if the generator is under the jurisdiction of a CUPA.

(ii) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(B) Upon demonstration of good cause by the generator, the department may allow a shorter time period, than the 60 days required by subparagraph (A), between notification and commencement of hazardous waste treatment pursuant to this section.

(C) The notification submitted pursuant to this paragraph shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to permit applications, shall be on a form prescribed by the department, and shall include, but not be limited to, all of the following information:

(i) The name, identification number, site address, mailing address, and telephone number of the generator to whom the conditional exemption applies.

(ii) A description of the physical characteristics and chemical composition of the hazardous waste to which the conditional exemption applies.

(iii) A description of the hazardous waste treatment activity to which the conditional exemption applies, including, but not limited to, the basis for determining that a hazardous waste facilities permit is not required under the federal act.

(iv) A description of the characteristics and management of any treatment residuals.

(D) The development and publication of the notification form required under this paragraph is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

(E) Any notification submitted pursuant to this paragraph shall supersede any prior notice of intent submitted by the same generator in order to obtain a permit-by-rule under the regulations adopted by the department. This subparagraph does not require the department to refund any fees paid for any application in conjunction with the submission of a notice of intent for a permit-by-rule.

(8) (A) Upon terminating operation of any treatment process or unit exempted pursuant to this section, the generator who conducted the treatment shall remove or decontaminate all waste residues, containment system components, soils, and other structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from service shall be conducted in a manner that does both of the following:

(i) Minimizes the need for further maintenance.

(ii) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the environment after treatment process is no longer in operation.

(B) Any owner or operator who permanently ceases operation of a treatment process or unit that is conditionally exempted pursuant to this section shall, upon completion of all activities required under this subdivision, provide written notification in person or by certified mail, with return receipt requested, to the department and to one of the following:

(i) The CUPA, if the generator is under the jurisdiction of a CUPA.

(ii) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(9) The waste is managed in accordance with all applicable requirements for generators of hazardous waste under this chapter and the regulations adopted by the department pursuant to this chapter.

(10) Except as provided in Section 25404.5, the generator submits a fee in the amount required by Section 25205.14, unless the generator is subject to a fee under a permit-by-rule or a grant of conditional authorization pursuant to Section 25200.3. The generator shall submit that fee within 30 days of the date that the fee is assessed by the State Board of Equalization, in the manner specified by Section 43152.10 of the Revenue and Taxation Code.

(e) (1) Unless otherwise required by federal law, ancillary equipment for a tank or container treating hazardous wastes solely pursuant to this section is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the ancillary equipment's integrity is attested to pursuant to Section 66265.191 of Title 22 of the California Code of Regulations every two years from the date that retrofitting requirements would otherwise apply.

(2) (A) The Legislature hereby finds and declares that, in the case of underground, gravity-pressured sewer systems, integrity testing is often not feasible.

(B) The department shall, by regulation, determine the best feasible leak detection measures which are sufficient to ensure that underground gravity-pressured sewer systems, for which it is not feasible to conduct integrity testing, do not leak.

(C) If it is not feasible for an operator's ancillary equipment, or a portion thereof, to undergo integrity testing, the operator shall not be subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the operator implements the best feasible leak detection measures that are determined to be sufficient by the department in those regulations, and those leak detection measures do not reveal any leaks emanating from the operator's ancillary equipment. Any ancillary equipment found to leak shall be retrofitted by the operator to meet the full secondary containment standards of Section 66265.196 of Title 22 of the California Code of Regulations.

(f) Nothing in this section shall abridge any authority granted to the department, a unified program agency, or local health officer or local public officer designated pursuant to Section 25180, by any other provision of law to impose any further restrictions or limitations upon facilities subject to this section, that the department, a unified program agency, or local health officer or local public officer designated pursuant to Section 25180, determines to be necessary to protect human health or the environment.

(g) A generator that would otherwise be subject to this section may contract with the operator of a transportable treatment unit who is operating

pursuant to this section to treat the generator's waste. If treatment of the generator's waste takes place under such a contract, the generator is not otherwise subject to the requirements of this section, but shall comply with all other requirements of this chapter that apply to generators. The operator of the transportable treatment unit shall comply with all of the applicable requirements of this section and, for purposes of this section, the operator of the transportable treatment unit shall be deemed to be the generator.

(h) A generator conducting activities which are exempt from this chapter pursuant to Section 66261.7 of Title 22 of the California Code of Regulations, as that section read on January 1, 1993, is not required to comply with this section.

(i) (1) Within 30 days of any change in operation which necessitates modifying any of the information submitted in the notification required pursuant to paragraph (7) of subdivision (d), a generator shall submit an amended notification, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(A) The CUPA, if the generator is under the jurisdiction of a CUPA.

(B) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(2) Each amended notification made pursuant to this subdivision shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to hazardous waste facilities permit applications.

(j) A person who submitted a notification to the department pursuant to paragraph (7) of subdivision (d) shall be deemed to be operating pursuant to this section, and, except as provided in Section 25404.5, shall be subject to the fee set forth in subdivision (c) of Section 25205.14 until that person submits a certification that the generator has ceased all treatment activities of hazardous waste streams authorized pursuant to this section in accordance with the requirements of paragraph (8) of subdivision (d). The certification required by this subdivision shall be submitted, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(1) The CUPA, if the generator is under the jurisdiction of a CUPA.

(2) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(Amended by Stats. 1998, Ch. 309, Sec. 4. Effective January 1, 1999.)

25201.6. (a) For purposes of this section and Section 25205.2, the following terms have the following meaning:

(1) "Series A standardized permit" means a permit issued to a facility that meets one or more of the following conditions:

(A) The total influent volume of liquid hazardous waste treated is greater than 50,000 gallons per calendar month.

(B) The total volume of solid hazardous waste treated is greater than 100,000 pounds per calendar month.

(C) The total facility storage design capacity is greater than 500,000 gallons for liquid hazardous waste.

(D) The total facility storage design capacity is greater than 500 tons for solid hazardous waste.

(E) A volume of liquid or solid hazardous waste is stored at the facility for more than one calendar year.

(2) "Series B standardized permit" means a permit issued to a facility that does not store liquid or solid hazardous waste for a period of more than one calendar year, that does not exceed any of the upper volume limits specified in subparagraphs (A) to (D), inclusive, and that meets one or more of the following conditions:

(A) The total influent volume of liquid hazardous waste treated is greater than 5,000 gallons, but does not exceed 50,000 gallons, per calendar month.

(B) The total volume of solid hazardous waste treated is greater than 10,000 pounds, but does not exceed 100,000 pounds, per calendar month.

(C) The total facility storage design capacity is greater than 50,000 gallons, but does not exceed 500,000 gallons, for liquid hazardous waste.

(D) The total facility storage design capacity is greater than 100,000 pounds, but does not exceed 500 tons, for solid hazardous waste.

(3) "Series C standardized permit" means a permit issued to a facility that does not store liquid or solid hazardous waste for a period of more than one calendar year, that does not conduct thermal treatment of hazardous waste, with the exception of evaporation, and that either meets the requirements of paragraph (3) of subdivision (g) or meets all of the following conditions:

(A) The total influent volume of liquid hazardous waste treated does not exceed 5,000 gallons per calendar month.

(B) The total volume of solid hazardous waste treated does not exceed 10,000 pounds per calendar month.

(C) The total facility storage design capacity does not exceed 50,000 gallons for liquid hazardous waste.

(D) The total facility storage design capacity does not exceed 100,000 pounds for solid hazardous waste.

(b) The department shall adopt regulations specifying standardized hazardous waste facilities permit application forms that may be completed by a non-RCRA Series A, B, or C treatment, storage, or treatment and storage facility, in lieu of other hazardous waste facilities permit application procedures set forth in regulations. The department shall not issue permits under this section to specific classes of facilities unless the department finds that doing so will not create a competitive disadvantage to a member or members of that class that were in compliance with the permitting requirements which were in effect on September 1, 1992.

(c) The regulations adopted pursuant to subdivision (b) shall include all of the following:

(1) Require that the standardized permit notification be submitted to the department on or before October 1, 1993, for facilities existing on or before September 1, 1992, except for facilities specified in paragraphs (2) and (3) of subdivision (g). The standardized permit notification shall include, at a minimum, the information required for a Part A application as described in the regulations adopted by the department.

(2) Require that the standardized permit application be submitted to the department within six months of the submittal of the standardized permit notification. The standardized permit application shall require, at a minimum, that the following information be submitted to the department for review prior to the final permit determination:

(A) A description of the treatment and storage activities to be covered by the permit, including the type and volumes of waste, the treatment process, equipment description, and design capacity.

(B) A copy of the closure plan as required by paragraph (13) of subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations.

(C) A description of the corrective action program, as required by Section 25200.10.

(D) Financial responsibility documents specified in paragraph (17) of subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations.

(E) A copy of the topographical map as specified in paragraph (18) of subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations.

(F) A description of the individual container, and tank and containment system, and of the engineer's certification, as specified in Sections 66270.15 and 66270.16 of Title 22 of the California Code of Regulations.

(G) Documentation of compliance, if applicable, with the requirements of Article 8.7 (commencing with Section 25199).

(3) Require that a facility operating pursuant to a standardized permit comply with the liability assurance requirements in Section 25200.1.

(4) Specify which of the remaining elements of the permit application, as described in subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations, shall be the subject of a certification of compliance by the applicant.

(5) Establish a procedure for imposing an administrative penalty pursuant to Section 25187, in addition to any other penalties provided by this chapter, upon an owner or operator of a treatment or storage facility that is required to obtain a hazardous waste facilities permit and that meets the criteria for a Series A, B, or C permit listed in subdivision (a), who does not submit a standardized permit notification to the department on or before the submittal deadline specified in paragraph (1) or the submittal deadline specified in paragraph (2) or (3) of subdivision (g), whichever date is

applicable, and who continues to operate the facility without obtaining a hazardous waste facilities permit or other grant of authorization from the department after the applicable deadline for submitting the notification to the department. In determining the amount of the administrative penalty to be assessed, the regulations shall require the amount to be based upon the economic benefit gained by that owner or operator as a result of failing to comply with this section.

(6) Require that a facility operating pursuant to a standardized permit comply, at a minimum, with the interim status facility operating requirements specified in the regulations adopted by the department, except that the regulations adopted pursuant to this section may specify financial assurance amounts necessary to adequately respond to damage claims at levels that are less than those required for interim status facilities if the department determines that lower financial assurance levels are appropriate.

(d) (1) Any regulations adopted pursuant to this section may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) On and before January 1, 1995, the adoption of the regulations pursuant to paragraph (1) 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.

(e) The department may not grant a permit under this section unless the department has determined the adequacy of the material submitted with the application and has conducted an inspection of the facility and determined all of the following:

(1) The treatment process is an effective method of treating the waste, as described in the permit application.

(2) The corrective action plan is appropriate for the facility.

(3) The financial assurance is sufficient for the facility.

(f) (1) Interim status shall not be granted to a facility that does not submit a standardized permit notification on or before October 1, 1993, unless the facility is subject to paragraph (2) or (3) of subdivision (g).

(2) Interim status shall be revoked if the permit application is not submitted within six months of the permit notification.

(3) Interim status granted to any facility pursuant to this section and Sections 25200.5 and 25200.9 shall terminate upon a final permit determination or January 1, 1998, whichever date is earlier. This paragraph shall apply retroactively to facilities for which a final permit determination is made on or after September 30, 1995.

(4) A treatment, storage, or treatment and storage facility operating pursuant to interim status that applies for a permit pursuant to this section shall pay fees to the department in an amount equal to the fees established by subdivision (e) of Section 25205.4 for the same size and type of facility.

(g) (1) Except as provided in paragraphs (2), (3), and (4), a facility treating used oil or solvents, or that engages in incineration, thermal destruction, or any land disposal activity, is not eligible for a standardized permit pursuant to this section.

(2) (A) Notwithstanding paragraph (1), an offsite facility treating solvents is eligible for a standardized permit pursuant to this section if all of the following conditions are met:

(i) The facility exclusively treats solvent wastes, and is not required to obtain a permit pursuant to the federal act.

(ii) The solvent wastes that the facility treats are only the types of solvents generated from dry cleaning operations.

(iii) Ninety percent or more of the solvents that the facility receives are from dry cleaning operations.

(iv) Ninety percent or more of the solvents that the facility receives are recycled and sold by the facility, excluding recycling for energy recovery, provided that the facility does not produce more than 15,000 gallons per month of recycled solvents.

(B) A facility that is eligible for a standardized permit pursuant to this paragraph is also eligible for the fee exemption provided in subdivision (d) of Section 25205.12 for any year or reporting period prior to January 1, 1995, if the owner or operator complies with the notification and application requirements of this section on or before March 1, 1995.

(C) A facility treating solvents pursuant to this paragraph shall clearly label all recycled solvents as recycled prior to subsequent sale or distribution.

(D) Notwithstanding that a facility eligible for a standardized permit pursuant to this paragraph meets the eligibility requirements for a Series C standardized permit specified in paragraph (3) of subdivision (a), the facility shall obtain and meet the requirements for a Series B standardized permit specified in paragraph (2) of subdivision (a).

(E) Notwithstanding any other provision of this chapter, for purposes of this paragraph, if the recycled material is to be used for dry cleaning, "recycled" means the removal of water and inhibitors from waste solvent and the production of dry cleaning solvent with an appropriate inhibitor for dry cleaning use. The removal of inhibitors is not required if all of the solvents received by the facility that are recycled for dry cleaning use are from dry cleaners.

(3) (A) Notwithstanding paragraph (1), an owner or operator with a surface impoundment used only to contain non-RCRA wastes generated onsite, that holds those wastes for not more than one 30-day period in any calendar year, and that meets the criteria specified in paragraphs (i) to (iii), inclusive, may submit a Series C standardized permit application to the department. A surface impoundment is eligible for operation under the Series C standardized permit tier if all of the following requirements are met:

(i) The waste and any residual materials are removed from the surface impoundment within 30 days of the date the waste was first placed into the surface impoundment.

(ii) The owner or operator has, and is in compliance with, current waste discharge requirements issued by the appropriate California regional water quality control board for the surface impoundment.

(iii) The owner or operator complies with all applicable groundwater monitoring requirements of the regulations adopted by the department pursuant to this chapter.

(B) A facility that is eligible for a standardized permit pursuant to this paragraph is also eligible for the fee exemption provided in subdivision (d) of Section 25205.12 for any year or reporting period prior to January 1, 1996, if the owner or operator complies with the notification and application requirements of this section on or before March 1, 1996.

(4) For purposes of this subdivision, treating solvents and thermal destruction do not include the destruction of nonmetal constituents in a thermal treatment unit that is operated solely for the purpose of the recovery of precious metals, if that unit is operating pursuant to a standardized permit issued by the department and the unit is in compliance with the applicable requirements of Division 26 (commencing with Section 39000). This paragraph does not prohibit the department from specifying, in the standardized permit for such a unit, a maximum concentration of nonmetal constituents, if the department determines that this requirement is necessary for protection of human health or safety or the environment.

(h) Facilities operating pursuant to this section shall comply with Article 4 (commencing with Section 66270.40) of Chapter 20 of Division 4.5 of Title 22 of the California Code of Regulations.

(i) (1) The department shall require an owner or operator applying for a standardized permit to complete and file a phase I environmental assessment with the application. However, if a RCRA facility assessment has been performed by the department, the assessment shall be deemed to satisfy the requirement of this subdivision to complete and file a phase I environmental assessment, and the facility shall not be required to submit a phase I environmental assessment with its application.

(2) (A) For purposes of this subdivision, the phase I environmental assessment shall include a preliminary site assessment, as described in subdivision (a) of Section 25200.14, except that the phase I environmental assessment shall also include a certification, signed, except as provided in subparagraph (B), by the owner, and also by the operator if the operator is not the owner, of the facility and an independent professional engineer, geologist, or environmental assessor registered in the state.

(B) Notwithstanding subparagraph (A), the certification for a permanent household waste collection facility may be signed by any professional engineer, geologist, or environmental assessor registered in the state, including, but not limited to, such a person employed by the governmental entity, but if the facility owner is not a governmental entity, the engineer, geologist, or assessor signing the certification shall not be employed by, or be an agent of, the facility owner.

(3) The certification specified in paragraph (2) shall state whether evidence of a release of hazardous waste or hazardous constituents has been found.

(4) If evidence of a release has been found, the facility shall complete a detailed site assessment to determine the nature and extent of any contamination resulting from the release and shall submit a corrective action plan to the department, within one year of submittal of the standardized permit application.

(j) The department shall establish an inspection program to identify, inspect, and bring into compliance any treatment, storage, or treatment and storage facility that is eligible for, and is required to obtain, a standardized hazardous waste facilities permit pursuant to this section, and that is operating without a permit or other grant of authorization from the department for that treatment or storage activity.

(k) A treatment, storage, or treatment and storage facility authorized to operate pursuant to a hazardous waste facilities permit issued pursuant to Section 25200, that meets the criteria listed in subdivision (a) for a standardized permit, may operate pursuant to a Series A, B, or C standardized permit by completing the appropriate permit modification procedure specified in the regulations for such a modification.

(Amended by Stats. 2001, Ch. 605, Sec. 14. Effective October 9, 2001. Operative January 1, 2002, by Sec. 18 of Ch. 605.)

25201.6.1. The department shall seek a determination from the United States Environmental Protection Agency as to the conditions, if any, under which the department may authorize a storage facility that is authorized under Section 25201.6 to transfer bulk liquids to and from railcars, to store railcars holding a residual heel from prior loads of RCRA hazardous waste in excess of 10 days without obtaining a RCRA-equivalent hazardous waste facility permit. Upon receipt of a written determination from the United States Environmental Protection Agency, the department shall initiate whatever administrative actions are necessary to enable the department to authorize this activity, subject to any regulatory or permit conditions that are required by the United States Environmental Protection Agency or are determined to be necessary by the department. Those administrative actions may include, but are not limited to, one or more of the following, as determined necessary:

(a) Adopting regulations.

(b) Processing permit modification requests.

(c) Seeking authorization from the United States Environmental Protection Agency to allow the department to authorize this activity.

(Added by Stats. 2005, Ch. 577, Sec. 2. Effective January 1, 2006.)

25201.7. The department shall, upon request of a facility subject to the regulations concerning operation under a permit-by-rule for treatment of wastes which are hazardous solely due to the presence of inorganic metals listed in paragraph 2 of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, allow the facility to use the technologies specified for aqueous wastes on a mixture of aqueous wastes and wastes which are nonaqueous solely due to the presence of nonhazardous suspended solids at concentrations greater than 1 percent, unless the department determines under the circumstances that the treatment would not qualify for the lower risk status to which permit-by-rule is intended to apply.

(Added by Stats. 1992, Ch. 1345, Sec. 20. Effective January 1, 1993.)

25201.8. (a) Notwithstanding any other provision of law, a generator of effluent hazardous waste from dry cleaning operations who treats the waste onsite is not a hazardous waste facility, and is exempt from the hazardous waste facilities permit requirements imposed pursuant to this chapter, or the regulations pertaining to hazardous waste facilities permit requirements adopted by the department pursuant to this chapter, if the generator meets all of the following conditions:

(1) The effluent is a non-RCRA hazardous waste, or the treatment of the effluent is exempt from hazardous waste treatment facilities permit requirements pursuant to the federal act.

(2) The effluent is treated at the same facility at which it was generated.

(3) The effluent is treated within 90 days of its generation.

(4) The effluent is treated in a tank or container.

(5) Any residual products or byproducts of the treatment of the effluent are managed in accordance with all applicable requirements for generators of hazardous waste under this chapter and the regulations adopted by the department pursuant to this chapter.

(6) The effluent is a hazardous waste solely due to its PCE (perchloroethylene) content.

(7) The total effluent hazardous waste stream treated does not exceed 180 gallons in any calendar month.

(8) The generator complies with all local requirements applicable to the treatment of the waste.

(9) The generator's facility does not require a hazardous waste permit for any other hazardous waste management activity.

(b) The local officer or agency authorized to enforce this section pursuant to subdivision (a) of Section 25180, as part of the existing inspection program for dry cleaning facilities, shall inspect the dry cleaning operations subject to subdivision (a) for compliance with the conditions of subdivision (a), and to ensure that all treatment devices are properly installed, operated, and maintained. Monitoring standards shall be developed by the department in conjunction with the unified program agencies, county health officer or director of environmental health, consistent with existing requirements of local and regional agencies pertaining to air, water, and soil resources.

(c) For purposes of this section, "dry cleaning operations" means the process of using a solvent to clean materials in either a dry-to-dry machine, a transfer machine, or any modification of these machines. Dry cleaning operations include, but are not limited to, all recovery operations, units, filters, stills, cookers, stages, or processes in which solvent is extracted for use or reuse in the cleaning process.

(d) This section shall not be construed to limit or otherwise abrogate the authority of any local agency, including a city, county, or special district, to control or otherwise regulate any dry cleaning facility located within the local agency's jurisdiction, or the related past or existing discharges from that dry cleaning facility.

(e) This section shall not be construed to limit the liability of any dry cleaning facility for any past, present, or future discharge.

(f) Nothing in this section shall abridge any authority granted to the department or a unified program agency by any other provision of law to impose any further restrictions or limitations upon facilities subject to this section, that the department or a unified program agency determines to be necessary to protect human health or the environment.

(Amended by Stats. 1995, Ch. 639, Sec. 43. Effective January 1, 1996.)

25201.9. (a) Upon the written request of any person, the department may enter into an agreement with that person pursuant to which the department will perform consultative services for the purpose of providing assistance to the person, or any facility owned or operated by the person, in complying with this chapter, Chapter 6.8 (commencing with Section 25300), and any regulations adopted pursuant to those provisions. The agreement shall require the person to reimburse the department for its costs of performing the consultative services pursuant to Article 9.2 (commencing with Section 25206.1). The agreement may provide for some or all of the reimbursement to be made in advance of the performance of the consultative services.

(b) The consultative services performed pursuant to subdivision (a) shall be over and above the routine functions of the department, and may include, but need not be limited to, onsite inspections, regulation and compliance training, and technical consultation.

(c) Any reimbursement received for assistance in complying with this chapter pursuant to this section shall be placed in the Hazardous Waste Control Account for disbursement in accordance with Section 25174. Any reimbursement received for assistance in complying with Chapter 6.8 (commencing with Section 25300) shall be deposited in the Toxic Substances Control Account for expenditure in accordance with Section 25173.6.

(d) The consultative services shall be provided subject to available staff and resources as determined by the department, and may include, but need not be limited to, onsite inspections, regulation and compliance training, and technical consultation.

(e) In scheduling limited onsite inspections, priority shall be given to businesses with fewer than 50 employees.

(f) (1) The staff of the department providing consultation pursuant to this section shall not initiate an administrative or civil enforcement action, except as specified in subdivision (g), for violations identified during a limited onsite inspection conducted pursuant to an agreement at a facility which does not require a permit pursuant to the federal act.

(2) The staff of the department shall require the owner or operator to correct any identified deficiencies and violations in accordance with a schedule for compliance or correction issued by the department.

(g) If class I violations, as defined in regulations adopted by the department, are identified during a limited onsite inspection, or an owner or operator refuses or fails to correct any deficiencies or violations within the timeframe specified in the schedule for compliance or correction issued by the

department pursuant to subdivision (f), the department may undertake any further inspection, investigation, or enforcement action authorized by law.

(h) The failure of the department to discover any particular deficiencies or violations during a limited onsite inspection shall not preclude the department, or any other agency, from undertaking a subsequent enforcement action to address any deficiencies or violations should they be discovered at a later time.

(i) Nothing in this section is intended to limit the authority of the department to refer criminal violations to the Attorney General, a district attorney, a county counsel, or a city attorney.

(j) Other than as expressly provided in this section, nothing in this section is intended to limit or restrict the authority of the department under any other provision of this division.

(k) This section shall become operative only if the department adopts regulations defining "class I violations."

(Amended by Stats. 1997, Ch. 870, Sec. 17. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25201.10. Any information which a generator is required to provide to the department or to a local agency pursuant to Section 25200.3, 25200.14 or 25201.5 or to regulations adopted by the department related to operation under a permit-by-rule shall be available to the public pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(Added by Stats. 1992, Ch. 1345, Sec. 22. Effective January 1, 1993.)

25201.11. (a) Copyright protection and all other rights and privileges provided pursuant to Title 17 of the United States Code are available to the department to the fullest extent authorized by law, and the department may sell, lease, or license for commercial or noncommercial use any work, including, but not limited to, videotapes, audiotapes, books, pamphlets, and computer software as that term is defined in Section 6254.9 of the Government Code, that the department produces whether the department is entitled to that copyright protection or not.

(b) Any royalties, fees, or compensation of any type that is paid to the department to make use of a work entitled to copyright protection shall be deposited in the Hazardous Waste Control Account.

(c) Nothing in this section is intended to limit any powers granted to the department pursuant to Section 6254.9 of the Government Code or any other provision of law.

(Added by renumbering Section 25201.10 (as added by Stats. 1992, Ch. 1117) by Stats. 1994, Ch. 146, Sec. 112. Effective January 1, 1995.)

25201.12. Notwithstanding any other provision of law, a hazardous waste facilities permit or other grant of authorization from the department, and payment of any fee imposed pursuant to Article 9.1 (commencing with Section 25205.1), are not required for a facility, with regard to the facility's operation of a physical process to remove air pollutants from exhaust gases prior to their emission to the atmosphere, as permitted by an air pollution control district or an air quality management district, unless a permit is required for that operation pursuant to the federal act. However, the facility is subject to all requirements imposed pursuant to this chapter on hazardous waste generators with regard to any liquid, semisolid, or solid hazardous waste that is generated as part of, and upon its removal from, the air pollution control process.

(Added by Stats. 1994, Ch. 1225, Sec. 5. Effective January 1, 1995.)

25201.13. (a) The Legislature hereby finds and declares that demineralization of water is a standard industrial water purification process used by utilities and industry. The regeneration and recycling of ion exchange media used to demineralize water is a continuous, onsite, totally enclosed, automated process, which is exempt from federal permitting requirements. The conditions set forth in subdivision (d) of Section 25201.5 are important to protect the environment by ensuring notification before treatment begins, written operating instructions, inspections, compliance with pretreatment standards, cleanup of terminated units, and recordkeeping to demonstrate compliance. However, those conditions are inapplicable to demineralization units because of the enclosed, automated, continuous technology involved, the very brief period in which treatment occurs, and the lack of any waste residue. An exemption from Section 25201.5 is therefore appropriate. Similarly, elementary neutralization associated with food processing industry wastewaters should also be exempt from Section 25201.5.

(b) An owner or operator of an elementary neutralization unit, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, and any storage tank not regulated under the federal act which is an integral part of the demineralizer operation, that neutralizes wastes which are hazardous solely due to corrosivity or toxicity that results only from the acidic or alkaline material, is exempt from this article, including the requirement of obtaining a hazardous waste facilities permit or other grant of authorization from the department, if the wastes result solely from the regeneration of ion exchange media used to demineralize water, do not contain more than 10 percent acid or base concentration by weight, are treated in vessels and piping constructed of materials that are compatible with the range of temperatures and pH levels of the wastes, and are subject to appropriate pH and temperature controls.

(c) (1) An owner or operator of an elementary neutralization unit, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, including any storage or processing tank not regulated under the federal act which is an integral part of the elementary neutralization operation, is exempt from this article, including the requirement to obtain a hazardous waste facilities permit or other grant of authorization from the department, if all of the following requirements are met:

(A) The unit neutralizes wastewaters which are hazardous solely due to corrosivity or toxicity that results only from alkaline or acidic materials used in the owner's or operator's food processing operations.

(B) The wastewaters result from food processing operations, do not contain more than 10 percent acid or base concentration by weight, are treated in vessels and piping that are compatible with the range of temperatures and pH levels of the wastewaters, and are subject to appropriate pH and temperature controls.

(2) For purposes of this subdivision "food processing operation" means activities conducted at facilities in SIC Code Major Group 20 (Food and Kindred Products), and includes preparation, mixing, cooking, fermentation, aging, storage, packaging, sanitizing, or pasteurization of products intended for human consumption, and all associated equipment and vessel cleaning operations.

(Amended by Stats. 1995, Ch. 640, Sec. 14. Effective January 1, 1996.)

25201.14. (a) To the extent consistent with the federal act, the following activities are exempt from this article, including the requirements of obtaining a hazardous waste facilities permit or other grant of authorization from the department, if the activity is conducted at the site where the material was generated and the management of the waste meets the requirements of subdivisions (a) to (d), inclusive, of Section 25143.9 and subdivisions (b) and (c) of this section:

(1) Except as provided in subdivision (b), the separation of used oil from water, if all other applicable laws and regulations are met, the used oil is properly transported to an authorized oil recycler, and the separation is accomplished by using one of the following methods:

(A) Gravity separation.

(B) A centrifuge.

(C) Membrane technology.

(D) Heating of the water containing the used oil to a temperature that is not more than 20 degrees Fahrenheit below the flashpoint of the used oil component of the mixture at atmospheric pressure.

(E) The addition of demulsifiers to the water containing the used oil.

(2) (A) The operation of a totally enclosed treatment unit or facility, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, when authorized by regulations adopted by the department pursuant to subparagraph (B).

(B) The department shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code exempting this type of unit or facility from this article to the extent that the department determines that the exemption is consistent with the protection of public health, safety, and the environment.

(b) For purposes of paragraph (1) of subdivision (a), the separation of used oil from water does not include a method using any of the following:

(1) Contaminated groundwater.

(2) Water containing any measurable amount of gasoline or more than 2 percent of a combination of Number 1 or Number 2 diesel fuel.

(3) Used oil and water which contain other constituents that render the material hazardous under the regulations adopted pursuant to Sections 25140 and 25141.

(c) A generator operating pursuant to subdivision (a) shall meet all of the following conditions:

(1) The generator complies with the conditions of subdivisions (d) and (e) of Section 25201.5.

(2) The generator submits a notification that is in compliance with paragraph (7) of subdivision (d) of Section 25201.5 on or before April 1, 1996, or if the generator is commencing the first treatment of waste pursuant to this section, not less than 60 days prior to the date of commencing treatment of that waste pursuant to this section. Upon demonstration of good cause by the generator, the department may allow a shorter time period than 60 days between notification and commencement of hazardous waste treatment pursuant to this section. The generator shall be in compliance with all other notification requirements of subdivision (d) of Section 25201.5.

(3) The generator maintains adequate records to demonstrate that the requirements and conditions of this section are met, including appropriate waste sampling and analysis records, to demonstrate that none of the water and used oil mixtures listed in subdivision (b) are treated pursuant to this section. All records required pursuant to this paragraph and subdivision (d) of Section 25201.5 shall be maintained onsite for a period of at least three years.

(4) Except as provided in Section 25404.5, the generator submits a one-time fee in the amount of one hundred dollars ($100) to the department as part of the notification required by paragraph (2), at the same time that notification is submitted, unless the generator is subject to a fee under a permit-by-rule or a grant of conditional authorization pursuant to Section 25200.3.

(5) (A) If the generator is conducting treatment pursuant to paragraph (1) of subdivision (a), the generator complies with the phase I environmental assessment requirements of Section 25200.14, except for subdivisions (d), (f), and (g) of Section 25200.14. The generator shall not be required to comply with this subparagraph until the department completes an evaluation of the phase I environmental assessment requirement, pursuant to Section 25200.14.1, and until any revisions resulting from that evaluation are implemented by statute or regulation.

(B) A generator conducting treatment pursuant to paragraph (2) of subdivision (a) shall not be required to conduct any site investigations, beyond that required by subparagraph (A), or to initiate remediation activities until the department adopts regulations specifying the criteria and procedures for corrective action at non-RCRA facilities.

(C) This paragraph does not limit the authority of the department or a unified program agency approved pursuant to Section 25404.1 to issue an order pursuant to Section 25187.1 or to order corrective action pursuant to Section 25187.

(Amended by Stats. 2001, Ch. 450, Sec. 1. Effective January 1, 2002.)

25201.15. (a) For the purposes of this section, the following terms have the following meaning:

(1) "Biotechnology manufacturing or biotechnology process development activities" means activities conducted in SIC Code subgroups 283, 2833, 2834, 2835, 2836, 8731, 8732, and 8733, including manufacturing and process development of medicinal chemicals and botanical products, pharmaceutical preparations, in vitro and in vivo diagnostic substances, and biological products, and all associated equipment and vessel cleaning and maintenance operations.

(2) "Biotechnology elementary neutralization activities" means the elementary neutralization of wastes generated by biotechnology manufacturing or biotechnology process development activities.

(3) "SIC Code" has the same meaning as defined in subdivision (u) of Section 25501.

(b) The Legislature hereby finds and declares that the biotechnology industry's elementary neutralization of hazardous wastes is a common, safe, and standard practice that typically occurs in a wastewater collection system, and that does not warrant extensive regulatory oversight.

(c) Biotechnology elementary neutralization activities are exempt from any requirement imposed pursuant to this chapter, including any regulation adopted pursuant to this chapter, that relates to generators, tanks, and tank systems, and the requirement to obtain a hazardous waste facilities permit or other grant of authorization from the department, except as otherwise provided in subdivision (d), if all of the following conditions are met:

(1) A permit is not required to conduct elementary neutralization under the federal act.

(2) The hazardous wastes are hazardous solely due to acidic or alkaline materials, and are generated by biotechnology process manufacturing or biotechnology process development activities.

(3) Either of the following applies with regard to the biotechnology elementary neutralization activity:

(A) The hazardous wastes in the elementary neutralization unit do not contain more than 10 percent by weight acid or alkaline constituents.

(B) The generator of the hazardous wastes determines that the elementary neutralization process will not raise the temperature of the hazardous wastes to within 10 degrees of the boiling point or cause the release of hazardous gaseous emissions, using either constituent-specific concentration limits or calculations. The generator shall make these calculations in accordance with the regulations adopted by the department, if the department adopts those regulations.

(4) The hazardous wastes are not diluted for the sole purpose of meeting the criteria specified in subparagraph (A) of paragraph (3) and after neutralization the wastewaters do not exhibit the characteristic of corrosivity, as defined in Section 66261.22 of Title 22 of the California Code of Regulations, or any successor regulation.

(5) The temperature of any unit 100 gallons or larger is automatically monitored, and is fitted with a high temperature alarm system, and for closed systems, the unit automatically controls the adding and mixing of corrosive and neutralizing solutions.

(d) The operator of an elementary neutralization unit exempt under this section shall comply with the following requirements:

(1) An operator of an elementary neutralization unit subject to this section shall successfully complete a program of classroom instruction or on-the-job training that includes, at a minimum, instruction for responding effectively to emergencies by familiarizing personnel with emergency procedures, emergency equipment, and emergency systems, including, where applicable, procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment, communications, or alarm systems.

(2) Within 10 days of commencing initial operation of the unit, or within any other time period that may be required by the CUPA, the operator shall notify the CUPA of the commencement of operation of the unit under the exemption made pursuant to this section. If the operator is not under the jurisdiction of a CUPA, the notice shall be sent to the officer of the agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (2) of subdivision (c) of Section 25404.

(e) Notwithstanding any other provision of law, unless required by federal law, biotechnology elementary neutralization activities satisfying the requirements of subdivisions (c) and (d) are exempt from any statute or any regulation adopted pursuant to state law requiring the elementary neutralization unit to have secondary containment for piping or ancillary equipment, including, but not limited to, a regulation adopted by the State Water Resources Control Board, the department, or any other state agency.

(Amended by Stats. 2000, Ch. 343, Sec. 13. Effective January 1, 2001.)

25201.16. (a) For purposes of this section, the following terms have the following meanings:

(1) "Aerosol can" means a container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam.

(2) "Aerosol can processing" means the puncturing, draining, or crushing of aerosol cans.

(3) "Destination facility," as used in Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations, also includes a facility that treats, except as described in subdivision (d), or disposes of, a hazardous waste aerosol can that is shipped to the facility as a universal waste aerosol can, except destination facility does not include a facility at which universal waste aerosol cans are merely accumulated.

(4) "Hazardous waste aerosol can" means an aerosol can that meets the definition of hazardous waste, as defined in Section 25117.

(5) "Unauthorized release" means a release to the environment

that is in violation of any applicable federal, state, or local law, or any permit or other approval document issued by any federal, state, or local agency.

(6) "Universal waste aerosol can" means a hazardous waste aerosol can while it is being managed in accordance with the department's regulations governing the management of universal waste, except as required otherwise in subdivisions (d) to (k), inclusive. Upon receipt of a universal waste aerosol can by a destination facility for purposes of treatment or disposal, the can is no longer a universal waste aerosol can, but continues to be a hazardous waste aerosol can.

(7) With respect to a universal waste aerosol can, the term "universal waste handler," as defined in Section 66273.9 of Title 22 of the California Code of Regulations, does not include either of the following:

(A) A person who treats, except as described in subdivision (h), or disposes of hazardous waste aerosol cans including universal waste aerosol cans.

(B) A person engaged in offsite transportation of hazardous waste aerosol cans, including, but not limited to, universal waste aerosol cans, by air, rail, highway, or water, including a universal waste aerosol can transfer facility.

(b) (1) The requirements of this section apply to any person who manages aerosol cans, except for the following:

(A) Aerosol cans that are not yet wastes pursuant to Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(B) Aerosol cans that do not exhibit a characteristic of a hazardous waste as set forth in Article 3 (commencing with Section 66261.20) of Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations.

(C) Aerosol cans that are empty pursuant to subsection (m) of Section 66261.7 of Title 22 of the California Code of Regulations.

(2) (A) An aerosol can becomes a waste on the date the aerosol can is discarded or is no longer useable. An aerosol can is deemed to be no longer useable when any of the following occurs:

(i) The can is as empty as possible, using standard practices.

(ii) The spray mechanism no longer operates as designed.

(iii) The propellant is spent.

(iv) The product is no longer used.

(B) An unused aerosol can is a waste, for purposes of Section 25124, on the date the owner decides to discard it.

(c) (1) The disposal of any hazardous waste aerosol can is subject to the requirements of this chapter, and to any regulations adopted by the department relating to the disposal of hazardous waste.

(2) Except as otherwise provided in this section, the treatment or storage of any hazardous waste aerosol can is subject to the requirements of this chapter, and any regulations adopted by the department relating to the treatment and storage of hazardous waste.

(d) (1) Except as provided in paragraph (2), a universal waste aerosol can is deemed to be a universal waste for purposes of the department's regulations governing the management of universal wastes.

(2) The exemptions described in Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations for universal waste generated by households and conditionally exempt small quantity waste generators of universal waste do not apply to universal waste aerosol cans.

(e) A universal waste handler shall manage universal waste aerosol cans in a manner that prevents fire, explosion, and the unauthorized release of any universal waste or component of a universal waste to the environment.

(f) Any container used to accumulate or transport universal waste aerosol cans, or the contents removed from a universal waste aerosol can or processing device, unless the contents have been determined to not be hazardous waste, shall meet all of the following requirements:

(1) (A) Except when waste is added or removed or as provided in subparagraph (B), the container shall be closed, structurally sound, and compatible with the contents of the universal waste aerosol can, and shall show no evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(B) The closed container requirement in subparagraph (A) does not apply to a container used to accumulate universal waste aerosol cans prior to processing the cans pursuant to subdivision (h), or prior to shipping the cans offsite, except that the container shall be covered at the end of each workday.

(2) The container shall be placed in a location that has sufficient ventilation to avoid formation of an explosive atmosphere, and shall be designed, built, and maintained to withstand pressures reasonably expected during storage and transportation.

(3) (A) The container shall be placed on or above a floor or other surface that is free of cracks or gaps and is sufficiently impervious and bermed to contain leaks and spills.

(B) Subparagraph (A) does not apply to a container used to accumulate universal waste aerosol cans prior to processing the cans pursuant to subdivision (h) or prior to shipping the cans offsite.

(4) Incompatible materials shall be kept segregated and managed appropriately in separate containers.

(5) A container holding flammable wastes shall be kept at a safe distance from heat and open flames.

(6) A container used to hold universal waste aerosol cans shall be labeled or marked clearly with one of the following phrases: "Universal Waste-Aerosol Cans" , "Waste Aerosol Cans" , or "Used Aerosol Cans" .

(g) A universal waste handler shall accumulate universal waste aerosol cans in accumulation containers that meet the requirements of subdivision (f). The universal waste aerosol cans shall be accumulated in a manner that is sorted by type and compatibility of contents.

(h) A universal waste handler may process a universal waste aerosol can to remove and collect the contents of the universal waste aerosol can, if the universal waste handler meets all of the following requirements:

(1) The handler is not an offsite commercial processor of aerosol cans. For the purposes of this paragraph, a household hazardous waste collection facility, as defined in subdivision (f) of Section 25218.1, is not an offsite commercial processor.

(2) The handler ensures that the universal waste aerosol can is processed in a manner and in equipment designed, maintained, and operated so as to prevent fire, explosion, and the unauthorized release of any universal waste or component of a universal waste to the environment.

(3) The handler ensures that the unit used to process the universal waste aerosol cans is placed on or above a nonearthen floor that is free of cracks or gaps and is sufficiently impervious and bermed to contain leaks and spills.

(4) The handler ensures that the processing operations are performed safely by developing and implementing a written operating procedure detailing the safe processing of universal waste aerosol cans. This procedure shall, at a minimum, include all of the following:

(A) The type of equipment to be used to process the universal waste aerosol cans safely.

(B) Operation and maintenance of the unit.

(C) Segregation of incompatible wastes.

(D) Proper waste management practices, including ensuring that flammable wastes are stored away from heat and open flames.

(E) Waste characterization.

(5) The handler ensures that a spill cleanup kit is readily available to immediately clean up spills or leaks of the contents of the universal waste aerosol can.

(6) The handler immediately transfers the contents of the universal waste aerosol can or processing device, if applicable, to a container that meets the requirements of subdivision (f), and characterizes and manages the contents pursuant to subdivision (i).

(7) The handler ensures that the area in which the universal waste aerosol cans are processed is well ventilated.

(8) The handler ensures, through a training program utilizing the written operating procedures developed pursuant to paragraph (4), that each employee is thoroughly familiar with the procedure for sorting and processing universal waste aerosol cans, and proper waste handling and emergency procedures relevant to his or her responsibilities during normal facility operations and emergencies.

(i) A universal waste handler who processes universal waste aerosol cans to remove the contents of the aerosol can, or who generates other waste as a result of the processing of aerosol cans, shall determine whether the contents of the universal waste aerosol can, residues, or other wastes exhibit a characteristic of hazardous waste identified in Article 3 (commencing with Section 66261.20) of Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations.

(1) If the contents of the universal waste aerosol can, residues, or other wastes exhibit a characteristic of hazardous waste, those wastes shall be managed in compliance with all applicable requirements of this

chapter and the regulations adopted by the department pursuant to this chapter. The universal waste handler shall be deemed the generator of that hazardous waste and is subject to the requirements of Chapter 12 (commencing with Section 66262.10) of Division 4.5 of Title 22 of the California Code of Regulations.

(2) If the contents of the universal waste aerosol can, residues, or other wastes are not hazardous, the universal waste handler shall manage those wastes in a manner that is in compliance with all applicable federal, state, and local requirements.

(j) (1) A universal waste handler that processes universal waste aerosol cans shall, no later than the date on which the handler first initiates this activity, submit a notification, in person or by certified mail, with return receipt requested, to either of the following:

(A) The CUPA, if the facility is under the jurisdiction of a CUPA.

(B) If the facility is not under the jurisdiction of a CUPA, the notification shall be submitted to the agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(2) Each notification submitted pursuant to this subdivision shall be completed, dated, and signed according to the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, and shall include, but not be limited to, all of the following information:

(A) The name, identification number, site address, mailing address, and telephone number of the handler.

(B) A description of the universal waste aerosol can processing activities, including the type and estimated volumes or quantities of universal waste aerosol cans to be processed monthly, the treatment process or processes, equipment descriptions, and design capacities.

(C) A description of the characteristics and management of any hazardous treatment residuals.

(3) (A) Within 30 days of any change in operation which necessitates modifying any of the information submitted in the notification required pursuant to this subdivision, the handler shall submit an amended notification, in person or by certified mail, with return receipt requested, to one of the following:

(i) The CUPA, if the facility is under the jurisdiction of a CUPA.

(ii) If the facility is not under the jurisdiction of a CUPA, the notification shall be submitted to the agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(B) Each amended notification shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to hazardous waste facilities permit applications.

(k) In addition to the requirements set forth in Article 4 (commencing with Section 66273.50) of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations, during transportation, including holding time at a transfer facility, a transporter of universal waste aerosol cans shall comply with the following requirements:

(1) The transporter shall transport and otherwise manage universal waste aerosol cans in a manner that prevents fire, explosion, and the unauthorized release of any universal waste, or component of a universal waste, into the environment.

(2) Universal waste aerosol cans shall be transported and stored in accumulation containers that are clearly marked or labeled for that use and that meet the requirements of subdivision (f).

(l) The department may adopt regulations specifying any additional requirement or limitation on the management of hazardous waste aerosol cans that the department determines is necessary to protect human health or safety or the environment.

(m) The development and publication of the notification form specified in subdivision (j) is not subject to the requirements described in Chapter 3.5 (commencing with Section 11340) of Part I of Division 3 of Title 2 of the Government Code.

(n) In addition to the requirements set forth in this section, a hazardous waste aerosol can shall be managed in a manner that meets all requirements established by the United States Environmental Protection Agency.

(Added by Stats. 2001, Ch. 450, Sec. 2. Effective January 1, 2002.)

25201.17. (a) For purposes of this section, the following terms have the following meanings:

(1) "Pharmaceutical manufacturing or pharmaceutical process development activities" means activities conducted in North American Industry Classification System Code subgroups 325411 and 325412, to the extent they meet either of the following:

(A) Research, development, and production activities conducted in relation to an investigational new drug application or new drug application as set forth in Part 312 (commencing with Section 312.1) of, and Part 314 (commencing with Section 314.1) of, Subchapter D of Chapter 1 of Title 21 of the Code of Federal Regulations, that is filed with the United States Food and Drug Administration, or research and development activities conducted to support the future filing of an investigational new drug application or new drug application, or research, development, and production activities that are conducted in relation to a filing with a corresponding governmental authority in the European Union, Japan, or Canada that imposes similar requirements.

(B) The production of a pharmaceutical product, including starting materials, intermediates, and active pharmaceutical intermediates.

(2) "Pharmaceutical neutralization activities" means the deactivation of a material generated by, or used in, pharmaceutical manufacturing or pharmaceutical process development activities through the addition of a reagent, including, but not limited to, a caustic, before management of the material as a hazardous waste subject to this chapter.

(b) Pharmaceutical neutralization activities are exempt from any requirement imposed pursuant to this chapter, including any regulation adopted pursuant to this chapter, that relates to generators, tanks, and tank systems, and the requirement to obtain a hazardous waste facilities permit or other grant of authorization from the department, except as otherwise provided in subdivision (c), if all of the following conditions are met:

(1) A permit is not required to conduct neutralization under the federal act pursuant to Section 264.1(g)(5) of Title 40 of the Code of Federal Regulations.

(2) The pharmaceutical manufacturing or pharmaceutical process development activities are conducted in accordance with the United States Food and Drug Administration's current good manufacturing practices, as set forth in Part 210 (commencing with Section 210.1) of, and Part 211 (commencing with Section 211.1) of, Subchapter C of Chapter 1 of Title 21 of the Code of Federal Regulations.

(3) The pharmaceutical neutralization activity occurs within a unit that meets the standards of a totally enclosed treatment facility, as defined in Section 260.10 of Title 40 of the Code of Federal Regulations and Section 66260.10 of Title 22 of the California Code of Regulations, that is physically connected to the reactor or vessel where the material being neutralized is created.

(4) The pharmaceutical neutralization activity is integral to the manufacturing process and occurs within the manufacturing process area and prior to the transfer of the material to a dedicated hazardous waste storage or treatment unit.

(5) If the pharmaceutical neutralization activity occurs at greater than 15 pounds per square inch gauge pressure, it shall occur within a unit that meets applicable American Society of Mechanical Engineers (ASME) standards for pressure rated vessels, including the ASME requirements for automatic pressure relief in the event of a system failure, including pressure relief valves, burst discs, or equivalent devices.

(6) The pharmaceutical neutralization activities do not raise the temperature of the hazardous wastes to within 10 degrees Celsius of the boiling point or cause the release of hazardous gaseous emissions, using either constituent-specific concentration limits or calculations.

(7) The temperature of any unit 100 gallons or larger is automatically monitored, the unit is fitted with a high-temperature alarm system, and, for closed systems, the adding and mixing of in-process and neutralizing solutions are manually controlled.

(8) The pharmaceutical neutralization activity occurs within a facility that has design or engineering features, including, but not limited to, trenches, sumps, berming, sloping, or diking, designed to contain all liquid spills from pharmaceutical manufacturing process and neutralization units.

(c) An owner or operator of a pharmaceutical neutralization unit exempt under this section shall comply with all of the following requirements:

(1) The owner or operator shall successfully complete a program of classroom instruction or on-the-job training that includes, at a minimum, instruction for responding effectively to emergencies by familiarizing personnel with emergency procedures, emergency equipment, and emergency systems, including, where applicable, procedures for using, inspecting,

repairing, and replacing facility emergency and monitoring equipment, communications, or alarm systems.

(2) Within 10 days of commencing initial operation of the unit, or within any other time period that may be required by the CUPA, the owner or operator shall notify the CUPA of the commencement of the operation of the unit under the exemption made pursuant to this section. A CUPA is authorized to, and is required to, implement the requirements specified in this section. If the owner or operator is not under the jurisdiction of a CUPA, the notice shall be sent to the officer of the agency authorized, pursuant to subdivision (e) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (2) of subdivision (c) of Section 25404.

(3) The owner or operator shall establish and maintain documentation to substantiate its compliance with all of the requirements and conditions of this section, and shall make the documentation available for inspection upon request of the department or the CUPA.

(d) Notwithstanding any other provision of law, all air emissions from a pharmaceutical neutralization unit shall be managed in accordance with the requirements of the local air pollution control district or air quality management district.

(e) All wastes generated as a result of pharmaceutical neutralization activities shall be managed as hazardous wastes in accordance with all applicable requirements of this chapter.

(Added by Stats. 2006, Ch. 741, Sec. 1. Effective January 1, 2007.)

25202. (a) The owner or operator of a hazardous waste facility who holds a hazardous waste facilities permit or a grant of interim status shall comply with the conditions of the hazardous waste facilities permit or interim status document, the requirements of this chapter, and with the regulations adopted by the department pursuant to this chapter, including regulations which become effective after the issuance of the permit or grant of interim status.

Notwithstanding any term or condition in a hazardous waste facilities permit or interim status document, the department may adopt or amend regulations which impose additional or more stringent requirements than those existing at the time the permit or interim status document was issued. The department may enforce both the permit or interim status document and additional or more stringent requirements against the owner or operator of a facility.

(b) The amendment of this section made by Chapter 1126 of the Statutes of 1991 does not constitute a change in, but is declaratory of, the existing law.

(Amended by Stats. 1996, Ch. 688, Sec. 1. Effective January 1, 1997.)

25202.5. (a) With respect to any hazardous waste facility permitted pursuant to Section 25200 or granted interim status pursuant to Section 25200.5, the department may do either of the following:

(1) Enter into an agreement with the owner of the hazardous waste facility that requires the execution and recording of a written instrument which imposes an easement, covenant, restriction, or servitude upon the present and future uses of all or part of the land on which the hazardous waste facility subject to the permit or grant of interim status is located and on all or part of any adjacent land held by, or for the beneficial use of, the owners of the land on which the hazardous waste facility subject to the permit or grant of interim status is located.

(2) Impose a requirement upon the owner of the hazardous waste facility, by permit modification, permit condition, or otherwise, that requires the execution and recording of a written instrument which imposes an easement, covenant, restriction, or servitude upon the present and future uses of all or part of the land on which the hazardous waste facility subject to the permit or grant of interim status is located and on all or part of any adjacent land held by, or for the beneficial use of, the owners of the land on which the hazardous waste facility subject to the permit or grant of interim status is located.

(b) The easement, covenant, restriction, or servitude imposed pursuant to subdivision (a) shall be no more restrictive than needed, as determined by the department, to protect the present or future public health and safety and shall not place any restriction on any land that limits the use, modification, or expansion of an existing industrial or manufacturing facility or complex. The instrument shall be executed by all of the owners of the land and by the director, shall particularly describe the real property affected by the instrument, and shall be recorded by the owner in the office of the county recorder in each county in which all, or a portion of, the land is located within 10 days of the date of execution. The easement, covenant, restriction, or servitude shall state that the land described in the instrument has been, or will be, the site of a hazardous waste facility or is adjacent to the site of such a facility, and may impose those use restrictions as the department deems necessary to protect the present or future public health. The restrictions may include restrictions upon activities on, over, or under the land, including, but not limited to, a prohibition against building, filling, grading, excavating, or mining without the written permission of the director.

A certified copy of the recorded easement, covenant, restriction, or servitude shall be sent to the department upon recordation. Notwithstanding any other provision of law, except as provided in Section 25202.6, an easement, covenant, restriction, or servitude executed pursuant to this section and recorded so as to provide constructive notice shall run with the land from the date of recordation and shall be binding upon all of the owners of the land, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. The easement, covenant, restriction, or servitude shall be enforceable by the department pursuant to Article 8 (commencing with Section 25180).

(c) Except as provided in subdivisions (d) and (e), any land on which is located a hazardous waste disposal facility permitted pursuant to this chapter shall be surrounded by a minimum buffer zone of 2,000 feet between the facility and the outer boundary of the buffer zone. The department may impose an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, on the buffer zone pursuant to subdivision (a). If the department determines that a buffer zone of more than 2,000 feet is necessary to protect the present and future public health and safety, the department may increase the buffer zone by restricting the disposal of hazardous waste at that facility to land surrounded by a larger buffer zone.

(d) Subdivision (c) does not apply to any hazardous waste property, as defined in paragraph (1) of subdivision (a) of Section 25117.3, which was actually and lawfully used for the disposal of hazardous waste on August 6, 1980.

(e) If the owner of a hazardous waste disposal facility proves to the satisfaction of the department that a buffer zone of less than 2,000 feet is sufficient to protect the present and future public health and safety, the department may allow the disposal of hazardous waste onto land surrounded by a buffer zone of less than 2,000 feet.

(Amended by Stats. 1989, Ch. 906, Sec. 2.)

25202.6. The owner of land subject to an easement, covenant, restriction, or servitude, required by the department pursuant to Section 25202.5, may make a written request of the department to remove the easement, covenant, restriction, or servitude. Upon receipt of such a request and supporting material, the department shall promptly review the need for the easement, covenant, restriction, or servitude and, when appropriate, and after a public hearing, shall agree to modify or remove the easement, covenant, restriction, or servitude to make certain that it continues to be no more restrictive than necessary to protect the public health and safety. When the department agrees to modify or remove such an easement, covenant, restriction, or servitude, the director and all of the owners of the land shall execute an instrument that reflects this agreement, shall particularly describe the real property affected by the instrument, and the owner shall record the instrument in the county in which the land is located within 10 days of the date of execution.

(Amended by Stats. 1984, Ch. 1736, Sec. 5. Effective September 30, 1984.)

25202.7. Any decision of the department pursuant to either Section 25202.5 or Section 25202.6 shall be subject to review by a court of competent jurisdiction as provided in Section 1094.5 of the Code of Civil Procedure and shall be upheld if the court finds the decision is supported by substantial evidence.

(Added by Stats. 1980, Ch. 655.)

25202.9. The department shall require, as a permit condition when issuing a permit for an onsite hazardous waste treatment, storage, or disposal facility that the generator of the hazardous waste annually certify all of the following information to the department and the unified program agency:

(a) The generator of the hazardous waste has established a program to reduce the volume or quantity and toxicity of the hazardous waste to the degree, determined by the generator, to be economically practicable.

(b) The proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(Amended by Stats. 1995, Ch. 639, Sec. 44. Effective January 1, 1996.)

25203. It is unlawful for any person to dispose of a hazardous waste except at a disposal site or facility of an owner or operator who holds a valid hazardous waste facilities permit or other grant of authorization from the department to use and operate the site or facility.

(Amended by Stats. 1988, Ch. 1632, Sec. 20.)

25204. (a) For purposes of this section, "residuals repository" means a hazardous waste facility, or an operational unit at a hazardous waste facility, which meets all of the following requirements:

(1) It is sited, designed and constructed, operated, and maintained, in accordance with all applicable federal and state regulations, including, but not limited to, the regulations adopted pursuant to subdivision (b).

(2) The operator holds a hazardous waste facilities permit issued by the department under this chapter.

(3) A condition imposed in the hazardous waste facilities permit authorizes the residuals repository to accept for disposal in or on the land only treated hazardous waste, as defined in subdivision (l) of Section 25179.3, that has been specified as suitable for disposal in a residuals repository pursuant to paragraph (1) of subdivision (b).

(b) On or before May 1, 1990, the department shall adopt, by regulation, standards for residuals repositories. In developing these standards, the department shall consult with the State Water Resources Control Board, conduct public workshops, and request comments and recommendations from appropriate state and federal agencies and the interested public. The standards shall, at a minimum, be at least as stringent, effective, and comprehensive as the standards applicable to hazardous waste land disposal facilities adopted under the federal act, including the regulations, guidelines, and policies adopted pursuant to the federal act, and shall include, but not be limited to, all of the following:

(1) A specification of which treated hazardous wastes the department determines are suitable for disposal in a residuals repository. The department may specify these treated hazardous wastes by listing types or categories of treated hazardous wastes or by establishing physical or chemical properties that treated hazardous wastes are required to meet.

(2) Design and construction standards for a residuals repository.

(3) Standards governing the operation, monitoring, maintenance, closure, and postclosure maintenance of a residuals repository.

(4) Minimum standards governing the location of a residuals repository and the subsurface geology underlying the site. In establishing these standards, the department shall also specify the specific criteria, if any, under which the department justifies a finding that engineering measures or design factors may be substituted for geological requirements.

(5) Requirements for hazardous waste segregation and recordkeeping.

(Added by Stats. 1988, Ch. 1417, Sec. 3.)

25204.5. Any action taken by the department pursuant to this article shall be consistent with all applicable regulations adopted by the State Water Resources Control Board, all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code, and all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, to the extent the department determines that those regulations, plans, and policies are not less stringent than this chapter and the regulations adopted pursuant to this chapter. The department shall also incorporate, as a condition of any permit issued, amended, or renewed under this chapter, any waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board and any conditions imposed pursuant to Section 13227 of the Water Code, to the extent the department determines those waste discharge requirements, requirements, and limitations are not less stringent than this chapter and the regulations adopted pursuant to this chapter. The department may set more stringent requirements or limitations which the department determines are necessary or appropriate to carry out this chapter.

(Added by Stats. 1988, Ch. 1631, Sec. 37.)

25204.6. (a) On or before January 1, 1995, the Secretary for Environmental Protection shall develop a hazardous waste facility regulation and permitting consolidation program, after holding an appropriate number of public hearings throughout the state. The program shall be developed in close consultation with the director and with the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, and with affected businesses and interested members of the public, including environmental organizations.

(b) The hazardous waste facility regulation and permitting consolidation program shall provide for all of the following:

(1) The grant of sole authority to either the department, or the State Water Resources Control Board and the California regional water quality control boards, to implement and enforce the requirements of Article 6 (commencing with Section 66264.90) of Chapter 14 of, and Article 6 (commencing with Section 66265.90) of Chapter 15 of, Division 4.5 of Title 22 of the California Code of Regulations, but not including Section 66264.100 of Title 22 of the California Code of Regulations, and of Article 5 (commencing with Section 2530) of Chapter 15 of Division 3 of Title 23 of the California Code of Regulations, but not including Sections 2550.10, 2550.11, and 2550.12 of those regulations.

(2) The development of a process for ensuring, at each facility which conducts offsite hazardous waste treatment, storage, or disposal activities, or which conducts onsite treatment, storage, or disposal activities which are required to receive a permit under the federal act, and which is required to clean up or abate the effects of a release of a hazardous substance pursuant to Section 13304 of the Water Code, or which is required to take corrective action for a release of hazardous waste or constituents pursuant to Section 25200.10, or both, that sole jurisdiction over the supervision of that action is vested in either the department or the State Water Resources Control Board and the California regional water quality control boards.

(3) The development of a unified hazardous waste facility permit, issued by the department, which incorporates all conditions, limitations, and requirements imposed by the State Water Resources Control Board or the California regional water quality control boards to protect water quality, and incorporate all conditions, limitations, and requirements imposed by the department pursuant to this chapter.

(4) The development of a consolidated enforcement and inspection program designed to ensure effective, efficient, and coordinated enforcement of the laws implemented by the department, the State Water Resources Control Board, and the California regional water quality control boards, as those laws relate to facilities conducting offsite hazardous waste treatment, storage, or disposal activities, and to facilities conducting onsite treatment, storage, and disposal activities which are required to receive a permit under the federal act.

(c) The Secretary for Environmental Protection may immediately implement those aspects of the program which do not require statutory changes. If the Secretary for Environmental Protection determines that statutory changes are needed to fully implement the program, the secretary shall recommend these changes to the Legislature on or before January 1, 1995. It is the intent of the Legislature that the program be fully implemented not later than January 1, 1996.

(d) The Secretary for Environmental Protection shall work in close consultation with the Environmental Protection Agency, and shall implement this section only to the extent that doing so will not result in this state losing its authorization to implement the federal act, or its delegation to implement the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

(Amended by Stats. 1995, Ch. 639, Sec. 45. Effective January 1, 1996.)

25204.7. (a) Notwithstanding any other provision of law, a generator conducting a treatment activity that is eligible for operation under a permit-by-rule pursuant to the department's regulations, a grant of conditional authorization, or a grant of conditional exemption pursuant to this chapter, and who meets the criteria in subdivision (b), is exempt from all of the following requirements:

(1) The requirement for a generator to submit a notification to the department under Sections 25144.6, 25200.3, and 25201.5 and the regulations

adopted by the department pertaining to a permit-by-rule.

(2) The requirement to pay a fee pursuant to Section 25201.14 or 25205.14.

(b) To be eligible for an exemption pursuant to this section, the generator shall meet all of the following requirements:

(1) The generator is located within the jurisdiction of a certified unified program agency that includes the publicly owned treatment works that regulates the generator's activity or unit that is eligible for operation under a permit-by-rule or a grant of conditional authorization or conditional exemption, and which has implemented a unified program pursuant to Chapter 6.11 (commencing with Section 25404) that includes the following elements:

(A) The pretreatment program of the publicly owned treatment works that regulates the generator.

(B) An inspection program that meets the requirements of Section 25201.4 and that inspects the generator for compliance with the requirements of this section.

(2) The generator meets all other requirements of this chapter and the department's regulations pertaining to permit-by-rule, conditional authorization, or conditional exemption, whichever is applicable.

(3) The generator's activity or unit that is eligible for operation under a permit-by-rule or a grant of conditional authorization or conditional exemption is within the scope of the hazardous waste element of the unified program, as specified in paragraph (1) of subdivision (c) of Section 25404.

(Amended by Stats. 1997, Ch. 870, Sec. 18. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25205. (a) Except as provided in Section 25245.5, the department shall not issue or renew a permit to operate a hazardous waste facility unless the owner or operator of the facility establishes and maintains the financial assurances required pursuant to Article 12 (commencing with Section 25245).

(b) The grant of interim status of a facility, or any portion thereof, that is operating under a grant of interim status pursuant to Section 25200.5, based on the facility having been in existence on November 19, 1980, shall terminate on July 1, 1997, unless the department certifies, on or before July 1, 1997, that the facility is in compliance with the financial assurance requirements of Article 12 (commencing with Section 25245) for a facility in operation since November 19, 1980, for all units, tanks, and equipment for which the facility has authorization to operate pursuant to its grant of interim status.

(Amended by Stats. 1996, Ch. 962, Sec. 5. Effective January 1, 1997.)

Article 9.1. Facilities and Generator Fees

(Article 9.1 repealed and added by Stats. 1988, Ch. 1376, Sec. 12. Effective September 26, 1988.)

25205.1. For purposes of this article, the following definitions apply:

(a) "Board" means the State Board of Equalization.

(b) "Facility" means any units or other structures, and all contiguous land, used for the treatment, storage, disposal, or recycling of hazardous waste, for which a permit or a grant of interim status has been issued by the department for that activity pursuant to Article 9 (commencing with Section 25200).

(c) "Large storage facility," in those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a storage facility with capacity to store 1,000 or more tons of hazardous waste. In those cases in which it is not so provided, "large storage facility" means a storage facility that stores 1,000 or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(d) "Large treatment facility," in those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle 1,000 or more tons of hazardous waste. In those cases in which it is not so provided, "large treatment facility" means a treatment facility that treats, land treats, or recycles 1,000 or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(e) "Generator" means a person who generates hazardous waste at an individual site commencing on or after July 1, 1988. A generator includes, but is not limited to, a person who is identified on a manifest as the generator and whose identification number is listed on that manifest, if that identifying information was provided by that person or by an agent or employee of that person.

(f) "Ministorage facility," in those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a storage facility with capacity to store 0.5 tons (1,000 pounds) or less of hazardous waste. In those cases in which it is not so provided, "ministorage facility" means a storage facility that stores 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(g) "Minitreatment facility," in those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle 0.5 tons (1,000 pounds) or less of hazardous waste. In those cases in which it is not so provided, "minitreatment facility, means a treatment facility that treats, land treats, or recycles 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(h) "Site" means the location of an operation that generates hazardous wastes and is noncontiguous to any other location of these operations owned by the generator.

(i) "Small storage facility," in those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a storage facility with capacity to store more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste. In those cases in which it is not so provided, "small storage facility" means a storage facility that stores more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(j) "Small treatment facility," in those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste. In those cases in which this is not provided, "small treatment facility" means a treatment facility that treats, land treats, or recycles more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any month of the current reporting period commencing on or after July 1, 1991.

(k) "Unit" means a hazardous waste management unit, as defined in regulations adopted by the department. If an area is designated as a hazardous waste management unit in a permit, it shall be conclusively presumed that the area is a "unit."

(l) "Class 1 modification," "class 2 modification," and "class 3 modification" have the meanings provided in regulations adopted by the department.

(m) "Hazardous waste" has the meaning provided in Section 25117. The total tonnage of hazardous waste, unless otherwise provided by law, includes the hazardous substance as well as any soil or other substance that is commingled with the hazardous substance.

(n) "Land treat" means to apply hazardous waste onto or incorporate it into the soil surface for the sole and express purpose of degrading, transforming, or immobilizing the hazardous constituents.

(o) "Treatment," "storage," and "disposal" mean only that treatment, storage, or disposal of hazardous waste engaged in at a facility pursuant to a permit or grant of interim status issued by the department pursuant to Article 9 (commencing with Section 25200). Treatment, storage, or disposal that does not require this permit or grant of interim status shall not be considered treatment, storage, or disposal for purposes of this article.

(1) "Disposal" includes only the placement of hazardous waste onto or into the ground for permanent disposition and does not include the placement of hazardous waste in surface impoundments, as defined in regulations adopted by the department, or the placement of hazardous waste onto or into the ground solely for purposes of land treatment.

(2) "Storage" does not include the ongoing presence of hazardous wastes in the ground or in surface impoundments after the facility has permanently discontinued accepting new hazardous wastes for placement into the ground or into surface impoundments.

(Amended by Stats. 2006, Ch. 538, Sec. 380. Effective January 1, 2007.)

25205.2. (a) Except as provided in subdivisions (c) and (h), in

addition to the fees specified in Section 25174.1, each operator of a facility shall pay a facility fee for each reporting period, or any portion thereof, to the board based on the size and type of the facility, as specified in Section 25205.4. On or before January 31 of each calendar year, the department annually shall notify the board of all known facility operators by facility type and size. The department shall also notify the board of any operator who is issued a permit or grant of interim status within 30 days from the date that a permit or grant of interim status is issued to the operator. The fee specified in this section does not apply to facilities exempted pursuant to Section 25205.12.

(b) The board shall deposit all fees collected pursuant to subdivision (a) in the Hazardous Waste Control Account in the General Fund. The fees so deposited may be expended by the department, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25174.

(c) Notwithstanding subdivision (a), a person who is issued a variance by the department from the requirement of obtaining a hazardous waste facilities permit or grant of interim status is not subject to the fee, for any reporting period following the reporting period in which the variance was granted by the department.

(d) Operators subject to facility fee liability pursuant to this section shall pay the following amounts:

(1) The operator shall pay the applicable facility fee for each reporting period in which the facility actually engaged in the treatment, storage, or disposal of hazardous waste.

(2) The operator shall pay the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in that treatment or storage. For the 1994 reporting period and thereafter, the facility's size for that additional reporting period shall be deemed to be the largest size at which the facility has ever been subject to the fee. If the department previously approved a unit or portion of the facility for a variance, closure, or permit-by-rule, the facility's size for that reporting period shall be deemed to be its largest size since the department granted the approval.

(3) The operator of a disposal facility shall pay twice the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in disposal of hazardous waste.

(4) For the 1994 reporting period and thereafter, a facility shall not be deemed to have stopped treating, storing, or disposing of hazardous waste unless it has actually ceased that activity and has notified the department of its intent to close.

(5) If the reporting period which immediately followed the final reporting period in which a facility actually engaged in the treatment, storage, or disposal of the hazardous waste was the six-month period from July 1, 1991, through December 31, 1991, the operator shall be subject to twice the fee otherwise applicable to that operator for that reporting period under paragraphs (2) and (3).

(e) No facility shall be subject to a facility fee for treatment, storage, or disposal, if that activity ceased before July 1, 1986, and if the fee for the activity was not paid prior to January 1, 1994.

(f) Notwithstanding any other provision of this section, a person who ceased actual treatment, storage, or disposal of hazardous waste, whether generated onsite or received from offsite, before July 1, 1986, and who paid facility fees for any reporting period after that date pursuant to a decision of the State Board of Equalization, and who filed a claim for refund of those fees on or before January 1, 1994, shall be entitled to a refund of those amounts.

(g) Facility operators who treated, stored, or disposed of hazardous waste on or after July 1, 1986, shall be subject to the provisions of this section which were in effect prior to January 1, 1994, as to payments which their operators made prior to January 1, 1994. The operators shall be subject to subdivision (d) as to any other liability for the facility fee.

(h) A treatment facility is not subject to the facility fee established pursuant to this section, if the facility engages in treatment exclusively to accomplish a removal or remedial action or a corrective action in accordance with an order issued by the Environmental Protection Agency pursuant to the federal act or in accordance with an order issued by the department pursuant to Section 25187, if the facility was put in operation solely for purposes of complying with that order. The department shall instead assess a fee for that facility for the actual time spent by the department for the inspection and oversight of that facility. The department shall base the fee on the department's work standards and shall assess the fee on an hourly basis.

(i) Notwithstanding subdivision (a), a facility operating pursuant to a standardized permit or grant of interim status, as specified in Section 25201.6, shall receive a credit for the annual facility fee imposed by this section for a period of time equal to the number of years that the facility lawfully operated prior to September 21, 1993, pursuant to a hazardous waste facilities permit or other grant of authorization and paid facility fees for the operation of the facility pursuant to this section.

(Amended by Stats. 1996, Ch. 259, Sec. 1. Effective January 1, 1997.)

25205.3. The following facilities are exempt from the fees imposed by this article:

(a) Any household hazardous waste collection facility operated pursuant to Article 10.8 (commencing with Section 25218).

(b) Any facility operated by a local government agency, or by any person operating a hazardous waste collection program under an agreement with a public agency, which is used for wastes which meet the requirements of paragraph (3) of subdivision (a) of Section 25174.7.

(c) That portion of a solid waste facility permitted pursuant to Chapter 3 (commencing with Section 44001) of Part 4 of Division 30 of the Public Resources Code, which is used for the segregation, handling, and storage of hazardous waste separated from solid waste loads received by the facility, pursuant to a load checking program.

(d) A facility used solely for the treatment, storage, disposal, or recycling of hazardous waste which results when a public agency or its contractor investigates, removes, or remedies a release of hazardous waste caused by another person.

(e) (1) For purposes of fees assessed in any reporting period beginning July 1, 1990, or subsequently, a facility which has been issued a permit for the purpose of storing hazardous waste onsite, and whose permit has expired, if all of the following has occurred:

(A) The facility has received no waste from offsite since the permit expired.

(B) The owner or operator gave the department timely notification of intent to close the facility, pursuant to regulations adopted by the department.

(C) At least 90 days have elapsed since the owner or operator gave the department that notification.

(D) The department did not complete its review of the closure plan within 90 days of receiving the notification.

(2) This exclusion shall take effect the reporting period following the reporting period in which the facility first satisfied the requirements of paragraph (1) and did not accumulate waste onsite for more than 90 consecutive days.

(Added by Stats. 1993, Ch. 1145, Sec. 8. Effective January 1, 1994.)

25205.4. (a) The base rate for the 1997 reporting period for the facility fee imposed by Section 25205.2 is nineteen thousand seven hundred sixty-one dollars ($19,761). Commencing with the 1998 reporting period, and for each reporting period thereafter, the board shall adjust the base rate annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.

(b) The determination of the facility fee pursuant to this section, including the redetermination of the base rate, is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Except as provided in subdivision (e), in computing the facility fees, all of the following shall apply:

(1) The fee to be paid by a ministorage facility shall equal 25 percent of the base facility rate.

(2) The fee to be paid by a small storage facility shall equal the base facility rate.

(3) The fee to be paid by a large storage facility shall equal twice the base facility rate.

(4) The fee to be paid by a minitreatment facility shall equal 50 percent of the base facility rate.

(5) The fee to be paid by a small treatment facility shall equal twice the base facility rate.

(6) The fee to be paid by a large onsite treatment facility shall equal three times the base facility rate.

(7) The fee to be paid by a large offsite treatment facility shall be as follows:

(A) The annual facility fees for 1998, 1999, and 2000 shall equal 2.25 times the base facility rate.

(B) Beginning with the annual facility fee for 2001, the annual facility fee shall equal three times the base facility rate.

(8) The fee to be paid by a disposal facility shall equal 10 times the base facility rate.

(9) (A) The fee to be paid by a facility with a postclosure permit shall be five thousand seven hundred twenty-five dollars ($5,725) annually for a small facility, eleven thousand four hundred fifty dollars ($11,450) annually for a medium facility, and seventeen thousand one hundred seventy-five dollars ($17,175) for a large facility during the first five years of the postclosure period. The fee to be paid by a facility with a postclosure permit during the remaining years of the postclosure care period shall be three thousand fifty dollars ($3,050) annually for a small facility, six thousand one hundred dollars ($6,100) annually for a medium facility, and ten thousand three hundred dollars ($10,300) annually for a large facility.

(B) The fees required by subparagraph (A) shall be reduced by 50 percent for any facility for which an agency, other than the department, is the lead agency pursuant to paragraph (1) of subdivision (b) of Section 25204.6.

(d) If a facility falls into more than one category listed in either subdivision (c) or (e), or any combination thereof, or multiple operations under a single hazardous waste facilities permit or grant of interim status fall into more than one category listed in subdivision (c) or (e), or any combination thereof, the facility operator shall pay only the rate for the facility category which is the highest rate.

(e) Notwithstanding subdivision (c), the facility fee for a facility that has been issued a standardized permit shall be as follows:

(1) The fee to be paid for a facility that has been issued a Series A standardized permit shall be eleven thousand seven hundred thirty dollars ($11,730).

(2) The fee to be paid for a facility that has been issued a Series B standardized permit shall be five thousand four hundred ninety-seven dollars ($5,497).

(3) Except as specified in paragraph (4), the fee to be paid for a facility that has been issued a Series C standardized permit shall be four thousand six hundred seventeen dollars ($4,617).

(4) The fee for a facility that has been issued a Series C standardized permit is two thousand three hundred eight dollars ($2,308) if the facility meets all of the following conditions:

(A) The facility treats not more than 1,500 gallons of liquid hazardous waste and not more than 3,000 pounds of solid hazardous waste in any calendar month.

(B) The total facility storage capacity does not exceed 15,000 gallons of liquid hazardous waste and 30,000 pounds of solid hazardous waste.

(C) If the facility both treats and stores hazardous waste, the facility does not exceed the volume limitations specified in subparagraphs (A) and (B) for each individual activity.

(f) The fee imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(Amended by Stats. 1997, Ch. 870, Sec. 19. Effective January 1, 1998.)

25205.5. (a) In addition to the fee imposed pursuant to Section 25174.1, every generator of hazardous waste, in the amounts specified in subdivision (c), shall pay the board a generator fee for each generator site for each calendar year, or portion thereof, unless the generator has paid a facility fee or received a credit, as specified in Section 25205.2, for each specific site, for the calendar year for which the generator fee is due.

(b) The base fee rate for the fee imposed pursuant to subdivision (a) is two thousand seven hundred forty-eight dollars ($2,748).

(c) (1) Each generator who generates an amount equal to, or more than, five tons, but less than 25 tons, of hazardous waste during the prior calendar year shall pay 5 percent of the base rate.

(2) Each generator who generates an amount equal to, or more than, 25 tons, but less than 50 tons, of hazardous waste during the prior calendar year shall pay 40 percent of the base rate.

(3) Each generator who generates an amount equal to, or more than, 50 tons, but less than 250 tons, of hazardous waste during the prior calendar year shall pay the base rate.

(4) Each generator who generates an amount equal to, or more than, 250 tons, but less than 500 tons, of hazardous waste during the prior calendar year shall pay five times the base rate.

(5) Each generator who generates an amount equal to, or more than, 500 tons, but less than 1,000 tons, of hazardous waste during the prior calendar year shall pay 10 times the base rate.

(6) Each generator who generates an amount equal to, or more than, 1,000 tons, but less than 2,000 tons, of hazardous waste during the prior calendar year shall pay 15 times the base rate.

(7) Each generator who generates an amount equal to, or more than, 2,000 tons of hazardous waste during the prior calendar year shall pay 20 times the base rate.

(d) The base rate established pursuant to subdivision (b) was the base rate for the 1997 calendar year and the board shall adjust the base rate annually to reflect increases or decreases in the cost of living, during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.

(e) The establishment of the annual operating fee pursuant to this section is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The following materials are not hazardous wastes for purposes of this section:

(1) Hazardous materials which are recycled, and used onsite, and are not transferred offsite.

(2) Aqueous waste treated in a treatment unit operating, or which subsequently operates, pursuant to a permit-by-rule, or pursuant to Section 25200.3 or 25201.5. However, hazardous waste generated by a treatment unit treating waste pursuant to a permit-by-rule, by a unit which subsequently obtains a permit-by-rule, or other authorization pursuant to Section 25200.3 or 25201.5 is hazardous waste for purposes of this section.

(g) The fee imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(h) (1) A generator who pays a hazardous waste generator inspection fee to a certified unified program agency, which is imposed as part of a single fee system and fee accountability program that are both in compliance with the requirements of Section 25404.5, shall be eligible for a refund of all, or part of, the generator fee paid pursuant to subdivision (a) if both of the following conditions apply:

(A) The generator received a credit pursuant to Section 43152.7 or 43152.11 of the Revenue and Taxation Code for fees paid for hazardous waste generated in 1996.

(B) The department certifies, pursuant to subdivision (b) of Section 25205.9, that funds are available to pay all or part of the refund.

(2) A generator who is eligible for a refund pursuant to paragraph (1) shall submit an application for that refund to the board by September 30 following the fiscal year during which the generator paid the generator fee pursuant to subdivision (a). An application for a refund postmarked after September 30 is void, shall not be processed by the board, and shall be returned to the applicant.

(i) (1) A generator who transfers hazardous materials to an offsite facility for recycling at that offsite facility or another offsite facility shall be eligible for a refund of all, or part of, the generator fee paid pursuant to subdivision (a) if all of the following conditions apply:

(A) The offsite facility to which the hazardous materials are manifested pays a facility fee pursuant to Section 25205.2.

(B) The amount of hazardous materials transferred to the offsite facility and recycled there, when deducted from the total tonnage of hazardous waste generated at the generator's site, results in the generator becoming eligible for a generator fee that is lower than the fee paid pursuant to subdivision (a).

(C) The hazardous materials transferred to the offsite facility are not burned in a boiler, industrial furnace, or an incinerator, as those terms are defined in Section 260.10 of Title 40 of the Code of Federal Regulations, used in a manner constituting disposal, or used to produce products that are applied to land.

(D) The department certifies, pursuant to subdivision (b) of Section 25205.9, that funds are available to pay all or part of the refund.

(2) A generator who is eligible for a refund pursuant to paragraph

(1) shall submit an application for that refund to the board by September 30 following the fiscal year during which the generator paid the generator fee pursuant to subdivision (a). An application for a refund postmarked after September 30 is void, shall not be processed by the board, and shall be returned to the applicant.

(j) (1) The amendment of this section made by Chapter 1125 of the Statutes of 1991 does not constitute a change in, but is declaratory of, existing law.

(2) The amendment of subdivision (a) of this section made by Chapter 259 of the Statutes of 1996 does not constitute a change in, but is declaratory of, existing law.

(Amended by Stats. 2001, Ch. 543, Sec. 1. Effective January 1, 2002.)

25205.5.1. Notwithstanding Sections 25174.1 and 25205.5, the department may adopt regulations exempting victims of disasters from the hazardous waste disposal fee imposed pursuant to Section 25174.1 and the generator fee imposed pursuant to Section 25205.5. The regulations may allow that exemption if all of the following apply:

(a) The hazardous waste is generated in a geographical area identified in a state of emergency proclamation by the Governor pursuant to Section 8625 of the Government Code because of fire, flood, storm, earthquake, riot, or civil unrest.

(b) The hazardous waste is generated when property owned or controlled by the victim is damaged or destroyed as a result of the disaster.

(c) The hazardous waste is not hazardous waste that is routinely produced as part of a manufacturing or commercial business or that is managed by a hazardous waste facility or a facility operated by a generator of hazardous waste who files a hazardous waste notification statement with the department pursuant to subdivision (a) of Section 25158.

(d) The victim meets any other condition or limitation on eligibility specified by the department.

(Added by Stats. 1996, Ch. 688, Sec. 2. Effective January 1, 1997.)

25205.6. (a) For purposes of this section, "organization" means a corporation, limited liability company, limited partnership, limited liability partnership, general partnership, and sole proprietorship.

(b) On or before November 1 of each year, the department shall provide the board with a schedule of codes, that consists of the types of organizations that use, generate, store, or conduct activities in this state related to hazardous materials, as defined in Section 25501, including, but not limited to, hazardous waste. The schedule shall consist of identification codes from one of the following classification systems, as deemed suitable by the department:

(1) The Standard Industrial Classification (SIC) system established by the United States Department of Commerce.

(2) The North American Industry Classification System (NAICS) adopted by the United States Census Bureau.

(c) Each organization of a type identified in the schedule adopted pursuant to subdivision (a) shall pay an annual fee, which shall be set in the following amounts:

(1) Two hundred dollars ($200) for those organizations with 50 or more employees, but less than 75 employees.

(2) Three hundred fifty dollars ($350) for those organizations with 75 or more employees, but less than 100 employees.

(3) Seven hundred dollars ($700) for those organizations with 100 or more employees, but less than 250 employees.

(4) One thousand five hundred dollars ($1,500) for those organizations with 250 or more employees, but less than 500 employees.

(5) Two thousand eight hundred dollars ($2,800) for those organizations with 500 or more employees, but less than 1,000 employees.

(6) Nine thousand five hundred dollars ($9,500) for those organizations with 1,000 or more employees.

(d) The fee imposed pursuant to this section shall be paid by each organization that is identified in the schedule adopted pursuant to subdivision (a) in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code and shall be deposited in the Toxic Substances Control Account. The revenues shall be available, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25173.6.

(e) For purposes of this section, the number of employees employed by an organization is the number of persons employed in this state for more than 500 hours during the calendar year preceding the calendar year in which the fee is due.

(f) The fee rates specified in subdivision (c) are the rates for the 1998 calendar year. Beginning with the 1999 calendar year, and for each calendar year thereafter, the State Board of Equalization shall adjust the rates annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.

(g) (1) Pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)), the state is obligated to pay specified costs of removal and remedial actions carried out pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(2) The fee rates specified in subdivision (c) are intended to provide sufficient revenues to fund the purposes of subdivision (b) of Section 25173.6, including appropriations in any given fiscal year of three million three hundred thousand dollars ($3,300,000) to fund the state's obligation pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)).

(3) If the department determines that the state's obligation under paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)) will exceed three million three hundred thousand dollars ($3,300,000) in any fiscal year, the department shall report that determination to the Legislature in the Governor's Budget. If, as part of the Budget Act deliberations, the Legislature concurs with the department's determination, the Legislature shall specify in the annual Budget Act those pro rata changes to the fee rates specified in subdivision (c) that will increase revenues in the next calendar year as necessary to fund the state's increased obligations. However, the Legislature shall not specify fee rates in the annual Budget Act that increase revenues in an amount greater than eight million two hundred thousand dollars ($8,200,000) above the revenues provided by the fee rates specified in subdivision (c).

(4) Any changes in the fee rates approved by the Legislature in the annual Budget Act pursuant to this subdivision shall have effect only on the fee payment that is due and payable by the end of February in the fiscal year for which that annual Budget Act is enacted.

(h) This section does not apply to a nonprofit corporation primarily engaged in the provision of residential social and personal care for children, the aged, and special categories of persons with some limits on their ability for self-care, as described in SIC Code 8361 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(i) The changes made to this section by the act of the 2005-06 Regular Session of the Legislature amending this section shall not increase fee revenues in the 2006-07 fiscal year.

(Amended by Stats. 2006, Ch. 77, Sec. 13. Effective July 18, 2006. Note: Pursuant to Stats. 2006, Ch. 344 (effective Sept. 20), this amendment applies initially to the fee for the 2007 calendar year, which is due by Feb. 29, 2008.)

25205.7. (a) (1) Except as otherwise provided in this section, any person who applies for, or requests, one of the following shall enter into a written agreement with the department pursuant to which that person shall reimburse the department, pursuant to Article 9.2 (commencing with Section 25206.1), for the costs incurred by the department in processing the application or responding to the request:

(A) A new hazardous waste facilities permit, including a standardized permit.

(B) A hazardous waste facilities permit for postclosure.

(C) A renewal of an existing hazardous waste facilities permit, including a standardized permit or postclosure permit.

(D) A class 2 or class 3 modification of an existing hazardous waste facilities permit or grant of interim status, including a standardized permit or grant of interim status or a postclosure permit.

(E) A variance.

(F) A waste classification determination.

(2) Any agreement required pursuant to paragraph (1) may provide for some, or all, of the reimbursement to be made in advance of the processing

of the application or the response to the request.

(3) Any agreement entered into pursuant to this subdivision may include costs of reviewing and overseeing corrective action as set forth in subdivision (b).

(4) This subdivision does not apply to any application or request submitted to the department prior to July 1, 1998. Any person who submitted such an application or request shall pay the applicable fee, if not already paid, for the application or request as required by this chapter as it read prior to January 1, 1998, unless the department and the applicant or requester mutually agree to enter into a reimbursement agreement in lieu of any unpaid portion of the required fee.

(b) The department shall recover all the department's costs in reviewing and overseeing any corrective action program described in the application for a standardized permit pursuant to subparagraph (C) of paragraph (2) of subdivision (c) of Section 25201.6 or required pursuant to subdivision (b) of Section 25200.10, and in reviewing and overseeing any corrective action work undertaken at the facility pursuant to that corrective action program.

(c) Any reimbursements received pursuant to this section shall be placed in the Hazardous Waste Control Account for appropriation in accordance with Section 25174.

(d) (1) In lieu of entering into a reimbursement agreement with the department pursuant to subdivision (a), any person who applies for a new permit, a permit for postclosure, a renewal of an existing permit, or a class 2 or class 3 permit modification may instead elect to pay a fee as follows:

(A) A person submitting a hazardous waste facilities permit application for a land disposal facility shall pay one hundred four thousand one hundred eighty-seven dollars ($104,187) for a small facility, two hundred twenty-two thousand one hundred eighty-three dollars ($222,183) for a medium facility, and three hundred eighty-one thousand six hundred two dollars ($381,602) for a large facility.

(B) A person submitting a hazardous waste facilities permit application for any incinerator shall pay sixty-two thousand seven hundred sixty-two dollars ($62,762) for a small facility, one hundred thirty-three thousand sixty dollars ($133,060) for a medium facility, and two hundred twenty-eight thousand four hundred fifty-eight dollars ($228,458) for a large facility.

(C) Except as provided in subparagraph (D), a person submitting a hazardous waste facility permit application for a storage facility, a treatment facility, or a storage and treatment facility shall pay twenty-one thousand three hundred forty dollars ($21,340) for a small facility, thirty-eight thousand nine hundred thirteen dollars ($38,913) for a medium facility, and seventy-five thousand three hundred seventeen dollars ($75,317) for a large facility.

(D) A person submitting an application for a standardized permit for a storage facility, a treatment facility, or a storage and treatment facility, as specified in Section 25201.6, shall pay thirty-two thousand fifty-two dollars ($32,052) for a Series A standardized permit, twenty thousand eleven dollars ($20,011) for a Series B standardized permit, and five thousand three hundred thirty-two dollars ($5,332) for a Series C standardized permit. The board shall assess the fees specified in this subparagraph, in accordance with paragraph (2), based upon the classifications specified in subdivision (a) of Section 25201.6.

(E) (i) A person submitting a hazardous waste facilities permit application for a transportable treatment unit shall pay sixteen thousand three hundred twenty dollars ($16,320) for a small unit, thirty-seven thousand six hundred fifty-seven dollars ($37,657) for a medium unit, and seventy-five thousand three hundred seventeen dollars ($75,317) for a large unit.

(ii) Notwithstanding clause (i), the fee for any application for a new permit, permit modification, or permit renewal for a transportable treatment unit, that was pending before the department as of January 1, 1996, shall be determined according to the type of permit authorizing operation of that unit, as provided by subdivision (d) of Section 25200.2 or the regulations adopted pursuant to subdivision (a) of Section 25200.2. Any standardized permit issued to the operator of a transportable treatment unit after January 1, 1996, that succeeds a full hazardous waste facilities permit issued by the department prior to January 1, 1996, in accordance with subdivision (d) of Section 25200.2 or the regulations adopted pursuant to subdivision (a) of Section 25200.2, shall not be considered to be a new hazardous waste facilities permit.

(F) A person submitting a hazardous waste facilities permit application for a postclosure permit shall pay a fee of ten thousand forty dollars ($10,040) for a small facility, twenty-two thousand five hundred ninety-six dollars ($22,596) for a medium facility, and thirty-seven thousand six hundred fifty-seven dollars ($37,657) for a large facility.

(G) A person submitting an application for one or more class 2 permit modifications, including a class 2 modification to a standardized permit, shall pay a fee equal to 20 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 40 percent for each application, except that each person who applies for one or more class 2 permit modifications for a land disposal facility or an incinerator shall pay a fee equal to 15 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 30 percent for each application.

(H) A person submitting an application for one or more class 3 permit modifications, including a class 3 modification to a standardized permit, shall pay a fee equal to 40 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 80 percent for each application, except that a person who applies for one or more class 3 permit modifications for a land disposal facility or an incinerator shall pay a fee equal to 30 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 60 percent for each application.

(I) A person who submits an application for renewal of any existing permit shall pay an amount equal to the fee that would have been assessed had the person requested the same changes in a modification application, but not less than one-half the fee required for a new permit.

(J) A person who submits a single application for a facility that falls within more than one fee category shall pay only the higher fee.

(2) The fees required by paragraph (1) shall be assessed by the board upon application to the department. For a facility operating pursuant to a grant of interim status, the submittal of the application shall be the submittal of the Part B application in accordance with regulations adopted by the department. The fee shall be nonrefundable, even if the application is withdrawn or denied. The department shall provide the board with any information that is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account.

(3) The amounts stated in this subdivision are the base rates for the 1997 calendar year. Thereafter, the fees shall be adjusted annually by the board to reflect increases or decreases in the cost of living, during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations, or a successor agency.

(4) Except as provided in paragraph (5), for purposes of this section, and notwithstanding Section 25205.1, any facility or unit is "small" if it manages 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the state's current fiscal year, "medium" if it manages more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the state's current fiscal year, and "large" if it manages 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year.

(5) For purposes of subparagraph (F) of paragraph (1) of this subdivision and paragraph (8) of subdivision (c) of Section 25205.4, any facility or unit is "small" if 0.5 tons (1,000 pounds) or less of hazardous waste remain after closure, "medium" if more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste remain after closure, and "large" if 1,000 or more tons of hazardous waste remain after closure.

(6) The amounts stated in this subdivision are in addition to any amounts required to reimburse the department for the corrective action review and oversight costs required to be recovered pursuant to subdivision (b).

(e) Subdivision (a) does not apply to any variance granted pursuant to Article 4 (commencing with Section 66263.40) of Chapter 13 of Division 4.5 of Title 22 of the California Code of Regulations.

(f) Subdivisions (a) and (d) do not apply to a permit modification resulting from a revision of a facility's or operator's closure plan if the facility is exempted from fees pursuant to subdivision (e) of Section 25205.3, or if the operator is subject to paragraph (2) or (3) of subdivision (d) of Section 25205.2.

(g) (1) Except as provided in paragraphs (3) and (4), subdivisions (a) and (d) do not apply to any permit or variance to operate a research, development, and demonstration facility, if the duration of the permit or variance is not longer than one year, unless the permit or variance is renewed pursuant to the regulations adopted by the department.

(2) For purposes of this section, a "research, development, and demonstration facility" is a facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which regulations prescribing permit standards have not been adopted.

(3) The exemption provided by this subdivision does not apply to a facility which operates as a medium or large multiuser offsite commercial hazardous waste facility and which does not otherwise possess a hazardous waste facilities permit pursuant to Section 25200.

(4) The fee exemption authorized pursuant to paragraph (1) shall be effective for a total duration of not more than two years.

(h) Subdivisions (a) and (d) do not apply to any of the following:

(1) Any variance issued to a public agency to transport wastes for purposes of operating a household hazardous waste collection facility, or to transport waste from a household hazardous waste collection facility, which receives household hazardous waste or hazardous waste from conditionally exempted small quantity generators pursuant to Article 10.8 (commencing with Section 25218).

(2) A permanent household hazardous waste collection facility.

(3) Any variance issued to a public agency to conduct a collection program for agricultural wastes.

(i) Notwithstanding subdivisions (a) and (b), the department shall not assess any fees or seek any reimbursement for the department's costs in reviewing and overseeing any preliminary site assessment in conjunction with a hazardous waste facilities permit application.

(j) The changes made in this section by Chapter 870 of the Statutes of 1997 do not require amendment of, or otherwise affect, any agreement entered into prior to July 1, 1998, pursuant to which any person has agreed to reimburse the department for the costs incurred by the department in processing applications, responding to requests, or otherwise providing other services pursuant to this chapter.

(Amended by Stats. 1998, Ch. 882, Sec. 8. Effective January 1, 1999.)

25205.9. (a) On or before June 30 of each year, the department shall determine if there are surplus funds in the Hazardous Waste Control Account and shall, upon appropriation by the Legislature, allocate these surplus funds to pay refunds in the following order of priority:

(1) To pay refunds to generators pursuant to subdivision (c).

(2) To pay refunds to generators pursuant to subdivision (d). However, the department shall not pay refunds pursuant to subdivision (d) until all applications for refunds pursuant to subdivision (c) have first been paid.

(b) The department shall certify the amount of the surplus in the Hazardous Waste Control Account to the board and shall direct the board to pay refunds to generators pursuant to subdivisions (c) and (d) to the extent funds permit. If funds are not sufficient to pay all the refunds for which the board receives applications pursuant to subdivision (h) of Section 25205.5, the department shall direct the board to pay refunds pursuant to subdivision (c) on a pro rata basis. If funds are sufficient to pay all refunds for which applications are received pursuant to subdivision (h) of Section 25205.5 but not sufficient to pay all refunds for which applications were received by the board pursuant to subdivision (i) of Section 25205.5, the department shall direct the board to pay refunds pursuant to subdivision (d) on a pro rata basis.

(c) (1) If the department certifies that there are sufficient funds to do so, the board shall issue refunds, in the manner directed by the department pursuant to subdivision (b), to hazardous waste generators who are eligible for refunds pursuant to paragraph (1) of subdivision (h) of Section 25205.5.

(2) The refund made to a generator pursuant to this subdivision shall not exceed the fee paid by the generator pursuant to Section 25205.5, or exceed the hazardous waste generator inspection fee paid to the certified unified program agency for the previous calendar year, whichever is less.

(3) The board may issue refunds pursuant to this section only if the department certifies, pursuant to subdivision (b), that funds for these refunds are available.

(d) (1) If the department certifies that there are sufficient funds to do so, the board shall issue refunds, in the manner directed by the department pursuant to subdivision (b), to hazardous waste generators who are eligible for refunds pursuant to paragraph (1) of subdivision (i) of Section 25205.5.

(2) The refund made to a generator pursuant to this subdivision shall be equal to the difference between the amount of the generator fee paid by the generator pursuant to Section 25205.5 and the amount the generator would have paid if the amount of hazardous materials transferred to an offsite facility for recycling had been deducted from the total tonnage of hazardous waste generated at the generator's site. However, if a generator receives a refund pursuant to subdivision (c), the generator may not receive a refund pursuant to this subdivision that exceeds the difference between the amount of the generator fee paid pursuant to Section 25205.5 and the amount of the refund received pursuant to subdivision (c).

(3) The board may issue refunds pursuant to this subdivision only if the department certifies, pursuant to subdivision (b), that funds for these refunds are available.

(e) For purposes of this section, "surplus" means the amount in the Hazardous Waste Control Account on June 30 of each year that is in excess of the reserve required by subdivision (k) of Section 25174.

(Amended by Stats. 1999, Ch. 941, Sec. 1. Effective January 1, 2000.)

25205.12. (a) The owner of a hazardous waste facility authorized to operate pursuant to a permit-by-rule, authorized under a grant of conditional authorization pursuant to Section 25200.3, exempted pursuant to subdivision (a) or (c) of Section 25201.5, or exempted pursuant to Section 25144.6 or 25201.14 is exempt from the facility fee specified in Section 25205.2 for any activities authorized by the permit-by-rule, under a grant of conditional authorization pursuant to Section 25200.3, exempted pursuant to subdivision (a) or (c) of Section 25201.5, or exempted pursuant to Section 25144.6 or 25201.14 at that facility for any year or reporting period during which the facility is operating.

(b) The retroactive portion of the facility fee exemption provided by subdivision (a) does not apply to any facility that was authorized by the department to operate on or before June 1, 1991, for any fees paid or billed prior to September 1, 1992.

(c) The operator of a hazardous waste facility authorized by the department to clean and recycle excavated underground storage tanks is exempt from the facility fee specified in Section 25205.2 with regard to those activities conducted before January 1, 1994, and those activities conducted after that date, until the effective date of a regulation adopted by the department governing the statewide requirements for the issuance of a permit for tank cleaning and recycling facilities.

(d) The operator of a hazardous waste facility operating pursuant to a standardized permit or a grant of interim status, as specified in Section 25201.6, is exempt from the facility fee specified in Sections 25205.2 and 25205.4 for any year or reporting period prior to January 1, 1993, during which the facility operated, if the hazardous waste treatment or storage activity was conducted prior to January 1, 1993, and the owner or operator is in compliance with the notification and application requirements of Section 25201.6, as amended in the 1993-94 Regular Session of the Legislature, or as amended thereafter, and either of the following circumstances apply:

(1) The owner or operator was not authorized by the department before July 1, 1993, to conduct the eligible treatment or storage activity.

(2) The owner or operator did not pay a hazardous waste facility fee, as specified in Section 25205.2, for that year or reporting period prior to July 1, 1993, for the facility that is the subject of the standardized permit.

(Amended by Stats. 1997, Ch. 870, Sec. 25. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25205.13. (a) Notwithstanding any other provision of law or regulation, for the 1993 reporting period, the deadline for submitting permit-by-rule fixed treatment unit facility-specific notifications and unit-specific notifications is April 1, 1993, or 60 days prior to commencing the first treatment of that waste, whichever date is later.

(b) The development and publication of the notification form for a fixed or transportable treatment unit operating pursuant to a permit-by-rule, as specified in subdivisions (a) and (b) of Section 67450.2 of Title 22 of the California Code of Regulations, is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

(c) A facility or transportable treatment unit operating pursuant to a permit-by-rule shall provide the following information with the notifications required pursuant to subdivisions (a) and (b) of Section 67450.2

of Title 22 of the California Code of Regulations:

(1) The basis for determining that a hazardous waste facility permit is not required under the federal act.

(2) Documentation of any convictions, judgments, settlements, or orders resulting from an action by any local, state, or federal environmental or public health enforcement agency concerning the operation of the facility within the last three years, as the documents would be available under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code or the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of the Civil Code.

(3) A waste minimization certificate, as specified in Section 25202.9.

(d) The facility or transportable treatment unit operating pursuant to a permit-by-rule shall treat only waste which is generated onsite.

(Amended by Stats. 1993, Ch. 411, Sec. 11. Effective September 21, 1993.)

25205.14. (a) Except as provided in Section 25404.5, the owner or operator of a facility or transportable treatment unit operating pursuant to a permit-by-rule shall pay a fee to the board per facility or transportable treatment unit for each reporting period, or portion thereof. The fee for the 1997 reporting period shall be nine hundred fifty-eight dollars ($958). Until July 1, 1998, the owner or operator of a facility or transportable treatment unit operating pursuant to a permit-by-rule shall also pay a fee in the amount of 50 percent of the fee specified in this subdivision for each modification of the notification required by Sections 67450.2 and 67450.3 of Title 22 of the California Code of Regulations, as those sections read on January 1, 1995, or as those sections may subsequently be amended. Thereafter, the fee shall be adjusted annually by the board to reflect increases and decreases in the cost of living, as measured by the Consumer Price Index issued by the Department of Industrial Relations or a successor agency. The reporting period shall begin January 1 of each calendar year. On or before January 31 of each calendar year, the department shall notify the board of all known owners or operators operating pursuant to a permit-by-rule who are not exempted from this fee pursuant to Section 25404.5. The department shall also notify the board of any owner or operator authorized to operate pursuant to a permit-by-rule, who is not exempted from this fee pursuant to Section 25404.5, within 60 days after the owner or operator is authorized.

(b) Except as provided in Section 25404.5, a generator operating under a grant of conditional authorization pursuant to Section 25200.3 shall pay a fee to the board per facility for each reporting period, or portion thereof, unless the generator is subject to a fee under a permit-by-rule. The fee for the 1997 reporting period shall be nine hundred fifty-eight dollars ($958). Thereafter, the fee shall be adjusted annually by the board to reflect increases and decreases in the cost of living, during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or a successor agency. The reporting period shall begin January 1 of each calendar year. On or before January 31 of each calendar year, the department shall notify the board of all known generators operating pursuant to a grant of conditional authorization under Section 25200.3 who are not exempted from this fee pursuant to Section 25404.5. The department shall also notify the board of any generator authorized to operate under a grant of conditional authorization, who is not exempted from this fee pursuant to Section 25404.5, within 60 days of the receipt of notification.

(c) Except as provided in Section 25404.5, a generator performing treatment conditionally exempted pursuant to Section 25144.6 or subdivision (a) or (c) of Section 25201.5 shall pay thirty-eight dollars ($38) to the board per facility for each reporting period, unless that generator is subject to a fee under a permit-by-rule or a conditional authorization pursuant to Section 25200.3. Until July 1, 1998, a generator performing treatment conditionally exempted pursuant to Section 25144.6 or subdivision (a) or (c) of Section 25201.5 shall pay one hundred dollars ($100) to the board per facility for the initial operating period, or portion thereof, unless that generator is subject to a fee under a permit-by-rule or a conditional authorization pursuant to Section 25200.3. The reporting period shall begin January 1 of each calendar year. On or before January 31 of each calendar year, the department shall notify the board of all known facilities performing treatment conditionally exempted by Section 25144.6 or subdivision (a) or (c) of Section 25201.5 who are not exempted from this fee pursuant to Section 25404.5. The department shall also notify the board of any generator who notifies the department that the generator is conducting a conditionally exempt treatment operation, and who is not exempted from this fee pursuant to Section 25404.5, within 60 days of the receipt of the notification.

(d) The fees imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(Amended by Stats. 1997, Ch. 870, Sec. 26. Effective January 1, 1998.)

25205.15. (a) Except for the first four manifests used in a calendar year by a business with less than 100 employees, and except as provided in paragraph (2), in addition to any fees to cover printing and distribution costs, the department shall impose a manifest fee of seven dollars and fifty cents ($7.50) for each California Hazardous Waste Manifest form or electronic equivalent used after June 30, 1998, by any person, in the following manner:

(1) The department shall bill generators for each California Uniform Hazardous Waste Manifest form, manifest number, or electronic equivalent used after June 30, 1998. The billing frequency specified by the department may range from monthly to annually, with the payment by the generator required within 30 days from the date of receipt of the billing, and shall be determined based on consultation with the regulated community. In preparing the bills, the department shall distinguish between manifests used solely for recycled hazardous wastes and those used for nonrecycled hazardous wastes. In determining the billing frequency, the department may take into account each person's volume of manifest usage.

(2) (A) The manifest fee shall not be collected on the use of California Hazardous Waste Recycling Manifests that are used solely for hazardous wastes that are recycled.

(B) The manifest fee for each California Uniform Hazardous Waste Manifest form used solely for hazardous waste derived from air compliance solvents, shall be three dollars and fifty cents ($3.50) This is in addition to any fees charged to cover printing and distribution costs.

(3) The department shall implement a system for the use of manifests that distinguishes among recycling manifests used solely for hazardous wastes that are to be recycled, manifests used solely to transport hazardous waste derived from air compliance solvents, and general manifests that may be used for transporting waste for any purpose.

(4) (A) If a person erroneously reports on a California Uniform Hazardous Waste Manifest that the manifest is being used for the transport of hazardous wastes that are being shipped for recycling or for the transport of hazardous wastes derived from air compliance solvents rather than the transport of other types of hazardous waste, the person shall pay the seven dollars and fifty cents ($7.50) manifest fee and an additional error correction fee of twenty dollars ($20) per manifest, as required pursuant to Section 25160.5.

(B) Notwithstanding subparagraph (A) the department shall provide the manifest user with a reasonable opportunity to notify the department of any incorrect use of the recycling manifest, as described in subparagraph (A), and to provide the department with the appropriate manifest fee payment without additional fines, penalties, or payment of the error correction fee.

(5) The department may adopt regulations to implement and administer the manifest fee system imposed pursuant to this subdivision.

(b) For purposes of subdivision (a), a California Uniform Hazardous Waste Manifest means either of the following:

(1) A manifest document printed and supplied by the state for a shipment initiated on and before September 4, 2006.

(2) The Uniform Hazardous Waste Manifest printed by a source registered with the United States Environmental Protection Agency for a shipment initiated on and after September 5, 2006, if the manifest originates from a generator located in California, is received by the designated facility located in California where the manifest is signed and terminated, or is imported or exported through a point of entry or exit in California.

(c) On and after July 1, 1999, commencing with 1999-2000 fiscal year and annually thereafter, the department shall expend, upon appropriation by the Legislature in the annual Budget Act, not less than one million fifty thousand dollars ($1,050,000) from the manifest fees, deposited in the Hazardous Waste Control Account, to establish a program to encourage hazardous waste generators to implement pollution prevention measures. The program shall be administered pursuant to administrative and expenditure criteria to be established by the Legislature.

(d) The manifest fees shall be deposited in the Hazardous Waste

Control Account and be available for expenditure, upon appropriation by the Legislature.

(e) For purposes of this section, "air compliance solvent" means a solvent, including aqueous solutions, that are required or approved for use by regulations adopted by the State Air Resources Board, an air pollution control district, or an air quality management district, to meet air emission standards adopted by that board or district and, pursuant to those regulations, is required to be used instead of another solvent that was used and recycled prior to the adoption of those regulations.

(Amended by Stats. 2006, Ch. 77, Sec. 14. Effective July 18, 2006.)

25205.16. (a) (1) The department may impose an annual verification fee upon all generators, transporters, and facility operators with 50 or more employees that possess a valid identification number issued either by the department or by the Environmental Protection Agency. The fee charged shall be one hundred fifty dollars ($150) for each generator, transporter, and facility operator with 50 or more employees, but less than 75 employees; one hundred seventy-five dollars ($175) for each generator, transporter, and facility operator with 75 or more employees, but less than 100 employees; two hundred dollars ($200) for each generator, transporter, and facility operator with 100 or more employees, but less than 250 employees; two hundred twenty-five dollars ($225) for each generator, transporter, and facility operator with 250 or more employees, but less than 500 employees; two hundred fifty dollars ($250) for each generator, transporter, and facility operator with 500 or more employees. However, no generator, transporter, or facility operator shall be assessed fees pursuant to this section that exceed, in total, five thousand dollars ($5,000).

(2) The generator, transporter, or facility operator subject to the fee shall submit payment of the fee within 30 days from the date of receiving a notice of assessment from the department. The notice shall be sent once during each fiscal year to each holder of a valid identification number. The fee imposed by this section shall be deposited in the Hazardous Waste Control Account and be available for expenditure, upon appropriation by the Legislature. For purposes of this section, "employee" shall have the same meaning set forth in Section 25205.6.

(b) The department shall establish an identification number certification system to biennially verify the accuracy of information related to generators, transporters, and facilities authorized to treat, store, or dispose of hazardous waste. However, if the number of identification numbers issued since the previous certification exceeds 20 percent of the active identification numbers, the department may implement an annual certification. Each entity issued an identification number shall provide or verify the information specified in paragraphs (1) to (9), inclusive, when requested by the department. The system shall include the provision or verification of all of the following information:

(1) The name, mailing address, facsimile number, fictitious business name, federal employer number, State Board of Equalization identification number, SIC code, electronic mail address, if available, and telephone number of the firm or organization engaged in hazardous waste activities.

(2) The name, mailing address, facsimile number, and telephone number of the owner of the firm or organization.

(3) The name, title, mailing address, facsimile number, and telephone number of a contact person for the firm or organization.

(4) The identification number assigned to the firm or organization.

(5) The site location address or description associated with the firm or organization's identification number provided in paragraph (4).

(6) The number of employees of the firm or organization.

(7) If the firm or organization is a generator, a statement of whether the generator produces RCRA hazardous waste or non-RCRA hazardous waste.

(8) An identification of any of the following hazardous waste activities in which the firm or organization is engaged:

(A) Generation.

(B) Transportation.

(C) Onsite treatment, storage, or disposal.

(9) The waste codes associated with the four largest hazardous waste streams, by volume, of the firm or organization. The federal waste code shall be verified for RCRA hazardous waste and the California waste code shall be verified for non-RCRA hazardous waste.

(c) Any generator, transporter, and facility operator who fails to comply with this section, or who fails to provide information required by the department to verify the accuracy of hazardous waste activity data, shall be subject to suspension of any and all identification numbers assigned to the generator, transporter, or facility operator and to any other authorized enforcement action.

(Amended by Stats. 2001, Ch. 319, Sec. 7. Effective January 1, 2002.)

25205.17. Notwithstanding any other provision of law, no facility for any reporting period prior to 1994 shall be a "disposal facility" for purposes of the annual facility fee if that facility had a permit or interim status document issued by the department which designated that facility or any part of its process as "storage" or "treatment" and did not designate that facility or any part of its process as "disposal" or "landfill."

(Added by Stats. 1993, Ch. 1145, Sec. 13. Effective January 1, 1994.)

25205.18. (a) If a facility has a permit or an interim status document which sets forth the facility's allowable capacity for treatment or storage, the facility's size for purposes of the annual facility fee shall be based upon that capacity, except as provided in subdivision (d).

(b) If a facility's allowable capacity changes or is initially established as a result of a permit modification, or a submission of a certification pursuant to subdivision (d), the fee that is due for the reporting period in which the change occurs shall be the lower fee until December 31, 1994. After that date, the fee that is due for the reporting period in which a change occurs shall be the higher fee.

(c) (1) The department may require the facility to submit an application to modify its permit to provide for an allowable capacity.

(2) Subdivisions (a) and (d) of Section 25205.7 do not apply to an application for modification required by the department pursuant to this subdivision.

(d) A facility may reduce its allowable capacity below the amounts specified in subdivision (a) or (c) by submitting a certification signed by the owner or operator in which the owner or operator pledges that the facility will not handle hazardous waste at a capacity above the amount specified in the certification. In that case, the facility's size for purposes of the annual facility fee shall be based upon the capacity specified in the certification, until the certification is withdrawn. Exceeding the capacity limits specified in a certification that has not been withdrawn shall be a violation of the hazardous waste control law and may subject a facility or its operator to a penalty and corrective action as provided in this chapter, including, but not limited to, an augmentation pursuant to Section 25191.1.

(e) This section shall have no bearing on the imposition of the annual postclosure facility fee.

(Amended by Stats. 1997, Ch. 870, Sec. 29. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25205.19. (a) If a facility has a permit or an interim status document which sets forth the facility's type, pursuant to Section 25205.1, as either treatment, storage, or disposal, the facility's type for purposes of the annual facility fee shall be rebuttably presumed to be what is set forth in that permit or document.

(b) If the facility's type changes as a result of a permit or interim status modification, any change in the annual facility fee shall be effective the reporting period following the one in which the modification becomes effective.

(c) (1) If the facility's permit or interim status document does not set forth its type, the department may require the facility to submit an application to modify the permit or interim status document to provide for a facility type.

(2) Subdivisions (a) and (d) of Section 25205.7 do not apply to an application for modification pursuant to this subdivision.

(d) A permit or interim status document may set forth more than one facility type or size. In accordance with subdivision (e) of Section 25205.4, the facility shall be subject only to the highest applicable fee.

(Amended by Stats. 1997, Ch. 870, Sec. 30. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25205.20. (a) In issuing a variance, the department may, for purposes of the annual facility fee only, make the variance retroactive to not earlier than one year after the date of the variance application's submittal to the department, or January 1, 1994, whichever is later.

(b) A facility which is subject to the annual facility fee shall pay such fee while the variance application is pending. Within one year of the issuance of the variance, the board shall issue a refund of facility fees paid for all reporting periods following the period to which the variance is retroactive. The refund shall not include interest.

(c) Variance, for purposes of this section, means a variance from the requirement of obtaining a hazardous waste facilities permit or grant of interim status.

(Added by Stats. 1993, Ch. 1145, Sec. 16. Effective January 1, 1994.)

25205.21. (a) Notwithstanding Section 25205.4, a disposal facility operator which is a government agency shall be subject to a maximum facility fee of ten thousand dollars ($10,000) for any reporting period of 12 months and five thousand dollars ($5,000) for any reporting period of six months, for that disposal facility for any reporting period in which it did not at any time dispose of hazardous waste therein. This section shall apply to all reporting periods since the inception of the facility fee up to and including the reporting period ending December 31, 1998.

(b) Prior to January 1, 1998, no interest or penalty shall accrue on any amount owed by an operator pursuant to subdivision (a).

(c) This section shall not affect the imposition of the annual postclosure facility fee.

(Added by Stats. 1993, Ch. 1145, Sec. 17. Effective January 1, 1994.)

25205.22. (a) Prior to January 1, 1996, any person transporting, importing, or receiving non-RCRA hazardous waste imported into this state for purposes of treatment, recycling, or disposal shall be considered the generator of that waste and the facility shall be considered the site of generation for purposes of payment of the generator fee pursuant to Section 25205.5, and the facility operator shall pay the applicable generator fee even if the operator has also paid a facility fee, but no generator fee shall be assessed for non-RCRA hazardous waste imported prior to January 1, 1994.

(b) Notwithstanding subdivision (c), any fees due pursuant to this chapter for calendar year 1995 and which are due and payable in calendar year 1996 shall be paid in 1996 in accordance with Section 43152.7 of the Revenue and Taxation Code.

(c) On and after January 1, 1996, any person transporting, importing, or receiving non-RCRA hazardous waste imported into this state for purposes of treatment, recycling, or disposal shall be exempt from the payment of the generator fee imposed pursuant to Section 25205.5 and the generator surcharge imposed pursuant to Section 25205.9.

(Amended by Stats. 1995, Ch. 638, Sec. 21. Effective January 1, 1996.)

25205.23. Notwithstanding Chapter 3 (commencing with Section 43151) of Part 22 of Division 2 of the Revenue and Taxation Code, at the request of any party contesting any fee imposed pursuant to this chapter or Chapter 6.8 (commencing with Section 25300), the department may hold an informal conference to attempt to settle the dispute. Upon the payment of any sum agreed upon between the contesting party and the department in settlement of the disputed fee liability, the liable person shall be released from any further liability for payment of the disputed fee.

(Added by Stats. 1993, Ch. 1145, Sec. 19. Effective January 1, 1994.)

Article 9.2. Cost Reimbursement

(Article 9.2 added by Stats. 1997, Ch. 870, Sec. 31.
Effective January 1, 1998.
Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25206.1. For purposes of this article, the following terms have the following meaning:

(a) "Direct costs" means the costs to the department of processing applications, responding to requests, or providing other services, for which the applicant or requester is required to reimburse the department pursuant to those provisions specified in Section 25206.2, that can be specifically attributed to a particular cost objective, including, but not limited to, sites, facilities, and activities.

(b) "Indirect costs" means the costs to the department of activity that is of a common or joint purpose benefiting more than one cost objective and not readily assignable to a single cost objective.

(c) "Pro rata" means the general administrative costs expended by central service agencies to provide centralized services to state agencies, as defined in the State Administrative Manual.

(Added by Stats. 1997, Ch. 870, Sec. 31. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25206.2. (a) Except as provided in subdivision (c), the department shall comply with this article when recovering costs for processing applications, responding to requests, or providing other services, for which the applicant or requester is required to reimburse the department for its costs pursuant to Sections 25149.3, 25179.7, 25200.1.5, 25201.9, 25205.7, 25222.1, 25233, and 25234. For purposes of this article and Sections 25149.3, 25179.7, 25200.1.5, 25201.9, 25205.7, 25222.1, 25233, and 25234, the department's costs include direct costs, indirect costs, and pro rata costs, as defined in Section 25206.1.

(b) For the purposes of recovering the department's costs pursuant to those provisions listed in subdivision (a), the department shall establish and implement policies and procedures that include, but are not limited to, all of the following:

(1) Within 14 days following receipt of an application or request for which charges are to be assessed, or a later date as may be mutually agreed upon, the department and the applicant or requester shall hold a project planning meeting. Within 30 days from the date of the planning meeting, or within 30 days from the date that a complete application or request is received by the department, whichever is later, or by a later date mutually agreed upon, the department shall provide the applicant or requester an estimate that includes all of the following information:

(A) A detailed description of the work to be performed or services to be provided.

(B) The estimated billing rates for all classes of employees expected to work on the project. The department may adjust its billing rates not more than once every six months. Any adjustment in billing rates or other charges, including, but not limited to, pro rata costs and indirect costs, shall operate prospectively.

(C) An estimate of all expected charges to be billed to the applicant or requester, to the extent that the department can project its time and costs in advance. The department may adjust this estimate subsequent to commencement of the project based on analysis of new information that supports the adjustment, including, but not limited to, such circumstances as a change in the scope of the original work, additional work that is needed to ensure protection of human health or safety or of the environment, or other circumstances that arise that require substantially more time and effort than was originally anticipated to complete the work. An adjustment may only be made after providing written notice and a detailed explanation of the change to the applicant or requester.

(2) The department shall adopt a billing system and procedures that include, but are not limited to, all of the following:

(A) Billing rate and indirect cost rate schedules by employee job classification.

(B) Standardized work task descriptions.

(C) Issuance of invoices at least quarterly, and to the extent practicable, within 60 days from the date of completion of work for which the charge is assessed.

(D) The inclusion of sufficient detail with each invoice so that the applicant or requester can relate the items on the invoice to the benefits received and to the estimate or charges provided pursuant to subparagraph (C) of paragraph (1). Invoices shall be supplemented with statements of any changes in rates and a detailed justification for any such changes.

(E) Upon request and within a reasonable time, not to exceed 30 working days to the extent practicable, providing the applicant or requester with access to time records and other materials supporting the invoice.

(F) The review of invoices for accuracy and appropriateness by a member of the department staff who has direct knowledge of the work or service performed.

(G) The mailing of invoices to the contact person identified by the applicant or requester.

(H) The development of policies and procedures for resolving disputes regarding charges billed pursuant to this section. The department shall ensure that the party responsible for resolving a dispute is not also responsible for, or performing, the work for which the charges are assessed. A person disputing an invoice shall notify the department in writing of the dispute and the reasons for the dispute within 45 days from the date of the

invoice.

(I) The development of a concise statement of its cost reimbursement policies and billing procedures, and making those policies and procedures, the dispute resolution policies and procedures, and other program guidance and policies readily available to any person requesting them.

(c) This article does not require amendment of, or otherwise affect, any agreement entered into prior to July 1, 1998, pursuant to which any person has agreed to reimburse the department for the costs incurred by the department in processing applications, responding to requests, or otherwise providing other services pursuant to those provisions listed in subdivision (a).

(Added by Stats. 1997, Ch. 870, Sec. 31. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25206.3. The department shall take all of the following actions with regard to the tracking of indirect costs:

(a) Ensure that pro rata costs are allocated appropriately to all departmental activities, so that the department's program will only bear those pro rata costs in proportion to the benefits received by those persons subject to the reimbursement requirements specified in Section 25206.2.

(b) Routinely include operating expenses in the indirect costs and allocate those expenses using processes that ensure that the department's program only bears indirect costs in proportion to the benefits received by those persons subject to the reimbursement requirements specified in Section 25206.2.

(c) Exclude from indirect costs, the costs of grant development and administration, fee administration, contract development and administration, and public and governmental inquiries.

(Added by Stats. 1997, Ch. 870, Sec. 31. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25206.4. The department shall establish rates for indirect costs that are specific to each program and shall review and update the indirect cost rates based upon increases or decreases in the amounts of grants received by the department, department reorganizations, and other relevant factors, but not less than once every six months, based upon the previous 12 months of expenditure data. The department shall apply the indirect cost rates prospectively and shall not make retroactive adjustments in those rates.

(Added by Stats. 1997, Ch. 870, Sec. 31. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

Article 9.4. Banned, Unregistered, or Outdated Agricultural Wastes

(Article 9.4 added by Stats. 1990, Ch. 1173, Sec. 1. Effective September 24, 1990.
Note: Former termination clause was deleted by Stats. 1993, Ch. 989, Sec. 14.)

25207. The Legislature finds and declares all of the following:

(a) Small agriculture-related operations need an appropriate and economic means of disposing of banned, unregistered, or outdated agricultural wastes.

(b) An awareness of the problems caused by agricultural wastes has increased as information has become available from the planning process for county hazardous waste management plans conducted pursuant to Article 3.5 (commencing with Section 25135).

(c) Banned, unregistered, or outdated agricultural wastes are located in rural areas.

(d) The abandonment or illegal disposal of these agricultural wastes is a threat to water supplies and wildlife habitat.

(Amended by Stats. 1992, Ch. 591, Sec. 1. Effective January 1, 1993.)

25207.1. For purposes of this article, the following definitions apply:

(a) "Banned or unregistered agricultural waste" means a hazardous waste, as defined in Section 25117, including an extremely hazardous waste, containing an economic poison for which the Administrator of the Environmental
Protection Agency has canceled or suspended its registration after purchase pursuant to Part 164 (commencing with Section 164.1) of Subchapter E of Chapter 1 of Title 40 of the Code of Federal Regulations, or for which the Director of Pesticide Regulation has canceled or suspended its registration after purchase pursuant to Section 12825, 12826, 12827, or 12827.5 of the Food and Agricultural Code.

(b) "Economic poison" means an economic poison, as defined in Section 12753 of the Food and Agricultural Code.

(c) "Eligible participant" means any of the following:

(1) Any person who stores not more than 500 kilograms of banned, unregistered, or outdated agricultural wastes and operates any of the following:

(A) A farm for the purpose of cultivating the soil or raising any agricultural or horticultural commodity.

(B) An agricultural pest control business.

(C) An agricultural pesticide dealership.

(D) A park, cemetery, or golf course.

(2) A governmental agency which performs pest control work and stores not more than 500 kilograms of banned, unregistered, or outdated agricultural wastes.

(3) A business concern which primarily conducts operations relating to agriculture and stores not more than 500 kilograms of banned, unregistered, or outdated agricultural wastes.

(d) "Outdated agricultural waste" means an economic poison which can be classified as a retrograde material, as defined in Section 25121.5.

(e) "Registrant" has the same meaning as defined in Section 12755 of the Food and Agricultural Code.

(Amended by Stats. 1992, Ch. 591, Sec. 2. Effective January 1, 1993.)

25207.2. (a) A county may develop and establish a collection program for the collection of banned, unregistered, or outdated agricultural wastes, which shall be implemented and operated pursuant to this article. In implementing this collection program, the county may consult with the department, the Department of Pesticide Regulation, the Department of the California Highway Patrol, licensed agricultural pest control operators, agricultural pest control advisers, and the University of California.

(b) A county may implement a collection program with the assistance of the county agricultural commissioner.

(c) If a county implements a collection program pursuant to this article, the program shall include the education of eligible participants on the procedures for the disposal of banned, unregistered, or outdated agricultural wastes, and on problems concerning liability with regard to that disposal.

(Amended by Stats. 1993, Ch. 989, Sec. 1. Effective January 1, 1994.)

25207.3. A participating county shall conduct a survey to identify all eligible participants in the county, within 180 days after the county elects to implement this article, to assess the amount, kind, and conditions of the banned, unregistered, or outdated agricultural waste which will be collected by the program. The survey shall include, but not be limited to, an evaluation of the banned, unregistered, or outdated agricultural waste to determine if it is securely contained, requires a removal or remedial action, whether the contents of the wastes are known, and whether it is clearly labeled.

(Added by Stats. 1990, Ch. 1173, Sec. 1. Effective September 24, 1990.)

25207.4. If a county implements a collection program that includes collection sites for the dropoff of banned, unregistered, or outdated agricultural wastes by eligible participants, the county shall, upon selection of the sites, complete and submit to the department, for review and approval, all of the following:

(a) An application for Hazardous Waste Identification Numbers for each collection site.

(b) A completed application for an extremely hazardous waste disposal permit, which shall identify the collection site.

(c) A notification to operate each collection site under a permit-by-rule.

(Amended by Stats. 1993, Ch. 989, Sec. 2. Effective January 1, 1994.)

25207.5. (a) Except as provided in subdivision (b), for purposes of this article, all eligible participants who transport banned, unregistered, or outdated agricultural wastes which are identified in the survey conducted pursuant to Section 25207.3, and which are prepackaged in accordance with the

federal regulations specified in subdivision (a) of Section 25207.6 and transported to the collection site in accordance with subdivision (c) of Section 25207.6, or who transport banned, unregistered, or outdated agricultural wastes which are rejected at the collection site and required to be transported back to the point of origin, are exempt from all of the following:

(1) The requirements for hazardous waste transporter registration specified in Section 25163.

(2) The manifest requirement specified in subdivision (c) of Section 25160.

(3) The volume and weight limits specified in subdivision (c) of Section 25163.

(4) The requirement to obtain an extremely hazardous waste disposal permit pursuant to Chapter 43 (commencing with Section 67430.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(b) Notwithstanding subdivision (a), any eligible participant who generates more than 100 kilograms per month of any RCRA hazardous waste or more than one kilogram per month of any extremely hazardous waste shall obtain
a hazardous waste identification number and use a manifest as specified in subdivision (a) of Section 25160, when transporting banned, unregistered, or outdated agricultural wastes subject to a collection program, which shall be completed in accordance with the regulations set forth in Part B (commencing with Section 262.20) of Part 262 of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations. The eligible participant shall complete and process the manifest in the following manner:

(1) The blue copy of the manifest shall be sent to the department.

(2) The designated site for the collection of the banned, unregistered, or outdated agricultural wastes shall be listed in Block 9 of the manifest.

(3) The eligible participant shall sign the manifest as both the generator and the transporter, and sign in both Block 16 and Block 17 of the manifest.

(c) Any eligible participant who transports banned, unregistered, or outdated agricultural wastes pursuant to this section shall transport the waste by himself or herself or by an employee of the eligible participant, and the vehicle shall be owned by the eligible participant.

(Amended by Stats. 1996, Ch. 539, Sec. 21. Effective January 1, 1997.)

25207.6. All eligible participants shall handle banned, unregistered, or outdated agricultural wastes that are transported pursuant to Section 25207.5 in the following manner:

(a) The wastes shall be prepackaged in accordance with the regulations adopted by the federal Department of Transportation.

(b) The wastes shall be accompanied by a shipping paper with the information required by the federal Department of Transportation for 100 kilograms or less of RCRA or any non-RCRA waste.

(c) The wastes shall be transported in accordance with the Vehicle Code and the regulations adopted by the Department of the California Highway Patrol pursuant to subdivision (b) of Section 34501 of the Vehicle Code.

(Repealed and added by Stats. 1993, Ch. 989, Sec. 6. Effective January 1, 1994.)

25207.7. The county shall act as the operator of the designated site for the collection of the wastes and shall comply with the regulations adopted pursuant to Section 25160 as the operator of that facility, as specified in Section 25207.13.

(Added by Stats. 1993, Ch. 989, Sec. 8. Effective January 1, 1994.)

25207.8. The banned, unregistered, or outdated agricultural wastes transported from the collection site shall be transported by a registered hazardous waste transporter to an offsite hazardous waste disposal facility and a manifest shall be completed for the wastes in accordance with Sections 25160 and 25163. The wastes shall also be handled and transported in accordance with the regulations adopted by the Environmental Protection Agency
pertaining to the management of hazardous waste, including, but not limited to, the regulations specified in Part 260 (commencing with Section 260.1) to Part 270 (commencing with Section 270.1), inclusive, of Subchapter I of Chapter 1 of the Code of Federal Regulations, the regulations adopted by the federal Department of Transportation concerning the transportation of hazardous materials, and any applicable state laws or regulations.

(Amended by Stats. 1996, Ch. 539, Sec. 22. Effective January 1, 1997.)

25207.9. A report regarding any transportation accident involving banned, unregistered, or outdated agricultural wastes that are transported pursuant to a collection program shall be submitted to the department by the participating county within 10 days of the incident.

(Added by renumbering Section 25207.8 by Stats. 1993, Ch. 989, Sec. 9. Effective January 1, 1994.)

25207.10. (a) A county implementing a collection program pursuant to this article shall charge a fee to eligible participants to cover the county's costs of implementing the program, including, but not limited to, the costs of collecting, handling, transporting, treating, recycling, and disposing of the wastes. The county shall transfer 10 percent of the fees that are collected pursuant to this subdivision to the department, within 60 days from the date of collection, for deposit in the Hazardous Waste Control Account, for expenditure by the department, upon appropriation by the Legislature, for purposes of implementing this article.

(b) A county implementing a collection program pursuant to this article may also charge a fee to eligible participants to cover registration fees, administrative costs, and overhead expenses.

(Added by renumbering Section 25207.9 by Stats. 1993, Ch. 989, Sec. 10. Effective January 1, 1994.)

25207.11. The collection program shall require, when economically feasible, that the banned, unregistered, or outdated agricultural wastes which are collected are recycled. If not recycled, the wastes shall be treated or disposed of in compliance with this chapter.

(Added by renumbering Section 25207.10 by Stats. 1993, Ch. 989, Sec. 11. Effective January 1, 1994.)

25207.12. (a) Any eligible participant who submits banned, unregistered, or outdated agricultural wastes for collection in a program established pursuant to this article is exempt from the fees and reimbursements required by Sections 25174.1, 25205.2, 25205.5, and 25205.7, with regard to the wastes submitted for collection.

(b) An eligible participant who submits banned, unregistered, or outdated agricultural wastes for collection is exempt from the hazardous waste facilities permit requirements of Section 25201 with regard to the management of the wastes submitted for collection.

(c) A county operating a collection program in compliance with this article shall not be held liable in any cost recovery action brought pursuant to Section 25360 for any hazardous waste which has been properly handled and transported to an authorized hazardous waste treatment or disposal facility, in compliance with this chapter, at a location other than that of the collection program.

(Amended by Stats. 1997, Ch. 870, Sec. 32. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25207.13. For purposes of complying with the manifest requirements of subdivision (b) of Section 25160, a county which collects banned, unregistered, or outdated agricultural wastes pursuant to this article shall be deemed to be the person who produced the hazardous waste, if the banned, unregistered, or outdated agricultural wastes collected by the county is labeled and no remedial or removal action is required.

(Added by renumbering Section 25207.12 by Stats. 1993, Ch. 989, Sec. 13. Effective January 1, 1994.)

Article 9.5. Surface Impoundments

(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 x 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 Chapter 6.8 (commencing with Section 25300) or to the state board

or any regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

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

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 x 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 (l) 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.)

Article 9.6. Land Treatment Units

(Article 9.6 added by Stats. 1987, Ch. 1374, Sec. 1.)

25209. The Legislature finds and declares as follows:

(a) Hazardous waste discharged into land treatment units may migrate beyond the treatment zone of the land treatment unit and thereby threaten the public health and the environment and pose a serious threat to the quality of the waters of this state.

(b) With the exception of land treatment units, all major forms of land disposal units are required by law to be equipped with liner and leachate collection and removal systems to ensure sufficient protection of the public health and safety and the environment and to protect the quality of the waters of this state. It is in the public interest to extend these requirements to include land treatment units.

(c) It is the intent of the Legislature to establish a uniform and workable procedure for implementing requirements for liner and leachate collection and removal systems in all existing land treatment units, and replacements and lateral expansions of existing and new land treatment units, and to ensure that the vadose zone and groundwater beneath all land treatment units is adequately monitored to detect the presence of any contamination. Land treatment units in operation in this state must be made safe, or closed if necessary, to protect public health and safety and the environment, including the waters of the state.

(Added by Stats. 1987, Ch. 1374, Sec. 1.)

25209.1. For purposes of this article, the following definitions apply:

(a) "Discharge" means to place or dispose hazardous wastes in a land treatment unit.

(b) "Facility" has the meaning specified in Section 25117.1.

(c) "Hazardous constituent" has the meaning specified in regulations adopted by the department.

(d) "Hazardous waste" means a hazardous waste, as defined in

Section 25117 and "non-RCRA hazardous waste" has the same meaning as defined
in Section 25117. 9.

(e) "Land treatment unit" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface so that hazardous constituents are degraded, transformed, or immobilized within the treatment zone. A land treatment unit is a disposal unit if the waste will remain after closure.

(f) "Potential source of drinking water" has the meaning specified in subdivision (s) of Section 25208.2.

(g) "Treatment zone" means the portion of a land treatment unit including the soil surface, within which hazardous constituents are degraded, transformed, or immobilized. A treatment zone may not extend more than five feet from the initial soil surface and the base of the treatment zone shall be a minimum of five feet above the highest anticipated elevation of the water table.

(h) "Vadose zone" means the unsaturated zone outside the treatment zone and between the land surface and the water table.

(i) "Waste management unit" has the meaning specified in the regulations adopted by the department.

(Amended by Stats. 1990, Ch. 1686, Sec. 10.)

25209.2. (a) Except as provided in Section 25209.5, unless granted a variance pursuant to subdivision (b), or exempted pursuant to Section 25209.6, no person shall discharge hazardous waste into a new land treatment unit at a new or existing facility, any land treatment unit which replaces an existing land treatment unit, or any laterally expanded portion of an existing land treatment unit that has not been equipped with liners, a leachate collection and removal system, a groundwater monitoring system, and a vadose zone monitoring system which satisfy the requirements of Section 25209.5.

(b) The department may grant a variance from the requirements of subdivision (a) and Section 25209.3, concerning equipping the land treatment unit with liners and a leachate collection and removal system, if the owner or operator demonstrates to the department and the department finds all of the following:

(1) If the land treatment unit is an existing land treatment unit, no hazardous constituents have migrated from the treatment zone of the land treatment unit into the vadose zone or into the waters of the state. In making this demonstration the owner or operator shall take a sufficient number of core samples in, beneath, and surrounding the treatment zone of the land treatment unit to characterize the chemical constituents in the treatment zone, in the immediate area of the vadose zone surrounding the treatment zone, and in the area of the vadose zone beneath the treatment zone and shall submit groundwater monitoring data sufficient in scope to demonstrate that there has been no migration of hazardous constituents into the vadose zone or into the waters of the state. The owner or operator, as an alternative to taking these core samples, may use the data obtained from any land treatment demonstration required by the department before issuing a hazardous waste facilities permit pursuant to Section 25200, if the data were obtained not more than two years prior to the application for the variance and is sufficient in scope to demonstrate that there has been no migration of hazardous constituents into the vadose zone or into the waters of the state.

(2) Notwithstanding the date that the land treatment unit commences operations, the design and operating practices will prevent the migration of hazardous constituents from the treatment zone of the land treatment unit into the vadose zone or into the waters of the state.

(3) Notwithstanding the date that the land treatment unit commences operations, the design and operating practices provide for rapid detection and removal or remediation of any hazardous constituents that migrate from the treatment zone of the land treatment unit into the vadose zone or into the waters of the state.

(c) (1) The department may renew a variance only in those cases where an owner or operator can demonstrate, and the department finds, both of the following:

(A) No hazardous constituents have migrated from the treatment zone of the land treatment unit into the vadose zone or into the waters of the state.

(B) Continuing the operation of the land treatment unit does not pose a significant potential of hazardous constituents migrating from the land treatment unit into the vadose zone or into the waters of the state.

(2) In making the demonstration for the renewal of a variance pursuant to this subdivision, the owner or operator may use field tests, laboratory analyses, or, operating data.

(d) A variance, or a renewal of a variance, may be issued for a period not to exceed three years.

(e) Except for the exemption from vadose zone monitoring requirements specified in Section 25209.5, neither the requirements of this article nor the variance provisions of subdivision (b) shall relieve the owner or operator from responsibility to comply with all other existing laws and regulations pertinent to land treatment units.

(Amended by Stats. 1990, Ch. 1686, Sec. 11.)

25209.3. Except as provided in Section 25209.5, after January 1, 1990, unless granted a variance pursuant to subdivision (b) of Section 25209.2, or exempted pursuant to Section 25209.6, no person shall discharge hazardous waste into a land treatment unit which has not been equipped with liners, a leachate collection and removal system, a groundwater monitoring system, and a vadose zone monitoring system which satisfy the requirements of Section 25209.5.

(Amended by Stats. 1988, Ch. 1632, Sec. 23.)

25209.4. (a) Except as provided in Section 25209.6, no person shall place or dispose of hazardous waste in a land treatment unit if any of the following conditions exist:

(1) Hazardous constituents have migrated from the land treatment unit into the vadose zone beneath or surrounding the treatment zone or into the waters beneath or surrounding the treatment zone.

(2) There is evidence that a hazardous constituent in the waste discharged to the land treatment unit has not been or will not be completely degraded, transformed, or immobilized in the treatment zone.

(3) There is a significant potential for hazardous constituents to migrate from the land treatment unit into a potential source of drinking water.

(b) The owner or operator of a land treatment unit shall do all of the following:

(1) Periodically, at the request of the department, and at least annually, submit information the department may require in order to evaluate whether the conditions set forth in paragraph (1) or (2) of subdivision (a) are not present. The information to be submitted to the department shall include, but is not limited to, a sufficient number of soil core samples in, beneath, and surrounding the treatment zone of the land treatment unit to detect any hazardous constituents which may have migrated from the treatment zone. The department may adopt regulations requiring additional or more frequent testing.

(2) Within 72 hours of detecting and confirming the existence of either of the conditions identified in paragraph (1) or (2) of subdivision (a), or the presence of factors that render the owner or operator unable to continue satisfying the variance requirements of subdivision (b) of Section 25209.2, report to the department describing the full extent of the owner's or operator's findings.

(c) Upon receiving notice pursuant to paragraph (2) of subdivision (b), or upon the independent confirmation by the department, the department shall order the owner or operator to cease operating the land treatment unit. The owner or operator shall not resume operating the land treatment unit and shall close the land treatment unit unless one of the following actions is taken:

(1) The owner or operator completes appropriate removal or remedial actions to the satisfaction of the department and the owner or operator submits to the department, and the department approves, an application for a permit or variance modification to modify the operating practices at the facility to maximize the success of degradation, immobilization, or transformation processes in the treatment zone, if the owner or operator has not previously submitted an application for a permit or variance modification pursuant to this paragraph.

(2) The owner or operator completes appropriate removal or remedial actions and equips the land treatment unit with liners, leachate collection and removal systems, a groundwater monitoring system, and a vadose zone monitoring system that satisfy the requirements of Section 25209.5, if the land treatment unit has not already been equipped with these systems.

(d) All actions taken by an owner or operator pursuant to paragraph (1) or (2) of subdivision (c) shall be completed within a time period specified by the department, which shall not exceed 18 months after the department receives notice pursuant to subdivision (c). If the actions are not completed within this time period, the land treatment unit shall be

closed, unless granted an extension by the department due to exceptional circumstances beyond the control of the owner and operator.

(Amended by Stats. 1989, Ch. 1436, Sec. 31. Effective October 2, 1989.)

25209.5. The liner, leachate collection and removal, groundwater monitoring, and vadose zone monitoring systems required by Sections 25209.2, 25209.3, and 25209.4 shall be designed, constructed, and operated according to regulations adopted by the department and State Water Resources Control Board regulations and standards for liner, leachate collection and removal, groundwater monitoring, and vadose zone monitoring systems for class I hazardous waste landfills, to the extent those regulations and standards are not less stringent than the regulations and standards of the department. Owners or operators of land treatment units which have treated and will treat solely non-RCRA hazardous waste and which are equipped with liners, leachate collection and removal systems, and a groundwater monitoring system that satisfy the requirements of this section shall not be required to perform vadose zone monitoring.

(Amended by Stats. 1988, Ch. 1632, Sec. 25.)

25209.6. Land treatment of soil contaminated only with non-RCRA hazardous waste which has been excavated as part of a removal or remedial action at any hazardous substance release site is exempt from the requirements of Sections 25209.2, 25209.3, and 25209.4, if all of the following apply:

(a) The department determines that the land treatment does not pose a threat to public health or safety or the environment.

(b) The land treatment is conducted pursuant to a plan approved by the department or a cleanup and abatement order issued by a regional water quality control board.

(c) The land treatment is not conducted at an offsite commercial hazardous waste facility.

(d) The land treatment is used only for purposes of removal or remedial action and, upon completion of the land treatment portion of the removal or remedial action, the land treatment unit is closed.

(Amended by Stats. 1988, Ch. 1632, Sec. 26.)

25209.7. (a) Every owner or operator of a land treatment unit subject to this article shall pay an annual fee to the department which shall be equivalent to 2 percent of the land disposal fee due under Section 25205.4. This fee shall be in addition to the annual hazardous waste facility fee and shall be due at the same time as the facility fee.

(b) The department may, by regulation, increase or decrease the amount of the fees specified in subdivision (a) if the department finds that the amounts charged do not reflect the cost of providing services under this article.

(Amended by Stats. 1997, Ch. 870, Sec. 33. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

Article 9.7. Integrated On-Farm Drainage Management

(Article 9.7 added by Stats. 2002, Ch. 597, Sec. 2. Effective January 1, 2003.)

25209.10. The Legislature finds and declares all of the following:

(a) The long-term economic and environmental sustainability of agriculture is critical to the future of the state, and it is in the interest of the state to enact policies that enhance that sustainability.

(b) High levels of salt and selenium are present in many soils in the state as a result of both natural occurrences and irrigation practices that concentrate their presence in soils.

(c) The buildup of salt and selenium in agricultural soil is an unsustainable practice that degrades soil, harms an irreplaceable natural resource, reduces crop yields and farm income, and poses threats to wildlife.

(d) Salt and selenium buildup can degrade groundwater, especially in areas with perched groundwater aquifers.

(e) Off-farm drainage of irrigation water with high levels of salt and selenium degrades rivers and waterways, particularly the San Joaquin River and its tributaries. This environmental damage presents a clear and imminent danger that warrants immediate action to prevent or mitigate harm to public health and the environment.

(f) Discharge of agricultural drainage water to manmade drains and ponds has resulted in environmental damage, including damage to wildlife. Proposals to discharge agricultural drainage to natural water bodies, including the San Francisco Bay, are extremely expensive and pose threats to the environmental quality of those water bodies.

(g) Water supplies for agricultural irrigation have been reduced significantly in recent years, necessitating increased efforts to use water more efficiently.

(h) Although salt can be collected and managed as a commercial farm commodity, California currently imports salt from other countries.

(i) Integrated on-farm drainage management is a sustainable system of managing salt-laden farm drainage water. Integrated on-farm drainage management is designed to eliminate the need for off-farm drainage of irrigation water, prevent the on-farm movement of irrigation and drainage water to groundwater, restore and enhance the productive value of degraded farmland by removing salt and selenium from the soil, conserve water by reducing the demand for irrigation water, and create the potential to convert salt from a waste product and pollutant to a commercial farm commodity.

(j) Although integrated on-farm drainage management facilities are designed and operated expressly to prevent threats to groundwater and wildlife, these facilities currently may be classified as surface impoundments pursuant to the Toxic Pits Act of 1984, which discourages farmers from using them as an environmentally preferable means of managing agricultural drainage water.

(k) It is the policy of the state to conserve water and to minimize the environmental impacts of agricultural drainage. It is therefore in the interest of the state to encourage the voluntary implementation of sustainable farming and irrigation practices, including, but not limited to, integrated on-farm drainage management, as a means of improving environmental protection,
conserving water, restoring degraded soils, and enhancing the economic productivity of farms.

(Added by Stats. 2002, Ch. 597, Sec. 2. Effective January 1, 2003.)

25209.11. For purposes of this article, the following terms have the following meanings:

(a) "Agricultural drainage water" means surface drainage water or percolated irrigation water that is collected by subsurface drainage tiles placed beneath an agricultural field.

(b) "On-farm" means land within the boundaries of a property or geographically contiguous properties, owned or under the control of a single owner or operator or a publicly organized land-based agency, that is used for the commercial production of agricultural commodities and that contains an integrated on-farm drainage management system and a solar evaporator.

(c) "Integrated on-farm drainage management system" means a facility for the on-farm management of agricultural drainage water that does all of the following:

(1) Reduces levels of salt and selenium in soil by the application of irrigation water to agricultural fields.

(2) Collects agricultural drainage water from irrigated fields and sequentially reuses that water to irrigate successive crops until the volume of residual agricultural drainage water is substantially decreased and its salt content significantly increased.

(3) Discharges the residual agricultural drainage water to an on-farm solar evaporator for evaporation and appropriate salt management.

(4) Eliminates discharge of agricultural drainage water to evaporation ponds and outside the boundaries of the property or properties that produces the agricultural drainage water and that is served by the integrated on-farm drainage management system and the solar evaporator.

(d) "Publicly organized land-based agency" means a resource conservation district, as described in Division 9 (commencing with Section 9001) of the Public Resources Code, an irrigation district, as described in Division 11 (commencing with Section 20500) of the Water Code, any other district established pursuant to the Water Code whose operations may include managing agricultural irrigation or drainage, or a joint powers authority formed for the purpose of managing agricultural drainage or salt.

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

(f) "Solar evaporator" means an on-farm area of land and its associated equipment that meets all of the following conditions:

(1) It is designed and operated to manage agricultural drainage water discharged from the integrated on-farm drainage management system.

(2) The area of the land that makes up the solar evaporator is equal to, or less than, 2 percent of the area of the land that is managed by

the integrated on-farm drainage management system.

(3) Agricultural drainage water from the integrated on-farm drainage management system is discharged to the solar evaporator by timed sprinklers or other equipment that allows the discharge rate to be set and adjusted as necessary to avoid standing water within the solar evaporator or, if a water catchment basin is part of the solar evaporator, within that portion of the solar evaporator that is outside the basin.

(4) The combination of the rate of discharge of agricultural drainage water to the solar evaporator and subsurface tile drainage under the solar evaporator provides adequate assurance that constituents in the agricultural drainage water will not migrate from the solar evaporator into the vadose zone or waters of the state in concentrations that pollute or threaten to pollute the waters of the state.

(g) "State board" means the State Water Resources Control Board.

(h) "Water catchment basin" means an area within the boundaries of a solar evaporator that is designated to receive and hold any water that might otherwise be standing water within the solar evaporator. The entire area of a water catchment basin shall be permanently and continuously covered with netting, or otherwise designed, constructed, and operated to prevent access by avian wildlife to standing water within the basin.

(Amended by Stats. 2006, Ch. 309, Sec. 1. Effective January 1, 2007.)

25209.12. The state board, in consultation, as necessary, with other appropriate state agencies, shall adopt or amend emergency regulations that establish minimum requirements for the design, construction, operation, and closure of a solar evaporator. The regulations shall include, but are not limited to, requirements to ensure all of the following:

(a) The operation of a solar evaporator does not result in a discharge of on-farm agricultural drainage water outside the boundaries of the area of land that makes up the solar evaporator.

(b) (1) The solar evaporator is designed, constructed, and operated so that, under reasonably forseeable operating conditions, the discharge of agricultural water to the solar evaporator does not result in standing water or drift of salt spray, mist, or particles outside the boundaries of the solar evaporator to the extent that drift constitutes a nuisance condition.

(2) Notwithstanding paragraph (1), a solar evaporator may be designed, constructed, and operated to accommodate standing water, if it includes a water catchment basin.

(3) The board may specify those conditions under which a solar evaporator is required to include a water catchment basin to prevent standing water that would otherwise occur within the solar evaporator.

(c) Avian wildlife is adequately protected. In adopting regulations pursuant to this subdivision, the state board shall do the following:

(1) Consider and, to the extent feasible, incorporate best management practices recommended or adopted by the United States Fish and Wildlife Service.

(2) Establish guidelines for the authorized inspection of a solar evaporator by the regional board pursuant to Section 25209.15. The guidelines shall include technical advice developed in consultation with the Department of Fish and Game and the United States Fish and Wildlife Service that may be used by regional board personnel to identify observed conditions relating to the operation of a solar evaporator that indicate an unreasonable threat to avian wildlife.

(d) Constituents in agricultural drainage water discharged to the solar evaporator will not migrate from the solar evaporator into the vadose zone or the waters of the state in concentrations that pollute or threaten to pollute the waters of the state.

(e) Adequate groundwater monitoring and recordkeeping is performed to ensure compliance with this article.

(f) Salt isolated in a solar evaporator shall be managed in accordance with all applicable laws and shall eventually be harvested and sold for commercial purposes, used for beneficial purposes, or stored or disposed in a facility authorized to accept that waste pursuant to this chapter or Division 30 (commencing with Section 40000) of the Public Resources Code.

(Amended by Stats. 2006, Ch. 309, Sec. 2. Effective January 1, 2007.)

25209.13. (a) A person who intends to operate a solar evaporator shall, before installing the solar evaporator, file a notice of intent with the regional board, using a form prepared by the regional board. The form shall require the person to provide all of the following:

(1) The location of the solar evaporator.

(2) The design of the solar evaporator and the equipment that will be used to operate it.

(3) The maximum anticipated rate at which agricultural drainage water will be discharged to the solar evaporator.

(4) The anticipated rate of accumulation of evaporite salt in the solar evaporator and the anticipated period of time before the salt needs to be removed to ensure the continued effective operation of the evaporator.

(5) Plans for operating the solar evaporator in compliance with this article, including a plan to collect and remove evaporite salt to ensure the continued effective operation of the evaporator.

(6) Groundwater monitoring data that are adequate to establish baseline data for use in comparing subsequent data submitted by the operator pursuant to this article.

(7) Weather data and a water balance analysis sufficient to assess the likelihood of standing water occurring within the solar evaporator.

(8) A brief description of any documents or reports required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), with the appropriate document or report, if required, included as an attachment to the form.

(9) Any other information required or authorized by regulation.

(b) The regional board shall, within 30 calendar days after receiving the notice submitted pursuant to subdivision (a), review the notice of intent for its completeness, inspect, if necessary, the site where the proposed solar evaporator will be located, and notify the operator of whether the notice of intent is complete. If the regional board determines that the notice of intent is not complete, the regional board shall issue a written response to the applicant identifying the reason why it is not complete. If the regional board determines that the notice of intent is complete, the regional board shall notify the operator in writing that the notice of intent is complete.

(c) A person who receives a written notice of completeness pursuant to subdivision (b) shall, before operating the installed solar evaporator, request the regional board to conduct a compliance inspection of the solar evaporator. Within 30 days after receiving a request, the regional board shall inspect the solar evaporator to determine whether it complies with this article. If the regional board finds that the solar evaporator does not comply with this article, the regional board, within 140 days after the inspection, shall issue a written response to the applicant identifying the reasons for noncompliance. Except as provided in subdivision (e), if the regional board finds that the solar evaporator complies with the requirements of this article, the regional board, within 30 days after the inspection, shall issue a written notice of authority to operate to the operator of the solar evaporator. The regional board may include in the authority to operate any associated condition that the regional board deems necessary to ensure compliance with the purposes and requirements of this article.

(d) A person shall not commence the operation of a solar evaporator before one of the following occurs:

(1) The person receives a written notice of authority to operate the solar evaporator pursuant to this section.

(2) The expiration of 140 days after the solar evaporator is inspected pursuant to subdivision (c), and the person has not received a written response from the regional board, identifying reasons for noncompliance.

(e) The regional board shall review an authority to operate issued by the regional board pursuant to this section every five years. The regional board shall renew the authority to operate, unless the regional board finds that the operator of the solar evaporator has not demonstrated compliance with the requirements of this article.

(Amended by Stats. 2006, Ch. 309, Sec. 3. Effective January 1, 2007.)

25209.14. (a) A person operating a solar evaporator shall submit to the regional board, in April and October of every year, all of the following information:

(1) Bimonthly waterflow data taken immediately prior to discharge to the solar evaporator.

(2) Bimonthly water quality data, as required by the regional board, taken immediately prior to discharge to the solar evaporator.

(3) Semiannual groundwater monitoring data taken from an area in the vicinity of the solar evaporator, as approved by the regional board. Groundwater shall be monitored for salts, selenium, and other elements, as

determined by the board, that could adversely affect avian wildlife or beneficial uses of adjacent groundwater.

(b) Notwithstanding subdivision (a), the regional board may do either of the following regarding data collected pursuant to paragraphs (1) and (2) of subdivision (a):

(1) Reduce the data collection schedule two years after data is submitted pursuant to subdivision (a), if the regional board determines that discharge to the solar evaporator has been adequately characterized.

(2) Increase the data collection schedule, if the regional board determines that changes in monitoring results or other changes in the operation of the solar evaporator require more frequent data collection.

(Amended by Stats. 2006, Ch. 309, Sec. 4. Effective January 1, 2007.)

25209.15. (a) The regional board, consistent with its existing statutory authority, shall inspect any solar evaporator that is authorized to operate pursuant to Section 25209.13 at least once every five years to ensure continued compliance with the requirements of this article. In conducting any inspection, the regional board may request the participation of a qualified state or federal avian biologist in a technical advisory capacity. The regional board shall include in the inspection report conducted pursuant to this section any evidence of adverse impacts on avian wildlife and shall forward the report to the appropriate state and federal agencies.

(b) If the regional board, as a result of an inspection or review conducted pursuant to this article, determines that a solar evaporator is not in compliance with the requirements of this article, the regional board shall provide written notice to the operator of the solar evaporator of that failure, and shall include in that written notice the reasons for that determination.

(c) Chapter 5 (commencing with Section 13300) of, and Chapter 5.8 (commencing with Section 13399) of, Division 7 of the Water Code apply to any failure to comply with the requirements of this article and to any action, or failure to act, by the state board or a regional board. The regional board may, consistent with Section 13223 of the Water Code, revoke or modify an authorization to operate issued pursuant to this article.

(Added by Stats. 2002, Ch. 597, Sec. 2. Effective January 1, 2003.)

25209.16. (a) For the purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including Section 11349.6 of the Government Code, the adoption or amendment of the regulations required to be adopted pursuant to this article 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.

(b) 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 or amended by the state board pursuant to this article shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until repealed by the state board.

(Amended by Stats. 2006, Ch. 309, Sec. 5. Effective January 1, 2007.)

25209.17. Any solar evaporator operating under a valid written notice of authority to operate issued by the regional board pursuant to this article, including any facility operating pursuant to Article 9.5 (commencing with Section 25208) prior to January 1, 2003, that the regional board determines is in compliance with the requirements of this article, is not subject to Article 9.5 (commencing with Section 25208) or Sections 13260 or 13263 of the Water Code. Upon determining pursuant to this section that a facility is a solar evaporator in compliance with this article, the regional board shall, as appropriate, revise or rescind any waste discharge requirements or other requirements imposed on the operator of the facility pursuant to Article 9.5 (commencing with Section 25208) or Section 13260 or 13263 of the Water Code.

(Added by Stats. 2002, Ch. 597, Sec. 2. Effective January 1, 2003.)

25209.18. (a) A person operating a solar evaporator pursuant to a valid notice of authority to operate shall, consistent with subdivision (f) of Section 25209.12, manage the collection and removal of evaporite salt from the solar evaporator as described in the plan prepared pursuant to paragraph (5) of subdivision (a) of Section 25209.13.

(b) If the regional board subsequently determines that accumulated salt needs to be collected and removed from a solar evaporator at a time, or in a manner, that differs from the plan prepared pursuant to paragraph (5) of subdivision (a) of Section 25209.13, the regional board shall notify the operator in writing and describe the reasons for its determination.

(c) An operator of a solar evaporator who receives a notice pursuant to subdivision (b) may appeal the determination of the regional board. The appeal shall include a response, prepared by an independent registered professional civil engineer or agricultural engineer, to the findings in the notice.

(Added by Stats. 2006, Ch. 309, Sec. 6. Effective January 1, 2007.)

25209.19. Within 30 days of an action or failure to act by a regional board pursuant to this article, an aggrieved person may petition the state board to review that action or failure to act. The petition and all other rules and procedures governing the petition shall be the same as in Section 13320 of the Water Code.

(Added by Stats. 2006, Ch. 309, Sec. 7. Effective January 1, 2007.)

Article 10. Prohibited Chemicals

(Article 10 added by Stats. 1977, Ch. 1039.)

25210. It shall be unlawful, on or after January 1, 1979, to use a nonbiodegradable toxic chemical in a chemical toilet, recreational vehicle, or waste facility of a vessel as the term vessel is defined in the Harbors and Navigation Code, and it shall be unlawful on or after January 1, 1979, to sell a nonbiodegradable toxic chemical in a container which indicates that the chemical could be used in a chemical toilet, a waste facility of a recreational vehicle, or a waste facility of a vessel as the term vessel is defined in the Harbors and Navigation Code. The department shall develop and adopt regulations to define nonbiodegradable toxic chemicals and limitations on the sale thereof by June 1, 1978.

(Added by Stats. 1977, Ch. 1039.)

25210.1. (a) For purposes of this section, the following definitions shall apply:

(1) "Halocarbon chemicals" means chemical compounds which contain carbon, and one or more halogens, and which may include hydrogen, including, but not limited to, trichloroethane, tetrachloroethylene, methylene chloride, halogenated benzenes, and carbon tetrachloride.

(2) "Aromatic hydrocarbon chemicals" means chemical compounds containing carbon and hydrogen and at least one six-carbon ring containing double bonds, including, but not limited to, benzene, toluene, and napthalene.

(3) "Sewage disposal system" means a septic tank, cesspool, sewage seepage pit, leachline, or other structure into which sewage is drained for purposes of disposal and which is not connected to a municipal treatment works.

(b) On and after July 1, 1988, no person shall use any product containing halocarbon chemicals or aromatic hydrocarbon chemicals for the purposes of cleaning or unclogging a sewage disposal system.

(c) On and after July 1, 1988, no person shall sell any product containing halocarbon chemicals or aromatic hydrocarbon chemicals in a container which indicates that the product may be used for the purposes of cleaning or unclogging a sewage disposal system. The department may adopt regulations regarding the sales of these products for the purposes of this subdivision.

(Added by Stats. 1987, Ch. 874, Sec. 1.)

Article 10.01. Management of Perchlorate

(Article 10.01 added by Stats. 2003, Ch. 608, Sec. 3. Effective January 1, 2004.)

25210.5. For purposes of this article, the following definitions shall apply:

(a) Notwithstanding Section 25117.2, "management" means disposal, storage, packaging, processing, pumping, recovery, recycling, transportation, transfer, treatment, use, and reuse.

(b) "Perchlorate" means all perchlorate-containing compounds.

(c) "Perchlorate material" means perchlorate and all

perchlorate-containing substances, including, but not limited to, waste perchlorate and perchlorate-containing waste.

(Added by Stats. 2003, Ch. 608, Sec. 3. Effective January 1, 2004.)

25210.6. (a) On or before December 31, 2005, the department shall adopt regulations specifying the best management practices for a person managing perchlorate materials. These practices may include, but are not limited to, all of the following:

(1) Procedures for documenting the amount of perchlorate materials managed by the facility.

(2) Management practices necessary to prevent releases of perchlorate materials, including, but not limited to, containment standards, usage, processing and transferring practices, and spill response procedures.

(b) (1) The department shall consult with the State Air Resources Board, the Office of Environmental Health Hazard Assessment, the State Water Resources Control Board, the Office of Emergency Services, the State Fire Marshal, and the California certified unified program agencies forum before adopting regulations pursuant to subdivision (a).

(2) The department shall also, before adopting regulations pursuant to subdivision (a), review existing federal, state, and local laws governing the management of perchlorate materials to determine the degree to which uniform and adequate requirements already exist, so as to avoid any unnecessary duplication of, or interference with the application of, those existing requirements.

(3) In adopting regulations pursuant to subdivision (a), the department shall ensure that those regulations are at least as stringent as, and to the extent practical consistent with, the existing requirements of Chapter 6.95 (commencing with Section 25500) and the Uniform Fire Code governing the management of perchlorate materials.

(c) The regulations adopted by the department pursuant to this section shall be adopted as emergency regulations 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, including subdivision (e) of Section 11346.1 of the Government Code, any emergency regulations adopted 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 department.

(d) The department may implement an outreach effort to educate persons who manage perchlorate materials concerning the regulations promulgated pursuant to subdivision (a).

(Amended by Stats. 2004, Ch. 183, Sec. 204. Effective January 1, 2005.)

25210.7. On and after the effective date of the regulations adopted by the department pursuant to Section 25210.6, a person may not manage
perchlorate materials unless the management complies with the best management practices specified in the regulations adopted by the department.

(Added by Stats. 2003, Ch. 608, Sec. 3. Effective January 1, 2004.)

Article 10.02. Lighting Toxics Reduction

(Article 10.02 added by Stats. 2007, Ch. 534, Sec. 3. Effective January 1, 2008.)

25210.9. (a) Except as provided in subdivisions (e), (f), and (g), on and after January 1, 2010, a person shall not manufacture general purpose lights for sale in this state that contain levels of hazardous substances that would result in the prohibition of those general purpose lights being sold or offered for sale in the European Union pursuant to the RoHS Directive.

(b) Except as provided in subdivisions (e), (f), and (g), on and after January 1, 2010, a person shall not sell or offer for sale in this state a general purpose light under any of the following circumstances:

(1) The general purpose light being sold or offered for sale was manufactured on and after January 1, 2010, and contains levels of hazardous substances that would result in the prohibition of that general purpose light being sold or offered for sale in the European Union pursuant to the RoHS Directive.

(2) The manufacturer of the general purpose light sold or being offered for sale fails to provide the documentation to the department required by subdivision (h).

(3) The manufacturer of the general purpose light being sold or offered for sale does not provide the certification required in subdivision (i).

(c) For the purposes of this section, "RoHS Directive" means Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, on the restriction of certain hazardous substances in electrical and electronic equipment, as amended thereafter by the Commission of European Communities (13.2.2003 Official Journal of the European Union).

(d) The department shall determine the products covered by the RoHS Directive by reference to authoritative guidance published by the United Kingdom implementing the RoHS Directive in that country.

(e) (1) Except as provided in paragraph (2), subdivisions (a), (b), (h), and (i) do not apply to high output and very high output linear fluorescent lamps greater than 32 millimeters in diameter and preheat linear fluorescent lamps.

(2) On or after January 1, 2014, the department shall determine, in consultation with companies that manufacture lamps specified in paragraph (1) in the United States, if those lamps should be subject to the requirements of subdivisions (a), (b), (h), and (i), taking into consideration changes in lamp design or manufacturing technology that will allow for the removal or reduction of mercury.

(f) On and after January 1, 2012, for high intensity discharge lamps and compact fluorescent lamps greater than nine inches in length, subdivisions (a), (b), (h), and (i) shall be applicable.

(g) On and after January 1, 2014, for state-regulated general service incandescent lamps and enhanced spectrum lamps as defined in subdivision (k) of Section 1602 of Title 20 of the California Code of Regulations, subdivisions (a), (b), (h), and (i) shall be applicable.

(h) A manufacturer of general purpose lights sold or being offered for sale in California shall prepare and, at the request of the department, submit within 28 days of the date of the request, technical documentation or other information showing that the manufacturer's general purpose lights sold or offered for sale in this state comply with the requirements of the RoHS Directive.

(i) A manufacturer of general purpose lights sold or being offered for sale in California shall provide, upon request, a certification to a person who sells or offers for sale that manufacturer's general purpose lights. The certification shall attest that the general purpose lights do not contain levels of hazardous substances that would result in the prohibition of those general purpose lights being sold or offered for sale in California. Alternatively, the manufacturer may display the certification required by this subdivision prominently on the shipping container or on the packaging of general purpose lights.

(j) The department may adopt regulations to implement and administer this article.

(Amended by Stats. 2008, Ch. 179, Sec. 146. Effective January 1, 2009.)

25210.10. (a) For purposes of this article, "general purpose lights" means lamps, bulbs, tubes, or other electric devices that provide functional illumination for indoor residential, indoor commercial, and outdoor use.

(b) General purpose lights do not include any of the following specialty lighting: appliance, black light, bug, colored, infrared, left-hand thread, marine, marine signal service, mine service, plant light, reflector, rough service, shatter resistant, sign service, silver bowl, showcase, three-way, traffic signal, and vibration service or vibration resistant.

(c) General purpose lights do not include lights needed to provide special-needs lighting for individuals with exceptional needs.

(Added by Stats. 2007, Ch. 534, Sec. 3. Effective January 1, 2008.)

25210.12. Notwithstanding Article 8 (commencing with Section 25180), a person who violates this article shall not be subject to any criminal penalties imposed pursuant to Article 8 (commencing with Section 25180).

(Added by Stats. 2007, Ch. 534, Sec. 3. Effective January 1, 2008.)

Article 10.1. Management of Hazardous Wastes Removed From Discarded Appliances

(Article 10.1 added by Stats. 1997, Ch. 884, Sec. 2. Effective January 1, 1998.)

25211. For purposes of this article, the following terms have the following meaning:

(a) "Certified appliance recycler" means a person or entity engaged in the business of removing and properly managing materials that require special handling from discarded major appliances, and who is certified pursuant to Section 25211.4, and does not include a person described in subdivision (b) of Section 25211.2.

(b) "CUPA" means a certified unified program agency, as defined in subdivision (b) of Section 25123.7.

(c) "Major appliance" has the same meaning as defined in Section 42166 of the Public Resources Code.

(d) "Materials that require special handling" has the same meaning as defined in Section 42167 of the Public Resources Code.

(e) "Scrap recycling facility" means a facility where machinery and equipment are used for processing and manufacturing scrap metal into prepared grades and whose principal product is scrap iron or nonferrous metallic scrap for sale for remelting purposes. A scrap recycling facility includes, but is not limited to, a feeder yard, a metal shredding facility, a metal crusher, and a metal baler.

(Amended by Stats. 2004, Ch. 880, Sec. 2. Effective January 1, 2005.)

25211.1. (a) Except as provided in subdivision (b), a person, other than a certified appliance recycler, shall not remove materials that require special handling from a major appliance.

(b) An appliance service technician certified pursuant to Section 82.161 of Title 40 of the Code of Federal Regulations may remove refrigerant from major appliances.

(Repealed and added by Stats. 2007, Ch. 709, Sec. 2. Effective January 1, 2008.)

25211.2. (a) Except as provided in subdivision (b), a person who transports, delivers, or sells discarded major appliances to a scrap recycling facility shall provide evidence that he or she is a certified appliance recycler and shall certify, on a form prepared by the department and provided to the facility at the time of the transaction, that all materials that require special handling have been removed from the appliances pursuant to subdivision (a) of Section 25212. Information on the form shall include, but not be limited to, the appliance recycler certificate number, the appliance recycler's hazardous waste generator identification number, the number and types of appliances included in the shipment, and the facilities to which the materials that require special handling and that were removed from the appliances were sent or are to be sent. If the appliances have been crushed, baled, or shredded by the certified appliance recycler, the requirement to include the number and types of appliances included in the shipment on the form shall not apply.

(b) A person who is not a certified appliance recycler may transport, deliver, or sell discarded major appliances to a scrap recycling facility only if the scrap recycling facility is a certified appliance recycler and only if either of the following conditions specified is met:

(1) The appliances have not been crushed, baled, shredded, sawed or sheared apart, or otherwise processed in such a manner that could result in the release, or prevent the removal, of materials that require special handling.

(2) The appliances have been crushed, baled, shredded, or sawed or sheared apart, or otherwise processed in such a manner that could result in the release, or prevent the removal, of materials that require special handling, and that person does one of the following:

(A) Provides the scrap recycling facility with a written certification, at the time of the transaction, that identifies any materials that require special handling that have been removed from the appliance and certifies that all of these materials were removed by a person authorized under Section 25211.1. The certification shall include the appliance recycler or appliance service technician certificate number, the appliance recycler or appliance service technician's hazardous waste generator identification number, the number and types of appliances included in the shipment, and the facilities to which the materials that require special handling that were removed from the appliances were sent or are to be sent.

(B) Presents a form of government issued identification and, under penalty of perjury, provides the scrap recycling facility his or her name, address, telephone number, and written certification that he or she obtained the appliance in its current condition and did not process the appliance or arrange to have it processed or knowingly accept the appliance from any other person who processed it or arranged to have it processed. That person shall also provide the name and address of the person from whom the appliance was obtained, or include in the written certification the reason that the information is unavailable.

(c) Appliances delivered to a scrap recycling facility by a local government representative that were generated as part of the local government's waste management activities are exempt from subdivision (b).

(d) A scrap recycling facility that accepts appliances pursuant to subparagraph (B) of paragraph (2) of subdivision (b) shall provide a monthly report to the department and the local CUPA that includes both of the following:

(1) For each appliance received by the scrap facility, the name and address of the person who transported, delivered, or sold the appliance to the scrap recycling facility.

(2) The total number of appliances received pursuant to the conditions provided in subparagraph (B) of paragraph (2) of subdivision (b).

(Repealed and added by Stats. 2007, Ch. 709, Sec. 4. Effective January 1, 2008.)

25211.3. A certified appliance recycler, and any person who is not a certified appliance recycler who is subject to subdivision (b) of Section 25211.2, shall retain onsite records demonstrating compliance with applicable requirements of this article and Section 42175 of the Public Resources Code. The records shall be retained for three years and shall be made available for inspection, upon the request of a representative of the department or a CUPA. The records shall be retained, after that three-year period, during the course of an unresolved enforcement action or as requested by the department or CUPA. The records shall include, but not be limited to, all of the following information:

(a) The amount, by volume or weight or both of each material that required special handling.

(b) The method used by the appliance recycler to recycle, dispose of, or otherwise manage each material that required special handling, including the name and address of the facility to which each material was sent.

(c) The number and types of appliances from which materials that require special handling are removed each year.

(d) The reports required pursuant to subdivision (c) of Section 25211.2.

(Amended by Stats. 2007, Ch. 709, Sec. 5. Effective January 1, 2008.)

25211.4. (a) On and after January 1, 2008, a person wishing to operate as a certified appliance recycler, except a person having a certification issued before January 1, 2008, until that certification expires, shall submit an initial or a renewal application to the department and obtain or renew certification from the department pursuant to this section. The department shall make available on its Internet Web site an application for certification as a certified appliance recycler that requires all of the following:

(1) The business name under which the appliance recycler operates, the telephone number, the physical address and mailing address, if different, and the business owner's name, address, and telephone number.

(2) A hazardous waste generator identification number issued by the department pursuant to this chapter.

(3) A statement indicating that the applicant has either filed an application for a stormwater permit or is not required to obtain a stormwater permit.

(4) A statement indicating that the applicant has either filed a hazardous materials business plan or is not required to file the plan.

(5) The tax identification number assigned by the Franchise Tax Board.

(6) A copy of a business license and any conditional use permits issued by the appropriate city or county.

(7) A description of the ability of the applicant to properly remove and manage all materials that require special handling, including, but not limited to, a technical description of how each material requiring special handling will be removed and a description of how each material requiring special handling will be managed by the applicant consistent with applicable laws.

(8) Any other information that the department may determine to be necessary to carry out this article.

(b) A person wishing to operate as a certified appliance recycler shall submit to the department, under penalty of perjury, the information required pursuant to subdivision (a). The department shall review the application for completeness and, upon determining that the application is complete and meets the requirements of this section, shall issue a numbered certificate to the applicant. The department shall notify an applicant whose application fails to meet the requirements for certification of the reason why the department denied the certification. The department may revoke or suspend a certification issued pursuant to this section, in accordance with the procedures specified in Sections 25186.1 and 25186.2, for any of the grounds specified in Section 25186.

(c) The certificate issued by the department shall include the issuance date and the expiration date, which shall be three years after the issuance date. A person whose certification has expired, and who has not applied for and obtained a new current certification, is no longer a certified appliance recycler and may no longer operate as a certified appliance recycler.

(d) Upon issuance of a certificate, the department shall transmit the application and certification of the certified appliance recycler to the certified uniform program agency in whose jurisdiction the person is located, which shall, as soon as is practicable, inspect the certified appliance recycling facility to determine whether the recycler is capable of properly removing and managing materials that require special handling from major appliances. In making the determination, the certified uniform program agency shall consider various factors, including, but not limited to, the working condition of equipment used to remove the materials, the technical ability of employees of the business to operate the equipment proficiently, and the facility's compliance with existing applicable laws.

(Repealed and added by Stats. 2007, Ch. 709, Sec. 7. Effective January 1, 2008.)

25211.5. The department may adopt any regulations determined necessary to implement and enforce this article.

(Added by Stats. 2004, Ch. 880, Sec. 7. Effective January 1, 2005.)

25212. (a) Materials that require special handling that are contained in major appliances shall not be disposed of at a solid waste facility and shall be removed from major appliances in which they are contained prior to the appliance being crushed, baled, shredded, sawed or sheared apart, disposed of, or otherwise processed in a manner that could result in the release or prevent the removal of materials that require special handling.

(b) A person who, pursuant to subdivision (a), removes from a major appliance any material that requires special handling, that is a hazardous waste under this chapter, is a hazardous waste generator and shall comply with all provisions of this chapter applicable to generators of hazardous waste.

(c) All materials that require special handling that have been removed from a major appliance pursuant to subdivision (a), and that are hazardous wastes, shall be managed in accordance with this chapter.

(d) A person who fails to comply with subdivision (a) is in violation of this chapter.

(e) (1) The department or a local health officer or other public officer authorized pursuant to Article 8 (commencing with Section 25180), including, when applicable, a certified unified program agency (CUPA) or a unified program agency within the jurisdiction of a CUPA, shall incorporate both of the following into the existing inspection and enforcement activities of the department or the local health officer or other public officer:

(A) The regulation of materials that require special handling that, when removed from a major appliance, is hazardous waste.

(B) The enforcement of subdivision (a).

(2) The department, local health officers, or other public officers shall coordinate their activities as needed to identify and regulate materials that require special handling that, when removed from major appliances, are hazardous wastes that are transported from one jurisdiction to another.

(Amended by Stats. 2004, Ch. 880, Sec. 8. Effective January 1, 2005.)

25213. (a) To implement subdivision (c) of Section 25212, the department shall, based on reasonably available information, develop a statewide list of appliance recyclers, used appliance dealers, solid waste facilities, metal scrapyards, and others who may remove, or do business with those who remove, from major appliances, materials that require special handling. The department shall notify persons on the list of the requirements of this chapter and the steps that will be required to be taken to comply with this chapter.

(b) The department shall transmit a copy of the Appliance Recycling Guide, published by the California Integrated Waste Management Board, and any other materials determined to be necessary by the department to ensure compliance with this chapter, to the following persons and agencies:

(1) Persons who apply for a generator identification number indicating that they are involved with any activities regulated pursuant to this article.

(2) The local officers and agencies authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.

(c) The department shall transmit the generator identification number of any person identified pursuant to paragraph (1) of subdivision (b) and the statewide list developed pursuant to subdivision (a) to the appropriate local officers and agencies authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.

(Added by Stats. 1997, Ch. 884, Sec. 2. Effective January 1, 1998.)

25214. The department shall make information available upon request regarding the implementation of this article, including, but not limited to, the list of persons notified pursuant to subdivision (a) of Section 25213, the list of persons identified pursuant to paragraph (1) of subdivision (b) of Section 25213, information on inspection and enforcement, and other information pertaining to the record of compliance with this article, subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(Added by Stats. 1997, Ch. 884, Sec. 2. Effective January 1, 1998.)

Article 10.1.1. Lead-Containing Jewelry

(Article 10.1.1 added by Stats. 2006, Ch. 415, Sec. 1. Effective January 1, 2007.)

25214.1. For purposes of this article, the following definitions shall apply:

(a) "Amended consent judgment" means the amended consent judgment in the consolidated action entitled People vs. Burlington Coat Factory Warehouse Corporation, et al. (Alameda Superior Court Lead Case No. RG 04-162075) that was entered by the court on June 15, 2006.

(b) "Body piercing jewelry" means any part of jewelry that is manufactured or sold for placement in a new piercing or a mucous membrane, but does not include any part of that jewelry that is not placed within a new piercing or a mucous membrane.

(c) "Children" means children aged six and younger.

(d) "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to, children. For purposes of this article, children's jewelry includes, but is not limited to, jewelry that meets any of the following conditions:

(1) Represented in its packaging, display, or advertising, as appropriate for use by children.

(2) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children.

(3) Sized for children and not intended for use by adults.

(4) Sold in any of the following:

(A) A vending machine.

(B) Retail store, catalogue, or online Web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(C) A discrete portion of a retail store, catalogue, or online

Internet Web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(e) (1) "Class 1 material" means any of the following materials:

(A) Stainless or surgical steel.

(B) Karat gold.

(C) Sterling silver.

(D) Platinum, palladium, iridium, ruthenium, rhodium, or osmium.

(E) Natural or cultured pearls.

(F) Glass, ceramic, or crystal decorative components, including cat's eye, cubic zirconia, including cubic zirconium or CZ, rhinestones, and cloisonne.

(G) A gemstone that is cut and polished for ornamental purposes, except as provided in paragraph (2).

(H) Elastic, fabric, ribbon, rope, or string, unless it contains intentionally added lead and is listed as a class 2 material.

(I) All natural decorative material, including amber, bone, coral, feathers, fur, horn, leather, shell, wood, that is in its natural state and is not treated in a way that adds lead.

(J) Adhesive.

(2) The following gemstones are not class 1 materials: aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite, phosgenite, samarskite, vanadinite, and wulfenite.

(f) "Class 2 material" means any of the following materials:

(1) Electroplated metal that meets the following standards:

(A) On and before August 30, 2009, a metal alloy with less than 10 percent lead by weight that is electroplated with suitable under and finish coats.

(B) On and after August 31, 2009, a metal alloy with less than 6 percent lead by weight that is electroplated with suitable under and finish coats.

(2) Unplated metal with less than 1.5 percent lead that is not otherwise listed as a class 1 material.

(3) Plastic or rubber, including acrylic, polystyrene, plastic beads and stones, and polyvinyl chloride (PVC) that meets the following standards:

(A) On and before August 30, 2009, less than 0.06 percent (600 parts per million) lead by weight.

(B) On and after August 31, 2009, less than 0.02 percent (200 parts per million) lead by weight.

(4) A dye or surface coating containing less than 0.06 percent (600 parts per million) lead by weight.

(g) "Class 3 material" means any portion of jewelry that meets both of the following criteria:

(1) Is not a class 1 or class 2 material.

(2) Contains less than 0.06 percent (600 parts per million) lead by weight.

(h) "Component" means any part of jewelry.

(i) "Jewelry" means any of the following:

(1) Any of the following ornaments worn by a person:

(A) An anklet.

(B) Arm cuff.

(C) Bracelet.

(D) Brooch.

(E) Chain.

(F) Crown.

(G) Cuff link.

(H) Hair accessory.

(I) Earring.

(J) Necklace.

(K) Pin.

(L) Ring.

(M) Body piercing jewelry.

(N) Jewelry placed in the mouth for display or ornament.

(2) Any bead, chain, link, pendant, or other component of an ornament specified in paragraph (1).

(3) A charm, bead, chain, link, pendant, or other attachment to shoes or clothing that can be removed and may be used as a component of an ornament specified in paragraph (1).

(4) A watch in which a timepiece is a component of an ornament specified in paragraph (1), excluding the timepiece itself if the timepiece can be removed from the ornament.

(j) (1) "Surface coating" means a fluid, semifluid, or other material, with or without a suspension of finely divided coloring matter, that changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.

(2) "Surface coating" does not include a printing ink or a material that actually becomes a part of the substrate, including, but not limited to, pigment in a plastic article, or a material that is actually bonded to the substrate, such as by electroplating or ceramic glazing.

(Amended by Stats. 2008, Ch. 575, Sec. 1. Effective January 1, 2009.)

25214.1.5. (a) This article does not do any of the following:

(1) Affect a duty or other requirement otherwise imposed under federal or state law.

(2) Alter or diminish a legal obligation otherwise required in common law, by statute, or by regulation.

(3) Create or enlarge a defense to an action to enforce a legal obligation otherwise required in common law, by statute, or by regulation.

(b) The Legislature finds and declares that the addition of this section during the 2007-08 Regular Session of the Legislature is declaratory of existing law.

(Added by Stats. 2008, Ch. 575, Sec. 1.5. Effective January 1, 2009.)

25214.2. (a) On and after March 1, 2008, a person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes jewelry for retail sale or promotional purposes in the state unless the jewelry is made entirely from a class 1, class 2, or class 3 material, or any combination thereof.

(b) Notwithstanding subdivision (a), on and after September 1, 2007, a person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes children's jewelry for retail sale or promotional purposes in the state unless the children's jewelry is made entirely from one or more of the following materials:

(1) A nonmetallic material that is a class 1 material and that does not otherwise violate the requirements of paragraph (4).

(2) A nonmetallic material that is a class 2 material.

(3) A metallic material that is either a class 1 material or contains less than 0.06 percent (600 parts per million) lead by weight.

(4) Glass or crystal decorative components that weigh in total no more than one gram, excluding any glass or crystal decorative component that contains less than 0.02 percent (200 parts per million) lead by weight and has no intentionally added lead.

(5) Printing ink or ceramic glaze that contains less than 0.06 percent (600 parts per million) lead by weight.

(6) Class 3 material that contains less than 0.02 percent (200 parts per million) lead by weight.

(c) Notwithstanding subdivision (a), on and after March 1, 2008, a person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes body piercing jewelry for retail sale or promotional purposes in the state unless the body piercing jewelry is made of one or more of the following materials:

(1) Surgical implant stainless steel.

(2) Surgical implant grade of titanium.

(3) Niobium (Nb).

(4) Solid 14 karat or higher white or yellow nickel-free gold.

(5) Solid platinum.

(6) A dense low-porosity plastic, including, but not limited to, Tygon or Polytetrafluoroethylene (PTFE), if the plastic contains no intentionally added lead.

(Amended by Stats. 2008, Ch. 575, Sec. 2. Effective January 1, 2009.)

25214.3. (a) Except as provided in Sections 25214.3.3 and 25214.3.4, a person who violates this article shall not be subject to criminal penalties imposed pursuant to this chapter and shall only be subject to the administrative or civil penalty specified in subdivision (b).

(b) (1) A person who violates this article shall be liable for an administrative or a civil penalty not to exceed two thousand five hundred dollars ($2,500) per day for each violation. That administrative or civil penalty may be assessed and recovered in an administrative action filed with the Office of Administrative Hearings or in a civil action brought in any court of competent jurisdiction.

(2) In assessing the amount of an administrative or a civil penalty for a violation of this article, the presiding officer or the court, as

applicable, shall consider all of the following:

(A) The nature and extent of the violation.

(B) The number of, and severity of, the violations.

(C) The economic effect of the penalty on the violator.

(D) Whether the violator took good faith measures to comply with this article and the time these measures were taken.

(E) The willfulness of the violator's misconduct.

(F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.

(G) Any other factor that justice may require.

(c) Administrative and civil penalties collected pursuant to this article shall be deposited in the Hazardous Waste Control Account, for expenditure by the department, upon appropriation by the Legislature, to implement and enforce this article.

(d) (1) Notwithstanding subdivision (b), a party that is a signatory to the amended consent judgment, or a party that is a signatory to a consent judgment entered in the consolidated action entitled People vs. Burlington Coat Factory Warehouse Corporation, et al. (Alameda Superior Court Lead Case No. RG 04-162075) that contains identical or substantially identical terms as provided in Sections 2, 3, and 4 of the amended consent judgment, shall not be subject to enforcement pursuant to this article, and an action brought to enforce this article against the party shall be subject to Section 4 of the amended consent judgment.

(2) The Legislature finds and declares that the amendment of this subdivision by the act amending this section during the 2007-08 Regular Session of the Legislature is declaratory of existing law.

(e) (1) For the purpose of administering and enforcing this article, an authorized representative of the department, upon obtaining consent or after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, may, upon presenting appropriate credentials and at a reasonable time, do any of the following:

(A) Enter a factory, warehouse, or establishment where jewelry is manufactured, packed, held, or sold; enter a vehicle that is being used to transport, hold, or sell jewelry; or enter a place where jewelry is being held or sold.

(B) Inspect a factory, warehouse, establishment, vehicle, or place described in subparagraph (A), and all pertinent equipment, raw material, finished and unfinished materials, containers, and labeling in the factory, warehouse, establishment, vehicle, or place. In the case of a factory, warehouse, or establishment where jewelry is manufactured, packed, held, or sold, this inspection shall include any record, file, paper, process, control, and facility that has a bearing on whether the jewelry is being manufactured, packed, held, transported, sold, or offered for sale or for promotional purposes in violation of this article.

(2) (A) An authorized representative of the department may secure a sample of jewelry when taking an action authorized pursuant to this subdivision. If the representative obtains a sample prior to leaving the premises, he or she shall leave a receipt describing the sample obtained.

(B) The department shall return, upon request, a sample that is not destroyed during testing when the department no longer has any purpose for retaining the sample.

(C) A sample that is secured in compliance with this section and found to be in compliance with this article that is destroyed during testing shall be subject to a claim for reimbursement.

(3) An authorized representative of the department shall have access to all records of a carrier in commerce relating to the movement in commerce of jewelry, or the holding of that jewelry during or after the movement, and the quantity, shipper, and consignee of the jewelry. A carrier shall not be subject to the other provisions of this article by reason of its receipt, carriage, holding, or delivery of jewelry in the usual course of business as a carrier.

(4) An authorized representative of the department shall be deemed to have received implied consent to enter a retail establishment, for purposes of this section, if the authorized representative enters the location of that retail establishment where the public is generally granted access.

(Amended by Stats. 2008, Ch. 575, Sec. 3. Effective January 1, 2009.)

25214.3.1. (a) A manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes shall prepare and, at the request of the department, submit to the department no more than 28 days after the date of the request, technical documentation or other information showing that the jewelry is in compliance with the requirements of this article.

(b) A manufacturer or supplier of jewelry sold or offered for sale in this state shall do either of the following:

(1) Provide a certification to a person who sells or offers for sale that manufacturer's or supplier's jewelry, upon the request of that person.

(2) Display the certification prominently on the shipping container or on the packaging of jewelry.

(c) The certification required by subdivision (b) shall attest that the jewelry does not contain a level of lead that would prohibit the jewelry from being sold or offered for sale pursuant to this article.

(Added by Stats. 2008, Ch. 575, Sec. 4. Effective January 1, 2009.)

25214.3.2. (a) Except as provided in subdivision (b), a person who sells jewelry at retail or offers jewelry for retail sale shall not be subject to an administrative or civil penalty for a violation of this article if the person proves, by a preponderance of evidence, all of the following:

(1) The person received a certificate of compliance for the jewelry from the manufacturer or supplier.

(2) The certificate of compliance received pursuant to paragraph (1) stated that the jewelry is in compliance with the requirements of this article.

(3) The person relied on the certificate of compliance and did not know, and had no reason to know, that the jewelry was in violation of this article.

(4) Upon receiving a notice of violation from the department, the person took corrective action by immediately removing the jewelry from commerce.

(b) The affirmative defense specified in subdivision (a) does not apply to, and may not be raised by, a person who has been found in violation of this article on at least two prior occasions in the preceding three years from the filing date of the current action.

(Added by Stats. 2008, Ch. 575, Sec. 5. Effective January 1, 2009.)

25214.3.3. A manufacturer or supplier of jewelry who knowingly and intentionally manufactures, ships, sells, offers for sale, or offers for promotional purposes jewelry containing lead in violation of this article is guilty of a misdemeanor punishable by a fine of not less than five thousand dollars ($5,000) nor more than one hundred thousand dollars ($100,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(Added by Stats. 2008, Ch. 575, Sec. 6. Effective January 1, 2009.)

25214.3.4. A manufacturer or supplier of jewelry who knowingly and with intent to deceive, falsifies any document or certificate required to be kept or produced pursuant to this article is subject to a fine of not more than fifty thousand dollars ($50,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(Added by Stats. 2008, Ch. 575, Sec. 7. Effective January 1, 2009.)

25214.4. The test methods for determining compliance with this article shall be conducted using the EPA reference methods 3050B, 3051A, and 3052, as specified in EPA Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846 (Third Edition, as currently updated) for the material being tested, except as otherwise provided in Sections 24214.4.1 and 25214.4.2, and in accordance with all of the following procedures:

(a) When preparing a sample, the laboratory shall make every effort to assure that the sample removed from a jewelry piece is representative of the component to be tested, and is free of contamination from extraneous dirt and material not related to the jewelry component to be tested.

(b) All jewelry component samples shall be washed prior to testing using standard laboratory detergent, rinsed with laboratory reagent grade deionized water, and dried in a clean ambient environment.

(c) If a component is required to be cut or scraped to obtain a sample, the metal snips, scissors, or other cutting tools used for the cutting

or scraping shall be made of stainless steel and washed and rinsed before each use and between samples.

(d) A sample shall be digested in a container that is known to be free of lead and with the use of an acid that is not contaminated by lead, including analytical reagent grade digestion acids and reagent grade deionized water.

(e) Method blanks, consisting of all reagents used in sample preparation handled, digested, and made to volume in the same exact manner and in the same container type as samples, shall be tested with each group of 20 or fewer samples tested.

(f) The results for the method blanks shall be reported with each group of sample results, and shall be below the stated reporting limit for sample results to be considered valid.

(g) Test methods selected shall be those that best demonstrate they can achieve total digestion of the sample material being analyzed. Test methods shall not be used if they are inconsistent with the specified application of the test method or do not demonstrate the best performance or proficiency for achieving total digestion of the sample material.

(Amended by Stats. 2008, Ch. 575, Sec. 8. Effective January 1, 2009.)

25214.4.1. In addition to the requirements of Section 25214.4, the following procedures shall be used for testing the following materials:

(a) For testing a metal plated with suitable undercoats and finish coats, the following protocols shall be observed:

(1) Digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be 0.050 gram to one gram.

(3) The digested sample may require dilution prior to analysis.

(4) The digestion and analysis shall achieve a reported detection limit no greater than 0.1 percent for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(b) For testing unplated metal and metal substrates that are not a class 1 material the following protocols shall be observed:

(1) Digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid and hydrogen peroxide.

(2) The sample size shall be 0.050 gram to one gram.

(3) The digested sample may require dilution prior to analysis.

(4) The digestion and analysis shall achieve a reported detection limit no greater than 0.01 percent for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(c) For testing polyvinyl chloride (PVC), the following protocols shall be observed:

(1) The digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid and hydrogen peroxide.

(2) The sample size shall be a minimum of 0.05 gram if using microwave digestion or 0.5 gram if using hotplate digestion, and shall be chopped or comminuted prior to digestion.

(3) Digested samples may require dilution prior to analysis.

(4) Digestion and analysis shall achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(d) For testing plastic or rubber that is not polyvinyl chloride (PVC), including acrylic, polystyrene, plastic beads, or plastic stones, the following protocols shall be observed:

(1) The digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be a minimum of 0.05 gram if using microwave digestion or 0.5 gram if using hotplate digestion, and shall be chopped or comminuted prior to digestion.

(3) Plastic beads or stones shall be crushed prior to digestion.

(4) Digested samples may require dilution prior to analysis.

(5) Digestion and analysis shall achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples.

(6) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(e) For testing coatings on glass and plastic pearls, the following protocols shall be observed:

(1) The coating of glass or plastic beads shall be scraped onto a surface free of dust, including a clean weighing paper or pan, using a clean stainless steel razor blade or other clean sharp instrument that will not contaminate the sample with lead. The substrate pearl material shall not be included in the scrapings.

(2) The razor blade or sharp instrument shall be rinsed with deionized water, wiped to remove particulate matter, rinsed again, and dried between samples.

(3) The scrapings shall be weighed and not less than 50 micrograms of scraped coating shall be used for analysis. If less than 50 micrograms of scraped coating is obtained from an individual pearl, multiple pearls from that sample shall be scraped and composited to obtain a sufficient sample amount.

(4) The number of pearls used to make the composite shall be noted.

(5) The scrapings shall be digested according to EPA reference method 3050B or 3051 or an equivalent procedure for hot acid digestion in preparation for trace lead analysis.

(6) The digestate shall be diluted in the minimum volume practical for analysis.

(7) The digested sample shall be analyzed according to specification of an approved and validated methodology for inductively coupled plasma mass spectrometry.

(8) A reporting limit of 0.001 percent (10 parts per million) in the coating shall be obtained for the analysis.

(9) The sample result shall be reported within the calibrated range of the instrument. If the initial test of the sample is above the highest calibration standard, the sample shall be diluted and reanalyzed within the calibrated range of the instrument.

(f) For testing dyes, paints, coatings, varnish, printing inks, ceramic glazes, glass, or crystal, the following testing protocols shall be observed:

(1) The digestion shall use hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be not less than 0.050 gram, and shall be chopped or comminuted prior to digestion.

(3) The digested sample may require dilution prior to analysis.

(4) The digestion and analysis shall achieve a reported detection limit no greater than 0.001 percent (10 parts per million) for samples.

(5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(g) For testing glass and crystal used in children's jewelry, the following testing protocols for determining weight shall be used:

(1) A component shall be free of any extraneous material, including adhesive, before it is weighed.

(2) The scale used to weigh a component shall be calibrated immediately before the components are weighed using S-class weights of one and two grams, as certified by the National Institute of Standards and Technology (NIST) of the Department of Commerce.

(3) The calibration of the scale shall be accurate to within 0.01 gram.

(Added by Stats. 2006, Ch. 415, Sec. 1. Effective January 1, 2007.)

25214.4.2. The department may adopt regulations to implement this article, including, but not limited to, adopting regulations that modify the testing protocols specified in Sections 25214.4 and 25214.4.1, as it deems necessary to further the purposes of this article.

(Amended by Stats. 2008, Ch. 575, Sec. 9. Effective January 1, 2009.)

Article 10.1.2. Lead Plumbing Monitoring and Compliance Testing

(Article 10.1.2 added by Stats. 2008, Ch. 581, Sec. 2. Effective January 1, 2009.)

25214.4.3. (a) Lead plumbing monitoring and compliance testing shall be undertaken by the department, as a part of the department's ongoing program for reducing toxic substances from the environment.

(b) For purposes of implementing this article, the department

shall, based on its available resources and staffing, annually select not more than 75 drinking water faucets or other drinking water plumbing fittings and fixtures for testing and evaluation, including the locations from which to select the faucets, fittings, and fixtures, to determine compliance with Section 116875.

(c) In implementing this article, the department shall use test methods, protocols, and sample preparation procedures that are adequate to determine total lead concentration in a drinking water plumbing fitting or fixture to determine compliance with the standards for the maximum allowable total lead content set forth in Section 116875.

(d) (1) In selecting drinking water faucets and other drinking water plumbing fittings and fixtures to test and evaluate pursuant to this article, the department shall exercise its judgment regarding the specific drinking water plumbing fittings or fixtures to test.

(2) This article does not require the department's selection to be either random or representative of all available plumbing fittings or fixtures.

(3) The department shall acquire its samples of fittings and fixtures from locations that are readily accessible to the public at either retail or wholesale sources.

(e) The department shall annually post the results of the testing and evaluation conducted pursuant to this article on its Internet Web site and shall transmit these results in an annual report to the State Department of Public Health.

(Added by Stats. 2008, Ch. 581, Sec. 2. Effective January 1, 2009.)

Article 10.2. Motor Vehicle Switches

(Article 10.2 added by Stats. 2001, Ch. 656, Sec. 4. Effective January 1, 2002.)

25214.5. For purposes of this article, "mercury-containing motor vehicle light switch" means any motor vehicle light switch found in the hood or trunk of a motor vehicle that contains mercury.

(Added by Stats. 2001, Ch. 656, Sec. 4. Effective January 1, 2002.)

25214.6. Any mercury-containing motor vehicle light switch removed from a motor vehicle is subject to Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations, and any other applicable regulation adopted by the department pursuant to this chapter, including, but not limited to, standards for the handling of hazardous waste, standards for destination facilities, requirements for the tracking of universal waste shipments, import requirements, and the regulations governing different products.

(Added by Stats. 2001, Ch. 656, Sec. 4. Effective January 1, 2002.)

25214.7. The department shall do all of the following:

(a) Coordinate with local agencies to provide technical assistance to businesses engaged in the dismantling or crushing of motor vehicles concerning the safe removal and proper disposal of mercury-containing light switches from motor vehicles, including information about vehicle makes and models that contain mercury light switches and entities that provide mercury recycling services.

(b) Coordinate and encourage entities, such as associations representing motor vehicle repair shops, to offer to the public the replacement and recycling of mercury-containing motor vehicle light switches.

(c) Make available to the public information concerning services to replace and recycle mercury-containing motor vehicle light switches.

(Added by Stats. 2001, Ch. 656, Sec. 4. Effective January 1, 2002.)

25214.8. On or before January 1, 2004, the department shall report to the appropriate policy and fiscal committees of the Legislature on both of the following:

(a) The success of efforts to remove mercury-containing vehicle light switches from vehicles pursuant to Section 25214.6.

(b) Compliance with the requirement to remove mercury-containing appliance switches pursuant to Section 42175 of the Public Resources Code.

(Added by Stats. 2001, Ch. 656, Sec. 4. Effective January 1, 2002.)

Article 10.2.1. Mercury-Added Thermostats, Relays, Switches, and Measuring Devices

(Heading of Article 10.2.1 amended by Stats. 2005, Ch. 578, Sec. 1. Effective January 1, 2006.)

25214.8.1. (a) The Legislature finds and declares all of the following:

(1) Once mercury is released into the environment it can change to methyl mercury, a highly toxic compound. Methyl mercury is easily taken up in living tissue and bioaccumulates over time, causing serious health effects, including neurological and reproductive disorders in humans and wildlife. Since mercury does not break down in the environment, it has become a significant health threat to humans and wildlife.

(2) Due to the bioaccumulation of mercury and other contaminants in fish, the California Environmental Protection Agency has issued a warning advising that adults and women who are pregnant or who may become pregnant should limit their fish intake from several state waterways.

(3) Increasingly stringent mercury discharge limits for wastewater treatment plants make the identification and elimination of unnecessary sources of mercury a critical task, because the cost of mercury removal at a wastewater treatment plant is far greater than the societal benefits of continuing use of mercury-containing products, as currently formulated.

(4) Thermostats and other switches and relays are among the largest remaining sources of mercury in consumer products that can be legally sold in California.

(5) Most thermostats contain 3,000 milligrams of mercury and have a 35-year lifespan.

(6) Many other mercury-containing switches hold up to 4 grams of mercury, and mercury-containing relays hold as much as 153 grams.

(7) Esophageal dilators contain as much as two pounds of mercury.

(8) Mercury thermostats, switches, relays, measuring devices, esophageal dilators, and gastrointestinal tubes are hazardous waste when discarded, and on and after January 1, 2006, all mercury thermostat, switch, relay, measuring device, esophageal dilator, and gastrointestinal tube wastes will be prohibited from disposal in a solid waste landfill under the regulations adopted pursuant to this chapter.

(9) Economical alternatives to mercury thermostats, relays, switches, measuring devices, esophageal dilators, and gastrointestinal tubes are available for commercial and, when applicable, residential applications.

(b) For purposes of this article the following definitions shall apply:

(1) "Mercury-added product" means any product or device that contains mercury.

(2) "Mercury-added thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. A mercury-added thermostat includes thermostats used to sense and control room temperature in residential, commercial, industrial, and other buildings but does not include a thermostat used to sense and control temperature as part of a manufacturing process.

(3) "Mercury relay" means a mercury-added product or device that opens or closes electrical contacts to effect the operation of other devices in the same or another electrical circuit. "Mercury relay" includes, but is not limited to, mercury displacement relays, mercury wetted reed relays, and mercury contact relays.

(4) "Mercury switch" means a mercury-added product or device that opens or closes an electrical circuit or gas valve.

(A) A mercury switch includes, but is not limited to, mercury float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in pressure, mercury temperature switches actuated by a change in temperature, and mercury flame sensors.

(B) A mercury switch does not include a mercury-added thermostat or a mercury diostat.

(C) "Mercury diostat" means a mercury switch that controls a gas valve in an oven or oven portion of a gas range.

(Amended by Stats. 2005, Ch. 578, Sec. 2. Effective January 1, 2006.)

25214.8.2. On and after January 1, 2006, a person shall not sell,

offer to sell, or distribute for promotional purposes in this state, a mercury-added thermostat, unless the mercury-added thermostat meets either of the following criteria:

(a) The thermostat will be used for manufacturing or industrial purposes.

(b) The thermostat will be used by a blind or visually impaired person.

(Added by Stats. 2004, Ch. 626, Sec. 1. Effective January 1, 2005.)

25214.8.3. (a) Except as provided in subdivision (b), on or after July 1, 2006, a person shall not sell, offer to sell, or distribute for promotional purposes in this state, any of the following new or refurbished mercury-added products:

(1) A barometer.

(2) An esophageal dilator, bougie tube, or gastrointestinal tube.

(3) A flow meter.

(4) A hydrometer.

(5) A hydrometer or psychometer.

(6) A manometer.

(7) A pyrometer.

(8) A sphygmanometer.

(9) A thermometer.

(b) Subdivision (a) does not apply to the sale of a mercury-added product if the use of the product is required under a federal law or federal contract specification or if the only mercury-added component in the product is a button cell battery.

(Added by Stats. 2005, Ch. 578, Sec. 3. Effective January 1, 2006.)

25214.8.4. (a) Except as provided in subdivisions (b) to (e), inclusive, and Section 25214.8.5, on or after July 1, 2006, a person shall not sell, offer to sell, or distribute for promotional purposes in this state, a new or refurbished mercury switch or mercury relay individually or as a product component.

(b) Subdivision (a) does not apply if the switch or relay is used to replace a switch or relay that is a component in a larger product in use prior to July 1, 2006, and one of the following applies:

(1) The larger product is used in manufacturing.

(2) The switch or relay is integrated in and not physically separate from other components of the larger product.

(c) Subdivision (a) does not apply to the sale of a mercury switch or mercury relay if use of the switch or relay is required under federal law or federal contract specification.

(d) Subdivision (a) does not apply to a mercury switch or a mercury relay that contains less than 1 milligram of mercury, if the manufacturer of the mercury switch or relay has notified the department of its plans to operate under an exemption pursuant to this subdivision. The notification shall be resubmitted to the department every three years. The initial and subsequent notifications shall be signed and dated, and shall include all of the following:

(1) The name of the manufacturer and the name, position, and contact information for the person who is the manufacturer's contact person on all matters concerning the exemption.

(2) An identification and description of the mercury switch or mercury relay to which the exemption applies.

(3) A statement that the manufacturer certifies all of the following:

(A) The mercury switch or relay is hermetically sealed by the manufacturer.

(B) The mercury switch or relay is intended for industrial use in test and measurement instruments or in systems for monitoring and control applications.

(C) There is no substantially equivalent nonmercury alternative technology for the intended use of the switch or relay, considering all aspects of electrical performance, size, power consumption, product life, and cost.

(D) (1) The manufacturer, individually, or in conjunction with an industry or trade group, has developed and implemented an ongoing program for the proper end-of-life collection, transportation, and management of exempted mercury switches or relays sold in this state, including the removal of the mercury switch or mercury relay from the product in which it is contained.

(2) The program includes a consumer information component to ensure that users of the mercury switch or relay, and the products that contain the mercury switches or relays, are aware of available collection opportunities and legal requirements for management of the mercury switch or relay, once the switch or relay or the product becomes a waste.

(E) The manufacturer recognizes that the exemption provided by this subdivision becomes null and void if and when either of the following occurs:

(i) The manufacturer fails to submit a new exemption notification, meeting the requirements of this subdivision, within three years following submission of the prior exemption notification.

(ii) Any of the conditions set forth in subparagraphs (A) to (D), inclusive, are no longer satisfied.

(e) Subdivision (a) does not apply to the resale of a refurbished imaging and therapy system utilized for medical diagnostic purposes that includes a mercury switch or relay if the manufacturer of the imaging and therapy system has notified the department of its plans to operate under an exemption pursuant to this subdivision. The notification shall be signed and dated, and shall include all of the following:

(1) The name of the manufacturer and the name, position, and contact information for the person who is the manufacturer's contact person on all matters concerning the exemption.

(2) An identification and description of the imaging and therapy system to which the exemption applies.

(3) A statement that the manufacturer certifies all of the following:

(A) The mercury switch or relay is integrated in, and not physically separate from, other components of the larger product.

(B) The larger product was initially manufactured prior to July 1, 2006.

(C) (1) The manufacturer, individually, or in conjunction with an industry or trade group, has developed and implemented an ongoing program for the proper end-of-life collection, transportation, and management of mercury switches or relays contained in exempted imaging and therapy systems sold in this state, including the removal of the mercury switch or mercury relay from the product in which it is contained.

(2) The program includes a consumer information component to ensure that users of the products that contain the mercury switches or relays are aware of available collection opportunities and legal requirements for management of the mercury switch or relay, and the products that contain the mercury switches or relays, once the switch or relay or the product becomes a waste.

(D) The manufacturer recognizes that the exemption provided by this subdivision becomes null and void if and when any of the conditions set forth in subparagraphs (A) and (B) are no longer satisfied.

(Added by Stats. 2005, Ch. 578, Sec. 4. Effective January 1, 2006.)

25214.8.5. (a) A product containing a mercury switch or a mercury relay is exempt from subdivision (a) of Section 25214.8.4, if the manufacturer of the product, or a trade group representing the manufacture, has obtained an exemption, pursuant to the process described in subdivision (b), for the product. An exemption granted under subdivision (b) may apply to all or only to limited uses of the product. An exemption granted under subdivision (b) also applies to the sale to the product manufacturer of the mercury switch or relay to be contained in the product covered by the exemption.

(b) The department shall grant, or renew, an exemption from subdivision (a) of Section 25214.8.4 for a period of three years only if all of the following conditions are met:

(1) The manufacturer of the product, or a trade group representing the manufacturer, submits a request for an initial or renewed exemption to the department that specifies the use or uses of the product for which an exemption is requested along with supporting information that complies with the requirements set forth in subdivision (c). A manufacturer or trade group may submit a request only for a product and use for which there is no technical feasible alternative, available at a reasonable cost, to the use of the mercury switch or mercury relay in the product for purposes of that use.

(2) The supporting information submitted by the manufacturer or trade group demonstrates that the product is eligible for the exemption.

(3) The manufacturer or trade group requesting the exemption enters into a cost reimbursement agreement with the department, pursuant to subdivision (d), and complies with the terms of that agreement.

(c) The supporting information that a manufacturer or trade group

submits to the department, before the department may grant an exemption pursuant to subdivision (b), shall include all of the following:

(1) The name of the manufacturer, or the trade group and the manufacturers represented by the trade group, requesting the exemption and the name, position, and contact information for the person who is the manufacturer's or trade group's contact person on all matters concerning the exemption.

(2) An identification and description of the product, and the use or uses of the product, for which the exemption is requested.

(3) An identification and description of the mercury switch or mercury relay, including identification of the manufacturer of the switch or relay, and an explanation of the need for, and functioning of, the mercury switch or mercury relay in the product.

(4) For each use for which an exemption is requested, information that fully and clearly demonstrates that there is no technically feasible alternative, available at a reasonable cost, to the use of the mercury switch or mercury relay in the product for purposes of that use. This shall include, but is not limited to, a description of past, current, and planned future efforts to seek or develop those alternatives, and a description of all alternatives that have been considered and an explanation of the technical or economic reasons as to why each alternative is not satisfactory.

(5) Information that fully and clearly demonstrates that the switch or relay or the product is constructed so as to prevent the release of mercury to the environment.

(6) A feasible, effective, detailed and complete plan for the proper collection, transportation, and management of the product at the end of its useful life, including removal and proper management of the mercury switch or mercury relay contained in the product, and information fully and clearly demonstrating that the manufacturer, individually, or in conjunction with an industry or trade group, is committed to and capable of implementing the plan. The plan shall include an education and outreach component to ensure that users of the product are aware of available collection opportunities and legal requirements for management of the product once it becomes a waste. An exemption granted pursuant to subdivision (b) shall become null and void if the manufacturer, individually, or in conjunction with an industry or trade group, has not implemented the plan submitted in support of the exemption request within six months of the effective date of the exemption.

(7) A copy of all similar exemption requests, including supporting documentation, submitted by the applicant to another state, and a copy of that state's response to the exemption request.

(d) A manufacturer or trade group that requests an exemption, or an exemption renewal, pursuant to subdivision (b) shall enter into a written agreement with the department pursuant to the procedures set fourth in Article 9.2 (commencing with Section 25206.1), for reimbursement of all costs incurred by the department in processing and responding to the request.

(e) Trade secrets, as defined in Section 25173, that are identified at the time of submission by a manufacturer or trade group, shall be treated as confidential as required by department procedures established pursuant to Section 25173. Any information that is not a trade secret, as defined in Section 25173, or that has not been identified by the manufacturer as a trade secret, shall be made available to the public upon request pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(f) (1) The department shall grant or deny an exemption requested pursuant to subdivision (b) no later than 180 calendar days after receiving the exemption request and all information determined by the department to be necessary to determine if all of the conditions specified in subdivision (b) are met.

(2) An exemption shall not be deemed to be granted if the department fails to grant or deny the exemption request within the time limit specified in paragraph (1)

(3) Nothing in this subdivision shall preclude the applicant and the department from mutually agreeing to an extension of the time limit specified in paragraph (1).

(Added by Stats. 2005, Ch. 578, Sec. 5. Effective January 1, 2006.)

25214.8.6. On or after January 1, 2008, a person shall not sell, offer to sell, or distribute for promotional purposes in this state, a mercury diostat or a new or refurbished oven or gas range containing a mercury diostat.

(Added by Stats. 2005, Ch. 578, Sec. 6. Effective January 1, 2006.)

Article 10.2.2. Mercury Thermostat Collection Act of 2008

(Article 10.2.2 added by Stats. 2008, Ch. 572, Sec. 2. Effective January 1, 2009.)

25214.8.10. This article shall be known, and may be cited, as the Mercury Thermostat Collection Act of 2008.

(Added by Stats. 2008, Ch. 572, Sec. 2. Effective January 1, 2009.)

25214.8.11. For purposes of this article, the following definitions shall apply:

(a) "Manufacturer" means a business concern that owns or owned a name brand of mercury-added thermostats sold in this state before January 1, 2006.

(b) "Mercury-added thermostat" has the same meaning as defined in paragraph (2) of subdivision (b) of Section 25214.8.1.

(c) "Out-of-service mercury-added thermostat" means a mercury-added thermostat that is removed from a building or facility in this state and is intended to be discarded.

(d) "Program" means a system for the collection, transportation, recycling, and disposal of out-of-service mercury-added thermostats that is financed, as well as managed or provided, by a manufacturer or collectively with other manufacturers.

(e) "Retailer" means a person who sells thermostats of any kind directly to a consumer through a selling or distribution mechanism, including, but not limited to, a sale using catalogs or the Internet. A retailer may be a wholesaler if the person meets the definition of a wholesaler set forth in subdivision (g).

(f) "Thermostat" means a product or device that uses a switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. "Thermostat" includes a thermostat used to sense and control room temperature in residential, commercial, industrial, and other buildings, but does not include a thermostat used to sense and control temperature as part of a manufacturing process.

(g) "Wholesaler" means a person engaged in the distribution and wholesale selling of heating, ventilation, and air-conditioning components to contractors who install heating, ventilation, and air-conditioning components, and whose total wholesale sales account for 80 percent or more of total sales. A manufacturer, as defined by this section, is not a wholesaler.

(Added by Stats. 2008, Ch. 572, Sec. 2. Effective January 1, 2009.)

25214.8.12. (a) (1) A manufacturer shall establish and maintain a program for out-of-service mercury-added thermostats in compliance with this article.

(2) A manufacturer may establish a collection and recycling program for out-of-service mercury-added thermostats individually or collectively with other manufacturers.

(3) A manufacturer, or a group of manufacturers operating a program collectively, may contract with a retailer for in-store or out-of-store collection of out-of-service mercury-added thermostats.

(b) (1) A person shall not sell or offer for sale in this state a thermostat that is produced by a manufacturer that is not in compliance with this article.

(2) The sales prohibition in paragraph (1) shall be effective on the 120th day after the notice described in subdivision (c) listing a manufacturer is posted on the department's Internet Web site and shall remain in effect until the manufacturer is no longer listed on the department's Internet Web site.

(c) On July 1, 2009, and on January 1 and July 1 annually thereafter, the department shall post a notice on its Internet Web site listing manufacturers that are not in compliance with this article.

(d) A wholesaler or a retailer that distributes or sells mercury-added thermostats shall monitor the department's Internet Web site to determine if the sale of a manufacturer's thermostats is in compliance with this section.

(Added by Stats. 2008, Ch. 572, Sec. 2. Effective January 1, 2009.)

25214.8.13. Each manufacturer shall individually, or collectively

with other manufacturers, do all of the following:

(a) Collect, handle, and arrange for the appropriate management of out-of-service mercury-added thermostats in compliance with this chapter and the regulations adopted pursuant to this chapter.

(b) On and after July 1, 2009, provide collection bins for out-of-service mercury-added thermostat collection to wholesalers at a cost not to exceed twenty-five dollars ($25).

(c) On and after July 1, 2009, make collection bins available at no cost for out-of-service mercury-added thermostats to any local governmental agency that requests a collection bin for use at household hazardous waste collection facilities or household hazardous waste events.

(d) Either arrange for pick up of the collection bins, or pay for the costs of shipping the collection bins provided pursuant to subdivisions (b) and (c) for proper handling and recycling.

(e) From July 1, 2009, to December 31, 2011, inclusive, undertake education and outreach efforts, including, but not limited to, all of the following:

(1) A public service announcement promoting the proper management of out-of-service mercury-added thermostats. Copies of the public service announcement shall be provided to the department and the California Integrated Waste Management Board for their use and promotion.

(2) The establishment of a public Internet Web site. Templates of educational materials shall be posted on the Internet Web site that are in a form and format that can be easily downloaded. A link to the Internet Web site shall be provided to the department and the California Integrated Waste Management Board.

(3) Methods used to engage other stakeholders such as waste, demolition, heating, ventilation, and air-conditioning organizations, as well as appropriate state agencies and local governments to secure support and participation to encourage the proper management of out-of-service mercury-added thermostats throughout California.

(4) Strategies to work with California utilities participating in demand response programs involving the replacement of thermostats to encourage
their participation in the collection and proper management of out-of-service mercury-added thermostats. These strategies may include the inclusion of an educational insert in their customers' utility bills.

(5) Contacting wholesalers in California and encouraging their support and participation in educating their customers on the proper management of out-of-service mercury-added thermostats.

(6) Strategies used to encourage support and participation by retailers and other outlets to educate consumers on the proper management of out-of-service mercury-added thermostats.

(f) On or before July 1, 2009, develop, and update as necessary, educational and other outreach materials aimed at heating, ventilation, and air-conditioning contractors, demolition contractors, and their associations, municipal utility districts, and homeowners. Those materials shall be made available to participating retailers, all wholesalers, and household hazardous waste programs. These materials shall include, but are not limited to, one or more of the following:

(1) Signage that is prominently displayed and easily visible to the consumer and contractors.

(2) Written materials and templates of materials for reproduction by retailers and wholesalers to be provided to the consumer at the time of purchase, delivery, or both purchase and delivery of a thermostat. The materials shall include information on the prohibition of improper disposal of mercury-added thermostats, the proper management of out-of-service mercury-added thermostats, and the locations of collection opportunities.

(3) Advertising or other promotional materials, or both, that include references to the collection opportunities.

(4) Materials to be used in direct communications with the consumer and contractor at the time of purchase.

(g) Provide incentives and education to contractors, service technicians, and homeowners to encourage the return of out-of-service mercury-added thermostats to established collection locations.

(h) Encourage the purchase of programmable thermostats that comply with Part 6 (commencing with Section 100) of Title 24 of the California Building Standards Code and that qualify for the Energy Star program of the federal Environmental Protection Agency, as replacements for mercury-added thermostats.

(i) On or before April 1, 2010, and on or before April 1 annually thereafter, submit an annual report to the department covering the one-year period ending December 31st of the previous calendar year. Each report shall be posted on the manufacturer's or program's Internet Web site. The annual report shall include all of the following:

(1) The number of out-of-service mercury-added thermostats collected in California during the previous calendar year.

(2) The estimated total amount of mercury contained in the collected out-of-service mercury-added thermostats.

(3) An evaluation of the effectiveness of the program.

(4) Commencing with the report due April 1, 2013, a comparison to the performance requirements for collection established pursuant to subdivision (b) of Section 25214.8.17.

(5) An accounting of the program administrative costs, including a copy of Internal Revenue Service Form 990 for a nonprofit organization's program. For a for-profit organization's program, the manufacturer, or group of manufacturers operating a program, shall submit independently audited financial statements detailing revenues and a full accounting of administrative costs incurred.

(6) A description of the outreach strategies employed to increase participation and collection rates.

(7) Examples of outreach and educational materials used.

(8) Names and locations of all participating collection locations.

(9) The number of out-of-service mercury-added thermostats collected at each collection location.

(10) The Internet Web site address where the annual report may be viewed online.

(11) A description of how the collected out-of-service mercury-added thermostats were managed.

(12) Modifications that the manufacturer is proposing to make in its collection and recycling program.

(Added by Stats. 2008, Ch. 572, Sec. 2. Effective January 1, 2009.)

25214.8.14. (a) A wholesaler that has a physical location in the state shall act as a collection location for out-of-service mercury-added thermostats.

(b) A retailer or wholesaler that distributes new thermostats by mail to buyers in the state shall include with the sale of the new thermostat, an Internet Web site address and toll-free telephone number with instructions on obtaining a prepaid mail-in label that a consumer may use to send an out-of-service mercury-added thermostat to a collection location.

(c) A wholesaler shall distribute the educational and outreach materials developed pursuant to Section 25214.8.13 to its customers.

(Added by Stats. 2008, Ch. 572, Sec. 2. Effective January 1, 2009.)

25214.8.15. A contractor who installs heating, ventilation, and air-conditioning components and who removes a mercury-added thermostat shall handle the thermostat in accordance with the regulations adopted pursuant to this chapter, and take the out-of-service mercury-added thermostat to a location with a collection bin operating in accordance with those regulations.

(Added by Stats. 2008, Ch. 572, Sec. 2. Effective January 1, 2009.)

25214.8.16. A person who demolishes a building shall remove any mercury-added thermostats from the building prior to demolition in accordance with all applicable regulations adopted pursuant to this chapter, and take the out-of-service mercury-added thermostat to a location that is authorized to collect out-of-service mercury-added thermostats.

(Added by Stats. 2008, Ch. 572, Sec. 2. Effective January 1, 2009.)

25214.8.17. (a) The department may order a manufacturer, or a group of manufacturers operating a program, to revise its program and to undertake actions to comply with this article.

(b) On or before January 1, 2012, the department shall adopt regulations for all of the following:

(1) To develop performance requirements that specify collection rates expressed as a percentage of out-of-service mercury-added thermostats becoming waste annually.

(2) To establish a methodology for the calculation of the number of out-of-service mercury-added thermostats becoming waste annually.

(Added by Stats. 2008, Ch. 572, Sec. 2. Effective January 1,

2009.)

25214.8.18. On or before March 1, 2009, a manufacturer, or a group of manufacturers operating a program, shall present to the department a survey plan and methodology for a survey to provide statistically valid data on the number of mercury-added thermostats that become waste annually in California. The manufacturer or group of manufacturers shall complete the survey by December 1, 2009, and shall present all survey data to the department by December 31, 2009.

(Added by Stats. 2008, Ch. 572, Sec. 2. Effective January 1, 2009.)

25214.8.20. It is the intent of this article to provide for the collection and recycling of the maximum feasible number of out-of-service mercury-added thermostats.

(Added by Stats. 2008, Ch. 572, Sec. 2. Effective January 1, 2009.)

Article 10.3. Electronic Waste

(Article 10.3 added by Stats. 2003, Ch. 526, Sec. 2. Effective January 1, 2004.)

25214.9. (a) The requirements and other provisions of Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code are incorporated by reference as requirements and provisions of this chapter.

(b) To the extent consistent with the federal act, the department may, by regulation, establish management standards as an alternative to one or more of the standards in this chapter, for any specified activity that involves the management of an electronic waste.

(Added by Stats. 2003, Ch. 526, Sec. 2. Effective January 1, 2004.)

25214.10. (a) For purposes of this section, "electronic device" has the same meaning as a "covered electronic device," as defined in Section 42463 of the Public Resources Code.

(b) The department shall adopt regulations, in accordance with this section, that prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, to the extent that Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, and as amended thereafter by the Commission of European Communities, prohibits that sale due to the presence of certain heavy metals.

(c) The regulations adopted pursuant to subdivision (b) shall take effect January 1, 2007, or on or after the date Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, takes effect, whichever date is later.

(d) The department shall exclude, from the regulations adopted pursuant to this section, the sale of an electronic device that contains a substance that is used to comply with the consumer, health, or safety requirements that are required by the Underwriters Laboratories, the federal government, or the state.

(e) In adopting regulations pursuant to this section, the department may not require the manufacture or sale of an electronic device that is different than, or otherwise not prohibited by, the European Union under Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003.

(f) (1) The department may not adopt any regulations pursuant to this section that impose any requirements or conditions that are in addition to, or more stringent than, the requirements and conditions expressly authorized by this section.

(2) In complying with this subdivision, the department shall use, in addition to any other information deemed relevant by the department, the published decisions of the Technical Adaptation Committee and European Union member states that interpret the requirements of Directive 2002/95/EC.

(Amended by Stats. 2004, Ch. 863, Sec. 1. Effective September 29, 2004.)

25214.10.1. (a) For purposes of this section, the following definitions shall apply:

(1) "Electronic device" means a video display device, as defined in subdivision (t) of Section 42463 of the Public Resources Code, with a screen size of greater than four inches.

(2) "Covered electronic device," "manufacturer," and "retailer" have the same meaning as those terms are defined in Section 42463 of the Public Resources Code.

(b) The department shall adopt regulations that identify electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter.

(c) (1) Except as provided in subdivision (e), a manufacturer of an electronic device that is identified in the regulations adopted by the department shall send a notice in accordance with the schedule specified in subparagraph (A) or (B), as applicable, of paragraph (3), to any retailer that sells that electronic device manufactured by the manufacturer. The notice shall identify the electronic device, and shall inform the retailer that the electronic device is a covered electronic device and is subject to a fee in accordance with subdivision (d).

(2) A manufacturer subject to this subdivision shall also send a copy of the notice to the State Board of Equalization.

(3) The notice required by this subdivision shall be sent in accordance with the following schedule:

(A) On or before October 1, 2004, the manufacturer shall send a notice covering any electronic device manufactured by that manufacturer that is identified in the regulations adopted by the department on or before July 1, 2004, that identify the electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter.

(B) On or before April 1, 2005, and on or before every April 1 of each year thereafter, the manufacturer shall send a notice covering any electronic device manufactured by that manufacturer identified in the regulations adopted by the department pursuant to subdivision (b) on or before December 31 of the prior year.

(4) If a retailer sells a refurbished covered electronic device, the manufacturer is required to comply with the notice requirement of this subdivision only if the manufacturer directly supplies the refurbished covered electronic device to the retailer.

(d) (1) Except as provided in subdivision (e), a covered electronic device that is identified in the regulations adopted, on or before July 1, 2004, by the department, that identify electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter shall, on and after January 1, 2005, be subject to Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the fee imposed pursuant to Section 42464 of the Public Resources Code.

(2) Except as provided in subdivision (e), a covered electronic device identified in the regulations adopted by the department, pursuant to subdivision (b), shall, on and after July 1 of the year subsequent to the year in which the covered electronic device is first identified in the regulations, be subject to Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the fee imposed pursuant to Section 42464 of the Public Resources Code.

(e) (1) If the manufacturer of an electronic device that is identified in the regulations adopted by the department pursuant to subdivision (b) obtains the concurrence of the department that an electronic device, when discarded, would not be a hazardous waste, in accordance with procedures set forth in Section 66260.200 of Title 22 of the California Code of Regulations, the electronic device shall cease to be a covered electronic device and shall cease to be subject to subdivisions (c) and (d) on the first day of the quarter that begins not less than 30 days after the date that the department provides the manufacturer with a written nonhazardous concurrence for the electronic device pursuant to this subdivision. A manufacturer shall notify each retailer, to which that manufacturer has sold a covered electronic device, that the device has been determined pursuant to this subdivision to be nonhazardous and is no longer subject to a covered electronic recycling fee.

(2) No later than 10 days after the date that the department issues a written nonhazardous concurrence to the manufacturer, the department shall do both of the following:

(A) Post on the department's Web site a copy of the nonhazardous concurrence, including, but not limited to, an identification and description of the electronic device to which the concurrence applies.

(B) Send a copy of the nonhazardous concurrence, including, but not limited to, an identification and description of the electronic device to

which the concurrence applies, to the California Integrated Waste Management Board and the State Board of Equalization.

(f) Notwithstanding Section 42474 of the Public Resources Code, a fine or penalty shall not be assessed on a retailer who unknowingly sells, or offers for sale, in this state a covered electronic device for which the covered electronic waste recycling fee has not been collected or paid, if the failure to collect the fee was due to the failure of the State Board of Equalization to inform the retailer that the electronic device was subject to the fee.

(Added by Stats. 2004, Ch. 863, Sec. 2. Effective September 29, 2004.)

25214.10.2. A regulation adopted pursuant to this article may be adopted as an emergency regulation 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, an emergency regulation adopted by the department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

(Added by Stats. 2004, Ch. 863, Sec. 3. Effective September 29, 2004.)

Article 10.4. Toxics in Packaging Prevention Act

(Heading of Article 10.4 renumbered from Article 10.3 (as added by Stats. 2003, Ch. 679) by Stats. 2004, Ch. 445, Sec. 1. Effective January 1, 2005.)

25214.11. (a) The Legislature finds and declares all of the following:

(1) The management of solid waste can pose a wide range of hazards to public health and safety and to the environment.

(2) Packaging comprises a significant percentage of the overall solid waste stream.

(3) The presence of heavy metals in packaging is a part of the total concern regarding the disposal of hazardous constituents in the solid waste stream, in light of the presence of heavy metals in emissions or ash when packaging is incinerated, or in leachate when packaging is disposed of in a solid waste landfill.

(4) Lead, mercury, cadmium, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern.

(5) It is desirable, as a first step in reducing the toxicity of packaging waste, and reducing the hazardous materials that may be disposed of in solid waste landfills, to eliminate the addition of these heavy metals to packaging.

(6) The intent of this article is to achieve this reduction in toxicity without impeding or discouraging the expanded use of recycled materials in the production of packaging and its components.

(b) This article shall be known, and may be cited, as the "Toxics in Packaging Prevention Act."

(Added by Stats. 2003, Ch. 679, Sec. 1. Effective January 1, 2004.)

25214.12. For purposes of this article, the following terms have the following meanings:

(a) "Authorized official" means a representative of a manufacturer or supplier who is authorized pursuant to the laws of this state to bind the manufacturer or supplier regarding the accuracy of the content of a certificate of compliance.

(b) "ASTM" means the American Society for Testing and Materials.

(c) "Distribution" means the practice of taking title to a package or a packaging component for promotional purposes or resale. A person involved solely in delivering a package or a packaging component on behalf of a third party is not engaging in distribution.

(d) (1) "Intentional introduction" means the act of deliberately utilizing a regulated metal in the formation of a package or packaging component where its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality.

(2) "Intentional introduction" does not include either of the following:

(A) The use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, where the incidental retention of a residue of that metal in the final package or packaging component is not desired or deliberate, if the final package or packaging component is in compliance with subdivision (c) of Section 25214.13.

(B) The use of recycled materials as feedstock for the manufacture of new packaging materials, where some portion of the recycled materials may contain amounts of a regulated metal, if the new package or packaging component is in compliance with subdivision (c) of Section 25214.13.

(e) "Incidental presence" means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

(f) "Manufacturer" means any person, firm, association, partnership, or corporation producing a package or packaging component.

(g) "Manufacturing" means the physical or chemical modification of a material to produce packaging or a packaging component.

(h) (1) Except as provided in paragraph (2) "package" means any container, produced either domestically or in a foreign country, providing a means of marketing, protecting, or handling a product from its point of manufacture to its sale or transfer to a consumer, including a unity package, an intermediate package or a shipping container, as defined in the ASTM specification D 996. "Package" also includes, but is not limited to, unsealed receptacles, including carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

(2) "Package" does not include a reusable bag, as defined in subdivision (d) of Section 42250 of the Public Resources Code.

(i) "Packaging component" means any individual assembled part of a package that is produced either domestically or in a foreign country, including, but not necessarily limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, labels, dyes, pigments, adhesives, stabilizers, or any other additives. Tin-plated steel that meets the ASTM specification A 623 shall be considered as a single package component. Electrogalvanized coated steel and hot dipped coated galvanized steel that meet the ASTM qualifications A 591, A 653, A 879, and A 924 shall be treated in the same manner as tin-plated steel.

(j) "Purchaser" means a person who purchases and takes title to a package or a packaging component, from a manufacturer or supplier, for the purpose of packaging a product manufactured, distributed, or sold by the purchaser.

(k) "Recycled material" means a material that has been separated from solid waste for the purpose of recycling the material as a secondary material feedstock. Recycled materials include paper, plastic, wood, glass, ceramics, metals, and other materials, except that recycled material does not include a regulated metal that has been separated from other materials into its elemental or other chemical state for recycling as a secondary material feedstock.

(l) "Regulated metal" means lead, mercury, cadmium, or hexavalent chromium.

(m) (1) "Supplier" means a person who does or is one or more of the following:

(A) Sells, offers for sale, or offers for promotional purposes, a package or packaging component that is used by any other person to package a product.

(B) Takes title to a package or packaging component, produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

(C) Acts as an intermediary for the purchase of a package or packaging component for resale from a manufacturer located in another country to a purchaser located in this state, and who may receive a commission or a fee on that sale.

(D) Listed as the importer of record on a United States Customs Service form for an imported package or packaging component.

(2) "Supplier" does not include a person involved solely in delivering a package or packaging component on behalf of a third party.

(n) "Toxics in Packaging Clearinghouse" means the Toxics in Packaging Clearinghouse (TPCH) of the Council of State Governments.

(Amended by Stats. 2008, Ch. 575, Sec. 10. Effective January 1,

2009.)

25214.13. (a) Except as provided in Section 25214.14, on and after January 1, 2006, a manufacturer or supplier may not offer for sale or for promotional purposes in this state a package or packaging component that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

(b) Except as provided in Section 25214.14, on and after January 1, 2006, a person may not offer for sale or for promotional purposes in this state a product in a package that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

(c) Except as provided in Section 25214.14, on and after January 1, 2006, a person may not offer for sale or for promotional purposes in this state a package, packaging component, or product in a package if the sum of the incidental total concentration levels of all regulated metals present in a single-component package or in an individual packaging component exceeds 100 parts per million by weight.

(Amended by Stats. 2008, Ch. 575, Sec. 11. Effective January 1, 2009.)

25214.14. A package or a packaging component is exempt from the requirements of Section 25214.13, and shall be deemed in compliance with this article, if the manufacturer or supplier complies with the applicable documentation requirements specified in Section 25214.15 and the package or packaging component meets any of the following conditions:

(a) The package or packaging component is marked with a code indicating a date of manufacture prior to January 1, 2006.

(b) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process, to comply with the health or safety requirements of a federal or state law.

(c) (1) The package or packaging component contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13 only because of the addition of a recycled material.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(d) (1) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process for a use for which there is no feasible alternative.

(2) For purposes of this subdivision, "a use for which there is no feasible alternative" means a use, other than for purposes of marketing, for which a regulated metal is essential to the protection, safe handling, or function, of the package's contents, and technical constraints preclude the substitution of other materials.

(e) (1) The package or packaging component is reused and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13, and all of the following apply:

(A) The product being conveyed by the package, the package, or packaging component is otherwise regulated under a federal or state health or safety requirement.

(B) The transportation of the packaged product is regulated under federal or state transportation requirements.

(C) The disposal of the package is otherwise performed according to the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(f) (1) The package or packaging component has a controlled distribution and reuse and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(g) (1) The packaging or packaging component is a glass or ceramic package or packaging component that has a vitrified label, and that, when tested in accordance with the Waste Extraction Test, described in Appendix II of Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations does not exceed 1.0 ppm for cadmium, 5.0 ppm for hexavalent chromium, or 5.0 ppm for lead. A glass or ceramic package or packaging component containing mercury is not exempted pursuant to this subdivision.

(2) A glass bottle package with paint or applied ceramic decoration on the bottle does not qualify for an exemption pursuant to this section, if the paint or applied ceramic decoration contains lead or lead compounds in excess of 0.06 percent by weight.

(3) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(Amended by Stats. 2008, Ch. 575, Sec. 12. Effective January 1, 2009.)

25214.15. (a) A package or packaging component qualifies for an exemption pursuant to Section 25214.14 only if the manufacturer or supplier prepares, retains, and biennially updates documentation containing all of the following information for that package or packaging component:

(1) A statement that the documentation applies to an exemption from the requirements of Section 25214.13.

(2) The name, position, and contact information for the person who is the manufacturer's or supplier's contact person on all matters concerning the exemption.

(3) An identification of the exemption and a reference to the applicable subdivision in Section 25214.14 setting forth the conditions for the exemption.

(4) A description of the type of package or packaging component to which the exemption applies.

(5) Identification of the type and concentration of the regulated metal or metals present in the package or packaging component, and a description of the testing methods used to determine the concentration.

(6) An explanation of the reason for the exemption.

(7) Supporting documentation that fully and clearly demonstrates that the package or packaging component is eligible for the exemption.

(8) The documentation listed in subdivisions (b), (c), (d), (e), (f), (g), or (h), whichever is applicable for the exemption.

(b) In addition to the requirements specified in subdivision (a), if an exemption is being claimed under subdivision (a) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) Date of manufacture.

(2) Estimated time needed to exhaust current inventory.

(3) Alternative package or packaging component that meets the requirements of Section 25214.13.

(c) In addition to the requirements specified in subdivision (a), if an exemption is being claimed under subdivision (b) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation that contains all of the following information for each regulated metal intentionally introduced in the package or packaging component to which the exemption applies:

(1) Identification of the specific federal or state law requiring the addition of the regulated metal to the package or packaging component.

(2) Detailed information that fully and clearly demonstrates that the addition of the regulated metal to the package or packaging component is necessary to comply with the law identified pursuant to paragraph (1).

(3) A description of past, current, and planned future efforts to seek or develop alternatives to eliminate the use of the regulated metal in the package or packaging component.

(4) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to why the alternative is not satisfactory for purposes of achieving compliance with the law identified pursuant to paragraph (1).

(d) In addition to the requirements specified in subdivision (a), if an exemption is being claimed under subdivision (c) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The type and percentage of recycled material or materials added to the package or packaging component.

(2) The type and concentration of each regulated metal contained in each recycled material added to the package or packaging component.

(3) Efforts to minimize or eliminate the regulated metals in the package or packaging component.

(4) A description of past, current, and planned future efforts to

seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(e) In addition to the requirements specified in subdivision (a), if an exemption is being claimed under subdivision (d) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for each regulated metal intentionally introduced into the package or packaging component to which the exemption applies:

(1) Detailed information and evidence that fully and clearly demonstrates how the regulated metal contributes to, and is essential to, the protection, safe handling, or functioning of the package's contents.

(2) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(3) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to the technical constraints that preclude substitution of the alternative for the use of the regulated metal.

(4) Documentation that the regulated metal is not being used for the purposes of marketing.

(f) In addition to the requirements specified in subdivision (a), if an exemption is being claimed under subdivision (e) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The percentage of reused materials.

(2) Identification of the federal or state health or safety law regulating the product being conveyed by the package, the package, or the packaging component.

(3) Identification of the federal or state transportation law regulating the transportation of the packaged product.

(4) Information demonstrating that the package is disposed of in accordance with the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104.

(5) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(g) In addition to the requirements specified in subdivision (a), if an exemption is being claimed under subdivision (f) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The percentage of reused materials.

(2) Information and evidence that demonstrates that the environmental benefit of the controlled distribution and reuse of the package or packaging component is significantly greater, as compared to the same package or packaging component manufactured in compliance with the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13.

(3) A means of identifying, in a permanent and visible manner, any reusable package or packaging component containing a regulated metal for which the exemption is sought.

(4) A method of regulatory and financial accountability, so that a specified percentage of the reusable packages or packaging components that are manufactured and distributed to other persons are not discarded by those persons after use, but are returned to the manufacturer or identified designees.

(5) A system of inventory and record maintenance to account for reusable packages or packaging components placed in, and removed from, service.

(6) A means of transforming returned packages or packaging components that are no longer reusable into recycled materials for manufacturing, or a means of collecting and managing returned packages or packaging components as waste in accordance with applicable federal and state law.

(7) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(h) In addition to the requirements specified in subdivision (a), if an exemption is being claimed under subdivision (g) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update the following documentation for the package or packaging component to which the exemption applies:

(1) Applicable test data.

(2) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(i) A manufacturer or supplier shall submit the documentation required pursuant to subdivisions (a) to (h), inclusive, to the department, as follows:

(1) Upon receipt of a written request from the department, the manufacturer or supplier shall, on or before 30 calendar days after the date of receipt, do one of the following:

(A) Submit the required documentation to the department.

(B) Submit a letter to the department indicating the date by which the documentation shall be submitted, which may be no more than 90 calendar days after the date of receipt of the department's request.

(2) If the department finds that the documentation supplied pursuant to paragraph (1) is incomplete or incorrect, the department shall notify the manufacturer or supplier that the documentation is incomplete or incorrect, and the manufacturer or supplier shall submit complete and correct documentation to the department within 60 calendar days after the date of receipt of the notification.

(j) If a manufacturer or supplier fails to comply with subdivision (i) by any of the specified dates in that subdivision, the manufacturer or supplier shall, with respect to the package or packaging component to which the documentation request applies, comply with one of the following:

(1) Immediately cease to offer the package or packaging component for sale or for promotional purposes in this state.

(2) Replace the package or packaging component with a package or packaging component that conforms with the regulated metals limitations specified in Section 25214.13, in accordance with a schedule approved in writing by the department.

(3) Submit complete and correct documentation for the package or packaging component, in accordance with a schedule approved in writing by the department.

(Amended by Stats. 2008, Ch. 575, Sec. 13. Effective January 1, 2009.)

25214.16. (a) On and after January 1, 2006, each manufacturer or supplier shall furnish a certificate of compliance to the purchaser of a package or packaging component, even when the purchaser is also a supplier, stating that the package or packaging component is in compliance with the requirements of this article. However, if, pursuant to Section 25214.14, the package is exempt from the requirements of Section 25214.13, the certificate of compliance shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturer or supplier. A copy of the certificate of compliance shall be kept on file by the manufacturer or supplier of the package or packaging component.

(b) A purchaser of a package or packaging component subject to subdivision (a) shall retain the certificate of compliance for as long as the package or packaging component is in use by the purchaser.

(c) The manufacturer or supplier shall furnish to the department a copy of the certificate of compliance for each package or packaging component for which an exemption is claimed under Section 25214.14 at the time when a certificate of compliance for that package or packaging component is first furnished to a purchaser. If no exemption is claimed for a package or packaging component, the manufacturer or supplier shall provide to the department upon request a copy of the certificate of compliance for that package or packaging component.

(d) If a manufacturer or supplier of a package or packaging component subject to subdivision (a) reformulates or creates a new package or packaging component, the manufacturer or supplier shall provide the purchaser, and, if the package or packaging component is exempt, the department, with an amended or new certificate of compliance for the reformulated or new package or packaging component.

(Amended by Stats. 2007, Ch. 659, Sec. 3. Effective January 1, 2008.)

25214.17. (a) Except as provided in subdivision (b), the department, pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government

Code), shall provide the public with access to all information relating to a package or packaging component that has been submitted to the department by a manufacturer or supplier of a package or packaging component pursuant to this article.

(b) (1) The department shall keep confidential any information identified by the manufacturer or supplier, pursuant to paragraph (2), as a trade secret, as defined in Section 25173, in accordance with departmental procedures that have been adopted pursuant to Section 25173, if the department determines that this information meets that definition of a trade secret.

(2) A manufacturer or supplier providing information to the department pursuant to this article shall, at the time of submission, identify all information that the manufacturer or supplier believes is a trade secret. The department shall make available to the public any information that is not a trade secret.

(Amended by Stats. 2008, Ch. 575, Sec. 14. Effective January 1, 2009.)

25214.18. If the department determines that other substances contained in packaging should be added as regulated metals to the list set forth in subdivision (l) of Section 25214.12 in order to further reduce the toxicity of packaging waste, the department may submit recommendations to the Governor and the Legislature for additions to the list, along with a description of the nature of the substitutes used in lieu of the recommended additions to the list.

(Amended by Stats. 2008, Ch. 575, Sec. 15. Effective January 1, 2009.)

25214.19. This article does not do the following:

(a) Affect a duty or other requirement imposed under federal or state law.

(b) Alter or diminish a legal obligation otherwise required in common law or by statute or regulation.

(c) Create or enlarge a defense in an action to enforce a legal obligation otherwise required in common law or by statute or regulation.

(Amended by Stats. 2004, Ch. 445, Sec. 8. Effective January 1, 2005.)

25214.20. (a) The provisions of this article are severable, and if a court holds that a phrase, clause, sentence, or provision of this article is invalid, or that its applicability to a person or circumstance is invalid, the remainder of the article and its applicability to other persons and circumstances may not be affected.

(b) The provisions of this article shall be liberally construed to give effect to the purposes of this article.

(Added by Stats. 2003, Ch. 679, Sec. 1. Effective January 1, 2004.)

25214.21. The department may enforce the requirements of this article pursuant to its authority to enforce this chapter under all applicable provisions of law.

(Added by Stats. 2004, Ch. 445, Sec. 9. Effective January 1, 2005.)

25214.22. (a) Except as provided in subdivision (b), a person who offers for retail sale or for promotional purposes a product in a package or in a packaging component that includes a regulated metal shall not be subject to any administrative or civil penalty for a violation of this article, if the person proves, by a preponderance of evidence, all of the following:

(1) The person received a certificate of compliance for the package or packaging component from the manufacturer or supplier.

(2) The certificate of compliance received pursuant to paragraph (1) stated that the package or packaging component is in compliance with the requirements of this article.

(3) The person relied on the certificate of compliance and did not know or had no reason to know that the package or packaging component was in violation of this article.

(4) Upon receiving a notice of violation from the department, the person took corrective action by immediately removing the package or packaging component from commerce.

(b) The affirmative defense specified in subdivision (a) does not apply to, and may not be raised by, a person who has been found to be in violation of this article on at least two prior occasions in the preceding three years from the filing date of the current action.

(Added by Stats. 2008, Ch. 575, Sec. 16. Effective January 1, 2009.)

25214.22.1. A manufacturer or supplier of a package or packaging component who knowingly and intentionally offers for sale or for promotional purposes a package or packaging component in violation of this article is guilty of a misdemeanor punishable by a fine of not less than five thousand dollars ($5,000) nor more than one hundred thousand dollars ($100,000), by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment.

(Added by Stats. 2008, Ch. 575, Sec. 17. Effective January 1, 2009.)

25214.23. (a) For the purpose of administering and enforcing this article, an authorized representative of the department, upon obtaining consent or after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, may, upon presenting appropriate credentials and at a reasonable time, do any of the following:

(1) Enter a factory, warehouse, or establishment in which a package or packaging component is manufactured, packed, held, or sold; enter a vehicle that is being used to transport, hold, or sell the package or packaging component; or enter a place where a package or packaging component is suspected of being held or sold in violation of this article.

(2) Inspect a factory, warehouse, establishment, vehicle, or place described in paragraph (1), and all pertinent equipment, raw material, finished and unfinished materials, containers, and labeling in the factory, warehouse, establishment, vehicle, or place. In the case of a factory, warehouse, or establishment in which a package or packaging component is manufactured, packed, held, or sold, inspection shall include any record, file, paper, process, control, and facility that has a bearing on whether the package, packaging component, or product in a package is being manufactured, packed, held, transported, sold, offered for sale, or offered for promotional purposes in violation of this article.

(3) Have access to all records of a carrier in commerce relating to the movement in commerce of a package or packaging component, or the holding of that package or packaging component during or after the movement, and the quantity, shipper, and consignee of the package or packaging component. A carrier shall not be subject to the other provisions of this article by reason of its receipt, carriage, holding, or delivery of a product in a package or packaging component in the usual course of business as a carrier.

(b) An authorized representative of the department shall be deemed to have received implied consent to enter a retail establishment, for purposes of this section if the authorized representative enters the location of that retail establishment where the public is generally granted access.

(Added by Stats. 2008, Ch. 575, Sec. 18. Effective January 1, 2009.)

25214.24. (a) When taking an action authorized pursuant to Section 25214.23, an authorized representative of the department may secure a sample of a package, packaging component, or product in a package. If the representative obtains a sample prior to leaving the premises, he or she shall leave a receipt describing the sample obtained.

(b) The department shall return, upon request, a sample that is not destroyed during testing when the department no longer has any purpose for retaining the sample.

(c) A sample that is secured in compliance with this section and found to be in compliance with this article that is destroyed during testing shall be subject to a claim for reimbursement.

(Added by Stats. 2008, Ch. 575, Sec. 19. Effective January 1, 2009.)

25214.26. The department may adopt regulations to implement this article, as deemed necessary to further the purposes of this article.

(Added by Stats. 2008, Ch. 575, Sec. 20. Effective January 1, 2009.)

Article 10.5. Management of Lead Acid Batteries

(Article 10.5 added by Stats. 1988, Ch. 209, Sec. 1.

Effective June 27, 1988.)

25215. The Legislature finds and declares all of the following:

(a) There are currently 24 million motor vehicles registered in this state and each contains a lead acid battery for starting, lighting, and ignition applications.

(b) An estimated 8 million used lead acid batteries are generated and replaced in this state each year. The average lead acid battery contains 17.5 pounds of lead, 1.5 gallons of sulfuric acid, and 1.6 pounds of polypropylene.

(c) There has existed an efficient and comprehensive recycling process whereby used lead acid batteries are returned by the consumer to the lead acid battery retailer when a new lead acid battery is purchased by the consumer, often involving an "exchange" discount. These returned lead batteries are then picked up and eventually transported to secondary lead smelters who then reclaim the lead and polypropylene for use in new batteries and other products and neutralize the sulfuric acid.

(d) This lead acid battery recycling process is losing its comprehensive nature and, in recent years, an estimated 30 percent of all used lead acid batteries nationwide are not finding their way into the recycling process. In California, this gap translates into 2.4 million used lead acid batteries escaping the recycling process each year.

(e) The decline in the lead acid battery recycling process is due to a combination of depressed lead prices, higher operating costs, and an erosion in the exchange process between the consumer and retailer of lead acid batteries. Increasing numbers of consumers are not returning their old lead acid batteries when purchasing new ones and increasing numbers of distributors and retailers are not accepting used lead acid batteries.

(f) While there are no data on where these batteries are going, it is very likely that they are being stored indefinitely in private garages, or disposed of in municipal sanitary landfills, on roadsides, in ditches, under bridges, in bodies of water, and at secluded locations.

(g) These 2.4 million unrecycled lead acid batteries are not being disposed of properly and represent the introduction of 210,000 tons of lead, 3 million gallons of sulfuric acid, and 3.2 million pounds of polypropylene, all hazardous waste, into the environment each year.

(h) The introduction of these volumes of hazardous waste poses a significant and unacceptable risk to the public health and safety and steps need to be taken to attain the renewed viability of the lead acid battery recycling process.

(i) If consumers and retailers were encouraged to return and collect these used lead acid batteries for the recycling process, a major source of hazardous waste that is presently being disposed of improperly could be successfully eliminated.

(Added by Stats. 1988, Ch. 209, Sec. 1. Effective June 27, 1988.)

25215.1. For purposes of this article, the following definitions shall apply:

(a) "Consumer" means every person who, for his or her use or consumption, purchases a lead acid battery.

(b) "Dealer" means every person who engages in the sale of lead acid batteries directly to consumers.

(c) "Lead acid battery" means any battery which is primarily composed of both lead and sulfuric acid, with a capacity of six volts or more, and which is used for any of the following purposes:

(1) As a starting battery which is designed to deliver a high burst of energy necessary to crank an engine until it starts.

(2) As a motive power battery which is designed to provide the sources of power for propulsion or operation.

(3) As a stationary standby battery which is designed to be used in systems where the battery acts as a source of emergency power, serving as a backup in case of failure or interruption in the flow of power from the primary source.

(Added by Stats. 1988, Ch. 209, Sec. 1. Effective June 27, 1988.)

25215.2. (a) Except as provided in subdivision (b), no person shall dispose, or attempt to dispose, of a lead acid battery at a solid waste facility, or on or in any land, surface waters, watercourses, or marine waters.

(b) A person may dispose of a lead acid battery at any of the following locations:

(1) A facility established and operated for the purpose of recycling, or providing for the eventual recycling of, lead acid batteries, including a facility located at a solid waste facility.

(2) An establishment which is a dealer pursuant to Section 25215.3.

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

(Added by Stats. 1988, Ch. 209, Sec. 1. Effective June 27, 1988. Section operative January 1, 1989, by its own provisions.)

25215.3. (a) A dealer shall accept, when offered at the point of transfer, a lead acid battery from a consumer in exchange for the new lead acid battery purchased by that consumer from the dealer.

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

(Added by Stats. 1988, Ch. 209, Sec. 1. Effective June 27, 1988. Section operative January 1, 1989, by its own provisions.)

25215.4. The department shall, within 30 days after June 27, 1988, notify all manufacturers of lead acid batteries sold by dealers to consumers in this state of the requirements set forth in Sections 25215.2, 25215.3, and 25215.5.

(Amended by Stats. 2006, Ch. 538, Sec. 384. Effective January 1, 2007.)

25215.5. Each manufacturer of lead acid batteries sold by dealers to consumers in this state shall, within 60 days after the effective date of the act enacting this section, notify the distributors, wholesalers, and dealers of the lead acid batteries it manufactures of the requirements set forth in Sections 25215.2 and 25215.3.

(Added by Stats. 1988, Ch. 209, Sec. 1. Effective June 27, 1988.)

Article 10.6. Management of Small Household Batteries

(Article 10.6 added by Stats. 1989, Ch. 1122, Sec. 1.)

25216. For the purposes of this article, "batteries" means primary or secondary batteries, including nickel-cadmium, alkaline, carbon-zinc, and other batteries generated as non-RCRA waste similar in size to those typically generated as household waste. "Batteries" does not include lead-acid batteries.

(Added by Stats. 1989, Ch. 1122, Sec. 1.)

25216.1. (a) Any collection location or intermediate collection location that receives, or any person that transports, spent batteries, as defined in this article, is exempt from the requirements of this chapter concerning the receipt, storage, and transportation of hazardous waste if the batteries are subsequently sent from that collection location to a facility authorized to receive those batteries and all of the following conditions are met:

(1) The collection location is either of the following:

(A) The collection location does not store more than 600 pounds of batteries at any one time and no batteries are stored for longer than 180 days.

(B) The collection location is operated, or is authorized to be operated, by a public agency as part of a curbside collection program, no batteries are stored for longer than 180 days, and the public agency has considered appropriate volume limits and other necessary precautions to protect the public health, safety, and the environment.

(2) The batteries are stored and transferred in a manner which minimizes the possibility of fire, explosion, or any release of hazardous substances or hazardous waste constituents.

(3) The collection location, transporter, and receiving facility retains a copy of the hazardous waste manifest or bill of lading used during transportation for a period of three years. If a bill of lading is used, the bill of lading shall have, at a minimum, all of the following information:

(A) The name, address, and telephone number of the collection location, transporter, and receiving facility.

(B) A general description and quantity of batteries.

(C) The date of the transfer.

(D) The signatures of the transporter and the collection location representative.

(4) The batteries are not treated or reclaimed at any location exempted from the requirements of this chapter by this article.

(5) Batteries which are received in accordance with subparagraph (A) or (B) of paragraph (1) which are not subsequently recycled at the

facility or transferred to a permitted recycling facility are transferred to a disposal facility authorized to accept such batteries.

(b) A household hazardous waste collection facility, as defined in subdivision (f) of Section 25218.1, may refuse to accept spent batteries if the volume of spent batteries delivered for receipt exceeds the facility's storage capabilities. Such a facility may charge a fee to recover the handling, storage, and disposal costs of those spent batteries, which shall not exceed the facility's handling, storage, and disposal costs.

(Amended by Stats. 1995, Ch. 633, Sec. 1. Effective January 1, 1996.)

25216.2. (a) (1) This article does not apply to batteries that are disposed of on or into the land, water, or air.

(2) For purposes of this subdivision, disposal does not include a battery which is delivered to a collection location or an intermediate collection location and subsequently transported to a household hazardous waste collection facility.

(b) The department shall implement this article consistent with all applicable state and federal laws.

(Amended by Stats. 1995, Ch. 633, Sec. 2. Effective January 1, 1996.)

25216.3. (a) For purposes of this section, "spent dry cell battery containing zinc electrodes" means an alkaline or zinc-carbon battery, that meets all of the following conditions:

(1) It is an enclosed device or sealed container consisting of one or more voltaic or galvanic cells, electrically connected to produce electric energy, of any shape, including, but not limited to, button, coin, cylindrical, or rectangular, and designed for commercial, industrial, medical, institutional, or household use.

(2) It contains an electrode comprised of zinc or zinc oxide or a combination thereof, and a liquid starved or gelled electrolyte.

(3) It does not contain any constituent, other than zinc or zinc oxide, that would cause it to be classified as a hazardous waste pursuant to this chapter.

(4) It is discarded by the user.

(b) Notwithstanding any other provision of law, a spent dry cell battery containing zinc electrodes is not a hazardous waste, and is not subject to the requirements of this chapter, if all of the following conditions are met:

(1) The spent dry cell battery containing zinc electrodes is disposed of in a permitted municipal solid waste landfill, as defined in Section 20164 of Title 27 of the California Code of Regulations, or in a permitted municipal solid waste transformation facility, as defined in Section 40201 of the Public Resources Code, or is accumulated for recycling.

(2) The spent dry cell battery containing zinc electrodes is not stored or accumulated for longer than 180 days. In addition, at least 75 percent, by weight or volume, of all spent dry cell batteries containing zinc electrodes stored or accumulated at a site during a calendar year shall be transferred to a different site for disposal or recycling during that calendar year.

(3) The spent dry cell battery containing zinc electrodes is stored, accumulated, and transferred in a manner that minimizes the possibility of fire, explosion, or any release of hazardous substances or hazardous waste constituents.

(Added by Stats. 1998, Ch. 281, Sec. 1. Effective January 1, 1999.)

Article 10.7. Recyclable Latex Paint

(Article 10.7 added by Stats. 1991, Ch. 364, Sec. 1.)

25217. For the purposes of this article, "recyclable latex paint" means any water-based latex paint, still in liquid form, that is transferred for the purposes of being recycled.

(Added by Stats. 1991, Ch. 364, Sec. 1.)

25217.1. No person shall dispose of, or attempt to dispose of, liquid latex paint in the land or into the waters of the state unless authorized by applicable provisions of law.

(Added by Stats. 1991, Ch. 364, Sec. 1.)

25217.2. (a) Recyclable latex paint may be accepted at any location if all of the following conditions are met:

(1) The location manages the recyclable latex paint in accordance with all applicable latex paint product management procedures specified by federal, state, or local law or regulation which include, at a minimum, that the recyclable latex paint is stored and handled in a manner that minimizes the chance of exposing the handler and the environment to potentially hazardous constituents that may be in, or have been incidentally added to, the recyclable latex paint.

(2) Any latex paint that is accepted as recyclable by the location and which is later discovered to be nonrecyclable shall be deemed to be a waste generated at the location where this discovery is made and this latex paint shall be managed as a waste in accordance with this chapter.

(3) The owner or operator of the location has a business plan that meets the requirements of Section 25504, if required by the administrating agency, including, but not limited to, emergency response plans and procedures, as described in subdivision (b) of Section 25504. The plans and procedures shall specifically address recyclable latex paint or meet the department's emergency response and contingency requirements which are applicable to generators of hazardous waste.

(4) If the recyclable latex paint is not excluded or exempted from regulation under Chapter I (commencing with Section 1.1) of Title 40 of the Code of Federal Regulations, the location meets all applicable federal requirements.

(Added by Stats. 1991, Ch. 364, Sec. 1.)

25217.3. (a) Notwithstanding Sections 25160 and 25163, a person may transport recyclable latex paint without the use of a manifest or obtaining registration as a hazardous waste hauler if the transporter complies with this article.

(b) A person transporting recyclable latex paint shall use a bill of lading to document the transportation of recyclable latex paint from collection locations, or any interim locations, to a recycling facility, whenever the transportation involves a change in ownership of the recyclable latex paint. A copy of the bill of lading shall be kept by the originating location, transporter, and destination of the recyclable latex paint for a period of at least three years and shall include all of the following information:

(1) The name, address, and telephone number of the originating location, the transporter, and the destination of the recyclable latex paint.

(2) The quantity of the recyclable latex paint being transported.

(3) The date on which the transporter accepts the recyclable latex paint from the originating location.

(4) The signatures of the transporter and a representative of the originating location.

(Added by Stats. 1991, Ch. 364, Sec. 1.)

25217.4. A person may recycle recyclable latex paint at a facility which is not authorized by the department pursuant to the applicable hazardous waste facilities permit requirements of Article 9 (commencing with Section 25200) if the person complies with Section 25217.2.

(Added by Stats. 1991, Ch. 364, Sec. 1.)

Article 10.8. Household Hazardous Waste and Small Quantity Generator Waste

(Article 10.8 added by Stats. 1993, Ch. 913, Sec. 13. Effective January 1, 1994.)

25218. The Legislature hereby finds and declares all of the following:

(a) Residential households which generate household hazardous waste and conditionally exempt small quantity generators which generate small amounts of hazardous waste in the state need an appropriate and economic means of disposing of the hazardous waste they generate.

(b) (1) Counties and cities provide for the collection of household hazardous waste and conditionally exempt small quantity generator waste as a community service to ensure proper handling and disposal of the material and to prevent the potential contamination of solid waste landfills.

(2) To the extent available, cities and counties should consider utilizing public service television to provide public safety awareness and training on packaging and transporting household hazardous waste to collection centers.

(c) To facilitate and increase the collection of household

hazardous waste and conditionally exempt small quantity generator waste, it is the responsibility of the state to provide for an expedited and streamlined permitting and regulatory structure for household hazardous waste and conditionally exempt small quantity generator waste collection and handling. Overburdensome regulations defeat the objectives of providing convenient and accessible collection facilities and the protection of public health and safety.

(d) Abandonment or illegal disposal of household hazardous waste and hazardous waste from small businesses and the continued disposal of those wastes into the solid waste stream is a threat to public health and safety and to the environment.

(e) It is the shared responsibility of citizens, conditionally exempt small quantity generators, disposal facility operators, hazardous waste processors, manufacturers, sellers, solid waste handlers, and state and local agencies to ensure the proper recycling and disposal of household hazardous waste and conditionally exempt small quantity generator waste.

(Amended by Stats. 1995, Ch. 672, Sec. 3. Effective January 1, 1996.)

25218.1. For purposes of this article, the following terms have the following meaning:

(a) "Conditionally exempt small quantity generator" or "CESQG" means a business concern which meets the criteria specified in Section 261.5 of Title 40 of the Code of Federal Regulations.

(b) "Curbside household hazardous waste collection program" means a collection service authorized by a public agency that is operated in accordance with Section 25163 and subdivision (d) of Section 25218.5 and that collects one or more of the following types of household hazardous waste:

(1) Latex paint.

(2) Used oil.

(3) Used oil filters.

(4) Household hazardous waste that is designated as a universal waste pursuant to this chapter or the regulations adopted by the department.

(c) "Door-to-door household hazardous waste collection program" or "household hazardous waste residential pickup service" means a program operated by a public agency, or its contractor, that collects household hazardous waste from individual residences, and transports that waste in an inspected and certified hazardous waste transport vehicle to an authorized household hazardous waste collection facility.

(d) "Household" means a single detached residence or a single unit of a multiple residence unit and all appurtenant structures.

(e) "Household hazardous waste" means any hazardous waste generated incidental to owning or maintaining a place of residence. Household hazardous waste does not include any waste generated in the course of operating a business concern at a residence.

(f) "Household hazardous waste collection facility" means a facility operated by a public agency, or its contractor, for the purpose of collecting, handling, treating, storing, recycling, or disposing of household hazardous waste, and its operation may include accepting hazardous waste from conditionally exempt small quantity generators if that acceptance is authorized pursuant to Section 25218.3. Household hazardous waste collection facilities include permanent household hazardous waste collection facilities, as defined in subdivision (h), temporary household hazardous waste collection facilities, as defined in subdivision (p), recycle-only household hazardous waste collection facilities, as defined in subdivision (n), curbside household hazardous waste collection programs, as defined in subdivision (b), and mobile household hazardous waste collection facilities, as defined in subdivision (g).

(g) "Mobile household hazardous waste collection facility" means a portable structure within which a household hazardous waste collection facility is operated and that meets all of the following conditions:

(1) The facility is operated not more than four times in any one calendar year at the same location.

(2) The facility is operated not more than three consecutive weeks within a two-month period at the same location.

(3) Upon the termination of operations, all equipment, materials, and waste are removed from the site within 144 hours.

(h) "Permanent household hazardous waste collection facility" means a permanent or semipermanent structure at a fixed location that meets both of the following conditions:

(1) The facility is operated at the same location on a continuous, regular schedule.

(2) The hazardous waste stored at the facility is removed within one year after collection.

(i) "Public agency" means a state or federal agency, county, city, or district.

(j) "Quality assurance plan" means a written protocol prepared by a public agency that is designed to ensure that reusable household hazardous products or materials, as defined in subdivision (o), that are collected by a household hazardous waste collection program are evaluated to verify that product containers, contents, and labels are as they originated from the products' manufacturers. The public agency or a person authorized by the public agency, as defined in subdivision (k), shall design the protocol to ensure, using its best efforts with the resources generally available to the public agency, or the person authorized by the public agency, that products selected for distribution are appropriately labeled, uncontaminated, and appear to be as they originated from the product manufacturers. A quality assurance plan shall identify specific procedures for evaluating each container placed in a recycling or exchange program. The quality assurance plan shall also identify those products that shall not be accepted for distribution in a recycling or exchange program. Unacceptable products may include, but are not limited to, banned or unregistered agricultural waste, as defined in subdivision (a) of Section 25207.1, and products containing PCB, asbestos, or dioxin.

(k) "Person authorized by the public agency" means an employee of a public agency or a person from whom services are contracted by the public agency.

(l) "Recipient" means any person who accepts a reusable household hazardous product or material at a household hazardous waste collection facility operating pursuant to this article.

(m) "Recyclable household hazardous waste material" means any of the following:

(1) Latex paint.

(2) Used oil.

(3) Used oil filters.

(4) Antifreeze.

(5) Spent lead-acid batteries.

(6) Household hazardous waste that is designated as a universal waste pursuant to this chapter or the regulations adopted by the department, except a universal waste for which the department determines, by regulation, that there is no readily available authorized recycling facility capable of accepting and recycling that waste.

(n) "Recycle-only household hazardous waste collection facility" means a household hazardous waste collection facility that is operated in accordance with Section 25218.8 and accepts for recycling only recyclable household hazardous waste materials.

(o) "Reusable household hazardous product or material" means a container of household hazardous product, or a container of hazardous material generated by a conditionally exempt small quantity generator, that has been received by a household hazardous waste facility operating pursuant to this article and that is offered for distribution in a materials exchange program to a recipient, as defined in subdivision (l), in accordance with a quality assurance plan, as defined in subdivision (j).

(p) "Temporary household hazardous waste collection facility" means a household hazardous waste collection facility that meets both of the following conditions:

(1) The facility is operated not more than once for a period of not more than two days in any one month at the same location.

(2) Upon termination of operations, all equipment, materials, and waste are removed from the site within 144 hours.

(Amended by Stats. 2002, Ch. 626, Sec. 2. Effective January 1, 2003.)

25218.2. (a) Prior to commencing operations, a public agency, or its contractor, that intends to operate a household hazardous waste collection facility shall submit the following written information to the CUPA, or, in those jurisdictions where there is no CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404:

(1) A certification that the household hazardous waste collection facility will be operated in accordance with this article and with any other requirement that may be imposed by the department by regulation.

(2) All of the following information:

(A) The facility's name.
(B) The facility's location.
(C) The facility's generator identification number.
(D) The date that the facility will begin operation.
(E) The facility's operating schedule.
(b) In addition to the information required pursuant to paragraph (2) of subdivision (a), the public agency, or its contractor, shall also subsequently notify the CUPA, or, in those jurisdictions where there is no CUPA, the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, of any significant change in the facility's operating schedule.
(c) The public agency, or its contractor, shall also submit the written information pursuant to subdivision (a), and notify the department pursuant to subdivision (b), until (1) regulations promulgated by the Secretary for Environmental Protection establishing a unified program information collection and reporting system and standards are effective, (2) the regulations require a statewide data base system that will enable the department and the public to obtain the required information from all CUPAs or the authorized officers or agencies, and (3) the statewide data base system is in place and fully operational.
(Amended by Stats. 1997, Ch. 778, Sec. 3. Effective January 1, 1998.)

25218.3. (a) The department may authorize any household hazardous waste collection facility to accept hazardous waste from conditionally exempt small quantity generators.
(b) A household hazardous waste collection facility which is authorized to accept hazardous waste from CESQGs pursuant to subdivision (a) shall not accept more than 100 kilograms of hazardous waste, or 1 kilogram of extremely hazardous waste, from any one CESQG in a calendar month.
(c) A public agency, or its contractor, that accepts hazardous waste from CESQGs pursuant to this section may charge the CESQGs a fee for the
cost incurred in handling their hazardous waste.
(d) The department may adopt and revise regulations for household hazardous waste collection facilities, including those which are authorized to accept hazardous waste from CESQGs. The regulations shall provide for all of the following:
(1) Promoting the reduction, reclamation, and recycling of hazardous waste over other hazardous waste management alternatives.
(2) Ensuring the safe transport of household hazardous waste and hazardous waste to authorized collection programs.
(3) Ensuring the compliance of participating CESQGs with the monthly quantity limitations specified in Section 261.5 of Title 40 of the Code of Federal Regulations.
(Added by Stats. 1993, Ch. 913, Sec. 13. Effective January 1, 1994.)

25218.4. Except as provided in subdivision (f) of Section 25218.5, any person who transports household hazardous waste, and any CESQG that transports hazardous waste to an authorized household hazardous waste collection facility, who meets the conditions of Section 25218.5, is exempt from subdivision (a) of Section 25163 and from the requirement for possession of a manifest in paragraph (1) of subdivision (d) of Section 25160.
(Amended by Stats. 1996, Ch. 539, Sec. 23. Effective January 1, 1997.)

25218.5. (a) (1) Except as provided in paragraph (2), hazardous waste transported to a household hazardous waste collection facility shall be transported by any of the following:
(A) The individual or CESQG who generated the waste.
(B) A curbside household hazardous waste collection program.
(C) A mobile household hazardous waste collection facility, a temporary household hazardous waste collection facility, or a recycle-only household hazardous waste facility.
(D) A door-to-door household hazardous waste collection program.
(E) A household hazardous waste residential pickup service.
(F) A registered hazardous waste transporter carrying hazardous waste generated by a CESQG.
(G) A registered hazardous waste transporter carrying hazardous waste from a solid waste landfill loadcheck program or a transfer station loadcheck program under agreement with the household hazardous waste facility.
(H) A registered hazardous waste transporter, under agreement with the household hazardous waste facility, operating under a contract with a public agency to transport hazardous wastes that were disposed of in violation of this chapter, and that are being removed by, or are being removed under the oversight of, the public agency, if the hazardous wastes were not originally disposed of in violation of this chapter by that public agency.
(2) Spent batteries that are received and transported pursuant to Section 25216.1 may be transported to a household hazardous waste collection facility from a collection location or an intermediate collection location.
(3) Notwithstanding Section 25218.4, a registered hazardous waste transporter or mobile household hazardous waste collection facility transporting hazardous waste to a household hazardous waste collection facility shall comply with subdivisions (a) and (c) of Section 25163 and paragraph (1) of subdivision (d) of Section 25160.
(b) An individual transporting household hazardous waste generated by that individual and a CESQG transporting hazardous waste generated by the CESQG to a household hazardous waste collection facility shall meet all of the following conditions:
(1) (A) Except as provided in subparagraphs (B) and (C) and Section 25218.5.1, the total amount of household hazardous waste transported by an individual or hazardous waste transported by a CESQG to a household hazardous waste collection facility shall not exceed a total liquid volume of five gallons or a total dry weight of 50 pounds. If the hazardous waste transported is both liquid and nonliquid, the total amount transported shall not exceed a combined weight of 50 pounds.
(B) Subparagraph (A) does not apply to spent batteries that are collected by a collection location or intermediate collection location pursuant to Section 25216.1 and transported to a household hazardous waste collection facility.
(C) A CESQG may transport up to 27 gallons or 220 pounds, but not more than 100 kilograms, per month to a household hazardous waste collection facility, if all of the following conditions are met:
(i) The hazardous waste being transported was generated by that CESQG.
(ii) The CESQG contacts the household hazardous waste collection facility prior to each delivery to confirm that the facility will accept the hazardous waste.
(iii) The household hazardous waste collection facility provides oral, written, or electronic instructions to the CESQG prior to each delivery on proper packing for the safe transportation of the specific hazardous waste being transported.
(iv) The CESQG or employees of the CESQG transport the hazardous waste in a vehicle owned and operated by the CESQG.
(2) The household hazardous waste and CESQG hazardous waste that is transported shall be in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during transport.
(3) Different household hazardous wastes or different CESQG hazardous wastes shall not be mixed within a container before or during transport.
(4) If the hazardous waste is an extremely hazardous waste or an acutely hazardous waste, the total amount transported by a CESQG shall not exceed 2.2 pounds.
(c) (1) Except as provided in paragraph (2), the total combined volume or weight of latex paint, used oil filters, antifreeze, and small batteries transported to a recycle-only household hazardous waste collection facility by any one individual shall not exceed a total volume of 10 gallons or a total dry weight of 100 pounds. Up to two spent lead-acid batteries may be transported at the same time and not more than 20 gallons of used oil may be transported in the same vehicle if the volume of each individual container does not exceed five gallons.
(2) Paragraph (1) does not apply to spent batteries that are collected by a collection location or intermediate collection location pursuant to Section 25216.1 and transported to a household hazardous waste collection facility.
(d) A curbside household hazardous waste collection program shall meet all of the following conditions:
(1) Not more than a total combined weight of 10 pounds of used oil filters shall be collected from a single residence at one time.
(2) Not more than five gallons of used oil shall be collected from a single residence at one time, and the volume of each individual container

collected shall not exceed five gallons.

(3) Not more than five gallons of latex paint shall be collected from a single residence at one time, and the volume of each individual container collected shall not exceed five gallons.

(4) Hazardous waste containing mercury shall not be collected by a curbside household hazardous waste collection program unless the waste is contained in secure packaging that prevents breakage and spillage.

(5) Fluorescent light tubes that are four feet or greater in length shall not be collected by a curbside household hazardous waste collection program.

(6) The transported household hazardous waste shall be in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during transport.

(7) Different household hazardous wastes shall not be mixed within a container before or during transport.

(e) A door-to-door household hazardous waste collection program or household hazardous waste residential pickup service shall meet all of the following conditions:

(1) The transported household hazardous waste shall be in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during transport.

(2) Different household hazardous wastes shall not be mixed within a container before or during transport.

(3) A door-to-door household hazardous waste collection program or household hazardous waste residential pickup service is exempt from the requirements of Section 25160 regarding the use of a manifest when transporting household hazardous waste collected from individual residences to an authorized hazardous waste collection facility. In lieu of a manifest, a receipt shall be issued for the household hazardous waste collected from an individual residence, and a copy of the receipt shall be retained by the public agency for a period of at least three years.

(f) Notwithstanding Section 25218.4, a mobile household hazardous waste collection facility, a temporary household hazardous waste collection facility, or a recycle-only household hazardous waste collection facility that transports household hazardous waste from the collection facility to a household hazardous waste collection facility pursuant to subdivision (a) shall comply with subdivisions (a) and (c) of Section 25163 and paragraph (1) of subdivision (d) of Section 25160.

(Amended by Stats. 2004, Ch. 686, Sec. 1. Effective September 22, 2004.)

25218.5.1. Notwithstanding Section 25218.5, a public agency may elect to increase the liquid volume and dry weight specified in paragraph (1) of subdivision (b) of, and in subdivision (c) of, Section 25218.5, to a liquid volume of 15 gallons and a dry weight of 125 pounds, if the public agency, as the case may be, finds that the local household hazardous waste collection program operated by that public agency, or its contractor, has adequate public education programs to inform the public on proper techniques for packaging and transporting the household hazardous waste to the program's household hazardous waste collection facilities.

(Added by Stats. 1995, Ch. 672, Sec. 4. Effective January 1, 1996.)

25218.6. The fees imposed by Article 7 (commencing with Section 25170) and Article 9.1 (commencing with Section 25205.1) do not apply to either of the following:

(a) Hazardous wastes generated or disposed of by a public agency, or its contractor, operating a household hazardous waste collection facility, including, but not limited to, hazardous waste received from CESQGs.

(b) A household hazardous waste collection facility operated in accordance with this article.

(Added by Stats. 1993, Ch. 913, Sec. 13. Effective January 1, 1994.)

25218.7. The corrective action provisions of Section 25200.10 do not apply to a permit issued for the operation of a temporary household hazardous waste collection facility.

(Added by Stats. 1993, Ch. 913, Sec. 13. Effective January 1, 1994.)

25218.8. (a) Except as provided in subdivision (b), a hazardous waste facilities permit shall be obtained for the operation of a household hazardous waste collection facility.

(b) A hazardous waste facilities permit is not required for the operation of a recycle-only household hazardous waste collection facility if all of the following conditions are met:

(1) The facility accepts only the following recyclable household hazardous waste materials for subsequent transport to an authorized recycling facility:

(A) Latex paint.

(B) Used oil.

(C) Used oil filters.

(D) Antifreeze.

(E) Spent lead-acid batteries.

(F) Nickel-cadmium, alkaline, carbon-zinc, or other small batteries, if the facility is in compliance with Section 25216.1.

(G) Intact spent fluorescent lamps.

(H) Intact spent high intensity discharge (HID) lamps.

(2) No hazardous wastes or other materials are handled at the facility other than the materials specified in paragraph (1).

(3) The materials are transported to the collection facility by either of the following:

(A) The person who generated the material.

(B) The authorized curbside household hazardous waste collection program.

(4) The materials transported to the facility are transported in accordance with Section 25218.5.

(5) The materials collected are not stored at the facility for more than 180 days, except that less than one ton of spent lead-acid batteries may be stored at the facility for up to one year. More than one ton of spent lead-acid batteries shall not be stored at the facility for more than 180 days.

(6) The materials collected are managed in accordance with the hazardous waste labeling, containerization, emergency response, and personnel training requirements of this chapter.

(7) The facility is in compliance with Section 25218.2.

(Amended by Stats. 1996, Ch. 999, Sec. 7. Effective January 1, 1997.)

25218.9. On or before October 1 of each year, a public agency, or its contractor, operating a household hazardous waste collection facility shall submit to the CUPA, or, in those jurisdictions where there is no CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, a copy of the completed California Integrated Waste Management Board Form 303, which is required to be submitted to that board for the prior fiscal year pursuant to regulations adopted by that board. The completed California Integrated Waste Management Board Form 303 shall also be submitted to the department until (1) regulations promulgated by the Secretary for Environmental Protection establishing a unified program information collection and reporting system and standards are effective, (2) the regulations require a statewide data base system that will enable the department and the public to obtain the required information from all CUPAs or the authorized officers or agencies, and (3) the statewide data base system is in place and fully operational.

(Amended by Stats. 1997, Ch. 778, Sec. 4. Effective January 1, 1998.)

25218.10. The department and the California Integrated Waste Management Board shall jointly develop and maintain a data base of all household hazardous waste collection events, facilities, and programs within the state. The department and the California Integrated Waste Management Board shall both maintain that information, as a cooperative effort, and shall make information from the data base available to the public upon request. However, the department and the California Integrated Waste Management Board shall implement this section only to the extent that funds are appropriated therefor by the Legislature.

(Added by Stats. 1993, Ch. 913, Sec. 13. Effective January 1, 1994.)

25218.11. (a) On or before March 31, 1996, the department shall develop a separate and distinct regulatory structure for the permitting of permanent household hazardous waste facilities that conduct the activities

specified in subdivision (b). The regulations shall simplify the permitting of facilities and encourage the collection of material and shall be not more burdensome than is necessary to protect the public health and safety. The regulations adopted to implement this section shall balance public safety considerations of household hazardous waste collection with the safety and environmental considerations of illegal disposal.

(b) The regulations adopted pursuant to subdivision (a) shall apply only to household hazardous waste collection activities that are operated by a public agency, or its contractor, and that accept only household hazardous waste or hazardous waste collected from conditionally exempt small quantity generators. The regulations shall require that, prior to the commencement of the activities specified in this subdivision, the activities shall be authorized by the department.

(Amended by Stats. 1996, Ch. 124, Sec. 70. Effective January 1, 1997.)

25218.12. (a) A public agency may conduct a materials exchange program as a part of its household hazardous waste collection program if the public agency determines which reusable household hazardous products or materials are suitable and acceptable for distribution to the public in accordance with a quality assurance plan prepared by the public agency. The public agency shall instruct the recipient to use the product in a manner consistent with the instructions on the label.

(b) If the recipient of a household hazardous product or material is a business or employer, the recipient shall be responsible for obtaining any written information necessary for compliance with the Hazardous Substances
Information and Training Act (Chapter 1 (commencing with Section 6360) of Part
7 of Division 5 of the Labor Code).

(Added by Stats. 1996, Ch. 647, Sec. 3. Effective January 1, 1997.)

25218.13. (a) A household hazardous waste collection facility that has a permit issued under Section 25218.8 may operate as a "home-generated sharps consolidation point," as defined in subdivision (b) of Section 117904, if the facility is approved by the enforcement agency as a point of consolidation pursuant to Section 117904 and the facility complies with the provisions of that section.

(b) For the purposes of this section, "sharps waste" has the meaning defined in Section 40190.5 of the Public Resources Code.

(Added by Stats. 2004, Ch. 157, Sec. 2. Effective January 1, 2005.)

Article 10.9. Battery Management: Federal Regulation
(Article 10.9 added by Stats. 1996, Ch. 575, Sec. 1.
Effective September 17, 1996.)

25219. As used in this article, the following terms have the following meaning:

(a) "Federal battery management act" means the Mercury-Containing and Rechargeable Battery Management Act (P.L. 104-142), or that act as it may thereafter be amended.

(b) "Federally regulated battery" means a battery that is subject to the federal battery management act.

(Added by Stats. 1996, Ch. 575, Sec. 1. Effective September 17, 1996.)

25219.1. (a) Notwithstanding any other provision of law, including, but not limited to, any other provision of this chapter, the federal battery management act shall be deemed to be the law of this state with regard to the easy removability, environmental labeling, collection, storage, and transportation of federally regulated batteries, and any battery that is a federally regulated battery shall be managed in accordance with the federal battery management act.

(b) It is the intent of subdivision (a) to make the necessary changes in state law to allow the department to seek and maintain the approval of the Administrator of the Environmental Protection Agency to implement and enforce the requirements of subsection (a) of Section 104 of the federal battery management act.

(Added by Stats. 1996, Ch. 575, Sec. 1. Effective September 17, 1996.)

25219.2. Except as provided in this article, batteries not subject to regulation pursuant to Section 25219.1 shall be managed in compliance with all other requirements of this chapter.

(Added by Stats. 1996, Ch. 575, Sec. 1. Effective September 17, 1996.)

Article 11. Hazardous Waste Disposal Land Use
(Article 11 added by Stats. 1980, Ch. 1161.)

25220. (a) For purposes of this article, unless the context clearly requires a different meaning:

(1) "Determination" means a decision by the department as to whether land should be designated as hazardous waste property or border zone property and which is reached after an analysis and an evaluation of the information obtained by the department.

(2) "Designation" means imposition of the requirements specified in Section 25230 after a determination, a public hearing, and a decision by the director has occurred pursuant to Section 25229.

(b) Whenever there is reasonable cause for the department to believe that any land may be a hazardous waste property or border zone property, the department may, by certified mail, request any person who owns, leases, or occupies the land, or any other person who has information relating to the land, to provide any or all of the following information:

(1) A description of the present use of the land.

(2) The types and volumes of hazardous waste or extremely hazardous waste contained therein or thereon.

(3) The date or dates the hazardous waste or extremely hazardous waste was deposited into or onto the land.

(4) A map or maps of the property which they own and which contains or overlies hazardous waste or extremely hazardous waste, drawn to a scale of not more than 200 feet to the inch, which shows the area or areas where the hazardous waste or extremely hazardous waste is contained or was deposited. The provision of a map pursuant to this subdivision shall not be required if the respondent to the request asserts in writing that the respondent has no knowledge or insufficient knowledge of the existence or location of the wastes to comply with this subdivision.

(5) Any other information which relates to the disposal of hazardous waste on or within 2,000 feet of the property or the potential for the migration of those wastes.

(c) Any person who is requested to provide information pursuant to subdivision (b) shall submit the information to the department within 90 calendar days of receipt of the request.

(d) The department shall notify the planning and building department of each city, county, or regional council of governments of any recorded land use restriction imposed pursuant to Section 25202.5, 25222.1, 25229, 25230, 25355.5, or 25398.7 within the jurisdiction of the local agency. Upon receiving this notification, the planning and building department shall do both of the following:

(1) File all recorded land use restrictions in the property files of the city, county, or regional council of government.

(2) Require that any person requesting a land use which differs from those filed land use restrictions on the property apply to the department for a variance or a removal of the land use restrictions pursuant to Section 25233 or 25234.

(e) A planning and building department of a city, county, or regional council of governments may assess a property owner a reasonable fee to cover the costs of taking the actions required by subdivision (d). For purposes of this subdivision, "property owner" does not include a person who holds evidence of ownership solely to protect a security interest in the property, unless the person participates, or has a legal right to participate, in the management of the property.

(f) The department shall maintain a list of all recorded land use restrictions, including deed restrictions, recorded pursuant to Sections 25200, 25200.10, 25202.5, 25222.1, 25229, 25230, 25355.5, and 25398.7. The list shall, at a minimum, provide the street address, or, if a street address is not available, an equivalent description of location for a rural location or the latitude and longitude, of each property. The department shall update the list as new deed restrictions are recorded. The department shall make the list available to the public, upon request, and shall make the list available on the department's Internet website. The list shall also be incorporated into the list of sites compiled pursuant to Section 65962.5 of the Government

Code.

(Amended by Stats. 1998, Ch. 430, Sec. 2. Effective January 1, 1999.)

25221. (a) Any person as owner, lessor, or lessee who (1) knows, or has probable cause to believe, that a significant disposal of hazardous waste has occurred on, under, or into the land which he or she owns or leases or that the land is within 2,000 feet of a significant disposal of hazardous waste, and (2) intends to construct or allow the construction on that land of a building or structure to be used for a purpose which is described in subdivision (b) of Section 25232 within one year, shall apply to the department prior to construction for a determination as to whether the land should be designated a hazardous waste property or a border zone property pursuant to Section 25229.

The addition of rooms or living space to an existing single-family dwelling or other minor repairs or improvements to residential property which do not change the use of the property or increase the population density does not constitute the construction of a building or structure for purposes of this subdivision.

(b) Any person who, as owner, lessor, or lessee, knows or has probable cause to believe that land which he or she owns or leases is a hazardous waste property or a border zone property, may apply to the department for a determination as to whether the land should be designated a hazardous waste property or a border zone property pursuant to Section 25229.

(c) If a city or county knows or has probable cause to believe that any land within its jurisdiction is a hazardous waste property or a border zone property, the city or county may apply to the department for a determination as to whether that land should be designated a hazardous waste property or a border zone property pursuant to Section 25229.

(d) Subdivisions (a), (b), and (c) do not apply to any land on which a determination has previously been made pursuant to Section 25222.1 or 25229, unless either of the following has occurred since that determination:

(1) A significant new disposal of hazardous waste has occurred on, under, or into the land.

(2) Significant new information about past disposal of hazardous waste on, or within 2,000 feet of, the land becomes known to the owner, lessor, or lessee of the land or to the city or county.

(Amended by Stats. 1997, Ch. 870, Sec. 34. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25221.1. Whenever the department receives an application pursuant to Section 25221, it may request information pursuant to Section 25220 to determine whether the land should be designated as hazardous waste property or border zone property. Upon evaluating all pertinent available information, the department may do any one or more of the following:

(a) Issue a statement that, based on existing documents and other information available to the department, there is no currently known hazard.

(b) Recommend to local land use authorities that they place a moratorium on any new land uses specified in paragraph (1) of subdivision (a) of Section 25232, if the department suspects that the land is hazardous waste property, or a moratorium on the construction or placement of any building or structure which is intended to be used for any of the purposes specified in paragraph (1) of subdivision (b) of Section 25232, if the department suspects that the land is border zone property.

(c) Collect additional information, including sampling, monitoring, and analytical data for the purpose of making a determination as to whether the land should be designated as hazardous waste property or border zone property pursuant to Section 25229.

(d) Make a determination as to whether the land should be designated as hazardous waste property or border zone property pursuant to Section 25229.

(e) Enter into an agreement pursuant to Section 25222.1.

(Added by Stats. 1984, Ch. 1736, Sec. 8. Effective September 30, 1984.)

25222. (a) In any case where the department has obtained information which shows that a significant disposal of hazardous wastes has occurred on, under, or in land and that the disposal creates a significant existing or potential hazard to present or future public health or safety, the department may consider designating the affected land as hazardous waste property or border zone property.

Whenever the department considers designating land as a hazardous waste property or a border zone property, it shall issue and cause to be served upon the owner of the land, and the legislative body of the city or county in whose jurisdiction the land is located, a notice of a hearing. The notice shall contain (1) a statement that the land is under consideration for designation as a hazardous waste property or a border zone property; (2) a summary of the reasons for that designation and what significant existing or potential health hazards are believed to exist; (3) notice of the time, date, and place of the hearing, and any policy regarding continuance of the hearing; and (4) a form to acknowledge receipt of the notice.

(b) Service of the notice of hearing may be made in any manner permitted for the service of summons in civil actions, or by mailing a copy of the notice of hearing by first-class mail or airmail, postage prepaid to the person to be served, together with two copies of the notice of service and acknowledgment specified in subdivision (d) and a return envelope, postage prepaid, addressed to the department.

(c) The notice of service specified in subdivision (b) shall be in substantially the following form:

NOTICE OF SERVICE

To: (Here state the name of the person to be served.)

The accompanying notice of hearing is served pursuant to Section 25222 of the California Health and Safety Code. Failure to complete this form and return it to the sender within 20 days may subject you, or the party on whose behalf you are being served, to liability for the payment of any expenses incurred in serving the notice of hearing upon you in any other manner permitted by law. If you are served on behalf of a corporation, unincorporated association, including a partnership, or other entity, this form must be signed in the name of that entity by you or by a person authorized to receive service of process on behalf of that entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. Section 25222 provides that the accompanying notice of hearing is deemed served on the date of execution of an acknowledgment of receipt of notice of hearing.

_____

(Signature of Sender)

ACKNOWLEDGMENT OF RECEIPT OF NOTICE OF HEARING

This acknowledges receipt on (insert date) of a copy of the notice of hearing.

Date: _____

(Date this acknowledgment is executed)

_____

(Signature of person acknowledging receipt, with title if acknowledgment is made on behalf of another person)

(d) Service of a notice of hearing pursuant to this section is deemed complete on the date a written acknowledgment of receipt of notice is executed, if the acknowledgment thereafter is returned to the department.

(e) If the person to whom a copy of the notice of hearing is mailed pursuant to this section fails to complete and return the acknowledgment form set forth in subdivision (b) within 20 days from the date of that mailing, the party to whom the notice of hearing was mailed is liable for reasonable expenses thereafter incurred in serving or attempting to serve the party by any other method permitted by this section. The department may bring a single action to recover all of these expenses in any court of competent jurisdiction and, except for good cause shown, the court upon motion, with or without notice to that person, shall award the department these expenses.

(Amended by Stats. 1984, Ch. 1736, Sec. 9. Effective September 30, 1984.)

25222.1. (a) Notwithstanding Sections 25222, 25229, 25232, and 25233, any person may enter into an agreement with the department regarding that person's property, or a portion thereof, which provides for restricting specified uses of the property, as determined by all parties to the agreement. Except as otherwise provided in this article, the agreement is irrevocable and

shall be recorded by the owner, pursuant to paragraph (1) of subdivision (a) of Section 25230, as a hazardous waste easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, upon the present and future uses of the land. That person shall bear all costs incurred in determining the specific land use restrictions for that person's property, or a portion thereof pursuant to this subdivision.

(b) By entering into this agreement with respect to a portion of a property, the department is not precluded from taking action to designate the remainder of the property as hazardous waste or border zone property.

(Amended by Stats. 1989, Ch. 906, Sec. 5.)

25223. Public notice of any hearing conducted pursuant to Section 25222, or of any agreement proposed to be entered into pursuant to Section 25222.1, shall be provided by the department at least 30 days before the hearing or execution of the agreement. The notice shall be given by publication once in a newspaper of general circulation published and circulated in the locale or, if there is none, by posting the notice in at least three public places in the locale. In the case of a proposed agreement, the department shall also give notice to the city or county in whose jurisdiction the property is located. Public comment on any proposed agreement pursuant to Section 25222.1 shall be submitted to the department in writing.

(Amended by Stats. 1984, Ch. 1736, Sec. 11. Effective September 30, 1984.)

25224. The hearing shall be held before the director, or any agent or agency designated by the director for that purpose, not less than 30 days or more than 90 days after the notice. The department may delay the hearing upon request of any interested person.

(Amended by Stats. 1984, Ch. 1736, Sec. 12. Effective September 30, 1984.)

25226. The persons served shall have the right to file a response to the notice and to appear in person or otherwise and give testimony at the place and time fixed in the notice. At the discretion of the director, agent, or agency conducting the hearing, any interested person may be allowed to intervene in the proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. All proceedings shall be appropriately reported, and the testimony taken shall be reduced to writing and filed with the director. Thereafter, at his or her discretion, the director, upon notice, may take further testimony or hear argument.

(Added by Stats. 1980, Ch. 1161.)

25227. Discovery for a hearing held pursuant to this article shall be conducted as provided in Sections 11507.6, 11507.7, 11510, and 11511 of the Government Code.

(Added by Stats. 1980, Ch. 1161.)

25228. (a) With regard to designating land as a hazardous waste property, the department shall have the burden of proving that hazardous waste has been deposited on, under, or in the land and that the hazardous waste creates a significant existing or potential hazard to present or future public health or safety on the hazardous waste property.

(b) With regard to designating land as a border zone property, the department shall have the burden of proving that hazardous waste has been deposited within 2,000 feet of the land and that the hazardous waste creates a significant existing or potential hazard to present or future public health or safety on the border zone property.

(Added by Stats. 1980, Ch. 1161.)

25229. (a) If, after the hearing, the director makes the decision that the subject land should not be designated a hazardous waste property or border zone property, the director shall issue that decision in writing and serve it in the manner provided in subdivision (c).

(b) If, after the hearing, the director makes the decision, upon a preponderance of the evidence, including any evidence developed at any time prior to the hearing, that the land should be designated a hazardous waste property or a border zone property, the director shall issue that decision in writing, which shall identify the subject land, or portion thereof, by street address, assessor's parcel number, or legal description and the name of the owner of record, contain findings of fact based upon the issues presented, including the reasons for this designation, the substances on, under, or in the land, and the significant existing or potential hazards to present or future public health and safety, and order every owner of the designated land to take all of the following actions:

(1) Execute before a notary a written instrument which imposes an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, upon the present and future uses of the land pursuant to Section 25230. The written instrument shall also include a copy of the director's decision.

(2) Return the executed instrument to the director within 30 days after the decision is delivered or mailed. Within 10 days after receiving the instrument, the director shall execute the written instrument and return the instrument to the owner.

(3) Record the written instrument pursuant to Section 25230 within 10 days after receiving the written instrument executed by the director, as specified in paragraph (2).

(4) Return the recorded written instrument to the director within 10 days after the owner records the instrument, as specified in paragraph (3).

(c) Copies of the determination shall be delivered or sent by certified mail to the owner of the property, the legislative body of the city or county in whose jurisdiction the land is located, and any other persons who were served pursuant to Section 25222 or who were permitted to intervene in the proceeding pursuant to Section 25226.

(d) Failure or refusal to comply with any order issued pursuant to this section shall be treated in the manner provided by Article 12 (commencing with Section 11455.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1995, Ch. 938, Sec. 67. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938.)

25230. (a) Upon a decision that the subject land shall be designated as hazardous waste property or border zone property pursuant to Section 25229, the director shall notify the owner of the property and the legislative body of the city or county in whose jurisdiction the land is located and any other persons who were permitted to intervene in the proceeding, and shall issue orders to every owner of the land requiring all of the following:

(1) The notarized execution and recordation of a written instrument which imposes an easement, covenant, restriction, or servitude, or combination thereof, as appropriate, upon the present and future uses of all or part of the land which has been designated a hazardous waste property or a border zone property as provided by Section 25232, and which provides that removal of the easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, shall be in accordance with Section 25234. The easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, shall be executed by all the owners of the land and by the director, shall particularly describe the real property affected by the instrument, and, if applicable, the location of the easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, on the real property. The easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, shall be recorded with the recorder of the county in which the land is located within 10 days after the instrument, as executed by the director, is received by the owner and shall be indexed by the county recorder in the grantor index in the name of the record title owner of the real property and in the grantee index in the name of the department. The easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, shall state that the land described in the instrument is subject to a hazardous waste easement, covenant, restriction, or servitude, or any combination thereof, as appropriate. Notwithstanding any other provision of law, an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, executed pursuant to this section shall run with the land from the date of recordation and shall be binding upon all of the owners of the land, their heirs, successors, and assignees, and the agents, employees, or lessees of the owners, heirs, successors, and assignees, unless it is removed pursuant to Section 25234. The easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, shall be enforceable by the department pursuant to Article 8 (commencing with Section 25180).

(2) The execution and delivery of a written instrument to accompany all purchase, lease, or rental agreements relating to the land which has been designated a hazardous waste property or a border zone property. The instrument shall be prepared by the owner or lessor of the land and shall

contain the following statement:

"The land described herein contains hazardous waste or is within 2,000 feet of land that contains hazardous waste. This condition renders the land and the owner, lessee, or other possessor of the land subject to the requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

(b) In any case where the department has made reasonable efforts to obtain execution of the easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, and the owner or owners have failed or refused to execute it, the department may apply to the court for an order imposing the easement, covenant, restriction, or servitude, or any combination thereof, as appropriate. The issued order shall be recorded in the same manner as an executed instrument, as specified in paragraph (1) of subdivision (a).

(c) Any hazardous waste easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, executed pursuant to this section shall be exclusively for the purpose of protecting the public health and safety and shall convey no interest in real or other property to the state. Notwithstanding any other provision of law, any easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, held by the department shall not be sold or otherwise transferred to another person.

(Amended by Stats. 1989, Ch. 906, Sec. 7.)

25231. A decision of the director made pursuant to Section 25229 shall be reviewable pursuant to Section 1094.5 of the Code of Civil Procedure.

(Amended by Stats. 1989, Ch. 906, Sec. 8.)

25232. (a) Except as provided in subdivision (c) of this section, after the director has provided notice in compliance with Section 25222 and a hearing or decision regarding specific land is pending, or after a hearing has been conducted and a decision has been made pursuant to Section 25229 that land is a hazardous waste property, then none of the following shall occur on the land without a specific variance approved in writing by the department for the land use and land in question:

(1) Any new use of the land, other than the use, modification, or expansion of an existing industrial or manufacturing facility or complex on land which is owned by, or held for the beneficial use of, such facility or complex as of January 1, 1981, and which is a hazardous waste property as defined in Section 25117.3.

(2) Subdivision of such land, as that term is used in Division 2 (commencing with Section 66410) of Title 7 of the Government Code, except that
this paragraph shall not prevent the division of a parcel of land so as to divide that portion of the parcel which is designated a hazardous waste property from other portions of such parcel not so designated.

(b) Except as provided in subdivision (c) of this section, after the director has provided notice in compliance with Section 25222 and a hearing or decision regarding specific land is pending, or after a hearing has been conducted and a decision has been made pursuant to Section 25229 that land is a border zone property, then none of the following shall occur on the land without a specific variance approved in writing by the department for the land use and land in question:

(1) Construction or placement of a building or structure on the land which is intended for use as any of the following, or the new use of an existing structure for the purpose of serving as any of the following:

(A) A residence, including any mobilehome or factory built housing constructed or installed for use as permanently occupied human habitation, except that the addition of rooms or living space to an existing single-family dwelling or other minor repairs or improvements to residential property which do not change the use of the property or increase the population density does not constitute construction or placement of a building or structure for the purposes of this paragraph.

(B) A hospital for humans.

(C) A school for persons under 21 years of age.

(D) A day care center for children.

(E) Any permanently occupied human habitation other than those used for industrial purposes.

(2) Subdivision of such land, as that term is used in Division 2 (commencing with Section 66410) of Title 7 of the Government Code, except that this paragraph shall not prevent the division of a parcel of land so as to divide that portion of the parcel which is designated a border zone property from other portions of such parcel not so designated.

(c) This section shall not apply to a portion of a parcel of land which is determined by the director to meet all of the following requirements:

(1) The parcel has been previously classified as a class II-1 disposal site as defined in Section 2510 or 2511 of Title 23 of the California Administrative Code.

(2) The portion of the parcel is physically isolated from the remainder of the classified parcel by the construction of a freeway, as defined in Section 332 of the Vehicle Code, which divides the classified parcel.

(3) The portion of the parcel has not been used as a hazardous waste disposal site.

(4) The portion of the parcel does not contain or overlie hazardous waste.

(Amended by Stats. 1982, Ch. 417, Sec. 2. Effective July 8, 1982.)

25233. (a) Any aggrieved person may apply to the department for a written variance from a land use restriction, including the requirements set forth in subdivision (a) or (b) of Section 25232. Any application shall contain sufficient evidence for the department to issue a notice for a hearing. The notice shall contain both of the following:

(1) A statement of all of the following that apply:

(A) Land use restrictions have been imposed on the land.

(B) A hearing is pending on the land.

(C) The land has been designated a hazardous waste property or border zone property.

(2) A statement of who is applying for a variance, the proposed variance, and a statement of the reasons in support of the granting of a variance.

(b) The procedures for the conducting of the hearing specified in subdivision (a) are those set forth in this article. No person shall make a subsequent application pursuant to this section within 18 months of a final decision on an application by the department. A person applying for a variance pursuant to this section shall pay the department for all costs incurred by the department relating to the application.

(c) The applicant shall have the burden of proving at the hearing that the variance will not cause or allow any of the following effects associated with hazardous waste or extremely hazardous waste:

(1) The creation or increase of significant present or future hazards to public health.

(2) Any significant diminution of the ability to mitigate any significant potential or actual hazard to public health.

(3) Any long-term increase in the number of humans or animals exposed to significant hazards which affect the health, well-being, or safety of the public.

(d) If, upon the preponderance of the testimony taken, the director is of the opinion that the variance should be granted, the director shall issue and cause to be served his or her decision and findings of fact on the owner of the land, the legislative body of the city or county in whose jurisdiction the land is located, and upon any other persons who were permitted to intervene in the proceedings. The findings of fact shall include the exact nature of the proposed variance and the reasons in support of the granting of the variance.

(e) If the director is of the opinion that the variance should not be granted, the director shall issue and cause to be served his or her findings of fact in support of the denial on the parties mentioned in subdivision (c).

(f) The department shall record within 10 days any final decision made by the director pursuant to this section as provided in Section 25235.

(g) A decision of the director made after a hearing held pursuant to this section shall be reviewable pursuant to Section 1094.5 of the Code of Civil Procedure and shall be upheld if the court finds that it is supported by substantial evidence.

(Amended by Stats. 1989, Ch. 906, Sec. 9.)

25234. (a) Any aggrieved person may apply to the department to remove a land use restriction, including a designation that the land is a hazardous waste property or a border zone property on the grounds that the waste no longer creates a significant existing or potential hazard to present or future public health or safety. No person shall make a subsequent application pursuant to this section within 12 months of a final decision on an application by the department. A person applying to the department

pursuant to this section shall pay the department all costs incurred by the department relating to the application. Any application shall contain sufficient evidence for the department to make a finding upon any or all of the following grounds:

(1) The hazardous waste which caused the land to be restricted or designated has since been removed or altered in a manner which precludes any significant existing or potential hazard to present or future public health.

(2) New scientific evidence is available since the restriction or designation of the land or the making of any previous application pursuant to this section, concerning either of the following:

(A) The nature of the hazardous waste which caused the land to be designated.

(B) The geology or other physical environmental characteristics of the designated land.

(b) Any aggrieved person may appeal a determination of the department made pursuant to subdivision (a) by submitting a request for a hearing to the director. The request shall be mailed by certified mail not later than 30 days after the date of the mailing of the department's decision on the application.

(c) Upon receipt of a timely appeal, the director shall give notice of a hearing pursuant to the procedures set forth in this article.

(d) The department shall record within 10 days any new and final determination made by the department pursuant to this section as provided in Section 25235.

(e) A determination made by the department, after a hearing held pursuant to this section, shall be reviewable pursuant to Section 1094.5 of the Code of Civil Procedure and shall be upheld if the court finds that it is supported by substantial evidence.

(f) Whenever there is a final determination pursuant to this section removing a land use restriction, including the designation of a hazardous waste property or a border zone property, the easement, covenant, restriction, or servitude imposed on the land created by Section 25222.1, 25230, or 25355.5 shall automatically terminate. The department shall record or cause to be recorded within 10 days a termination of the easement, covenant, restriction, or servitude which shall particularly describe the real property subject to the easement, covenant, restriction, or servitude and which shall be indexed by the recorder in the grantee index in the name of the record title owner of the real property subject to the easement, covenant, restriction, or servitude, and in the grantor index in the name of the department.

(Amended by Stats. 1989, Ch. 906, Sec. 10.)

25235. The department shall record within 10 days any final written instrument made pursuant to Section 25222.1 or 25230 with the county recorder of the county in which the property is located. Any recordation made pursuant to this article or Section 25202.5 or 25355.5 shall include the street address, assessor's parcel number, or legal description of each parcel affected and the name of the owner thereof, and the recordation shall be recorded by the recorder in the grantor index in the name of the record title owner of the real property and in the grantee index in the name of the department.

(Amended by Stats. 1989, Ch. 906, Sec. 11.)

25236. (a) Prior to, or simultaneously with, utilizing the provisions of this article, the department shall diligently pursue feasible civil and criminal actions against any operator or other responsible party who violates any provision of this chapter or Chapter 6.8 (commencing with Section 25300) and the regulations promulgated under those chapters. However, nothing in this chapter shall be construed as restricting or diminishing any remedy provided by law to the owner or possessor of any land which is affected by hazardous waste on or near the land against any person who produced the waste or against any other person who was responsible for the condition affecting the property.

(b) A designation by the department pursuant to Section 25230 shall constitute a land use restriction. Except as specifically provided in this chapter, nothing in this chapter shall diminish or limit the authority of any city or county to approve or disapprove proposed land uses. Nothing in this chapter shall be construed to require a local government to permit a particular land use, including, but not limited to, commercial, industrial, agricultural, or other nonresidential use, on land which has been designated hazardous waste property or border zone property pursuant to Section 25230.

(Amended by Stats. 1984, Ch. 1736, Sec. 18. Effective September 30, 1984.)

25237. If any provision of this article or the application thereof to any person or circumstance is held invalid, such holding shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end, the provisions of the article are severable.

(Added by Stats. 1980, Ch. 1161.)

25239. All costs associated with the administration of this article by the department, including, but not limited to, costs incurred to implement Section 25156 and 25220, shall be paid from the Hazardous Waste Control Account in the General Fund.

(Added by Stats. 1980, Ch. 1161.)

25240. An assessor shall consider any restrictive easement, covenant, restriction, or servitude adopted pursuant to Section 25202.5, 25222.1, or 25355.5 or any easement, covenant, restriction, or servitude imposed pursuant to Section 25230 as an enforceable easement, covenant, restriction, or servitude subject to Section 402.1 of the Revenue and Taxation Code and shall appropriately reassess any land, the use of which has been so restricted, at the lien date following the adoption or imposition of the easement, covenant, restriction, or servitude.

(Amended by Stats. 1989, Ch. 906, Sec. 12.)

25241. The provisions of this article shall not apply to hazardous waste property as defined in paragraph (1) of subdivision (a) of Section 25117.3. Such property shall be regulated by the department pursuant to Section 25202.5 in order to protect the present and future public health and safety from hazardous waste.

(Added by Stats. 1982, Ch. 165, Sec. 4. Effective April 26, 1982.)

Article 11.5. Hazardous Waste Disposal on Public Land

(Article 11.5 added by Stats. 1984, Ch. 1546, Sec. 1. Effective September 30, 1984.)

25242. (a) Any city, county, or state agency which, as owner, lessor, or lessee, knows or has probable cause to believe that a disposal of hazardous waste which is not authorized pursuant to this chapter has occurred on, under, or into the land which the city, county, or state agency owns or leases shall notify the department. Upon receiving that notice, the department shall determine if there has been a disposal of hazardous waste which is not authorized pursuant to this chapter.

(b) If the department determines that there has been a disposal of hazardous waste which is not authorized pursuant to this chapter, the department shall do all of the following:

(1) Conduct, or arrange for the conducting of, tests to determine the general chemical and mineral composition of the hazardous waste.

(2) Require the city, county, or state agency which submitted the notice pursuant to subdivision (a) to prepare a hazardous waste management plan specifying those removal or remedial actions, as defined in Sections 25322 and 25323, which are needed to be taken concerning the hazardous waste. The hazardous waste management plan shall provide for the protection of human health and the environment and minimize or eliminate the escape of hazardous waste constituents, leachate, contaminated rainfall, and waste decomposition products into ground and surface waters and into the atmosphere.

(3) Send notice of the department's findings made pursuant to paragraph (1) to the county in which the land is located, the city, if any, in which the land is located, the owner of the property, and residents living within 2,000 feet of the property line of the land on which the hazardous wastes were disposed. The department shall also post signs in the vicinity of the land which contain this information and are visible to the public. The department may also provide this notice to other persons, or post these signs in any other area, to protect the public health and safety or to provide the maximum opportunity for comment from the potentially affected public.

(4) Conduct public hearings on the proposed hazardous waste management plan during those times and at those places which are convenient to the affected public. These hearings shall be conducted even if the hazardous waste management plan provides that no removal or remedial actions will be taken. The department shall publish notice of these hearings in newspapers of general circulation, as defined in Section 6000 of the Government Code, and shall use all other reasonable means to publicize these hearings.

(5) Take all actions required by Section 25358.7 concerning any

proposed removal or remedial actions.

(6) Take any other actions authorized by this chapter or Chapter 6.8 (commencing with Section 25300) to carry out the legislative intent specified in Section 25242.1.

(c) The city, county, or state agency which is required to prepare a hazardous waste management plan pursuant to paragraph (2) of subdivision (b) shall submit the proposed hazardous waste management plan for approval to the department or a California Regional Water Quality Control Board, whichever the department determines is appropriate. A city or state agency shall submit the plan to the county in which the land is located, and a county or state agency shall submit the plan to the city, if any, in which the land is located, for comments and recommendations. The city, county, or state agency shall also consider whether to incorporate any changes in the plan which are recommended by the county, city, and the public.

(Amended by Stats. 1985, Ch. 44, Sec. 6. Effective May 20, 1985.)

25242.1. It is the intention of the Legislature, in enacting this article, to protect the public health and safety and the environment by requiring all of the following:

(a) Prompt steps to remedy the unauthorized disposal of hazardous waste on public land be taken as soon as possible.

(b) Prompt notice be given to the affected public of such an unauthorized disposal of hazardous waste.

(c) Affording the public an opportunity for input into the manner in which the hazardous waste will be cleaned up or rendered safe.

(Added by renumbering Section 25342.1 (as added by Stats. 1984, Ch. 1546) by Stats. 1985, Ch. 44, Sec. 7. Effective May 20, 1985.)

25242.2. Prior to, or simultaneously with, utilizing the provisions of this article, the department shall diligently pursue all feasible civil and criminal actions against the owner of the land or other party responsible for the disposal of the hazardous waste, who violates this chapter or the regulations adopted pursuant to this chapter.

The owner, lessee, or lessor of any land which is affected by hazardous waste which was disposed on, under, or into the land may recover the costs incurred in complying with this article, in a civil action, from any person who produced the waste or from any other person who was responsible for the disposal of the hazardous waste.

The lessee of any land, who was not responsible for the unauthorized disposal of the hazardous waste upon that land, may also recover the costs incurred in complying with this article from the owner of the land if the person who produced the waste or who was responsible for the disposal of hazardous waste cannot be located or cannot compensate the lessee for these costs.

(Added by renumbering Section 25342.2 (as added by Stats. 1984, Ch. 1546) by Stats. 1985, Ch. 44, Sec. 8. Effective May 20, 1985.)

25242.3. If any provision of this article or the application thereof to any person or circumstance is held invalid, this holding shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end, the provisions of the article are severable.

(Added by renumbering Section 24342.3 (as added by Stats. 1984, Ch. 1546) by Stats. 1985, Ch. 44, Sec. 1. Effective May 20, 1985.)

Article 11.8. Hazardous Waste Reduction, Recycling, and Treatment

(Article 11.8 added by Stats. 1985, Ch. 1030, Sec. 2.)

25244. This article shall be known and may be cited as the Hazardous Waste Reduction, Recycling, and Treatment Research and Demonstration
Act of 1985.

(Added by Stats. 1985, Ch. 1030, Sec. 2.)

25244.1. (a) The Legislature hereby finds and declares that, whenever possible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible, and that waste that is generated should be recycled, treated, or disposed of in a manner that minimizes any present or future threats to human health or the environment.

(b) The Legislature further finds that there exists many promising, but as yet unproven, technologies for the reduced generation of hazardous waste and for recycling and treating hazardous waste.

(c) The Legislature further finds that financial commitment by public agencies and private industry for the expeditious development and dispersion of hazardous waste reduction, recycling, and treatment technologies depends upon further research as well as credible and timely demonstrations of the feasibility, environmental acceptability, and reliability of this technology.

(d) It is the intent of the Legislature, in enacting this article, to promote the research, development, and expeditious demonstration of technologies which have the potential to reduce, recycle, and treat hazardous waste. It is further the intent of the Legislature to encourage private sector participation in this program to the greatest extent possible.

(Added by Stats. 1985, Ch. 1030, Sec. 2.)

25244.2. For purposes of this article, "hazardous waste reduction, recycling, and treatment technologies" mean technologies and techniques which have, as their primary purpose, the reduced generation of hazardous waste, the recycling of hazardous waste, or the conversion of hazardous waste into a less hazardous form. "Hazardous waste reduction, recycling, and treatment technologies" do not include solidification or treatment occurring directly in, or on, the land, such as techniques using evaporation, surface impoundments, or land farming.

(Added by Stats. 1985, Ch. 1030, Sec. 2.)

25244.4. Every generator of hazardous waste shall submit a report to the department, at least once every two years, reporting the changes in volume and toxicity of waste achieved through waste reduction during the period for which the report is issued.

(Added by Stats. 1985, Ch. 1030, Sec. 2.)

25244.5. (a) The department shall establish a Hazardous Waste Technology, Research, Development, and Demonstration Program, which shall consist of all of the following elements:

(1) Contracting with, and providing grants to, universities, governmental agencies, and private organizations for the research and development of hazardous waste reduction, recycling, or treatment technologies pursuant to Section 25244.10.

(2) Providing grants, under specified conditions, to cities, counties, and private organizations for the commercial demonstration of hazardous waste reduction, recycling, or treatment technologies pursuant to Section 25244.6.

(3) Providing grants to local governments for the development of local hazardous waste reduction programs which provide technical assistance, including hazardous waste audits, to generators pursuant to Section 25244.1101.

(b) (1) For purposes of this subdivision, "commercially successful technology" means a hazardous waste reduction, recycling, or treatment technology which is proven to be profitable, as determined by the department.

(2) The department shall require any university, governmental agency, or private organization which receives a grant pursuant to paragraph (1) or (2) of subdivision (a) to agree to repay the department for the amount of the grant, if the grant results in the development of a commercially successful technology, and to additionally pay the department a percentage of any royalties derived from that technology, as negotiated between the department and the grant recipient.

(3) The department shall deposit any repayments or royalties received by the department pursuant to this subdivision in the Hazardous Waste Control Account, and those funds may be expended by the department, upon appropriation by the Legislature, to carry out this article.

(Amended by Stats. 1993, Ch. 412, Sec. 4. Effective January 1, 1994.)

25244.6. The department, in consultation with the State Water Resources Control Board, the State Air Resources Board, and the California Waste Management Board, shall do all of the following:

(a) Implement a program to research, develop, and demonstrate hazardous waste reduction, recycling, and treatment technologies at appropriate locations throughout the state.

(b) On or before January 1, 1987, and, in consultation with industry and interested parties, adopt criteria for selecting projects which would receive grants to pay for the construction of equipment which would be used to demonstrate hazardous waste reduction, recycling, or treatment technologies. The criteria shall include provisions which require that, in assessing each project, the department consider the feasibility of the

project's particular technology, the research and technical spinoffs likely to be generated by the project, the degree to which the findings of the projects can be disseminated and evaluated for replication elsewhere, and the consistency of, and contributions of, the project to the state's hazardous waste management program.

(c) Using the criteria adopted pursuant to subdivision (b), select projects to receive grants to construct equipment which would be used to demonstrate hazardous waste reduction, recycling, or treatment technologies. A grant issued by the department pursuant to this section is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of the Public Contract Code, including, but not limited to, Section 10295 of the Public Contract Code, or Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code. The department shall select projects which also meet at least one of the following requirements:

(1) The project has onsite, as well as offsite potential, for the reduction, recycling, or treatment of hazardous waste.

(2) The project has the potential to benefit, or be utilized by, small businesses.

(3) The project is applicable to a range of industries.

(Amended by Stats. 1987, Ch. 914, Sec. 3.)

25244.7. Consistent with Article VII of the California Constitution, the department may contract for services to be performed to carry out this article, including, but not limited to, environmental control assessment, feasibility analysis, the review of project design, field management responsibilities, and project scheduling and control.

(Added by Stats. 1985, Ch. 1030, Sec. 2.)

25244.8. Grant funding for equipment construction needed for demonstration of hazardous waste reduction, recycling, and treatment technologies shall be provided to projects selected pursuant to Section 25244.6 in four consecutive steps:

(a) Step I grants shall be made to study the feasibility of a proposed project. Ninety percent of the costs of the feasibility study shall be eligible for grant funding up to a maximum of twenty-five thousand dollars ($25,000) per grant. In activities funded by a step I grant, the applicant shall develop information needed to select the waste reduction, recycling, or treatment alternative, which would be most cost-effective.

(b) Step II grants shall be made for project design. Seventy percent of the costs of the design of the project shall be eligible for grant funding, except that a small business may be eligible for 90 percent of those costs, up to a maximum of fifty thousand dollars ($50,000) per grant. In activities funded by a step II grant, the applicant shall prepare detailed plans and specifications for the selected facilities, establish schedules for implementation, and obtain necessary permits.

(c) Step III grants shall be made for the construction of the facilities. Fifty percent of the costs of constructing the project shall be eligible for grant funding, except that a small business may be eligible for 80 percent of those costs, up to a maximum of four hundred thousand dollars ($400,000) per grant. As a condition of receiving a step III grant, the grantee shall allow the results of the project to be evaluated and the information disseminated to other parties. In activities funded by a step III grant, the applicant shall construct the facilities as designed under a step II grant, procure needed equipment, and obtain necessary permits to operate the facility.

(d) Step IV grants shall be made to evaluate the effectiveness of grant-funded facilities, develop information on compliance with regulatory permits, and assess applicability of the selected approach to other generators of similar hazardous wastes. Ninety percent of the costs of those activities shall be eligible for grant funding, except that a small business may be eligible for 100 percent of those costs, up to a maximum of one hundred thousand dollars ($100,000) per grant.

(Added by Stats. 1985, Ch. 1030, Sec. 2.)

25244.9. The department shall compile the results of all evaluations of projects funded by step IV grants, as specified in subdivision (d) of Section 25244.8, or the evaluations of any other project which are available to the department, and shall make them available to interested parties as expeditiously as possible. The department shall notify any interested party of the availability of project evaluations.

(Added by Stats. 1985, Ch. 1030, Sec. 2.)

25244.10. The department may issue grants to, and enter into contracts with, universities, governmental agencies, and private organizations to research and develop hazardous waste reduction, recycling, or treatment technology. These grants may be applied to personnel, equipment, and administrative costs and shall, to the extent possible, be used to augment other sources of research and development funding, including federal and private funds. Any grant issued by the department pursuant to this section is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of the Public Contract Code, including, but not limited to, Section 10295 of the Public Contract Code, but a contract entered into pursuant to this section is subject to all applicable state laws governing contracts.

(Amended by Stats. 1987, Ch. 914, Sec. 4.)

25244.11. The department shall, report to the Governor and the Legislature, including the Chairpersons of the Senate Committee on Appropriations, Assembly Committee on Ways and Means, Joint Legislative Budget Committee, and Assembly Committee on Economic Development and New Technologies, on the status, funding, and results of all demonstration and research projects awarded grants during a year when grant funds are made available.

This report shall include recommendations for legislation and shall identify those state and federal economic and financial incentives which can best accelerate and maximize the research, development, and demonstration of hazardous waste reduction, recycling, and treatment technologies.

(Amended by Stats. 2004, Ch. 644, Sec. 9. Effective January 1, 2005.)

Article 11.9. Hazardous Waste Source Reduction and Management Review Act of 1989

(Article 11.9 added by Stats. 1989, Ch. 1218, Sec. 1.)

25244.12. This article shall be known and may be cited as the Hazardous Waste Source Reduction and Management Review Act of 1989.

(Added by Stats. 1989, Ch. 1218, Sec. 1.)

25244.13. The Legislature finds and declares as follows:

(a) Existing law requires the department and the State Water Resources Control Board to promote the reduction of generated hazardous waste. This policy, in combination with hazardous waste land disposal bans, requires the rapid development of new programs and incentives for achieving the goal of optimal minimization of the generation of hazardous wastes. Substantial improvements and additions to the state's hazardous waste reduction program are required to be made if these goals are to be achieved.

(b) Hazardous waste source reduction provides substantial benefits to the state's economy by maximizing use of materials, avoiding generation of waste materials, improving business efficiency, enhancing revenues of companies that provide products and services in the state, increasing the economic competitiveness of businesses located in the state, and protecting the state's precious and valuable natural resources.

(c) It is the intent of the Legislature to expand the state's hazardous waste source reduction activities beyond those directly associated with source reduction evaluation reviews and plans. The expanded program, which is intended to accelerate reduction in hazardous waste generation, shall include programs to promote implementation of source reduction measures using education, outreach, and other effective voluntary techniques demonstrated in California or other states.

(d) It is the intent of the Legislature for the department to maximize the use of its available resources in implementing the expanded source reduction program through cooperation with other entities, including, but not limited to, CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs. To the extent feasible, the department shall utilize cooperative programs with entities that routinely contact small business to expand its support of small business source reduction activities.

(e) It is the goal of this article to do all of the following:

(1) Reduce the generation of hazardous waste.

(2) Reduce the release into the environment of chemical contaminants which have adverse and serious health or environmental effects.

(3) Document hazardous waste management information and make that information available to state and local government.

(f) It is the intent of this article to promote the reduction of hazardous waste at its source, and wherever source reduction is not feasible

or practicable, to encourage recycling. Where it is not feasible to reduce or recycle hazardous waste, the waste should be treated in an environmentally safe manner to minimize the present and future threat to health and the environment.

(g) It is the intent of the Legislature not to preclude the regulation of environmentally harmful releases to all media, including air, land, surface water, and groundwater, and to encourage and promote the reduction of these releases to air, land, surface water, and groundwater.

(h) It is the intent of the Legislature to encourage all state departments and agencies, especially the State Water Resources Control Board, the California regional water quality control boards, the State Air Resources Board, the air pollution control districts, and the air quality management districts, to promote the reduction of environmentally harmful releases to all media.

(Amended by Stats. 1998, Ch. 881, Sec. 5. Effective January 1, 1999.)

25244.14. For purposes of this article, the following definitions apply:

(a) "Advisory committee" means the California Source Reduction Advisory Committee established pursuant to Section 25244.15.1.

(b) "Appropriate local agency" means a county, city, or regional association that has adopted a hazardous waste management plan pursuant to Article 3.5 (commencing with Section 25135).

(c) "Hazardous waste management approaches" means approaches, methods, and techniques of managing the generation and handling of hazardous waste, including source reduction, recycling, and the treatment of hazardous waste.

(d) "Hazardous waste management performance report" or "report" means the report required by subdivision (b) of Section 25244.20 to document and evaluate the results of hazardous waste management practices.

(e) (1) "Source reduction" means one of the following:

(A) Any action that causes a net reduction in the generation of hazardous waste.

(B) Any action taken before the hazardous waste is generated that results in a lessening of the properties which cause it to be classified as a hazardous waste.

(2) "Source reduction" includes, but is not limited to, all of the following:

(A) "Input change," which means a change in raw materials or feedstocks used in a production process or operation so as to reduce, avoid, or eliminate the generation of hazardous waste.

(B) "Operational improvement," which means improved site management so as to reduce, avoid, or eliminate the generation of hazardous waste.

(C) "Production process change," which means a change in a process, method, or technique which is used to produce a product or a desired result, including the return of materials or their components, for reuse within the existing processes or operations, so as to reduce, avoid, or eliminate the generation of hazardous waste.

(D) "Product reformulation," which means changes in design, composition, or specifications of end products, including product substitution, so as to reduce, avoid, or eliminate the generation of hazardous waste.

(3) "Source reduction" does not include any of the following:

(A) Actions taken after a hazardous waste is generated.

(B) Actions that merely concentrate the constituents of a hazardous waste to reduce its volume or that dilute the hazardous waste to reduce its hazardous characteristics.

(C) Actions that merely shift hazardous wastes from one environmental medium to another environmental medium.

(D) Treatment.

(f) "Source reduction evaluation review and plan" or "review and plan" means a review conducted by the generator of the processes, operations, and procedures in use at a generator's site, in accordance with the format established by the department pursuant to subdivision (a) of Section 25244.16, and that does both of the following:

(1) Determines any alternatives to, or modifications of, the generator's processes, operations, and procedures that may be implemented to reduce the amount of hazardous waste generated.

(2) Includes a plan to document and implement source reduction measures for the hazardous wastes specified in paragraph (1) that are technically feasible and economically practicable for the generator, including a reasonable implementation schedule.

(g) "SIC Code" has the same meaning as defined in Section 25501.

(h) "Hazardous waste," "person," "recycle," and "treatment" have the same meaning as defined in Article 2 (commencing with Section 25110).

(Amended by Stats. 1998, Ch. 881, Sec. 6. Effective January 1, 1999.)

25244.15. (a) The department shall establish a program for hazardous waste source reduction pursuant to this article.

(b) The department shall coordinate the activities of all state agencies with responsibilities and duties relating to hazardous waste and shall promote coordinated efforts to encourage the reduction of hazardous waste. Coordination between the program and other relevant state agencies and programs shall, to the fullest extent possible, include joint planning processes and joint research and studies.

(c) The department shall adopt regulations to carry out this article.

(d) (1) Except as provided in paragraph (3), this article applies only to generators who, by site, routinely generate, through ongoing processes and operations, more than 12,000 kilograms of hazardous waste in a calendar year, or more than 12 kilograms of extremely hazardous waste in a calendar year.

(2) The department shall adopt regulations to establish procedures for exempting generators from the requirements of this article where the department determines that no source reduction opportunities exist for the generator.

(3) Notwithstanding paragraph (1), this article does not apply to any generator whose hazardous waste generating activity consists solely of receiving offsite hazardous wastes and generating residuals from the processing of those hazardous wastes.

(Amended by Stats. 2000, Ch. 343, Sec. 13.5. Effective January 1, 2001.)

25244.15.1. (a) The California Source Reduction Advisory Committee is hereby created and consists of the following members:

(1) The Executive Director of the State Air Resources Board, as an ex officio member.

(2) The Executive Director of the State Water Resources Control Board, as an ex officio member.

(3) The Director of Toxic Substances Control, as an ex officio member.

(4) The Executive Director of the Integrated Waste Management Board, as an ex officio member.

(5) The Chairperson of the California Environmental Policy Council established pursuant to Section 71017 of the Public Resources Code, as an ex officio member.

(6) Ten public members with experience in source reduction as appointed by the department. These public members shall include all of the following:

(A) Two representatives of local governments from different regions of the state.

(B) One representative of a publicly owned treatment works.

(C) Two representatives of industry.

(D) One representative of small business.

(E) One representative of organized labor.

(F) Two representatives of statewide environmental advocacy organizations.

(G) One representative of a statewide public health advocacy organization.

(7) The department may appoint up to two additional public members with experience in source reduction and detailed knowledge of one of the priority categories of generators selected in accordance with Section 25244.17.1.

(b) The advisory committee shall select one member to serve as chairperson.

(c) The members of the advisory committee shall serve without compensation, but each member, other than officials of the state, shall be reimbursed for all reasonable expenses incurred in the performance of his or her duties, as authorized by the department.

(d) The advisory committee shall meet at least semiannually to

provide a public forum for discussion and deliberation on matters pertaining to the implementation of this chapter.

(e) The advisory committee's responsibilities shall include, but not be limited to, the following:

(1) Reviewing and providing consultation and guidance in the preparation of the work plan required by Section 25244.22.

(2) Evaluating the performance and progress of the department's source reduction program.

(3) Making recommendations to the department concerning program activities and funding priorities, and legislative changes, if needed.

(f) The advisory committee established by this section shall be in existence until April 15, 2002, by which date the department shall, in consultation with the advisory committee, evaluate the role and activities of the advisory committee and determine if the committee is beneficial to the implementation of this article. On and after April 15, 2002, the advisory committee shall continue to exist and operate to the extent that the department, in consultation with the advisory committee, determines the advisory committee continues to be beneficial to the operation of the department's source reduction programs.

(Added by Stats. 1998, Ch. 881, Sec. 7. Effective January 1, 1999.)

25244.16. The department shall do both of the following:

(a) Adopt a format to be used by generators for completing the review and plan required by Section 25244.19, and the report required by Section 25244.20. The format shall include at least all of the factors the generator is required to include in the review and plan and the report. The department may include any other factor determined by the department to be necessary to carry out this article. The adoption of a format pursuant to this subdivision is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Establish a data and information system to be used by the department for developing the categories of generators specified in Section 25244.18, and for processing and evaluating the source reduction and other hazardous waste management information submitted by generators pursuant to Section 25244.18. In establishing the data and information system, the department shall do all of the following:

(1) Establish methods and procedures for appropriately processing or managing hazardous waste source reduction and management information.

(2) Use the data management expertise, resources, and forms of already established environmental protection programs, to the extent practicable.

(3) Establish computerized data retrieval and data processing systems, including safeguards to protect trade secrets designated pursuant to Section 25244.23.

(4) Identify additional data and information needs of the program.

(Amended by Stats. 1997, Ch. 520, Sec. 3. Effective January 1, 1998.)

25244.17. The department shall establish a technical and research assistance program to assist generators in identifying and applying methods of source reduction and other hazardous waste management approaches. The program shall emphasize assistance to smaller businesses that have inadequate technical and financial resources for obtaining information, assessing source reduction methods, and developing and applying source reduction techniques. The program shall include at least all of the following elements, which shall be carried out by the department:

(a) The department shall encourage programs by private or public consultants, including onsite consultation at sites or locations where hazardous waste is generated, to aid those generators requiring assistance in developing and implementing the review and plan, the plan summary, the report, and the report summary required by this article.

(b) The department shall conduct review and plan assistance programs, seminars, workshops, training programs, and other similar activities to assist generators to evaluate source reduction alternatives and to identify opportunities for source reduction.

(c) The department shall establish a program to assemble, catalogue, and disseminate information about hazardous waste source reduction methods, available consultant services, and regulatory requirements.

(d) The department shall identify the range of generic and specific technical solutions that can be applied by particular types of hazardous waste generators to reduce hazardous waste generation.

(Added by Stats. 1989, Ch. 1218, Sec. 1.)

25244.17.1. The department shall establish a technical assistance and outreach program to promote implementation of model source reduction measures in priority industry categories.

(a) Every two years, in the work plan required by Section 25244.22, the department shall, in consultation with the advisory committee, select at least two priority categories of generators by SIC Code. At least one selected category of generators shall be taken from the list of categories previously selected by the department under Section 25244.18. At least one selected category of generators shall be a category that consists primarily of small businesses.

(b) For each selected priority industry category, the department shall implement a cooperative source reduction technical assistance and outreach program to include the following elements:

(1) The department shall use available resources, including reports prepared pursuant to paragraph (4) of subdivision (a) of Section 25244.18 and information on source reduction methods from federal, state, and local governments and industry associations and industry members, to identify a set of model source reduction measures for each industry category.

(2) The department shall determine, with the assistance of the advisory committee, the most effective technical assistance and outreach methods to promote implementation of the model source reduction measures identified in paragraph (1).

(3) The department shall develop a plan and schedule to implement the technical assistance and outreach measures before the next biennial work plan. The measures may include, but are not limited to, all of the following:

(A) Holding, presenting at, or cosponsoring workshops, conferences, technology fairs, and other promotional events.

(B) Developing and distributing educational materials, such as short descriptions of successful source reduction projects.

(C) Developing checklists, training manuals, technical resource manuals and using those resources to train CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs.

(D) Preparing and distributing resource lists, such as lists of vendors, consultants, or providers of financial assistance for source reduction projects.

(E) Serving as an information clearinghouse to support telephone and onsite consultations with businesses and local governments.

(4) For industry categories that include primarily large or technically complex businesses, the source reduction technical assistance and outreach program shall emphasize activities that involve direct communication between department staff and industry members. For these industry categories, the department shall communicate with representatives of 80 percent of the state's companies in the category. For categories that consist primarily of small businesses, the cooperative source reduction program shall emphasize providing industry-specific training and resources to CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs for use in their inspections and other direct communications with businesses.

(c) While conducting activities under this section, the department shall coordinate its activities with appropriate industry and professional associations.

(d) The department shall coordinate activities under this section with grants made under Sections 25244.5 and 25244.11.5.

(Added by Stats. 1998, Ch. 881, Sec. 8. Effective January 1, 1999.)

25244.17.2. The department shall expand the department's source reduction program to provide source reduction training and resources to CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs so that they can provide technical assistance to generators in identifying and applying methods of source reduction.

(a) The program expanded pursuant to this section shall emphasize activities necessary to implement Sections 25244.17 and 25244.17.1.

(b) The department shall determine, in consultation with the advisory committee, the most effective methods to promote implementation of source reduction education programs by CUPAs, small business development corporations, business environmental assistance centers, and other regional

and local government environmental programs. Program elements may include, but are not limited to, all of the following:

(1) Sponsoring workshops, conferences, technology fairs, and other training events.

(2) Sponsoring regional training groups, such as the regional hazardous waste reduction committees.

(3) Developing and distributing educational materials, such as short descriptions of successful source reduction projects and materials explaining how source reduction has been used by businesses to achieve compliance with environmental laws enforced by local governments.

(4) Developing site review checklists, training manuals, and technical resource manuals and using those resources to train CUPAs, small business development corporations, business environmental assistance centers, and other regional and local government environmental programs.

(5) Preparing and distributing resource lists such as lists of vendors, consultants, or providers of financial assistance for source reduction projects.

(6) Serving as an information clearinghouse to support telephone and onsite consultants with local governments.

(c) The department shall coordinate activities under this section with grants made under Section 25244.11.5.

(d) Each fiscal year, the department shall provide training and information resources to at least 90 percent of CUPAs.

(Added by Stats. 1998, Ch. 881, Sec. 9. Effective January 1, 1999.)

25244.18. (a) On or before September 15, 1991, and every two years thereafter, the department shall select at least two categories of generators by SIC Code with potential for source reduction, and, for each category, shall do all of the following:

(1) Request that selected generators in the category provide the department, on a timely basis, with a copy of the generator's completed review and plan and with a copy of the generator's completed report.

(2) Examine the review and plan and the report of selected generators in the category.

(3) Ensure that the selected generators in that category comply with Sections 25244.19 and 25244.20.

(4) Identify successful source reduction and other hazardous waste management approaches employed by generators in the category and disseminate information concerning those approaches to generators within the category.

(b) In carrying out subdivision (a), the department shall not disseminate information determined to be a trade secret pursuant to Section 25244.23.

(c) The department or the unified program agency may request from any generator, and the generator shall provide within 30 days from the date of the request, a copy of the generator's review and plan or report. The department or the unified program agency may evaluate any of those documents submitted to the department or the unified program agency to determine whether it satisfies the requirements of this article.

(d) (1) If the department or the unified program agency determines that a generator has not completed the review and plan in the manner required by Section 25244.19, or the report in the manner required by Section 25244.20, the department or the unified program agency shall provide the generator with a notice of noncompliance, specifying the deficiencies in the review and plan or report identified by the department. If the department or the unified program agency finds that the review and plan does not comply with Section 25244.19, the department or the unified program agency shall consider the review and plan to be incomplete. A generator shall file a revised review and plan or report correcting the deficiencies identified by the department or the unified program agency within 60 days from the date of the receipt of the notice. The department or the unified program agency may grant, in response to a written request from the generator, an extension of the 60-day deadline, for cause, except that the department or the unified program agency shall not grant that extension for more than an additional 60 days.

(2) If a generator fails to submit a revised review and plan or report complying with the requirements of this article within the required period, or if the department or unified program agency determines that a generator has failed to implement the measures included in the generator's review and plan for reducing the generator's hazardous waste, in accordance with Section 25244.19, the department or the unified program agency may impose civil penalties pursuant to Section 25187, in an amount not to exceed one thousand dollars ($1,000) for each day the violation of this article continues, notwithstanding Section 25189.2, seek an order directing compliance pursuant to Section 25181, or enter into a consent agreement or a compliance schedule with the generator.

(e) If a generator fails to implement a measure specified in the review and plan pursuant to paragraph (5) of subdivision (b) of Section 25244.19, the generator shall not be deemed to be in violation of Section 25244.19 for not implementing the selected measure if the generator does both of the following:

(1) The generator finds that, upon further analysis or as a result of unexpected consequences, the selected measure is not technically feasible or economically practicable, or if the selected approach has resulted in any of the following:

(A) An increase in the generation of hazardous waste.

(B) An increase in the release of hazardous chemical contaminants to other media.

(C) Adverse impacts on product quality.

(D) A significant increase in the risk of an adverse impact to human health or the environment.

(2) The generator revises the review and plan to comply with the requirements of Section 25244.19.

(f) When taking enforcement action pursuant to this article, the department or the unified program agency shall not judge the appropriateness of any decisions or proposed measures contained in a review and plan or report, but shall only determine whether the review and plan or report is complete, prepared, and implemented in accordance with this article.

(g) In addition to the unified program agency, an appropriate local agency that has jurisdiction over a generator's site may request from the generator, and the generator shall provide within 30 days from the date of that request, a copy of the generator's current review and plan and report.

(Amended by Stats. 1997, Ch. 520, Sec. 4. Effective January 1, 1998.)

25244.19. (a) On or before September 1, 1991, and every four years thereafter, each generator shall conduct a source reduction evaluation review and plan pursuant to subdivision (b).

(b) Except as provided in subdivision (c), the source reduction evaluation review and plan required by subdivision (a) shall be conducted and completed for each site pursuant to the format adopted pursuant to subdivision (a) of Section 25244.16 and shall include, at a minimum, all of the following:

(1) The name and location of the site.

(2) The SIC Code of the site.

(3) Identification of all routinely generated hazardous waste streams that annually weigh 600 kilograms or more and that result from ongoing processes or operations and exceed 5 percent of the total yearly weight of hazardous waste generated at the site, or, for extremely hazardous waste, that annually weigh 0.6 kilograms or more and exceed 5 percent of the total yearly weight of extremely hazardous waste generated at the site. For purposes of this paragraph, a hazardous waste stream identified pursuant to this paragraph shall also meet one of the following criteria:

(A) It is a hazardous waste stream processed in a wastewater treatment unit that discharges to a publicly owned treatment works or under a national pollutant discharge elimination system (NPDES) permit, as specified in the Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1251 and following).

(B) It is a hazardous waste stream that is not processed in a wastewater treatment unit and its weight exceeds 5 percent of the weight of the total yearly volume at the site, less the weight of any hazardous waste stream identified in subparagraph (A).

(4) For each hazardous waste stream identified in paragraph (3), the review and plan shall include all of the following information:

(A) An estimate of the quantity of hazardous waste generated.

(B) An evaluation of source reduction approaches available to the generator that are potentially viable. The evaluation shall consider at least all of the following source reduction approaches:

(i) Input change.

(ii) Operational improvement.

(iii) Production process change.

(iv) Product reformulation.

(5) A specification of, and a rationale for, the technically feasible and economically practicable source reduction measures that will be taken by the generator with respect to each hazardous waste stream identified

in paragraph (3). The review and plan shall fully document any statement explaining the generator's rationale for rejecting any available source reduction approach identified in paragraph (4).

(6) An evaluation, and, to the extent practicable, a quantification, of the effects of the chosen source reduction method on emissions and discharges to air, water, or land.

(7) A timetable for making reasonable and measurable progress towards implementation of the selected source reduction measures specified in paragraph (5).

(8) Certification pursuant to subdivision (d).

(9) Any generator subject to this article shall include in its source reduction evaluation review and plan four-year numerical goals for reducing the generation of hazardous waste streams through the approaches provided for in subparagraph (B) of paragraph (4), based upon its best estimate of what is achievable in that four-year period.

(10) A summary progress report that briefly summarizes and, to the extent practicable, quantifies, in a manner that is understandable to the general public, the results of implementing the source reduction methods identified in the generator's review and plan for each waste stream addressed by the previous plan over the previous four years. The report shall also include an estimate of the amount of reduction that the generator anticipates will be achieved by the implementation of source reduction methods during the period between the preparation of the review and plan and the preparation of the generator's next review and plan. Notwithstanding any other provision of this section, the summary progress report required to be prepared pursuant to this paragraph shall be submitted to the department on or before September 1, 1999, and every four years thereafter.

(c) If a generator owns or operates multiple sites with similar processes, operations, and waste streams, the generator may prepare a single multisite review and plan addressing all of these sites.

(d) Every review and plan conducted pursuant to this section shall be submitted by the generator for review and certification by an engineer who is registered as a professional engineer pursuant to Section 6762 of the Business and Professions Code and who has demonstrated expertise in hazardous waste management, by an individual who is responsible for the processes and operations of the site, or by an environmental assessor who is registered pursuant to Section 25570.3 and who has demonstrated expertise in hazardous waste management. The engineer, individual, or environmental assessor shall certify the review and plan only if the review and plan meet all of the following requirements:

(1) The review and plan addresses each hazardous waste stream identified pursuant to paragraph (3) of subdivision (b).

(2) The review and plan addresses the source reduction approaches specified in subparagraph (B) of paragraph (4) of subdivision (b).

(3) The review and plan clearly sets forth the measures to be taken with respect to each hazardous waste stream for which source reduction has been found to be technically feasible and economically practicable, with timetables for making reasonable and measurable progress, and properly documents the rationale for rejecting available source reduction measures.

(4) The review and plan does not merely shift hazardous waste from one environmental medium to another environmental medium by increasing emissions or discharges to air, water, or land.

(e) At the time a review and plan is submitted to the department or the unified program agency, the generator shall certify that the generator has implemented, is implementing, or will be implementing, the source reduction measures identified in the review and plan in accordance with the implementation schedule contained in the review and plan. A generator may determine not to implement a measure selected in paragraph (5) of subdivision (b) only if the generator determines, upon conducting further analysis or due to unexpected circumstances, that the selected measure is not technically feasible or economically practicable, or if attempts to implement that measure reveal that the measure would result in, or has resulted in, any of the following:

(1) An increase in the generation of hazardous waste.

(2) An increase in the release of hazardous chemicals to other environmental media.

(3) Adverse impacts on product quality.

(4) A significant increase in the risk of an adverse impact to human health or the environment.

(f) If the generator elects not to implement the review and plan, including, but not limited to, a selected measure pursuant to subdivision (e), the generator shall amend its review and plan to reflect that election and include in the review and plan proper documentation identifying the rationale for that election.

(Amended by Stats. 2000, Ch. 343, Sec. 14. Effective January 1, 2001.)

25244.20. (a) On or before September 1, 1991, and every four years thereafter, each generator shall prepare a hazardous waste management performance report documenting hazardous waste management approaches implemented by the generator.

(b) Except as provided in subdivision (d), the hazardous waste management performance report required by subdivision (a) shall be prepared for each site in accordance with the format adopted pursuant to subdivision (a) of Section 25244.16 and shall include all of the following:

(1) The name and location of the site.

(2) The SIC Code for the site.

(3) All of the following information for each waste stream identified pursuant to paragraph (3) of subdivision (b) of Section 25244.19:

(A) An estimate of the quantity of hazardous waste generated and the quantity of hazardous waste managed, both onsite and offsite, during the current reporting year and the baseline year, as specified in subdivision (c).

(B) An abstract for each source reduction, recycling, or treatment technology implemented from the baseline year through the current reporting year, if the reporting year is different from the baseline year.

(C) A description of factors during the current reporting year that have affected hazardous waste generation and onsite and offsite hazardous waste management since the baseline year, including, but not limited to, any of the following:

(i) Changes in business activity.

(ii) Changes in waste classification.

(iii) Natural phenomena.

(iv) Other factors that have affected either the quantity of hazardous waste generated or onsite and offsite hazardous waste management requirements.

(4) The certification of the report pursuant to subdivision (e).

(c) For purposes of subdivision (b), the following definitions apply:

(1) The current reporting year is the calendar year immediately preceding the year in which the report is to be prepared.

(2) The baseline year is either of the following, whichever is applicable:

(A) For the initial report, the baseline year is the calendar year selected by the generator for which substantial hazardous waste generation, or onsite or offsite management, data is available prior to 1991.

(B) For all subsequent reports, the baseline year is the current reporting year of the immediately preceding report.

(d) If a generator owns or operates multiple sites with similar processes, operations, and waste streams, the generator may prepare a single multisite report addressing all of these sites.

(e) Every report completed pursuant to this section shall be submitted by the generator for review and certification by an engineer who is registered as a professional engineer pursuant to Section 6762 of the Business and Professions Code and who has demonstrated expertise in hazardous waste management, by an individual who is responsible for the processes and operations of the site, or by an environmental assessor who is registered pursuant to Section 25570.3 and who has demonstrated expertise in hazardous waste management. The engineer, individual, or environmental assessor shall certify the report only if the report identifies factors that affect the generation and onsite and offsite management of hazardous wastes and summarizes the effect of those factors on the generation and onsite and offsite management of hazardous wastes.

(Amended by Stats. 2000, Ch. 343, Sec. 15. Effective January 1, 2001.)

25244.21. (a) Every generator shall retain the original of the current review and plan and report, shall maintain a copy of the current review and plan and report at each site, or, for a multisite review and plan or report, at a central location, and upon request, shall make it available to any authorized representative of the department or the unified program agency conducting an inspection pursuant to Section 25185. If a generator fails, within five days, to make available to the inspector the review and plan or report, the department, the unified program agency, or any authorized representative of the department, or of the unified program agency, conducting

an inspection pursuant to Section 25185, shall, if appropriate, impose a civil penalty pursuant to Section 25187, in an amount not to exceed one thousand dollars ($1,000) for each day the violation of this article continues, notwithstanding Section 25189.2.

(b) If a generator fails to respond to a request for a copy of its review and plan or report made by the department or a unified program agency pursuant to subdivision (c) of Section 25244.18, or by a local agency pursuant to subdivision (g) of Section 25244.18, within 30 days from the date of the request, the department or unified program agency shall, if appropriate, assess a civil penalty pursuant to Section 25187, in an amount not to exceed one thousand dollars ($1,000) for each day the violation of this article continues, notwithstanding Section 25189.2.

(c) (1) Any person may request the department to certify that a generator is in compliance with this article by having the department certify that the generator has properly completed the review and plan and report required pursuant to Sections 25244.19 and 25244.20. The department shall respond within 60 days to a request for certification. Upon receiving a request for certification, the department shall request from the generator, who is the subject of the request, a copy of the generator's review and plan and report, pursuant to subdivision (c) of Section 25244.19, if the department does not have these documents. The department shall forward a copy of the review and plan and report to the person requesting certification, within 10 days from the date that the department receives the request for certification or receives the review and plan and report, whichever is later. The department shall protect trade secrets in accordance with Section 25244.23 in a review and plan or report, requested to be released pursuant to this subdivision.

(2) This subdivision does not prohibit any person from directly requesting from a generator a copy of the review and plan or report. Solely for the purposes of responding to a request pursuant to this subdivision, the department shall deem the review and plan or report to be a public record subject to Section 25152.5, and shall act in compliance with that section.

(Amended by Stats. 1997, Ch. 520, Sec. 7. Effective January 1, 1998.)

25244.22. Commencing May 1, 2000, and on or before January 15 of every other year thereafter, the department shall prepare, and make available for public review within five days thereafter, a draft work plan for the department's operations and activities in carrying out this article. The department shall prepare the work plan in consultation with the advisory committee and with other interested parties, including local government, industry, labor, health, and environmental organizations. After holding a public meeting of the advisory committee to discuss the draft work plan, the department shall finalize the work plan on or before June 15, 2000, and on or before April 1 of every other year thereafter. The department may include this work plan within the report required pursuant to Section 25171. This work plan shall include, but not be limited to, all of the following information:

(a) A summary analysis of readily available data on the state's hazardous waste generation and management patterns. The analysis shall include information from various data sources including hazardous waste manifests, biennial generator reports, and United States Environmental Protection Agency Toxics Release Inventory reports. The department shall estimate the quantities of hazardous waste generated in the state, by hazardous waste stream, the amounts of hazardous waste generated in the state by industry SIC Code, and the amounts of hazardous waste state generators sent offsite for management, by management method.

(b) An evaluation of hazardous waste source reduction progress in this state, using the data summary analysis prepared pursuant to subdivision (a).

(c) Recommendations for legislation.

(d) Identification of any state, federal, or private economic and financial incentives that can best accelerate and maximize the research and development of source reduction and other hazardous waste management technologies and approaches.

(e) The status, funding, and results of all research projects.

(f) A detailed summary of the extent to which the statewide goal of 5 percent per year reduction of the generation of hazardous wastes, pursuant to subdivision (e) of Section 25244.15, has been attained, and a detailed summary of the extent to which different categories of facilities have attained the numerical goals established pursuant to paragraph (9) of subdivision (b) of Section 25244.19. This summary, which shall use the data summary analysis prepared pursuant to subdivision (a), shall include an evaluation by the department of the reasons why these goals have or have not been attained, including an evaluation of the impact of economic growth or decline and changes in production patterns, and a list of appropriate recommendations designed to ensure attainment of these goals.

(g) An outline of the department's operations and activities under this article proposed for the next two-year period. The department shall use the data summary analysis prepared pursuant to subdivision (a) to select hazardous waste stream and industries for source reduction efforts. When identifying activities for inclusion in the work plan, the department shall also consider potential benefits to human health and the environment, available resources, feasibility of applying source reduction techniques to reduce selected hazardous waste streams and to reduce hazardous wastes generated by selected industries, and availability of related resources from other entities, such as other states, the federal government, local governments, and other organizations.

(Amended by Stats. 1998, Ch. 881, Sec. 10. Effective January 1, 1999.)

25244.23. (a) (1) The department shall adopt regulations to ensure that trade secrets designated by a generator in all or a portion of the review and plan or the report required by this article are utilized by the director, the department, the unified program agency, or the appropriate local agency only in connection with the responsibilities of the department pursuant to this article, and that those trade secrets are not otherwise disseminated by the director, the department, the unified program agency, or any authorized representative of the department, or the appropriate local agency, without the consent of the generator.

(2) Any information subject to this section shall be made available to governmental agencies for use in making studies and for use in judicial review or enforcement proceedings involving the person furnishing the information.

(3) As provided by Section 25159.5, the regulations adopted pursuant to this subdivision shall conform with the corresponding trade secret regulations adopted by the Environmental Protection Agency pursuant to the federal act, except that the regulations adopted by the department may be more stringent or more extensive than the federal trade secret regulations.

(4) "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that is not patented, that is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value, and that gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(b) The department, the unified program agency, and the appropriate local agency shall protect from disclosure any trade secret designated by the generator pursuant to this section. The department shall make available information concerning source reduction approaches that have proved successful, and that do not constitute a trade secret, when carrying out subdivision (c) of Section 25244.17 and to subdivision (a) of Section 25244.18.

(c) This section does not permit a generator to refuse to disclose the information required pursuant to this article to the department, the unified program agency, or the appropriate local agency, an officer or employee of the department, the unified program agency, or the appropriate local agency, in connection with the official duties of that officer or employee under this article.

(d) Any officer or employee of the department, the unified program agency, or the appropriate local agency, or any other person, who, because of his or her employment or official position, has possession of, or has access to, confidential information, and who, knowing that disclosure of the information to the general public is prohibited by this section, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment.

(Amended by Stats. 1997, Ch. 520, Sec. 9. Effective January 1, 1998.)

25244.24. (a) For purposes of this section the following

definitions shall apply:

(1) "Program" means the voluntary program to reduce hazardous waste generation established by this section.

(2) "Release" means a release of a chemical into the environment in any manner and by any means. "Release" includes, but is not limited to, any release authorized or permitted pursuant to a statute, ordinance, regulation, or rule of any federal, state, local, or regional agency or government or by a permit, license, variance or other authorization from the agency or government.

(b) On or before October 1, 2000, the department shall, in consultation with the advisory committee established pursuant to Section 25244.15.1, conduct an inventory and analysis of low-cost voluntary programs that are, or have been conducted by other states, the federal government, or local government entities to reduce hazardous waste generation and other environmental releases of toxic chemicals, and shall develop recommendations for programs that would be effective and feasible in California, based on the inventory and analysis.

(c) In consultation with the advisory committee, large businesses, and the public, the department shall develop a low-cost voluntary program to further reduce generation of hazardous waste by large businesses in California. The program shall be designed to promote cooperative relationships between California business and the department, while creating a significant environmental benefit from reduced hazardous waste generation. The department shall include the program in the work plan required by Section 25244.22 on or before January 15, 2002.

(d) In designing and implementing the program the department shall take into consideration all of the following:

(1) Estimates of the volumes of potential reductions of hazardous waste generation and other possible program benefits.

(2) The types of facilities expected to participate and their current hazardous waste generation and other releases of toxic chemicals into the environment.

(3) The potential for reductions in hazardous waste generation resulting in an increase in releases of toxic chemicals to a different environmental medium.

(4) The potential public health and environmental benefits of the program.

(5) Methods for publicizing the program and encouraging facilities throughout the state to participate in the program.

(6) Providing appropriate public recognition of facilities that successfully are participating in the program.

(7) Establishing a means for monitoring the progress that each facility participating in the program is making toward implementing the program.

(8) Establishing methods for evaluating the implementation of the inventory, analysis, and program and for reporting on the progress of the program in the work plan required pursuant to Section 25244.22.

(9) Procedures for providing technical support to program participants to assist with the implementation of the program.

(e) Participation in the program shall not create a presumption that the participating facility has determined that any chemical release reduction measure is technically feasible or economically practicable pursuant to any other provision of law.

(f) Actions of the department pursuant to this section are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

(g) If, on the basis of the inventory and analysis required by in subdivision (b), the department finds that it is not possible to design and implement, at relatively low cost, a voluntary program to promote cooperative relationships between California business and the department, while creating a significant environmental benefit, and the advisory committee concurs with this finding, the department is not required to implement the program.

(Added by Stats. 1998, Ch. 881, Sec. 11. Effective January 1, 1999.)

Article 12. Financial Responsibility and Closure and Maintenance of Facilities

(Article 12 added by Stats. 1982, Ch. 90, Sec. 3. Effective March 2, 1982.)

25245. (a) The department shall adopt, and revise when appropriate, standards and regulations which shall do both of the following:

(1) Specify the financial assurances to be provided by the owner or operator of a hazardous waste facility that are necessary to respond adequately to damage claims arising out of the operation of that type of facility and to provide for the cost of closure and subsequent maintenance of the facility, including, but not limited to, the monitoring of groundwater and other aspects of the environment after closure. If the facility is required to obtain a permit under the federal act, the financial assurance shall be a trust fund, surety bond, letter of credit, insurance, or any other mechanism authorized under the federal act and the regulations adopted pursuant to the federal act. If the facility is not required to obtain a permit under the federal act, the financial assurance may include any other equivalent financial arrangement acceptable to the department.

(2) Provide that every hazardous waste facility can be closed and maintained for at least 30 years subsequent to its closure in a manner that protects human health and the environment and minimizes or eliminates the escape of hazardous waste constituents, leachate, contaminated rainfall, and waste decomposition products to ground and surface waters and to the atmosphere.

(b) In adopting regulations pursuant to subdivision (a), to carry out the purposes of this chapter, the department may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing evidence of financial responsibility.

(1) If an owner or operator is in bankruptcy, reorganization, or other arrangement pursuant to Title 11 of the United States Code, or where, with reasonable diligence, jurisdiction in any state or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which this section requires evidence of financial responsibility may be asserted directly against the guarantor who provided the evidence of financial responsibility.

(2) The total liability of any guarantor is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter.

(3) This subdivision does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to the owner or operator, including, but not limited to, the liability of the guarantor for bad faith in either negotiating or in failing to negotiate the settlement of any claim.

(4) This subdivision does not diminish the liability of any person under Section 107 or 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Secs. 9607 and 9611).

(5) For purposes of this subdivision, "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this section.

(Amended by Stats. 2004, Ch. 779, Sec. 4. Effective January 1, 2005.)

25245.4. (a) (1) (A) On and before September 30, 1996, a facility or transportable treatment unit operating pursuant to a permit-by-rule is exempt from any standard or regulation requiring the provision of financial assurances for the costs of closing a treatment unit of the facility authorized under a permit-by-rule or closing the transportable treatment unit that is adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245.

(B) On and after October 1, 1996, a facility or transportable treatment unit operating pursuant to a permit-by-rule under the regulations adopted by the department regarding transportable treatment units and fixed treatment units, which are contained in Chapter 45 (commencing with Section 67450.1) of Division 4.5 of Title 22 of the California Code of Regulations, shall provide financial assurances for the costs of closing a treatment unit of the facility authorized under a permit-by-rule under those regulations, or closing the transportable treatment unit, as specified in the standards and regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245 and subdivision (d), unless the facility or transportable treatment unit is exempt from those financial assurance requirements pursuant to this chapter. A facility operating pursuant to a permit-by-rule which operates not more than 30 days in any calendar year is not required to provide financial assurances for the costs of closure of such a treatment unit pursuant to paragraph (1) of subdivision (a) of Section 25245.

(2) A facility or transportable treatment unit operating pursuant to a permit-by-rule is exempt from any standard or regulation requiring the provision of financial assurances for third-party liability that is adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245.

(3) A facility or transportable treatment unit operating pursuant to a permit-by-rule is not required to provide financial assurances for postclosure maintenance pursuant to paragraph (2) of subdivision (a) of Section 25245, unless the department determines, pursuant to the regulations adopted by the department, that the facility is required to obtain a postclosure permit.

(b) (1) (A) On and before September 30, 1996, a conditionally authorized generator who treats waste pursuant to Section 25200.3 is exempt from any standard or regulation requiring the provision of financial assurance for the costs of closing the conditionally authorized units that is adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245.

(B) On and after October 1, 1996, a conditionally authorized generator who treats waste pursuant to Section 25200.3 shall provide financial assurances for the costs of closing the conditionally authorized units, as specified in the standards and regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245 and subdivision (d).

(2) A generator operating under a grant of conditional authorization pursuant to Section 25200.3 shall not be required to provide financial assurances for third-party liability damages pursuant to paragraph (1) of subdivision (a) of Section 25245.

(3) A generator operating under a grant of conditional authorization pursuant to Section 25200.3, shall not be required to provide financial assurances for postclosure maintenance pursuant to paragraph (2) of subdivision (a) of Section 25245, unless the department determines, pursuant to the regulations adopted by the department that the generator is required to obtain a postclosure permit.

(c) Notwithstanding any other provision of law, a person who treats waste pursuant to a grant of conditional exemption under this chapter is exempt, for those activities, from any standards or regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245 and is not required to provide financial assurances for the costs of closing the treatment units or for damage claims arising out of the operations of the unit pursuant to paragraph (1) of subdivision (a) of Section 25245, or to provide financial assurances for postclosure maintenance pursuant to paragraph (2) of subdivision (a) of Section 25245, unless the department determines, pursuant to the regulations adopted by the department, that the person is required to obtain a postclosure permit.

(d) (1) On or before February 1, 1996, the department shall adopt regulations to implement subparagraph (B) of paragraph (1) of subdivision (a) and subparagraph (B) of paragraph (1) of subdivision (b).

(2) The regulations adopted pursuant to this subdivision may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) The adoption of regulations pursuant to this subdivision 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.

(Amended by Stats. 1996, Ch. 999, Sec. 9. Effective January 1, 1997.)

25246. (a) Each owner or operator of a hazardous waste facility shall submit hazardous waste facility closure and postclosure plans to the department and to the California regional water quality control board for the region in which the facility is located. The plans shall contain the owner's or operator's estimate of the cost of closure and subsequent maintenance, shall conform to the regulations adopted by the department and shall comply with applicable state laws relating to water quality protection and monitoring.

(b) The plans specified in subdivision (a) shall be submitted to the department with the application for a hazardous waste facilities permit or when otherwise requested by the department. The plans shall be submitted to the California regional water quality control board with a report of waste discharge submitted in accordance with Section 13260 of the Water Code. An owner or operator who has submitted a request for, or received a hazardous waste facilities permit prior to, the adoption of the standards and regulations pursuant to Section 25245 shall submit the plans within 180 days after the department issues a written request for the plans. Prior to actual closure of the facility, the plans shall be updated if requested by the department. However, no owner or operator shall be required to revise or amend a closure plan after the department notifies the owner or operator in writing that the closure of the facility has been completed in accordance with the approved closure plan.

(c) An owner or operator who has not submitted facility closure and postclosure plans shall submit the plans at least 180 days prior to closure of the hazardous waste facility.

(d) This section does not apply to any person operating under a permit-by-rule, a conditional authorization, or a conditional exemption, pursuant to this chapter or the regulations adopted by the department.

(Amended by Stats. 1995, Ch. 640, Sec. 22. Effective January 1, 1996.)

25247. (a) The department shall review each plan submitted pursuant to Section 25246 and shall approve the plan if it finds that the plan complies with the regulations adopted by the department and complies with all other applicable state and federal regulations.

(b) The department shall not approve the plan until at least one of the following occurs:

(1) The plan has been approved pursuant to Section 13227 of the Water Code.

(2) Sixty days expire after the owner or operator of an interim status facility submits the plan to the department. If the department denies approval of a plan for an interim status facility, this 60-day period shall not begin until the owner or operator resubmits the plan to the department.

(3) The director finds that immediate approval of the plan is necessary to protect public health, safety, or the environment.

(c) Any action taken by the department pursuant to this section is subject to Section 25204.5.

(d) (1) To the extent consistent with the federal act, the department shall impose the requirements of a hazardous waste facility postclosure plan on the owner or operator of a facility through the issuance of an enforcement order, entering into an enforceable agreement, or issuing a postclosure permit.

(A) A hazardous waste facility postclosure plan imposed or modified pursuant to an enforcement order, a permit, or an enforceable agreement shall be approved in compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(B) Before the department initially approves or significantly modifies a hazardous waste facility postclosure plan pursuant to this subdivision, the department shall provide a meaningful opportunity for public involvement, which, at a minimum, shall include public notice and an opportunity for public comment on the proposed action.

(C) For the purposes of subparagraph (B), a "significant modification" is a modification that the department determines would constitute a class 3 permit modification if the change were being proposed to a hazardous waste facilities permit. In determining whether the proposed modification would constitute a class 3 modification, the department shall consider the similarity of the modification to class 3 modifications codified in Appendix I of Chapter 20 (commencing with Section 66270.1) of Division 4.5 of Title 22 of the California Code of Regulations. In determining whether the proposed modification would constitute a class 3 modification, the department shall also consider whether there is significant public concern about the proposed modification, and whether the proposed change is so substantial or complex in nature that the modification requires the more extensive procedures of a class 3 permit modification.

(2) This subdivision does not limit or delay the authority of the department to order any action necessary at a facility to protect public health or safety.

(3) If the department imposes a hazardous waste facility postclosure plan in the form of an enforcement order or enforceable agreement, in lieu of issuing or renewing a postclosure permit, the owner or operator who submits the plan for approval shall, at the time the plan is submitted, pay the same fee specified in subparagraph (F) of paragraph (1) of subdivision (d) of Section 25205.7, or enter into a cost reimbursement agreement pursuant to subdivision (a) of Section 25205.7 and upon commencement of the postclosure period shall pay the fee required by paragraph (9) of subdivision (c) of Section 25205.4. For purposes of this paragraph and paragraph (9) of subdivision (c) of Section 25205.4, the commencement of the postclosure period shall be the effective date of the postclosure permit, enforcement order, or enforceable agreement.

(4) In addition to any other remedy available under state law to enforce a postclosure plan imposed in the form of an enforcement order or enforcement agreement, the department may take any of the following actions:

(A) File an action to enjoin a threatened or continuing violation of a requirement of the enforcement order or agreement.

(B) Require compliance with requirements for corrective action or other emergency response measures that the department deems necessary to protect human health and the environment.

(C) Assess or file an action to recover civil penalties and fines for a violation of a requirement of an enforcement order or agreement.

(e) Subdivision (d) does not apply to a postclosure plan for which a final or draft permit has been issued by the department on or before December 31, 2003, unless the department and the facility mutually agree to replace the permit with an enforcement order or enforceable agreement pursuant to the provisions of subdivision (d).

(f) (1) Except as provided in paragraphs (2) and (3), the department may only impose postclosure plan requirements through an enforcement order or an enforceable agreement pursuant to subdivision (d) until January 1, 2009.

(2) This subdivision does not apply to an enforcement order or enforceable agreement issued prior to January 1, 2009, or an order or agreement for which a public notice is issued on or before January 1, 2009.

(3) This subdivision does not apply to the modification on or after January 1, 2009, of an enforcement order or enforceable agreement that meets the conditions in paragraph (2).

(g) If the department determines that a postclosure permit is necessary to enforce a postclosure plan, the department may, at any time, rescind and replace an enforcement order or an enforceable agreement issued pursuant to this section by issuing a postclosure permit for the hazardous waste facility, in accordance with the procedures specified in the department's regulations for the issuance of postclosure permits.

(h) Nothing in this section may be construed to limit or delay the authority of the department to order any action necessary at a facility to protect public health or safety, or the environment.

(Amended by Stats. 2005, Ch. 577, Sec. 3. Effective January 1, 2006.)

25248. The owner or operator of a facility for which closure and postclosure plans have been approved shall carry out the plans during the closure and postclosure period required by law.

(Amended by Stats. 1988, Ch. 1631, Sec. 42.)

25249. On the effective date of this article, any operator subject to former Division 7.5 (commencing with Section 14000) of the Water Code shall be subject to this article.

(Added by Stats. 1982, Ch. 90, Sec. 3. Effective March 2, 1982.)

Article 12.5. The Perchlorate Contamination Prevention Program

(Article 12.5 added by Stats. 2003, Ch. 608, Sec. 4. Effective January 1, 2004.)

25249.1. For the purposes of this article, the following definitions shall apply:

(a) "Management" means disposal, storage, packaging, processing, pumping, recovery, recycling, transportation, transfer, treatment, use, and reuse.

(b) "Perchlorate" means all perchlorate-containing compounds.

(c) "Perchlorate facility" means all contiguous land, and the structures, appurtenances and improvements on the land, that has been used for the management of perchlorate material. A perchlorate facility may consist of one or more units, or combination of units, that is or has been used for the management of perchlorate material.

(d) "Perchlorate material" means perchlorate and all perchlorate-containing substances, including, but not limited to, waste perchlorate and perchlorate-containing waste.

(e) "Public drinking water well" has the same meaning as defined in paragraph (1) of subdivision (a) of Section 25299.97.

(Added by Stats. 2003, Ch. 608, Sec. 4. Effective January 1, 2004.)

25249.2. On or before July 1, 2004, the owner or operator of a perchlorate facility, located within a 5-mile radius of a public drinking water well that has been found by any state or local agency to be contaminated with perchlorate, shall submit to the Environmental Protection Agency a summary of any subsurface and any groundwater monitoring, investigation, or remediation work that has been performed at the facility. The owner or operator shall submit the information electronically, if it is available in electronic format.

(Added by Stats. 2003, Ch. 608, Sec. 4. Effective January 1, 2004.)

[NOTE: Sections 25249.5 to 25249.13 are in Chapter 6.6, which follows Section 25257.1.]

Article 13. Management of Used Oil

(Article 13 added by Stats. 1986, Ch. 871, Sec. 1.
Note: The repeal and addition of Article 13 by Stats. 1998, Ch. 160, was void because Ch. 160 deferred to amendments by other 1988 statutes.)

25250. (a) The Legislature finds that almost 100 million gallons of used oil is generated each year in the state; that this oil is a valuable petroleum resource which can be recycled; and that, in spite of this potential for recycling, significant quantities of used oil are wastefully disposed of or improperly used by means which pollute the water, land, and air, and endanger the public health, safety, and welfare.

(b) The Legislature also finds that readily available technologies exist to recycle used oil into useful products and that used oil should be collected and recycled, to the maximum extent possible, by means which are economically feasible and environmentally sound, in order to conserve irreplaceable petroleum resources, to protect the environment, and to protect public health, safety, and welfare.

(Added by Stats. 1986, Ch. 871, Sec. 1.)

25250.1. (a) As used in this article, the following terms have the following meaning:

(1) (A) "Used oil" means all of the following:

(i) Oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of use or as a consequence of extended storage, or spillage, has been contaminated with physical or chemical impurities.

(ii) Material that is subject to regulation as used oil under Part 279 (commencing with Section 279.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(B) Examples of used oil are spent lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; industrial oils, including compressor, turbine, and bearing oil; hydraulic oil; metalworking oil; refrigeration oil; and railroad drainings.

(C) "Used oil" does not include any of the following:

(i) Oil that has a flashpoint below 100 degrees Fahrenheit or that has been mixed with hazardous waste, other than minimal amounts of vehicle fuel.

(ii) (I) Wastewater, the discharge of which is subject to regulation under either Section 307(b) (33 U.S.C. Sec. 1317(b)) or Section 402 (33 U.S.C. Sec. 1342) of the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), including wastewaters at facilities that have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil.

(II) For purposes of this clause, "de minimis quantities of used oil" are small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations, or small amounts of oil lost to the wastewater treatment system during washing or draining operations.

(III) This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases or to used oil recovered from wastewaters.

(iii) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(iv) Oil that contains polychlorinated biphenyls (PCBs) at a concentration of 5 ppm or greater.

(v) (I) Oil containing more than 1000 ppm total halogens, which shall be presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D (commencing with Section 261.30) of Part 261 of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(II) A person may rebut the presumption specified in subclause (I) by demonstrating that the used oil does not contain hazardous waste, including, but not limited to, in the manner specified in subclause (III).

(III) The presumption specified in subclause (I) is rebutted if it is demonstrated that the used oil that is the source of total halogens at a

concentration of more than 1000 ppm is solely either household waste, as defined in Section 261.4(b)(1) of Title 40 of the Code of Federal Regulations, or is collected from conditionally exempt small quantity generators, as defined in Section 261.5 of Title 40 of the Code of Federal Regulations. Nothing in this subclause authorizes any person to violate the prohibition specified in Section 25250.7.

(2) "Board" means the California Integrated Waste Management Board.

(3) (A) "Recycled oil" means any oil that meets all of the following requirements specified in clauses (i) to (iii), inclusive:

(i) Is produced either solely from used oil, or is produced solely from used oil that has been mixed with one or more contaminated petroleum products or oily wastes, other than wastes listed as hazardous under the federal act, provided that if the resultant mixture is subject to regulation as a hazardous waste under Section 279.10(b)(2) of Title 40 of the Code of Federal Regulations, the mixture is managed as a hazardous waste in accordance with all applicable hazardous waste regulations, and the recycled oil produced from the mixture is not subject to regulation as a hazardous waste under Section 279.10(b)(2) of Title 40 of the Code of Federal Regulations. If the oily wastes with which the used oil is mixed were recovered from a unit treating hazardous wastes that are not oily wastes, these recovered oily wastes are not excluded from being considered as oily wastes for purposes of this section or Section 25250.7.

(ii) The recycled oil meets one of the following requirements:

(I) The recycled oil is produced by a generator lawfully recycling its oil.

(II) The recycled oil is produced at a used oil recycling facility that is authorized to operate pursuant to Section 25200 or 25200.5 solely by means of one or more processes specifically authorized by the department. The department may not authorize a used oil recycling facility to use a process in which used oil is mixed with one or more contaminated petroleum products or oily wastes unless the department determines that the process to be authorized for mixing used oil with those products or wastes will not substantially contribute to the achievement of compliance with the specifications of subparagraph (B).

(III) The recycled oil is produced in another state, and the used oil recycling facility where the recycled oil is produced, and the process by which the recycled oil is produced, are authorized by the agency authorized to implement the federal act in that state.

(iii) Has been prepared for reuse and meets all of the following standards:

(I) The oil meets the standards of purity set forth in subparagraph (B).

(II) If the oil was produced by a generator lawfully recycling its oil or the oil is lawfully produced in another state, the oil is not hazardous pursuant to the criteria adopted by the department pursuant to Section 25141 for any characteristic or constituent other than those listed in subparagraph (B).

(III) The oil is not mixed with any waste listed as a hazardous waste in Part 261 (commencing with Section 261.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(IV) The oil is not subject to regulation as a hazardous waste under the federal act.

(V) If the oil was produced lawfully at a used oil recycling facility in this state, the oil is not hazardous pursuant to any characteristic or constituent for which the department has made the finding required by subparagraph (B) of paragraph (2) of subdivision (a) of Section 25250.19, except for one of the characteristics or constituents identified in the standards of purity set forth in subparagraph (B).

(B) The following standards of purity are in effect for recycled oil, in liquid form, unless the department, by regulation, establishes more stringent standards:

(i) Flashpoint: minimum standards set by the American Society for Testing and Materials for the recycled products. However, recycled oil to be burned for energy recovery shall have a minimum flashpoint of 100 degrees Fahrenheit.

(ii) Total lead: 50 mg/kg or less.

(iii) Total arsenic: 5 mg/kg or less.

(iv) Total chromium: 10 mg/kg or less.

(v) Total cadmium: 2 mg/kg or less.

(vi) Total halogens: 3000 mg/kg or less. However, recycled oil shall be demonstrated by testing to contain not more than 1000 mg/kg total halogens listed in Appendix VIII of Part 261 (commencing with Section 261.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(vii) Total polychlorinated biphenyls (PCBs): less than 2 mg/kg.

(C) Compliance with the specifications of subparagraph (B) or with the requirements of clauses (iv) and (v) of subparagraph (B) of paragraph (1) shall not be met by blending or diluting used oil with crude or virgin oil, or with a contaminated petroleum product or oily waste, except as provided in subclause (II) of clause (ii) of subparagraph (A), and shall be determined in accordance with the procedures for identification and listing of hazardous waste adopted in regulations by the department. Persons authorized by the department to recycle oil shall maintain records of volumes and characteristics of incoming used oil and outgoing recycled oil and documentation concerning the recycling technology utilized to demonstrate to the satisfaction of the department or other enforcement agencies that the recycling has been achieved in compliance with this subdivision.

(D) This paragraph does not apply to oil that is to be disposed of or used in a manner constituting disposal.

(4) "Used oil recycling facility" means a facility that reprocesses or re-refines used oil.

(5) "Used oil storage facility" means a storage facility, as defined in subdivision (b) of Section 25123.3, that stores used oil.

(6) "Used oil transfer facility" means a transfer facility, as defined in subdivision (a) of Section 25123.3, that meets the qualifications to be a storage facility, for purposes of Section 25123.3.

(7) (A) For purposes of this section and Section 25250.7 only, "contaminated petroleum product" means a product that meets all of the following conditions:

(i) It is a hydrocarbon product whose original intended purpose was to be used as a fuel, lubricant, or solvent.

(ii) It has not been used for its original intended purpose.

(iii) It is not listed in Subpart D (commencing with Section 251.30) of Part 261 of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(iv) It has not been mixed with a hazardous waste other than another contaminated petroleum product.

(B) Nothing in this section or Section 25250.7 shall be construed to affect the exemptions in Section 25250.3, or to subject contaminated petroleum products that are not hazardous waste to any requirements of this chapter.

(b) Unless otherwise specified, used oil that meets either of the following conditions is not subject to regulation by the department:

(1) The used oil has not been treated by the generator of the used oil, the generator claims the used oil is exempt from regulation by the department, and the used oil meets all of the following conditions:

(A) The used oil meets the standards set forth in subparagraph (B) of paragraph (3) of subdivision (a).

(B) The used oil is not hazardous pursuant to the criteria adopted by the department pursuant to Section 25141 for any characteristic or constituent other than those listed in subparagraph (B) of paragraph (3) of subdivision (a).

(C) The used oil is not mixed with any waste listed as a hazardous waste in Part 261 (commencing with Section 261.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(D) The used oil is not subject to regulation as either hazardous waste or used oil under the federal act.

(E) The generator of the used oil has complied with the notification requirements of subdivision (c) and the testing and recordkeeping requirements of Section 25250.19.

(F) The used oil is not disposed of or used in a manner constituting disposal.

(2) The used oil meets all the requirements for recycled oil specified in paragraph (3) of subdivision (a), the requirements of subdivision (c), and the requirements of Section 25250.19.

(c) Used oil recycling facilities and generators lawfully recycling their own used oil that are the first to claim that recycled oil meets the requirements specified in paragraph (2) of subdivision (b) shall maintain an operating log and copies of certification forms, as specified in Section 25250.19. Any person who generates used oil, and who claims that the used oil is exempt from regulation pursuant to paragraph (1) of subdivision (b), shall notify the department, in writing, of that claim and shall comply with the testing and recordkeeping requirements of Section 25250.19 prior to its reuse. In any action to enforce this article, the burden is on the generator or

recycling facility, whichever first claimed that the used oil or recycled oil meets the standards and criteria, and on the transporter or the user of the used oil or recycled oil, whichever has possession, to prove that the oil meets those standards and criteria.

(d) Used oil shall be managed in accordance with the requirements of this chapter and any additional applicable requirements of Part 279 (commencing with Section 279.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(Amended by Stats. 2004, Ch. 779, Sec. 5. Effective January 1, 2005.)

25250.3. Any virgin oil product or partially refined product, which has not been previously used, which has become contaminated with nonhazardous impurities such as dirt or water, and which has been returned to bulk storage by the product's manufacturer, transporter, or wholesaler for gravity separation of contaminants, is exempt from this article. Any petroleum product which becomes contaminated with any other petroleum product during refining, transportation by pipeline, or storage and which remains usable as a refinery feed stock or as a refinery fuel is exempt from this article.

(Added by Stats. 1986, Ch. 871, Sec. 1.)

25250.4. (a) Used oil shall be managed as a hazardous waste in accordance with the requirements of this chapter, unless one of the following applies:

(1) The used oil is excluded from regulation as hazardous waste pursuant to Section 25143.2, and is not subject to regulation as hazardous waste under the federal act.

(2) The used oil has been shown by the generator to meet the requirements of paragraph (1) of subdivision (b) of Section 25250.1 or the used oil is recycled oil and meets the requirements of paragraph (2) of subdivision (b) of Section 25250.1.

(b) This section does not apply to dielectric fluid removed from oil-filled electrical equipment that is filtered and replaced, onsite, at a restricted access electrical equipment area, or that is removed and filtered at a maintenance facility for reuse in electrical equipment and is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(c) For the purposes of this section:

(1) "Oil-filled electrical equipment" includes, but is not limited to, transformers, circuit breakers, and capacitators.

(2) "Restricted access electrical equipment area" means a fenced-off or walled-off restricted access area that is covered by a spill prevention control and countermeasure plan prepared in accordance with Part 112 of Title 40 of the Code of Federal Regulations and that is used in the transmission or distribution of electrical power, or both.

(d) For the purposes of subdivision (b), "filtered" means the use of filters assisted by the application of heat and suction to remove impurities, including, but not limited to, water, particulates, and trace amounts of dissolved gases, by equipment mounted upon or above an impervious surface.

(e) Nothing in this section affects the authority of the department or a certified unified program agency in the event of a spill.

(Amended by Stats. 2000, Ch. 732, Sec. 2.5. Effective January 1, 2001.)

25250.5. (a) The disposal of used oil by discharge to sewers, drainage systems, surface water or groundwater, watercourses, or marine waters; by incineration or burning as fuel; or by deposit on land, is prohibited, unless authorized under other provisions of law.

(b) The use of used oil or recycled oil as a dust suppressant or insect or weed control agent is prohibited unless allowed under another applicable law, but only to the extent that use as a dust suppressant or insect or weed control agent is consistent with the federal act.

(Amended by Stats. 1994, Ch. 1154, Sec. 4. Effective January 1, 1995.)

25250.7. (a) Except as provided in subdivision (b) or (c), no person who generates, stores, or transfers used oil shall intentionally contaminate used oil with other hazardous waste other than minimal amounts of vehicle fuel.

(b) A used oil transfer or recycling facility authorized by the department pursuant to Section 25200, 25200.5, or 25201.6 may mix used oil with a contaminated petroleum product or with an oily waste other than wastes listed as hazardous under the federal act, if all of the following conditions are met:

(1) If the resultant mixture is subject to regulation as a hazardous waste under paragraph (2) of subsection (b) of Section 279.10 of Title 40 of the Code of Federal Regulations, it is managed as a hazardous waste in accordance with all applicable hazardous waste regulations.

(2) The resultant mixture is used to produce recycled oil, as defined in paragraph (3) of subdivision (a) of Section 25250.1, at a used oil recycling facility solely by means of a process that has been specifically authorized by the department to treat these mixtures.

(3) The mixing of the used oil with a contaminated petroleum product or an oily waste is specifically authorized in the facility's permit.

(c) A generator or transporter may mix used oil with one or more contaminated petroleum products if the mixture is managed in accordance with Section 25143.2 or if all of the following conditions apply:

(1) If the resultant mixture is subject to regulation as a hazardous waste under paragraph (2) of subsection (b) of Section 279.10 of Title 40 of the Code of Federal Regulations, it is managed as a hazardous waste in accordance with all applicable hazardous waste regulations.

(2) (A) Except as provided in subparagraph (B), the resultant mixture is transported to a used oil recycling facility that issues a statement, in writing, to the generator or transporter that the mixture will be used to produce recycled oil, as defined in paragraph (3) of subdivision (a) of Section 25250.1, at a facility authorized to operate pursuant to Section 25200 or 25200.5 solely by means of a process that has been specifically authorized by the department to treat these mixtures.

(B) If the resultant mixture is transported to a used oil recycling facility located in another state, that facility is authorized by the agency authorized to implement the federal act in that state.

(3) The mixing is not conducted in a manner that violates subparagraph (C) of paragraph (3) of subdivision (a) of Section 25250.1.

(4) The transporter tests the halogen content of the used oil to demonstrate compliance with clause (vi) of subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1 before mixing the used oil with the contaminated petroleum product.

(Amended by Stats. 2003, Ch. 362, Sec. 5. Effective January 1, 2004.)

25250.9. (a) (1) Except as provided in subdivision (b), a hazardous waste transporter who transports used oil shall provide a written notification in the form below to each generator from whom the transporter receives used oil:

IMPORTANT NOTICE REGARDING THE DISPOSITION OF YOUR USED OIL

PLEASE SIGN AFTER READING

_____ (used oil transporter) hereby advises _____ (used oil generator) that _____ (generator's) shipment of used oil may be transported to a facility that is required to comply with federal regulations applicable to management of used oil, but that is not required to comply with the more stringent requirements applicable to hazardous waste management facilities. California facilities that handle or process used oil are required to meet those more stringent requirements, and some out-of-state facilities that process used oil also meet those requirements. These include more stringent leak detection and prevention requirements, engineering certifications of tank integrity, and financial assurances for closure and accidental releases. It is lawful to send used oil to out-of-state facilities that comply only with federal used oil management standards and not these more stringent requirements.

This notification is for information purposes only.

_____ (signed, Transporter) Date: _____

_____ (signed, Generator) Date: _____

(2) A hazardous waste transporter shall provide the notice required pursuant to paragraph (1) at least once each year, except if the notice is provided pursuant to subdivision (g).

(b) A transporter is not required to provide a generator with the notification specified in subdivision (a) if either of the following apply:

(1) The generator from whom the transporter receives used oil specifically designates in writing that the used oil is to be transported to a specified facility and that facility either is authorized by the department to produce used oil into recycled oil or it is operating in accordance with a hazardous waste facilities permit or interim status document issued pursuant to the federal act.

(2) The transporter annually certifies to the generator, in writing, that any used oil that the transporter receives from the generator will be transported only to a facility that is authorized by the department to produce used oil into recycled oil or to a facility that is lawfully operating in accordance with a hazardous waste facilities permit or interim status document issued pursuant to the federal act.

(c) A transporter may make the certification specified in subdivision (a) even if the used oil the transporter receives from the generator is first transported to a transfer facility, as defined in paragraph (3) of subdivision (a) of Section 25123.3, or a storage facility authorized by the department to store used oil, before the used oil is sent to a facility that is authorized by the department to produce used oil into recycled oil or to a facility that is lawfully operating in accordance with a hazardous waste facilities permit or interim status document issued pursuant to the federal act.

(d) Any person who makes a material misrepresentation in the course of implementing the requirements of this section is in violation of this chapter. A transporter that relies in reasonable good faith upon a statement made by a facility to comply with this section is not in violation of this chapter.

(e) Each transporter subject to this section shall retain the documents necessary to demonstrate compliance with this section, including, but not limited to, each signed notification form, for as long as the transporter is required to retain the manifest for the used oil to which the documents apply.

(f) This section shall not be construed to prohibit the transportation of used oil to any facility located outside the state, or to impose liability upon, or in any way affect the liability of a generator whose used oil is transported to a facility located outside the state in accordance with the requirements of this section.

(g) A transporter may place the notification and signature and date block specified in subdivision (a) on the back of the service order the transporter provides to the generator, if the notification language and associated signature and date block specified in subdivision (a) is the only wording appearing on that side of the service order and the transporter and generator sign the signature and date block each time the generator receives a service order.

(Amended by Stats. 2003, Ch. 362, Sec. 6. Effective January 1, 2004.)

25250.10. Every registered hazardous waste hauler who transports used oil shall report to the department, on or before March 1 of each year, the following information on a form provided by the department:

(a) The shipping descriptions of used oil transported during the preceding calendar year.

(b) The volume of each type of used oil transported, identified by shipping description.

(c) The facilities to which the used oil was transported, identified by name, address, telephone number, and Environmental Protection Agency identification number.

(Amended by Stats. 1988, Ch. 545, Sec. 3.)

25250.11. (a) Any person who receives used oil from consumers or other used oil generators, is exempt from hazardous waste facilities permit requirements imposed pursuant to Article 9 (commencing with Section 25200) with respect to any location at which used oil is received if all of the following conditions are met:

(1) Each shipment of used oil received does not exceed 55 gallons, and the capacity of any single container does not exceed 55 gallons.

(2) No other hazardous wastes are received at the location, unless authorized by other provisions of law.

(3) The used oil is transported by the generator of the used oil.

(b) Any person who transports used oil is exempt from the requirements of subdivision (a) of Section 25163 and from the requirements of Section 25160 concerning the possession of a manifest while transporting used oil to a location described in subdivision (a) if all of the following conditions are met:

(1) The capacity of any single container does not exceed 55 gallons.

(2) Each shipment of used oil does not exceed 55 gallons.

(3) The person transporting the used oil had generated the used oil.

(4) The person transporting the used oil does not transport greater than 20 gallons of used oil, and does not transport any used oil in any container exceeding 5 gallons in capacity, without first contacting the destination location described in subdivision (a) and verifying that the location will accept the used oil.

(c) This section does not prevent any person that receives used oil pursuant to subdivision (a) from placing volume limits or container size limits on the shipments of used oil accepted by that person that are smaller than the limits specified in this section.

(Amended by Stats. 2001, Ch. 605, Sec. 15. Effective October 9, 2001. Operative January 1, 2002, by Sec. 18 of Ch. 605.)

25250.12. Used oil generated during maintenance operations may be transferred from its point of generation to the maintenance person's place of business, other than a residence, for the purpose of consolidation in a tank or container, without meeting the requirements of Sections 25160, 25163, and 25201, if the material is to be recycled at an authorized offsite hazardous waste facility and if all the following conditions are met:

(a) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator.

(b) Not more than 55 gallons are transferred in the vehicle at any one time.

(c) The used oil is managed in accordance with all laws concerning storage and handling of hazardous wastes upon consolidation at the maintenance person's place of business.

(d) The used oil is deemed to be generated at the point of consolidation upon consolidation.

(Amended by Stats. 1994, Ch. 1154, Sec. 6. Effective January 1, 1995.)

25250.13. Notwithstanding any provision of this chapter, a transfer facility, as defined in paragraph (3) of subdivision (a) of Section 25123.3, that accepts used oil and holds the oil for more than 24 hours, but is not otherwise a storage facility, as defined in subdivision (b) of Section 25123.3, shall comply with the requirements for used oil transfer facilities that are specified in Subpart E (commencing with Section 279.40) of Part 279 of Title 40 of the Code of Federal Regulations.

(Amended by Stats. 2004, Ch. 779, Sec. 6. Effective January 1, 2005.)

25250.15. (a) Any person operating a refuse removal vehicle or a curbside collection vehicle used to collect or transport used oil which has been generated as a household waste or as part of a curbside recycling program, as defined by the board, is exempt from the requirements of Sections 25160 and 25250.8, and subdivision (a) of Section 25163 of this code and Chapter 2.5 (commencing with Section 2500) of Division 2 of, Division 14.1 (commencing with Section 32000) of, and subdivision (g) of Section 34500 of, the Vehicle Code.

(b) Refuse removal and other curbside collection operations exempted under subdivision (a) are also exempt from permit requirements pursuant to Article 9 (commencing with Section 25200), if the storage location meets all applicable hazardous waste generator, container, and tank requirements, except for the generator fee requirement specified in subdivision (d).

(c) Used oil collected pursuant to this section shall be deemed to be generated by the storage location upon receipt.

(d) Used oil collected pursuant to this section is exempt from the generator fee imposed pursuant to Section 25205.5.

(Amended by Stats. 1996, Ch. 539, Sec. 25. Effective January 1, 1997.)

25250.16. (a) No person may recycle used oil without obtaining authorization from the department pursuant to Section 25200 or 25200.5, or unless exempted pursuant to Section 25143.2.

(b) Any person who is authorized to recycle used oil pursuant to Section 25200 or 25200.5 shall assure, to the satisfaction of the department, that halogens removed from used oil in the recycling process are not burned, except at a facility authorized to do so pursuant to Section 25200 or 25200.5.

(Amended by Stats. 1995, Ch. 423, Sec. 4. Effective January 1, 1996.)

25250.17. (a) Unless the facility meets the requirements of Section 25250.11, each used oil recycling, storage, or transfer facility shall submit a report, on or before March 1 of each even-numbered year, to the department, on a form provided by the department, containing all of the following information:

(1) The total volume of used oil possessed at the beginning and end of the preceding calendar year.

(2) The total volume of used oil received during the preceding calendar year.

(3) The total volume of used oil recycled during the preceding calendar year, itemized as follows:

(A) Prepared for reuse as a petroleum product.

(B) Consumed in the process of preparing for reuse, including wastes generated.

(C) Prepared for reuse other than as a petroleum product, specifying each type of other use.

(D) Not recycled but transported offsite.

(E) The manner in which the used oil is processed or re-refined, including the specific processes used, if applicable.

(4) Any other information which the department may require.

(b) The department may utilize reports collected by other governmental agencies to obtain the information required by this section.

(Amended by Stats. 1994, Ch. 1154, Sec. 8. Effective January 1, 1995.)

25250.18. (a) Any person who transports recycled oil or oil exempted pursuant to paragraph (1) of subdivision (b) of Section 25250.1 shall maintain with each shipment a certification form, provided by the department, which contains all of the following information:

(1) The name and address of the used oil recycling facility or generator claiming the oil meets the requirements of Section 25250.1.

(2) The name and address of the facility receiving the shipment.

(3) The quantity of oil delivered.

(4) The date of shipment or delivery.

(5) A cross-reference to the records and documentation required under Section 25250.1.

(b) Certification forms required in subdivision (a) shall be maintained for three years and are subject to an audit and verification by the department or the board.

(Amended by Stats. 2000, Ch. 732, Sec. 3. Effective January 1, 2001.)

25250.19. (a) (1) A used oil recycler shall test all recycled oil in accordance with paragraph (2), prior to transportation from the recycling facility, pursuant to applicable methods in the Environmental Protection Agency Document No. Solid Waste 846 or an equivalent alternative method approved or required by the department, and shall ensure and certify the oil as being in compliance with the standards specified in paragraph (3) of subdivision (a) of Section 25250.1.

(2) The used oil recycler shall test the recycled oil for compliance with the purity standards set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1, and for any other hazardous characteristics or constituents for which testing is required in the permit issued by the department for the used oil recycling facility. The permit shall require testing for compliance with the purity standards set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1. The permit may also require testing for other hazardous characteristics and constituents only if the department finds, based upon evidence in the record, all of the following:

(A) There is a reasonable expectation that the recycled oil may exhibit the hazardous characteristic or contain the hazardous constituent at a level that would cause it to be hazardous waste if the recycled oil were a waste, taking into consideration at least all of the following factors:

(i) The conditions included in the facility's permit limiting the wastes that may be accepted at the facility and the conditions requiring testing of the wastes accepted at the facility.

(ii) The types of wastes that historically have been accepted by the facility or similar facilities and the types of wastes that the facility can reasonably be expected to accept in the future, including any new products or constituents.

(iii) Previous test results of recycled oil produced by the facility indicating the presence, or lack of the presence, of the constituent or characteristic at a level that would cause it to be hazardous waste if the recycled oil were a waste.

(iv) The treatment technologies and methods authorized in the facility's permit for production of the recycled oil and the extent to which those treatment technologies and methods remove or reduce the constituents or characteristics from the wastes accepted by the facility; and

(B) The hazardous characteristic or constituent cannot reasonably be expected to be present in products produced from crude oil similar to the recycled oil products produced by the facility at levels that would cause the product produced from crude oil to be a hazardous waste if it were a waste.

(3) Records of tests performed pursuant to this subdivision and a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department or the board. The department shall perform an audit and verification on a periodic basis. The department may charge a reasonable fee for this activity.

(b) (1) A generator claiming that used oil is exempted from regulation pursuant to paragraph (1) of subdivision (b) of Section 25250.1 shall ensure that all used oil for which the exemption is claimed has been tested and certified as being in compliance with the standards specified in paragraph (1) of subdivision (b) of Section 25250.1, prior to transportation from the generator location. A generator lawfully recycling its own oil shall ensure that all recycled oil has been tested and certified as being in compliance with the requirements specified in paragraph (2) of subdivision (b) of Section 25250.1. Records of tests performed and a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department, the unified program agency, or the board.

(2) Testing to meet the requirements in subparagraph (B) of paragraph (1) of subdivision (b) of Section 25250.1 is not required for dielectric fluid, derived from highly refined petroleum mineral oil, from oil-filled electrical equipment if the generator of the dielectric fluid has certified based on prior test results that the dielectric fluid from similar equipment subject to similar operating conditions did not exhibit the characteristic of toxicity as set forth in Section 66261.24 of Title 22 of the California Code of Regulations. A certification statement shall accompany each shipment of used oil that the generator claims is exempted. Records of prior tests on which the certification is based shall be maintained with the certification by the generator and are subject to audit and verification by the department, the unified program agency, or the board.

(c) Used oil recyclers identified in subdivision (a) and generators identified in subdivision (b) shall record in an operating log and retain for three years the information specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25250.18 on each shipment of recycled or exempted oil.

(d) Operating logs required in subdivision (c) are subject to audit and verification by the department, the unified program agency, or the board.

(e) (1) If oil produced at a used oil recycling facility in this state meets the standards of purity set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1 and is not hazardous due to the presence of a characteristic or constituent for which the department has made a finding required by subparagraphs (A) and (B) of paragraph (2) of subdivision (a), but the oil is hazardous due to the presence of another constituent or characteristic, the facility operator shall not be subject to a penalty pursuant to this chapter for failing to manage the oil as a hazardous waste, unless both of the following apply:

(A) While the oil was onsite at the facility, the operator of the facility knew, or reasonably should have known, that the oil failed to meet those criteria.

(B) The facility operator failed to take action to manage the oil as a hazardous waste when the oil was determined to be hazardous.

(2) The department may exercise its authority, including, but not

limited to, the issuance of an order, to a used oil recycling facility pursuant to Section 25187, to ensure that oil subject to this subdivision is managed as a hazardous waste pursuant to this chapter.

(Amended by Stats. 2007, Ch. 704, Sec. 1. Effective January 1, 2008.)

25250.20. Any person whose permit or registration has been revoked may not apply for a new or renewed permit or registration for a period of one year after the revocation of the permit or registration.

(Added by Stats. 1986, Ch. 871, Sec. 1.)

25250.21. Any person whose permit or registration has been revoked may not serve in the employ of a hazardous waste hauler or used oil recycler during the period of revocation of the permit or registration.

(Added by Stats. 1986, Ch. 871, Sec. 1.)

25250.22. (a) Notwithstanding any other provision of state law, and to the extent consistent with the federal act, a filter that contains a residue of gasoline or diesel fuel, may be managed in accordance with the requirements in the department's regulations governing the management of used oil filters, unless the department adopts regulations establishing management standards specific to filters that contain those residues.

(b) Management of filters that contain residue of gasoline, and commingled filters that include filters that contain residue of gasoline, shall also meet all of the following requirements:

(1) The filters shall be stored in containers that are designed to prevent ignition of the gasoline and that are labeled "used oil and gasoline filters."

(2) For purposes of transportation, the filters shall be packaged, and the package shall be marked and labeled in accordance with the applicable requirements of Parts 172 (commencing with Section 172.1), 173 (commencing with Section 173.1), 178 (commencing with Section 178.1), and 179 (commencing with Section 179.1) of Title 49 of the Code of Federal Regulations.

(3) The filters shall be stored and otherwise managed in accordance with applicable state and local fire code regulations.

(4) Any gasoline, or used oil commingled with gasoline, that accumulates in containers or other equipment used for filter storage or recycling, and nonmetal filter material removed from filter housing, shall be evaluated pursuant to Section 66262.11 of Title 22 of the California Code of Regulations, to determine its regulatory status under the federal act, and it shall be managed accordingly.

(Added by Stats. 2004, Ch. 240, Sec. 1. Effective January 1, 2005.)

25250.23. Any person who transports used oil shall register as a hazardous waste hauler and, unless specifically exempted or unless the used oil is not regulated by the department pursuant to subdivision (b) of Section 25250.1, shall comply with all provisions of this chapter.

(Amended by Stats. 2000, Ch. 732, Sec. 5. Effective January 1, 2001.)

25250.24. (a) Except as provided in subdivision (b), any person who generates, receives, stores, transfers, transports, treats, or recycles used oil, unless specifically exempted or unless the used oil is not regulated by the department pursuant to subdivision (b) of Section 25250.1, shall comply with all provisions of this chapter.

(b) Used oil which is removed from a motor vehicle and which is subsequently recycled, by a recycler who is permitted pursuant to this article, shall not be included in the calculation of the amount of hazardous waste generated for purposes of the generator fee imposed pursuant to Section 25205.5.

(Amended by Stats. 2000, Ch. 732, Sec. 6. Effective January 1, 2001.)

25250.25. (a) Any person who manufactures containers which are produced specifically for the noncommercial storage or transportation of used oil and which are sold in this state to consumers, shall not sell or transfer any of those containers in this state to any person, unless the container meets all of the following requirements:

(1) The used oil cannot leak or unintentionally be spilled from the container with normal handling.

(2) No part of the container that comes in contact with the used oil can absorb any of the used oil being collected and transported.

(3) The following statement shall be printed on a readily visible part of the container in at least 12-point typeface by the manufacturers of the container:

"Used oil is classified as a hazardous waste under California law. Used oil must be recycled properly. Placing used oil into household garbage or commercial dumpsters or pouring it into sewers or onto the ground is prohibited by law."

(b) Any person who manufactures containers which are produced specifically for the noncommercial drainage of used oil and which are sold in this state to consumers, shall not sell or transfer any of those containers in this state to any person unless the container meets the requirements of paragraphs (2) and (3) of subdivision (a).

(Added by Stats. 1988, Ch. 776, Sec. 1.)

25250.26. (a) Every generator of used oil, other than the owner or operator of a used oil collection center, as defined in Section 48622 of the Public Resources Code, or a household hazardous waste collection facility, as defined in Section 25218.1, that transfers used oil to a recycling facility, shall submit a certification to the transporter that the used oil transferred meets the definition of used oil pursuant to subdivision (a) of Section 25250.1. The certification shall specifically state that the used oil does not contain polychlorinated biphenyls (PCBs) at a concentration of 5 ppm, or greater, in accordance with clause (iv) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 25250.1. This subdivision shall not be construed to affect the methods that a generator is authorized to use to determine whether its waste constitutes used oil or hazardous waste pursuant to Section 66262.11 of Title 22 of the California Code of Regulations or under any other regulation or provision of law.

(b) (1) Any generator that falsely certifies pursuant to subdivision (a) that the used oil transferred to a used oil recycling facility does not contain PCBs at a concentration of 5 ppm or greater shall be liable for damages equal to three times the amount of any costs incurred by any transporter, facility owner or operator, or any other person adversely affected by the false certification, in a civil action that may be brought by the adversely affected party.

(2) In an action pursuant to this subdivision against a generator whose used oil was commingled with used oil generated by other generators prior to being delivered to the facility, the plaintiff shall demonstrate, by clear and convincing evidence, that the generator generated used oil containing PCBs at a concentration of 5ppm or greater.

(c) For the purposes of this section, the calculation of damages shall include any consequential damages caused by mixing the incorrectly certified PCB-contaminated used oil with other used oil.

(d) Nothing in this section shall affect the right of the department or any other enforcement agency to institute an administrative, civil, or criminal action against a generator that has made a false certification.

(e) Any plaintiff seeking damages pursuant to this section shall give written notice to the director upon filing an action pursuant to this section.

(Added by Stats. 1999, Ch. 745, Sec. 5. Effective January 1, 2000.)

25250.27. (a) Nothing in this article prohibits a generator from managing and transporting used oil, to the extent consistent with federal law, in accordance with Sections 25110.10, 25121.3, and 25163.3, if the generator meets the requirements specified in Sections 25110.10, 25121.3, and 25163.3.

(b) This section does not constitute a change in, but is declaratory of, existing law.

(Added by Stats. 2000, Ch. 343, Sec. 16. Effective January 1, 2001.)

25250.28. (a) For purposes of this section, "automated onboard oil management system" means a system designed to extend the intervals between necessary oil changes and diminish the use of crankcase oil by electronically sensing changes in the physical properties of the oil in the crankcase and, based on the properties detected, periodically transferring oil directly from the engine crankcase into the fuel tank to be burned as fuel.

(b) Notwithstanding any other provision of law, oil that is managed

by an automated onboard oil management system is exempt from the requirements
of this article and is excluded from classification as a waste under this chapter if all of the following conditions are satisfied:

(1) The system is applied to a mining vehicle with a gross vehicle weight capacity in excess of 200,000 pounds or a locomotive, and all of the following conditions are satisfied:

(A) Data concerning the air emissions associated with the operation of the system in those classes of equipment is submitted to the State Air Resources Board on or before January 1, 2002, and the data demonstrates that the operation of the system will not significantly impair the state's air quality. Mitigation measures may be provided to assist in satisfying this condition.

(B) The system is designed, maintained, and operated in a manner that does all of the following:

(i) The leakage of oil from any of the component parts of the system is prevented.

(ii) The quantity of used oil in the fuel tank at any given time is not more than 3 percent of the nominal capacity of the fuel tank.

(iii) The system meets the air emission criteria demonstrated by the applicant in the air emissions data submitted to the State Air Resources Board pursuant to subparagraph (A).

(C) Any mitigation provided to satisfy the air quality requirement in subparagraph (A) is maintained throughout the period of operation of the system or alternative satisfactory mitigation is provided.

(2) The system and the use of the system is approved by the State Air Resources Board, after consultation with the department, and all of the following requirements are satisfied:

(A) The State Air Resources Board determines that operation of the system will not significantly impair the state's air quality. Mitigation measures may be provided to assist in satisfying this requirement.

(B) A description of the manner in which the system will be operated to ensure compliance with the federal act and the Clean Air Act, as amended (42 U.S.C. Sec. 7401 et seq.) is submitted with the application for approval of the system pursuant to this paragraph and the system is operated in accordance with that description.

(C) The system is designed, maintained, and operated in a manner that prevents the leakage of oil from any of the component parts of the system.

(D) The system is designed, maintained, and operated in compliance with any conditions that the State Air Resources Board, after consultation with the department, determines to be necessary to ensure compliance with the requirements of this section.

(E) Any mitigation provided to satisfy the air quality requirement in subparagraph (A) is maintained throughout the period of operation of the system or alternative satisfactory mitigation is provided.

(c) This section does not exempt any of the following:

(1) Oil removed from an engine, other than through the operation of an automated onboard oil management system, from this article or from classification as a waste under this chapter.

(2) Emissions or other releases into the environment resulting from the operation of an automated onboard oil management system, from otherwise applicable air emissions standards, or any other applicable law.

(3) Oil managed by an automated onboard oil management system on vehicles authorized to be driven on the public highways pursuant to the Vehicle Code.

(Added by Stats. 2001, Ch. 605, Sec. 16. Effective October 9, 2001.)

Article 14. Green Chemistry

(Article 14 added by Stats. 2008, Ch. 560, Sec. 1. Effective January 1, 2009.)

25251. For purposes of this article, the following definitions shall apply:

(a) "Clearinghouse" means the Toxics Information Clearinghouse established pursuant to Section 25256.

(b) "Council" means the California Environmental Policy Council established pursuant to subdivision (b) of Section 71017 of the Public Resources Code.

(c) "Office" means Office of Environmental Health Hazard Assessment.

(d) "Panel" means the Green Ribbon Science Panel established pursuant to Section 25254.

(e) "Consumer product" means a product or part of the product that is used, brought, or leased for use by a person for any purposes. "Consumer product" does not include any of the following:

(1) A dangerous drug or dangerous device as defined in Section 4022 of the Business of Professions Code.

(2) Dental restorative materials as defined in subdivision (b) of Section 1648.20 of the Business and Professions Code.

(3) A device as defined in Section 4023 of the Business of Professions Code.

(4) A food as defined in subdivision (a) of Section 109935.

(5) The packaging associated with any of the items specified in paragraph (1), (2), or (3).

(6) A pesticide as defined in Section 12753 of the Food and Agricultural Code or the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Sec. 136 and following).

(7) Mercury-containing lights defined as mercury-containing lamps, bulbs, tubes, or other electric devices that provide functional illumination.

(f) This section shall remain in effect only until December 31, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before December 31, 2011, deletes or extends that date.

(Added by Stats. 2008, Ch. 560, Sec. 1 (1st version). Effective January 1, 2009. Repealed as of December 31, 2011, by its own provisions. See later operative version also added by Sec. 1 of Ch. 560.)

25251. For purposes of this article, the following definitions shall apply:

(a) "Clearinghouse" means the Toxics Information Clearinghouse established pursuant to Section 25256.

(b) "Council" means the California Environmental Policy Council established pursuant to subdivision (b) of Section 71017 of the Public Resources Code.

(c) "Office" means Office of Environmental Health Hazard Assessment.

(d) "Panel" means the Green Ribbon Science Panel established pursuant to Section 25254.

(e) "Consumer product" means a product or part of the product that is used, brought, or leased for use by a person for any purposes. "Consumer product" does not include any of the following:

(1) A dangerous drug or dangerous device as defined in Section 4022 of the Business of Professions Code.

(2) Dental restorative materials as defined in subdivision (b) of Section 1648.20 of the Business and Professions Code.

(3) A device as defined in Section 4023 of the Business of Professions Code.

(4) A food as defined in subdivision (a) of Section 109935.

(5) The packaging associated with any of the items specified in paragraph (1), (2), or (3).

(6) A pesticide as defined in Section 12753 of the Food and Agricultural Code or the Federal Insecticide, Fungicide and Rodenticide (7 United States Code Sections 136 and following).

(f) This section shall become effective on January 1, 2012.

(Repealed and added by Stats. 2008, Ch. 560, Sec. 1 (2nd version). Effective January 1, 2009. Section operative January 1, 2012, pursuant to its own provisions.)

25252. (a) On or before January 1, 2011, the department shall adopt regulations to establish a process to identify and prioritize those chemicals or chemical ingredients in consumer products that may be considered as being a chemical of concern, in accordance with the review process specified in Section 25252.5. The department shall adopt these regulations in consultation with the office and all appropriate state agencies and after conducting one or more public workshops for which the department provides public notice and provides an opportunity for all interested parties to comment. The regulations adopted pursuant to this section shall establish an identification and prioritization process that includes, but is not limited to, all of the following considerations:

(1) The volume of the chemical in commerce in this state.

(2) The potential for exposure to the chemical in a consumer product.

(3) Potential effects on sensitive subpopulations, including

infants and children.

(b) (1) In adopting regulations pursuant to this section, the department shall develop criteria by which chemicals and their alternatives may be evaluated. These criteria shall include, but not be limited to, the traits, characteristics and endpoints that are included in the clearinghouse data pursuant to Section 25256.1.

(2) In adopting regulations pursuant to this section, the department shall reference and use, to the maximum extent feasible, available information from other nations, governments, and authoritative bodies that have undertaken similar chemical prioritization processes, so as to leverage the work and costs already incurred by those entities and to minimize costs and maximize benefits for the state's economy.

(3) Paragraph (2) does not require the department, when adopting regulations pursuant to this section, to reference and use only the available information specified in paragraph (2).

(Added by Stats. 2008, Ch. 559, Sec. 1. Effective January 1, 2009.)

25252.5. (a) Except as provided in subdivision (f), the department, in adopting the regulations pursuant to Sections 25252 and 25253, shall prepare a multimedia life cycle evaluation conducted by affected agencies and coordinated by the department, and shall submit the regulations and the multimedia life cycle evaluation to the council for review.

(b) The multimedia evaluation shall be based on the best available scientific data, written comments submitted by interested persons, and information collected by the department in preparation for adopting the regulations, and shall address, but is not limited to, the impacts associated with all the following:

(1) Emissions of air pollutants, including ozone forming compounds, particulate matter, toxic air contaminants, and greenhouse gases.

(2) Contamination of surface water, groundwater, and soil.

(3) Disposal or use of the byproducts and waste materials.

(4) Worker safety and impacts to public health.

(5) Other anticipated impacts to the environment.

(c) The council shall complete its review of the multimedia evaluation within 90 calendar days following notice from the department that it intends to adopt regulations. If the council determines that the proposed regulations will cause a significant adverse impact on the public health or the environment, or that alternatives exist that would be less adverse, the council shall recommend alternative measures that the department or other state agencies may take to reduce the adverse impact on public health or the environment. The council shall make all information relating to its review available to the public.

(d) Within 60 days of receiving notification from the council of a determination of significant adverse impact, the department shall adopt revisions to the proposed regulation to avoid or reduce the adverse impact, or the affected agencies shall take appropriate action that will, to the extent feasible, mitigate the adverse impact so that, on balance, there is no significant adverse impact on public health or the environment.

(e) In coordinating a multimedia evaluation pursuant to subdivision (a), the department shall consult with other boards and departments within the California Environmental Protection Agency, the State Department of Public Health, the State and Consumer Services Agency, the Department of Homeland Security, the Department of Industrial Relations, and other state agencies with responsibility for, or expertise regarding, impacts that could result from the production, use, or disposal of consumer products and the ingredients they may contain.

(f) Notwithstanding subdivision (a), the department may adopt regulations pursuant to Sections 25252 and 25253 without subjecting the proposed regulation to a multimedia evaluation if the council, following an initial evaluation of the proposed regulation, conclusively determines that the regulation will not have any significant adverse impact on public health or the environment.

(g) For the purposes of this section, "multimedia life cycle evaluation" means the identification and evaluation of a significant adverse impact on public health or the environment, including air, water, or soil, that may result from the production, use, or disposal of a consumer product or consumer product ingredient.

(Added by Stats. 2008, Ch. 559, Sec. 2. Effective January 1, 2009.)

25253. (a) (1) On or before January 1, 2011, the department shall adopt regulations pursuant to this section that establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern, in accordance with the review process specified in Section 25252.5. The department shall adopt these regulations in consultation with all appropriate state agencies and after conducting one or more public workshops for which the department provides public notice and provides an opportunity for all interested parties to comment.

(2) The regulations adopted pursuant to this section shall establish a process that includes an evaluation of the availability of potential alternatives and potential hazards posed by those alternatives, as well as an evaluation of critical exposure pathways. This process shall include life cycle assessment tools that take into consideration, but shall not be limited to, all of the following:

(A) Product function or performance.

(B) Useful life.

(C) Materials and resource consumption.

(D) Water conservation.

(E) Water quality impacts.

(F) Air emissions.

(G) Production, in-use, and transportation energy inputs.

(H) Energy efficiency.

(I) Greenhouse gas emissions.

(J) Waste and end-of-life disposal.

(K) Public health impacts, including potential impacts to sensitive subpopulations, including infants and children.

(L) Environmental impacts.

(M) Economic impacts.

(b) The regulations adopted pursuant to this section shall specify the range of regulatory responses that the department may take following the completion of the alternatives analysis, including, but not limited to, any of the following actions:

(1) Not requiring any action.

(2) Imposing requirements to provide additional information needed to assess a chemical of concern and its potential alternatives.

(3) Imposing requirements on the labeling or other type of consumer product information.

(4) Imposing a restriction on the use of the chemical of concern in the consumer product.

(5) Prohibiting the use of the chemical of concern in the consumer product.

(6) Imposing requirements that control access to or limit exposure to the chemical of concern in the consumer product.

(7) Imposing requirements for the manufacturer to manage the product at the end of its useful life, including recycling or responsible disposal of the consumer product.

(8) Imposing a requirement to fund green chemistry challenge grants where no feasible safer alternative exists.

(9) Any other outcome the department determines accomplishes the requirements of this article.

(c) The department, in developing the processes and regulations pursuant to this section, shall ensure that the tools available are in a form that allows for ease of use and transparency of application. The department shall also make every feasible effort to devise simplified and accessible tools that consumer product manufacturers, consumer product distributors, product retailers and consumers can use to make consumer product manufacturing, sales, and purchase decisions.

(Added by Stats. 2008, Ch. 559, Sec. 3. Effective January 1, 2009.)

25254. (a) In implementing this article, the department shall establish a Green Ribbon Science Panel. The panel shall be composed of members
whose expertise shall encompass all of the following disciplines:

(1) Chemistry.

(2) Chemical engineering.

(3) Environmental law.

(4) Toxicology.

(5) Public policy.

(6) Pollution prevention.

(7) Cleaner production methods.

(8) Environmental health.
(9) Public health.
(10) Risk analysis.
(11) Materials science.
(12) Nanotechnology.
(13) Chemical synthesis.
(14) Research.
(15) Maternal and child health.

(b) The department shall appoint all members to the panel on or before July 1, 2009. The department shall appoint the members for staggered three-year terms, and may reappoint a member for additional terms, without limitation.

(c) The panel shall meet as often as the department deems necessary, with consideration of available resources, but not less than twice each year. The department shall provide for staff and administrative support to the panel.

(d) The panel meetings shall be open to the public and are subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(Added by Stats. 2008, Ch. 559, Sec. 4. Effective January 1, 2009.)

25255. The panel may take any of the following actions:

(a) Advise the department and the council on scientific and technical matters in support of the goals of this article of significantly reducing adverse health and environmental impacts of chemicals used in commerce, as well as the overall costs of those impacts to the state's society, by encouraging the redesign of consumer products, manufacturing processes, and approaches.

(b) Assist the department in developing green chemistry and chemicals policy recommendations and implementation strategies and details, and ensure these recommendations are based on a strong scientific foundation.

(c) Advise the department and make recommendations for chemicals the panel views as priorities for which hazard traits and toxicological end-point data should be collected.

(d) Advise the department in the adoption of regulations required by this article.

(e) Advise the department on any other pertinent matter in implementing this article, as determined by the department.

(Added by Stats. 2008, Ch. 559, Sec. 5. Effective January 1, 2009.)

25256. The department shall establish the Toxics Information Clearinghouse, which shall provide a decentralized, Web-based system for the collection, maintenance, and distribution of specific chemical hazard trait and environmental and toxicological end-point data. The department shall make the clearinghouse accessible to the public through a single Internet Web portal, and, shall, to the maximum extent possible, operate the clearinghouse at the least possible cost to the state.

(Added by Stats. 2008, Ch. 560, Sec. 1. Effective January 1, 2009.)

25256.1. On or before January 1, 2011, the office shall evaluate and specify the hazard traits and environmental and toxicological end-points and any other relevant data that are to be included in the clearinghouse. The office shall conduct this evaluation in consultation with the department and all appropriate state agencies, after one or more public workshops, and an opportunity for all interested parties to comment. The office may seek information from other states, the federal government, and other nations in implementing this section.

(Added by Stats. 2008, Ch. 560, Sec. 1. Effective January 1, 2009.)

25256.2. (a) The department shall develop requirements and standards related to the design of the clearinghouse and data quality and test methods that govern the data that is eligible to be available through the clearinghouse.

(b) The department may phase in the access to eligible information and data in the clearinghouse as that information and data become available.

(c) The department shall ensure the clearinghouse is capable of displaying updated information as new data becomes available.

(Added by Stats. 2008, Ch. 560, Sec. 1. Effective January 1, 2009.)

25256.3. The department shall consult with other states, the federal government, and other nations to identify available data related to hazard traits and environmental and toxicological end-points, and to facilitate the development of regional, national, and international data sharing arrangements to be included in the clearinghouse.

(Added by Stats. 2008, Ch. 560, Sec. 1. Effective January 1, 2009.)

25257. (a) A person providing information pursuant to this article may, at the time of submission, identify a portion of the information submitted to the department as a trade secret and, upon the written request of the department, shall provide support for the claim that the information is a trade secret. Except as provided in subdivision (d), a state agency shall not release to the public, subject information supplied pursuant to this article that is a trade secret, and that is so identified at the time of submission, in accordance with Section 6254.7 of the Government Code and Section 1060 of the Evidence Code.

(b) This section does not prohibit the exchange of a properly designated trade secret between public agencies, if the trade secret is relevant and necessary to the exercise of the agency's jurisdiction and the public agency exchanging the trade secrets complies with this section. An employee of the department that has access to a properly designated trade secret shall maintain the confidentiality of that trade secret by complying with this section.

(c) Information not identified as a trade secret pursuant to subdivision (a) shall be available to the public unless exempted from disclosure by other provisions of law. The fact that information is claimed to be a trade secret is public information.

(d) (1) Upon receipt of a request for the release of information that has been claimed to be a trade secret, the department shall immediately notify the person who submitted the information. Based on the request, the department shall determine whether or not the information claimed to be a trade secret is to be released to the public.

(2) The department shall make the determination specified in paragraph (1), no later than 60 days after the date the department receives the request for disclosure, but not before 30 days following the notification of the person who submitted the information.

(3) If the department decides that the information requested pursuant to this subdivision should be made public, the department shall provide the person who submitted the information 30 days' notice prior to public disclosure of the information, unless, prior to the expiration of the 30-day period, the person who submitted the information obtains an action in an appropriate court for a declaratory judgment that the information is subject to protection under this section or for a preliminary injunction prohibiting disclosure of the information to the public and promptly notifies the department of that action.

(e) This section does not authorize a person to refuse to disclose to the department information required to be submitted to the department pursuant to this article.

(f) This section does not apply to hazardous trait submissions for chemicals and chemical ingredients pursuant to this article.

(Added by Stats. 2008, Ch. 559, Sec. 6. Effective January 1, 2009.)

25257.1. (a) This article does not limit and shall not be construed to limit the department's or any other department's or agency's existing authority over hazardous materials.

(b) This article does not authorize the department to supersede the regulatory authority of any other department or agency.

(c) The department shall not duplicate or adopt conflicting regulations for product categories already regulated or subject to pending regulation consistent with the purposes of this article.

(Added by Stats. 2008, Ch. 560, Sec. 1. Effective January 1, 2009.)

HEATLH AND SAFETY CODE

CHAPTER 6.6. SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986

(Chapter 6.6 added November 4, 1986, by initiative Proposition 65, Sec. 2. Operative January 1, 1987, pursuant to Sec. 8 of Prop. 65.
Note: Prop. 65 allows (under conditions in Sec. 7) the Legislature to directly amend its provisions by 2/3 vote.)

25249.5. Prohibition On Contaminating Drinking Water With Chemicals Known to Cause Cancer or Reproductive Toxicity. No person in the course of doing business shall knowingly discharge or release a chemical known to the state to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water, notwithstanding any other provision or authorization of law except as provided in Section 25249.9.

(Added November 4, 1986, by initiative Proposition 65. Operative January 1, 1987.)

25249.6. Required Warning Before Exposure To Chemicals Known to Cause Cancer Or Reproductive Toxicity. No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

(Added November 4, 1986, by initiative Proposition 65. Operative January 1, 1987.)

25249.7. (a) Any person that violates or threatens to violate Section 25249.5 or 25249.6 may be enjoined in any court of competent jurisdiction.

(b) (1) Any person who has violated Section 25249.5 or 25249.6 shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) per day for each violation in addition to any other penalty established by law. That civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

(2) In assessing the amount of a civil penalty for a violation of this chapter, the court shall consider all of the following:

(A) The nature and extent of the violation.

(B) The number of, and severity of, the violations.

(C) The economic effect of the penalty on the violator.

(D) Whether the violator took good faith measures to comply with this chapter and the time these measures were taken.

(E) The willfulness of the violator's misconduct.

(F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.

(G) Any other factor that justice may require.

(c) Actions pursuant to this section may be brought by the Attorney General in the name of the people of the State of California, by any district attorney, by any city attorney of a city having a population in excess of 750,000, or, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor, or as provided in subdivision (d).

(d) Actions pursuant to this section may be brought by any person in the public interest if both of the following requirements are met:

(1) The private action is commenced more than 60 days from the date that the person has given notice of an alleged violation of Section 25249.5 or 25249.6 that is the subject of the private action to the Attorney General and the district attorney, city attorney, or prosecutor in whose jurisdiction the violation is alleged to have occurred, and to the alleged violator. If the notice alleges a violation of Section 25249.6, the notice of the alleged violation shall include a certificate of merit executed by the attorney for the noticing party, or by the noticing party, if the noticing party is not represented by an attorney. The certificate of merit shall state that the person executing the certificate has consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action, and that, based on that information, the person executing the certificate believes there is a reasonable and meritorious case for the private action. Factual information sufficient to establish the basis of the certificate of merit, including the information identified in paragraph (2) of subdivision (h), shall be attached to the certificate of merit that is served on the Attorney General.

(2) Neither the Attorney General, any district attorney, any city attorney, nor any prosecutor has commenced and is diligently prosecuting an action against the violation.

(e) Any person bringing an action in the public interest pursuant to subdivision (d) and any person filing any action in which a violation of this chapter is alleged shall notify the Attorney General that the action has been filed. Neither this subdivision nor the procedures provided in subdivisions (f) to (j), inclusive, shall affect the requirements imposed by statute or a court decision in existence on January 1, 2002, concerning whether any person filing any action in which a violation of this chapter is alleged is required to comply with the requirements of subdivision (d).

(f) (1) Any person filing an action in the public interest pursuant to subdivision (d), any private person filing any action in which a violation of this chapter is alleged, or any private person settling any violation of this chapter alleged in a notice given pursuant to paragraph (1) of subdivision (d), shall, after the action or violation is subject either to a settlement or to a judgment, submit to the Attorney General a reporting form that includes the results of that settlement or judgment and the final disposition of the case, even if dismissed. At the time of the filing of any judgment pursuant to an action brought in the public interest pursuant to subdivision (d), or any action brought by a private person in which a violation of this chapter is alleged, the plaintiff shall file an affidavit verifying that the report required by this subdivision has been accurately completed and submitted to the Attorney General.

(2) Any person bringing an action in the public interest pursuant to subdivision (d), or any private person bringing an action in which a violation of this chapter is alleged, shall, after the action is either subject to a settlement, with or without court approval, or to a judgment, submit to the Attorney General a report that includes information on any corrective action being taken as a part of the settlement or resolution of the action.

(3) The Attorney General shall develop a reporting form that specifies the information that shall be reported, including, but not limited to, for purposes of subdivision (e), the date the action was filed, the nature of the relief sought, and for purposes of this subdivision, the amount of the settlement or civil penalty assessed, other financial terms of the settlement, and any other information the Attorney General deems appropriate.

(4) If there is a settlement of an action brought by a person in the public interest under subdivision (d), the plaintiff shall submit the settlement, other than a voluntary dismissal in which no consideration is received from the defendant, to the court for approval upon noticed motion, and the court may approve the settlement only if the court makes all of the following findings:

(A) Any warning that is required by the settlement complies with this chapter.

(B) Any award of attorney's fees is reasonable under California law.

(C) Any penalty amount is reasonable based on the criteria set forth in paragraph (2) of subdivision (b).

(5) The plaintiff subject to paragraph (4) has the burden of producing evidence sufficient to sustain each required finding. The plaintiff shall serve the motion and all supporting papers on the Attorney General, who may appear and participate in any proceeding without intervening in the case.

(6) Neither this subdivision nor the procedures provided in subdivision (e) and subdivisions (g) to (j), inclusive, shall affect the requirements imposed by statute or a court decision in existence on January 1, 2002, concerning whether claims raised by any person or public prosecutor not a party to the action are precluded by a settlement approved by the court.

(g) The Attorney General shall maintain a record of the information submitted pursuant to subdivisions (e) and (f) and shall make this information available to the public.

(h) (1) Except as provided in paragraph (2), the basis for the certificate of merit required by subdivision (d) is not discoverable. However, nothing in this subdivision shall preclude the discovery of information related to the certificate of merit if that information is relevant to the subject matter of the action and is otherwise discoverable, solely on the ground that it was used in support of the certificate of merit.

(2) Upon the conclusion of an action brought pursuant to subdivision (d) with respect to any defendant, if the trial court determines

that there was no actual or threatened exposure to a listed chemical, the court may, upon the motion of that alleged violator or upon the court's own motion, review the basis for the belief of the person executing the certificate of merit, expressed in the certificate of merit, that an exposure to a listed chemical had occurred or was threatened. The information in the certificate of merit, including the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other data reviewed by those persons, shall be disclosed to the court in an in-camera proceeding at which the moving party shall not be present. If the court finds that there was no credible factual basis for the certifier's belief that an exposure to a listed chemical had occurred or was threatened, then the action shall be deemed frivolous within the meaning of Section 128.6 or 128.7 of the Code of Civil Procedure, whichever provision is applicable to the action. The court shall not find a factual basis credible on the basis of a legal theory of liability that is frivolous within the meaning of Section 128.6 or 128.7 of the Code of Civil Procedure, whichever provision is applicable to the action.

(i) The Attorney General may provide the factual information submitted to establish the basis of the certificate of merit on request to any district attorney, city attorney, or prosecutor within whose jurisdiction the violation is alleged to have occurred, or to any other state or federal government agency, but in all other respects the Attorney General shall maintain, and ensure that all recipients maintain, the submitted information as confidential official information to the full extent authorized in Section 1040 of the Evidence Code.

(j) In any action brought by the Attorney General, a district attorney, a city attorney, or a prosecutor pursuant to this chapter, the Attorney General, district attorney, city attorney, or prosecutor may seek and recover costs and attorney's fees on behalf of any party who provides a notice pursuant to subdivision (d) and who renders assistance in that action.

(Amended by Stats. 2003, Ch. 62, Sec. 185. Effective January 1, 2004. Note: This section was added Nov. 4, 1986, by initiative Prop. 65.)

25249.8. List Of Chemicals Known to Cause Cancer Or Reproductive Toxicity.

(a) On or before March 1, 1987, the Governor shall cause to be published a list of those chemicals known to the state to cause cancer or reproductive toxicity within the meaning of this chapter, and he shall cause such list to be revised and republished in light of additional knowledge at least once per year thereafter. Such list shall include at a minimum those substances identified by reference in Labor Code Section 6382(b)(1) and those substances identified additionally by reference in Labor Code Section 6382(d).

(b) A chemical is known to the state to cause cancer or reproductive toxicity within the meaning of this chapter if in the opinion of the state's qualified experts it has been clearly shown through scientifically valid testing according to generally accepted principles to cause cancer or reproductive toxicity, or if a body considered to be authoritative by such experts has formally identified it as causing cancer or reproductive toxicity, or if an agency of the state or federal government has formally required it to be labeled or identified as causing cancer or reproductive toxicity.

(c) On or before January 1, 1989, and at least once per year thereafter, the Governor shall cause to be published a separate list of those chemicals that at the time of publication are required by state or federal law to have been tested for potential to cause cancer or reproductive toxicity but that the state's qualified experts have not found to have been adequately tested as required.

(d) The Governor shall identify and consult with the state's qualified experts as necessary to carry out his duties under this section.

(e) In carrying out the duties of the Governor under this section, the Governor and his designates shall not be considered to be adopting or amending a regulation within the meaning of the Administrative Procedure Act as defined in Government Code Section 11370.

(Added November 4, 1986, by initiative Proposition 65. Operative January 1, 1987.)

25249.9. Exemptions from Discharge Prohibition.

(a) Section 25249.5 shall not apply to any discharge or release that takes place less than twenty months subsequent to the listing of the chemical in question on the list required to be published under subdivision (a) of Section 25249.8.

(b) Section 25249.5 shall not apply to any discharge or release that meets both of the following criteria:

(1) The discharge or release will not cause any significant amount of the discharged or released chemical to enter any source of drinking water.

(2) The discharge or release is in conformity with all other laws and with every applicable regulation, permit, requirement, and order.

In any action brought to enforce Section 25249.5, the burden of showing that a discharge or release meets the criteria of this subdivision shall be on the defendant.

(Added November 4, 1986, by initiative Proposition 65. Operative January 1, 1987.)

25249.10. Exemptions from Warning Requirement.

Section 25249.6 shall not apply to any of the following:

(a) An exposure for which federal law governs warning in a manner that preempts state authority.

(b) An exposure that takes place less than twelve months subsequent to the listing of the chemical in question on the list required to be published under subdivision (a) of Section 25249.8.

(c) An exposure for which the person responsible can show that the exposure poses no significant risk assuming lifetime exposure at the level in question for substances known to the state to cause cancer, and that the exposure will have no observable effect assuming exposure at one thousand (1000) times the level in question for substances known to the state to cause reproductive toxicity, based on evidence and standards of comparable scientific validity to the evidence and standards which form the scientific basis for the listing of such chemical pursuant to subdivision (a) of Section 25249.8. In any action brought to enforce Section 25249.6, the burden of showing that an exposure meets the criteria of this subdivision shall be on the defendant.

(Added November 4, 1986, by initiative Proposition 65. Operative January 1, 1987.)

25249.11. Definitions.

For purposes of this chapter:

(a) "Person" means an individual, trust, firm, joint stock company, corporation, company, partnership, limited liability company, and association.

(b) "Person in the course of doing business" does not include any person employing fewer than 10 employees in his or her business; any city, county, or district or any department or agency thereof or the state or any department or agency thereof or the federal government or any department or agency thereof; or any entity in its operation of a public water system as defined in Section 116275.

(c) "Significant amount" means any detectable amount except an amount which would meet the exemption test in subdivision (c) of Section 25249.10 if an individual were exposed to such an amount in drinking water.

(d) "Source of drinking water" means either a present source of drinking water or water which is identified or designated in a water quality control plan adopted by a regional board as being suitable for domestic or municipal uses.

(e) "Threaten to violate" means to create a condition in which there is a substantial probability that a violation will occur.

(f) "Warning" within the meaning of Section 25249.6 need not be provided separately to each exposed individual and may be provided by general methods such as labels on consumer products, inclusion of notices in mailings to water customers, posting of notices, placing notices in public news media, and the like, provided that the warning accomplished is clear and reasonable. In order to minimize the burden on retail sellers of consumer products including foods, regulations implementing Section 25249.6 shall to the extent practicable place the obligation to provide any warning materials such as labels on the producer or packager rather than on the retail seller, except where the retail seller itself is responsible for introducing a chemical known to the state to cause cancer or reproductive toxicity into the consumer product in question.

(Amended by Stats. 1996, Ch. 1023, Sec. 238. Effective September 29, 1996. Note: This section was added Nov. 4, 1986, by initiative Prop. 65.)

25249.12. (a) The Governor shall designate a lead agency and other agencies that may be required to implement this chapter, including this section. Each agency so designated may adopt and modify regulations, standards, and permits as necessary to conform with and implement this chapter and to further its purposes.

(b) The Safe Drinking Water and Toxic Enforcement Fund is hereby

established in the State Treasury. The director of the lead agency designated by the Governor to implement this chapter may expend the funds in the Safe Drinking Water and Toxic Enforcement Fund, upon appropriation by the Legislature, to implement and administer this chapter.

(c) In addition to any other money that may be deposited in the Safe Drinking Water and Toxic Enforcement Fund, all of the following amounts shall be deposited in the fund:

(1) Seventy-five percent of all civil and criminal penalties collected pursuant to this chapter.

(2) Any interest earned upon the money deposited into the Safe Drinking Water and Toxic Enforcement Fund.

(d) Twenty-five percent of all civil and criminal penalties collected pursuant to this chapter shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, or in the case of an action brought by a person under subdivision (d) of Section 25249.7, to that person.

(Amended by Stats. 2003, Ch. 228, Sec. 22. Effective August 11, 2003. Note: This section was added Nov. 4, 1986, by initiative Prop. 65.)

25249.13. Preservation Of Existing Rights, Obligations, and Penalties. Nothing in this chapter shall alter or diminish any legal obligation otherwise required in common law or by statute or regulation, and nothing in this chapter shall create or enlarge any defense in any action to enforce such legal obligation. Penalties and sanctions imposed under this chapter shall be in addition to any penalties or sanctions otherwise prescribed by law.

(Added November 4, 1986, by initiative Proposition 65. Operative January 1, 1987.)

[NOTE: Sections 25250 to 25257.1 are in Chapter 6.5, following Section 25249.2, in Articles 13 and 14.]

HEATLH AND SAFETY CODE

CHAPTER 6.65. UNIFIED AGENCY REVIEW OF HAZARDOUS MATERIALS RELEASE SITES

(Chapter 6.65 added by Stats. 1993, Ch. 1184, Sec. 1. Effective January 1, 1994.)

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 2 (commencing with Section 25310) of Chapter 6.8 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 25316.

(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.

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

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 Section 25355, 25355.5, or 25358.3.

(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 5.5 (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 Game 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. 2002, Ch. 999, Sec. 10. Effective January 1, 2003.)

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.)

HEALTH AND SAFETY CODE

CHAPTER 6.66. OVERSIGHT COSTS

(Chapter 6.66 added by Stats. 1996, Ch. 576, Sec. 3. Effective January 1, 1997.)

25269. The Legislature hereby finds and declares all of the following:

(a) To enhance cooperation between the department and the regulated community, and to reduce the state's costs associated with the oversight of cleanup efforts, the costs of the associated cost recovery program and the corresponding costs to the responsible parties involved, the oversight program should be administered in an efficient, responsible, and accountable manner.

(b) According to information provided to the Legislature, the department has collected more than seventy-one million dollars ($71,000,000) since the cost recovery effort was begun in the early 1980s and there is approximately seventy million dollars ($70,000,000) to eighty million dollars ($80,000,000) in outstanding receivables for disputed site cleanup oversight costs. The information provided to the Legislature indicates that potentially responsible parties have complained that the department's oversight costs have been unpredictable, unsubstantiated, and exceedingly high.

(c) Disputes with potentially responsible parties over the reasonableness of oversight costs have been a major factor in the difficulty that the department has experienced in conducting cost recovery. Disputes of that kind substantially increase the cost of state operations and the cost of doing business for the private sector, leading to extended negotiations and litigation. The redirection of resources by both parties in attempting to resolve those differences most likely inhibit cleanup efforts and affect the ability of the parties to work together cooperatively, thereby exacerbating the costs associated with the cleanups. Disputes would be reduced by clarifying current law by providing definitions of direct and indirect oversight costs. Further, these high costs affect the competitiveness of California businesses in national and global business environments.

(Added by Stats. 1996, Ch. 576, Sec. 3. Effective January 1, 1997.)

25269.1. For purposes of this article, the following terms have the following meaning:

(a) "Department" means the Department of Toxic Substances Control.

(b) "Direct oversight costs" means the costs to the department of overseeing a cleanup action, pursuant to the authority specified in subdivision (a) of Section 25269.2, that can be specifically attributed to a particular cost objective, including, but not limited to, sites, facilities, and activities.

(c) "Indirect oversight costs" means the costs to the department of activity that is of a common or joint purpose benefiting more than one cost objective and not readily assignable to a single case objective.

(d) "Pro rata" means the general administrative costs expended by central service agencies to provide centralized services to state agencies, as defined in the State Administrative Manual.

(Added by Stats. 1996, Ch. 576, Sec. 3. Effective January 1, 1997.)

25269.2. (a) The department shall comply with this chapter when recovering oversight costs for corrective action pursuant to Chapter 6.5 (commencing with Section 25100), for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300), and for response actions pursuant to Chapter 6.85 (commencing with Section 25396).

(b) The department shall develop a concise statement of its cost recovery policies and billing procedures, including dispute resolution procedures and availability of program guidance and policies, and distribute the statement to all responsible parties.

(Added by Stats. 1996, Ch. 576, Sec. 3. Effective January 1, 1997.)

25269.3. The department shall take the following actions with regard to the tracking of indirect oversight costs:

(a) Ensure that pro rata costs are allocated appropriately to all departmental activities, so that the department's program will only bear these pro rata costs in proportion to the benefits received by potentially responsible parties.

(b) Routinely include operating expenses in the indirect oversight costs and allocate those expenses using processes that ensure that the department's program only bears indirect oversight costs in proportion to the benefits received by potentially responsible parties.

(c) Exclude, from indirect oversight costs, the costs of grant development and administration, fee administration, contract development and administration, and public and governmental inquiries.

(Added by Stats. 1996, Ch. 576, Sec. 3. Effective January 1, 1997.)

25269.4. (a) The department shall establish rates for indirect oversight costs that are specific to each program and shall review and update the indirect cost rates based upon increases or decreases in the amounts of grants received by the department, department reorganizations, and other relevant factors, but not less than once every six months, based upon the previous 12 months of expenditure data. The department shall apply the indirect oversight cost rates prospectively and shall not make retroactive adjustments in those rates.

(b) The department shall review the department's cost recovery policies at least once every two years.

(Added by Stats. 1996, Ch. 576, Sec. 3. Effective January 1, 1997.)

25269.5. The department shall take the following actions with regard to the department's relationship with the parties who are performing the investigation and cleanup of the hazardous substance release site or taking a hazardous waste corrective action or response action:

(a) Adopt procedures to improve communication, facilitate the exchange of ideas, eliminate surprises, and allow better financial planning by the department and potentially responsible parties, including a meet and confer process which includes, but is not limited to, all of the following:

(1) An estimate of the cost of site remediation by the department for the next phase of the site remediation activity, including a list of estimated personnel labor rates.

(2) An estimate of the total hours that the department expects the department staff to incur in the next phase of the site mitigation process, to the extent that the department can project its time and costs in advance. That estimate shall include the projected hours of the project manager, and the costs of public participation, legal counsel, and technical consultations.

(3) A discussion of the schedule for the remediation action, including a thorough review of the services that the department expects to provide, deliverables, timeframes, expectations of both parties, a process for status reporting by both parties, systematic billing at least once every three months by the department, and an agreement on how the work plan will be modified, and how the costs will be estimated.

(b) Develop a concise statement of its cost recovery policies and billing procedures, including dispute resolution procedures and the availability of program guidance and policies, which shall be distributed to all potentially responsible parties before any site remediation commences, as part of the meet and confer process.

(c) Review all informal guidance documents for the cost recovery program, including fee bulletins, management memos, policies, and procedures, and review and update those documents, as appropriate.

(d) Establish a procedure, when there is a change of project manager for a remediation action, to provide for a detailed status briefing to identify the highlights of past work and identify the current areas of agreement and disagreement among the parties.

(Added by Stats. 1996, Ch. 576, Sec. 3. Effective January 1, 1997.)

25269.6. The department shall adopt a billing system for oversight costs which meets all of the following criteria:

(a) Invoices shall be issued within 60 days to the extent practicable, with appropriate incentives for prompt payment. In no event shall invoices be issued less frequently than on a quarterly basis.

(b) Invoices shall be mailed to the correct person for the potentially responsible party.

(c) Sufficient detail shall be included with each invoice, so that the potentially responsible party can relate the items on the invoice to the benefits received, and additional details, including daily timesheet personnel data, shall be made readily available.

(d) Invoices shall be supplemented with statements of any changes in rates and a detailed justification for any such changes.

(e) Invoices shall be reviewed for accuracy and appropriateness by a member of the department staff who has direct knowledge of the remediation action.

(f) Invoices shall be reasonably consistent with expectations regarding costs, benefits, and outcomes developed during the meet and confer process specified in subdivision (a) of Section 25269.5, if the department's knowledge of site conditions or other factors which may substantially impact the department's costs associated with the site, have not changed significantly since the last conference.

(g) A process for the timely review and settlement of any outstanding accounts shall be developed and implemented.

(Added by Stats. 1996, Ch. 576, Sec. 3. Effective January 1, 1997.)

25269.8. The department shall take all of the following actions with regard to uncollectible accounts:

(a) Review all current outstanding receivables and make an appropriate adjustment for estimated uncollectible amounts, consistent with current accounting practices and recognizing the present value of future collection. The department may, if warranted, write off or write down those receivable amounts.

(b) Maintain and report an analysis of outstanding receivables and other control analyses.

(c) Consider whether to enter into a contract with a private collection agency to collect substantially past-due accounts and, for longer term receivables, consider whether credit arrangements should be made with banks or other institutions willing to assist in financing a potentially responsible party's obligation for remediation.

(Added by Stats. 1996, Ch. 576, Sec. 3. Effective January 1, 1997.)

HEATLH AND SAFETY CODE

CHAPTER 6.67. ABOVEGROUND STORAGE OF PETROLEUM

(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 that has the capacity to store 55 gallons or more of petroleum and that is substantially or totally above the surface of the ground. "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, as defined in subdivision (g) of Section 25316, if the Department of Toxic Substances Control has issued the person owning or operating the tank a hazardous waste facilities permit 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 code and Chapter 16 (commencing with Section 2610) of Division 3 of Title 23 of the California Code of Regulations.

(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, dated November 24, 1971, 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.

(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 and 25404.2, 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 board and the regional boards by this chapter.

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

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

(f) "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.

(g) "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.

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

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

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

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

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

(m) "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 a single business entity 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.

(Amended by Stats. 2008, Ch. 179, Sec. 147. Effective January 1, 2009.)

25270.3. A tank facility is subject to this chapter if 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 or the tank facility has a storage capacity of 1,320 gallons or more of petroleum.

(Amended by Stats. 2007, Ch. 626, Sec. 5. Effective January 1, 2008.)

25270.4. This chapter shall be implemented by the Unified Program Agency. If there is no UPA, the agency authorized pursuant to subdivision (f) of Section 25404.3 shall be deemed to be the UPA for purposes of this chapter and shall implement this chapter.

(Repealed and added by Stats. 2007, Ch. 626, Sec. 7. Effective January 1, 2008.)

25270.4.5. (a) Except as provided in subdivision (b), each owner or operator of a storage tank at a tank facility subject to this chapter shall prepare a spill prevention control and countermeasure plan prepared in accordance with Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations. Each owner or operator specified in this subdivision shall conduct periodic inspections of the storage tank to assure compliance with Section 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, each 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 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 and the cumulative storage capacity of the tank facility does not exceed 100,000 gallons. 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.

(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.

(Added by Stats. 2007, Ch. 626, Sec. 8. Effective January 1, 2008.)

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.

(c) An inspection conducted pursuant to this section does not require the oversight of a professional engineer. The person conducting the inspection shall meet both of the following requirements:

(1) Complete an aboveground storage tank training program, which shall be established by the secretary.

(2) Satisfactorily pass an examination developed by the secretary on the spill prevention control and countermeasure plan provisions and safety requirements for aboveground storage tank inspections.

(Repealed and added by Stats. 2007, Ch. 626, Sec. 10. Effective January 1, 2008.)

25270.6. (a) (1) On or before January 1, 2009, and on or before January 1 annually thereafter, each owner or operator of a tank facility subject to this chapter shall file with the UPA a tank facility statement that shall identify the name and address of the tank facility, a contact person for the tank facility, the total storage capacity of the tank facility, and the location, size, age, and contents of each storage tank that exceeds 10,000 gallons in capacity and that holds a substance containing at least 5 percent of petroleum. 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 (e) of Section 25501, to the UPA, and that complies with Sections 25503.5, 25505, and 25510, satisfies the requirement in paragraph (1) to file a tank facility statement.

(b) Each year, commencing in calendar year 2010, each owner or operator of a tank facility who is subject to the requirements of subdivision (a) shall 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. The UPA may provide for a waiver of these fees when a state or local government agency submits a tank facility statement.

(Amended by Stats. 2007, Ch. 626, Sec. 11. Effective January 1, 2008.)

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. 2007, Ch. 626, Sec. 13. Effective January 1, 2008.)

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.

(Repealed and added by Stats. 2007, Ch. 626, Sec. 15. Effective January 1, 2008.)

25270.11. (a) All moneys in the Environmental Protection Trust Fund may be expended, upon appropriation by the Legislature, in the following manner:

(1) A portion of the funds, in an amount determined by the secretary in consultation with the UPAs, to a training account established and maintained by the secretary, to be used for purposes of training UPA personnel in the requirements of this chapter.

(2) All remaining funds in the Environmental Protection Trust Fund, shall be allocated to the UPAs, in accordance with a formula and process determined by the secretary in consultation with the UPAs. The UPAs shall expend those funds for the purpose of implementing this chapter. Eighty percent or less of each UPA's allocation may be distributed to the UPA in advance of actual expenditure by the UPA.

(b) All moneys remaining in the training account established pursuant to paragraph (1) of subdivision (a), as of June 1, 2011, may be expended pursuant to paragraph (2) of subdivision (a), upon appropriation by the Legislature.

(c) All moneys remaining in the Environmental Protection Trust Fund that have not been expended, as of June 1, 2011, shall be expended pursuant to paragraph (2) of subdivision (a), upon appropriation by the Legislature.

(d) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

(Repealed and added by Stats. 2007, Ch. 626, Sec. 18. Effective January 1, 2008. Inoperative July 1, 2011. Repealed as of January 1, 2012, by its own provisions.)

25270.12. (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, to report spills as required by Section 25270.8, or otherwise 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 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 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 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. 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.

(d) The city attorney, 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) The penalties specified in this section are in addition to any other penalties provided by law.

(Amended by Stats. 2007, Ch. 626, Sec. 19. Effective January 1, 2008.)

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.)

HEALTH AND SAFETY CODE

CHAPTER 6.7. UNDERGROUND STORAGE OF HAZARDOUS SUBSTANCES

(Chapter 6.7 added by Stats. 1983, Ch. 1046, Sec. 3.)

25280. (a) The Legislature finds and declares as follows:

(1) Substances hazardous to the public health and safety and to the environment are stored prior to use or disposal in thousands of underground locations in the state.

(2) Underground tanks used for the storage of hazardous substances and wastes are potential sources of contamination of the ground and underlying aquifers, and may pose other dangers to public health and the environment.

(3) In several known cases, underground storage of hazardous substances, including, but not limited to, industrial solvents, petroleum products, and other materials, has resulted in undetected and uncontrolled releases of hazardous substances into the ground. These releases have contaminated public drinking water supplies and created a potential threat to the public health and to the waters of the state.

(4) The Legislature has previously enacted laws regulating the management of hazardous wastes, including statutes providing the means to clean up releases of hazardous substances into the environment when the public health, domestic livestock, wildlife, and the environment are endangered. Current laws do not specifically govern the construction, maintenance, testing, and use of underground tanks used for the storage of hazardous substances, or the short-term storage of hazardous wastes prior to disposal, for the purposes of protecting the public health and the environment.

(5) The protection of the public from releases of hazardous substances is an issue of statewide concern.

(b) The Legislature therefore declares that it is in the public interest to establish a continuing program for the purpose of preventing contamination from, and improper storage of, hazardous substances stored underground. It is the intent of the Legislature, in enacting this chapter, to establish orderly procedures that will ensure that newly constructed underground storage tanks meet appropriate standards and that existing tanks be properly maintained, inspected, tested, and upgraded so that the health, property, and resources of the people of the state will be protected.

(Amended by Stats. 1992, Ch. 654, Sec. 1. Effective September 14, 1992.)

25280.5. The Legislature finds and declares all of the following:

(a) Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code provides for regulation of underground storage tanks and allows underground storage tanks to be regulated pursuant to a state program, in lieu of a federal program, in states which are authorized to implement these provisions.

(b) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to this chapter, to authorize the state to implement the provisions of Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, including any acts amending or supplementing Subchapter IX and any federal regulations and guidelines adopted pursuant to Subchapter IX.

(Added by Stats. 1989, Ch. 1397, Sec. 2.)

25280.6. Either the owner or operator of an underground storage tank may comply with the requirements of this chapter that apply to the owner or operator of an underground storage tank. Both the owner and the operator of an underground storage tank are responsible for complying with this chapter and if an underground storage tank is not in compliance with this chapter, both the owner and the operator of that underground storage tank are in violation of that requirement.

(Added by Stats. 2003, Ch. 42, Sec. 3. Effective July 7, 2003.)

25281. For purposes of this chapter, the following definitions apply:

(a) "Automatic line leak detector" means any method of leak detection, as determined in regulations adopted by the board, that alerts the owner or operator of an underground storage tank to the presence of a leak. "Automatic line leak detector" includes, but is not limited to, any device or mechanism that alerts the owner or operator of an underground storage tank to the presence of a leak by restricting or shutting off the flow of a hazardous substance through piping, or by triggering an audible or visual alarm, and that detects leaks of three gallons or more per hour at 10 pounds per square inch line pressure within one hour.

(b) "Board" means the State Water Resources Control Board. "Regional board" means a California regional water quality control board.

(c) "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the tank system.

(d) (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 or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, a UPA has the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 and the regulations adopted to implement those requirements. Except as provided in Section 25296.09, after a CUPA has been certified by the secretary, the UPA shall be the only local agency authorized to enforce the requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA. This paragraph shall not be construed to limit the authority or responsibility granted to the board and the regional boards by this chapter to implement and enforce this chapter and the regulations adopted pursuant to this chapter.

(e) "Department" means the Department of Toxic Substances Control.

(f) "Facility" means any one, or combination of, underground storage tanks used by a single business entity at a single location or site.

(g) "Federal act" means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), or as it may subsequently be amended or supplemented.

(h) "Hazardous substance" means either of the following:

(1) All of the following liquid and solid substances, unless the department, in consultation with the board, determines that the substance could not adversely affect the quality of the waters of the state:

(A) Substances on the list prepared by the Director of Industrial Relations pursuant to Section 6382 of the Labor Code.

(B) Hazardous substances, as defined in Section 25316.

(C) Any substance or material that is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class III-A combustible liquid.

(2) Any regulated substance, as defined in subsection (2) of Section 6991 of Title 42 of the United States Code, as that section reads on January 1, 1989, or as it may subsequently be amended or supplemented.

(i) "Local agency" means the local agency authorized, pursuant to Section 25283, to implement this chapter.

(j) "Operator" means any person in control of, or having daily responsibility for, the daily operation of an underground storage tank system.

(k) "Owner" means the owner of an underground storage tank.

(l) "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 state, another state of the United States, any department or agency of this state or another state, or the United States to the extent authorized by federal law.

(m) "Pipe" means any pipeline or system of pipelines that is used in connection with the storage of hazardous substances and that is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

(n) "Primary containment" means the first level of containment,

such as the portion of a tank that comes into immediate contact on its inner surface with the hazardous substance being contained.

(o) "Product tight" means impervious to the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(p) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils.

(q) "Secondary containment" means the level of containment external to, and separate from, the primary containment.

(r) "Single walled" means construction with walls made of only one thickness of material. For the purposes of this chapter, laminated, coated, or clad materials are considered single walled.

(s) "Special inspector" means a professional engineer, registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements of underground storage tanks.

(t) "Storage" or "store" means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for a period of years. "Storage" or "store" does not include the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or granted interim status under Section 25200.5.

(u) "Tank" means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials, including, but not limited to, wood, concrete, steel, or plastic that provides structural support.

(v) "Tank integrity test" means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the board.

(w) "Tank tester" means an individual who performs tank integrity tests on underground storage tanks.

(x) "Unauthorized release" means any release of any hazardous substance that does not conform to this chapter, including an unauthorized release specified in Section 25295.5.

(y) (1) "Underground storage tank" means any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground. "Underground storage tank" does not include any of the following:

(A) A tank with a capacity of 1,100 gallons or less that is located on a farm and that stores motor vehicle fuel used primarily for agricultural purposes and not for resale.

(B) A tank that is located on a farm or at the residence of a person, that has a capacity of 1,100 gallons or less, and that stores home heating oil for consumptive use on the premises where stored.

(C) Structures, such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits, sumps and lagoons. A sump that is a part of a monitoring system required under Section 25290.1, 25290.2, 25291, or 25292 and sumps or other structures defined as underground storage tanks under the federal act are not exempted by this subparagraph.

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

(2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be regulated by the board and any regional board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) to ensure that they do not pose a threat to water quality.

(z) "Underground tank system" or "tank system" means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

(aa) (1) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements of paragraph (3) of subdivision (c) of Section 25404.

(2) "Unified program facility permit" means a permit issued pursuant to Chapter 6.11 (commencing with Section 25404), and that encompasses the permitting requirements of Section 25284.

(3) "Permit" means a permit issued pursuant to Section 25284 or a unified program facility permit as defined in paragraph (2).

(Amended by Stats. 2003, Ch. 341, Sec. 1. Effective September 8, 2003.)

25281.5. (a) Notwithstanding subdivision (m) of Section 25281, for purposes of this chapter "pipe" means all parts of any pipeline or system of pipelines, used in connection with the storage of hazardous substances, including, but not limited to, valves and other appurtenances connected to the pipe, pumping units, fabricated assemblies associated with pumping units, and metering and delivery stations and fabricated assemblies therein, but does not include any of the following:

(1) An interstate pipeline subject to Part 195 (commencing with Section 195.0) of Subchapter D of Chapter 1 of Title 49 of the Code of Federal Regulations.

(2) An intrastate pipeline subject to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code.

(3) Unburied delivery hoses, vapor recovery hoses, and nozzles that are subject to unobstructed visual inspection for leakage.

(4) Vent lines, vapor recovery lines, and fill pipes which are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(b) In addition to the exclusions specified in subdivision (y) of Section 25281, "underground storage tank" does not include any of the following:

(1) Vent lines, vapor recovery lines, and fill pipes that are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(2) Unburied fuel delivery piping at marinas if the owner or operator conducts daily visual inspections of the piping and maintains a log of inspection results for review by the local agency. The exclusion provided by this paragraph shall not be applicable if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied fuel delivery piping at marinas.

(3) Unburied fuel piping connected to an emergency generator tank system, if the owner or operator conducts visual inspections of the piping each time the tank system is operated, but no less than monthly, and maintains a log of inspection results for review by the local agency. The exclusion provided by this paragraph does not apply if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied fuel supply and return piping connected to emergency generator tank systems.

(c) For purposes of this chapter, "emergency generator tank system" means an underground storage tank system that provides power supply in the event of a commercial power failure, stores diesel fuel, and is used solely in connection with an emergency system, legally required standby system, or optional standby system, as defined in Articles 700, 701, and 702 of the National Electrical Code of the National Fire Protection Association.

(Amended by Stats. 2002, Ch. 999, Sec. 12. Effective January 1, 2003.)

25282. (a) The department shall compile a comprehensive master list of hazardous substances. The master list shall be made available to the public and mailed to each local agency no later than June 30, 1984, notwithstanding any other provision of law, including Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Local agencies and owners or operators of underground storage tanks shall use the master list or, when adopted, the revised list adopted pursuant to subdivision (b), to determine which underground storage tanks require permits pursuant to this chapter. Hazardous substances included on the list may be denominated by scientific, common, trade, or brand names.

(b) The department may revise, when appropriate, the master list of all the hazardous substances specified in subdivision (a). The revised list of hazardous substances shall be prepared and adopted, and may be further revised, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by renumbering Section 25281 by Stats. 1984, Ch. 1038, Sec. 3.)

25283. (a) (1) This chapter shall be implemented, pursuant to the regulations adopted by the board, by one of the following:

(A) If there is a CUPA, the unified program agency.

(B) If there is no CUPA, by one of the following:

(i) Before January 1, 1997, the county or a city, pursuant to paragraph (2).

(ii) On and after January 1, 1997, the agency authorized pursuant to subdivision (f) of Section 25404.3.

(2) (A) Before January 1, 1997, if there is no CUPA, a city may, by ordinance, assume responsibility for the implementation of this chapter pursuant to the regulations adopted by the board and, if so, shall have exclusive jurisdiction within the boundary of the city for the purposes of carrying out this chapter. The ordinance adopted by the city shall comply with this chapter, applicable federal laws, and the regulations and guidelines adopted pursuant thereto. If there is no CUPA, a city which, prior to January 1, 1990, was exempt from implementing this chapter, has the exclusive jurisdiction, within its boundaries, for the purpose of implementing this chapter.

(B) No city may assume responsibility for implementation of this chapter unless it has notified the county, on or before July 1, 1990, of its intentions to assume responsibility for implementation of this chapter.

(C) A city's authorization for implementing this chapter pursuant to this paragraph shall remain in effect only until a CUPA is certified, or until January 1, 1997, whichever is earlier. On and after January 1, 1997, the agency responsible for administering and enforcing this chapter shall be the agency so authorized pursuant to subdivision (f) of Section 25404.3.

(b) If there is no CUPA, the county and any city that assumes responsibility pursuant to paragraph (2) of subdivision (a) shall designate a department, office, or other agency of that county or city, as the case may be, as the local agency responsible for administering and enforcing this chapter, pursuant to subdivision (a). A city that assumes responsibility for implementation of this chapter pursuant to paragraph (2) of subdivision (a) shall designate the agency which has responsibility for implementing Chapter 6.95 (commencing with Section 25500) as the local agency responsible for administering and enforcing this chapter. A designation pursuant to this subdivision shall remain in effect only until a CUPA is certified or until January 1, 1997, whichever is earlier. On and after January 1, 1997, the agency responsible for administering and enforcing this chapter shall be the agency so authorized pursuant to subdivision (f) of Section 25404.3.

(c) If the agency which receives certification as a certified unified program agency subsequently withdraws or is decertified before January 1, 1997, the local agency responsible for administering and enforcing this chapter prior to the certification of the CUPA shall assume responsibility for administering and enforcing this chapter until a successor CUPA is certified or until January 1, 1997, whichever is earlier.

(d) Revenue from fees collected by the county pursuant to this chapter shall be prorated between the city and county based upon when the city assumes responsibility for implementation of this chapter.

(Amended by Stats. 1995, Ch. 639, Sec. 53. Effective January 1, 1996.)

25283.1. This chapter does not prohibit any county from entering into a joint powers agreement with other counties for the purposes of enforcing this chapter.

(Amended by Stats. 2006, Ch. 538, Sec. 385. Effective January 1, 2007.)

25283.5. (a) An underground storage tank that meets all of the following criteria is exempt from the requirements of this chapter:

(1) All exterior surfaces of the tank, including connected piping, and the floor directly beneath the tank, can be monitored by direct viewing.

(2) The structure in which the tank is located is constructed in such a manner that the structure provides for secondary containment of the contents of the tank, as determined by the local agency designated pursuant to Section 25283.

(3) The owner or operator of the underground storage tank conducts weekly inspections of the tank and maintains a log of inspection results for review by the local agency, designated pursuant to Section 25283, as requested by the local agency.

(4) The local agency designated pursuant to Section 25283 determines without objection from the board that the underground storage tank meets requirements that are equal to or more stringent than those imposed by this chapter.

(b) Nothing in this section prohibits a local fire chief or an enforcement agency, as defined in Section 16006, from enforcing the applicable provisions of the local or state fire, building, or electrical codes.

(Amended by Stats. 2000, Ch. 245, Sec. 1. Effective January 1, 2001.)

25284. (a) (1) Except as provided in subdivision (c), no person may own or operate an underground storage tank unless a permit for its operation has been issued by the local agency to the owner or operator of the tank, or a unified program facility permit has been issued by the local agency to the owner or operator of the unified program facility on which the tank is located.

(2) If the operator is not the owner of the tank, or if the permit is issued to a person other than the owner or operator of the tank, the permittee shall ensure that both the owner and the operator of the tank are provided with a copy of the permit.

(3) If the permit is issued to a person other than the operator of the tank, that person shall do all of the following:

(A) Enter into a written agreement with the operator of the tank to monitor the tank system as set forth in the permit.

(B) Provide the operator with a copy or summary of Section 25299 in the form that the board specifies by regulation.

(C) Notify the local agency of any change of operator.

(b) Each local agency shall prepare a form that provides for the acceptance of the obligations of a transferred permit by any person who is to assume the ownership of an underground storage tank from the previous owner and is to be transferred the permit to operate the tank. That person shall complete the form accepting the obligations of the permit and submit the completed form to the local agency within 30 days from the date that the ownership of the underground storage tank is to be transferred. A local agency may review and modify, or terminate, the transfer of the permit to operate the underground storage tank, pursuant to the criteria specified in subdivision (a) of Section 25295, upon receiving the completed form.

(c) Any person assuming ownership of an underground storage tank used for the storage of hazardous substances for which a valid operating permit has been issued shall have 30 days from the date of assumption of ownership to apply for an operating permit pursuant to Section 25286 or, if accepting a transferred permit, shall submit to the local agency the completed form accepting the obligations of the transferred permit, as specified in subdivision (b). During the period from the date of application until the permit is issued or refused, the person shall not be held to be in violation of this section.

(d) A permit issued pursuant to this section shall apply and require compliance with all applicable regulations adopted by the board pursuant to Section 25299.3.

(Amended by Stats. 2002, Ch. 999, Sec. 13. Effective January 1, 2003.)

25284.1. (a) The board shall take all of the following actions with regard to the prevention of unauthorized releases from petroleum underground storage tanks:

(1) On or before June 1, 2000, initiate a field-based research program to quantify the probability and environmental significance of releases from underground storage tank systems meeting the 1998 upgrade requirements specified in Section 25284, as that section read on January 1, 2002. The research program shall do all of the following:

(A) Seek to identify the source and causes of releases and any deficiencies in leak detection systems.

(B) Include single-walled, double-walled, and hybrid tank systems, and avoid bias towards known leaking underground storage tank systems by including a statistically valid sample of all operating underground storage tank systems.

(C) Include peer review.

(2) Complete the research program on or before June 1, 2002.

(3) Use the results of the research program to develop appropriate changes in design, construction, monitoring, operation, and maintenance requirements for tank systems.

(4) On or before January 1, 2001, adopt regulations to do all of the following:

(A) (i) Require underground storage tank owners, operators, service technicians, installers, and inspectors to meet minimum industry-established training standards and require tank facilities to be operated in a manner consistent with industry-established best management practices.

(ii) The board shall implement an outreach effort to educate small business owners or operators on the importance of the regulations adopted pursuant to this subparagraph.

(B) (i) Except as provided in clauses (ii) and (iii), require testing of the secondary containment components, including under-dispenser and pump turbine containment components, upon initial installation of a secondary containment component and periodically thereafter, to ensure that the system is capable of containing releases from the primary containment until a release

is detected and cleaned up. The board shall consult with the petroleum industry and local government to assess the appropriate test or tests that would comply with this subparagraph.

(ii) Secondary containment components that are part of an emergency generator tank system may be tested using enhanced leak detection, if the test is performed at the frequency specified by the board for testing of secondary containment pursuant to Section 2644.1 of Title 23 of the California Code of Regulations. If the results of the enhanced leak detection test indicate that any component of the emergency generator tank system is leaking liquid or vapor, the owner or operator shall take appropriate actions to correct the leakage, and the owner or operator shall retest the system using enhanced leak detection until the system is no longer leaking liquid or vapor.

(iii) Any tank or piping that is part of an emergency generator tank system and located within a structure as described in paragraph (2) of subdivision (a) of Section 25283.5 is exempt from the secondary containment testing required by clause (i) of subparagraph (B) of paragraph (4), if the owner or operator conducts visual inspections of tank or piping each time the tank system is operated, but no less than monthly, and maintains a log of inspection results for review by the local agency. The provisions of this clause are not applicable if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied tanks that are part of an emergency generator tank system.

(C) Require annual testing of release detection sensors and alarms, including under-dispenser and pump turbine containment sensors and alarms. The board shall consult with the petroleum industry and local government to assess the appropriate test or tests that would comply with this subparagraph.

(5) (A) Require an owner or operator of an underground storage tank installed after July 1, 1987, if a tank is located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database, to have the underground storage tank system fitted, on or before July 1, 2001, with under-dispenser containment or a spill containment or control system that is approved by the board as capable of containing any accidental release.

(B) Require all underground storage tanks installed after January 1, 2000, to have the tank system fitted with under-dispenser containment or a spill containment or control system to meet the requirements of subparagraph (A).

(C) Require an owner or operator of an underground storage tank that is not otherwise subject to subparagraph (A), and not subject to subparagraph (B), to have the underground storage tank system fitted to meet the requirements of subparagraph (A), on or before December 31, 2003.

(D) On and after January 1, 2002, no person shall install, repair, maintain, or calibrate monitoring equipment for an underground storage tank unless that person satisfies both of the following requirements:

(i) The person has fulfilled training standards identified by the board in regulations adopted pursuant to this section.

(ii) The person possesses a tank testing license issued by the board pursuant to Section 25284.4, or a Class "A" General Engineering Contractor License, C-10 Electrical Contractor License, C-34 Pipeline Contractor License, C-36 Plumbing Contractor License, or C-61 (D40) Limited Specialty Service Station Equipment and Maintenance Contractor License issued by the Contractors' State License Board.

(E) Loans and grants for the installation of under-dispenser containment or a spill containment or control system shall be made available pursuant to Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code.

(6) Convene a panel of local agency and regional board representatives to review existing enforcement authority and procedures and to advise the board of any changes that are needed to enable local agencies to take adequate enforcement action against owners and operators of noncompliant underground storage tank facilities. The panel shall make its recommendations to the board on or before September 30, 2001. Based on the recommendations of the panel, the board shall also establish effective enforcement procedures in cases involving fraud.

(b) On or before July 1, 2001, the Contractors' State License Board, in consultation with the board, the petroleum industry, air pollution control districts, air quality management districts, and local government, shall review its requirements for petroleum underground storage tank system installation and removal contractors and make changes, where appropriate, to ensure these contractors are qualified.

(Amended by Stats. 2002, Ch. 999, Sec. 14. Effective January 1, 2003.)

25284.2. The owner or operator of an underground storage tank with a spill containment structure designed to prevent a release in the event of a spill or overfill while a hazardous substance is being placed in the tank shall annually test the spill containment structure to demonstrate that it is capable of containing the substance until it is detected and cleaned up.

(Added by Stats. 2002, Ch. 999, Sec. 15. Effective January 1, 2003.)

25284.4. (a) All tank integrity tests required by this chapter or pursuant to any local ordinance in compliance with Section 25299.1 shall be performed only by, or under the direct and personal supervision of, a tank tester with a currently valid tank testing license issued pursuant to this section. No person shall engage in the business of tank integrity testing, or act in the capacity of a tank tester, within this state without first obtaining a tank testing license from the board. Any person who violates this subdivision is guilty of a misdemeanor and may be subject to civil liability pursuant to subdivision (g).

(b) Any person proposing to conduct tank integrity testing within the state shall apply to the board for a tank testing license, and shall pay the appropriate fee established by the board. A license issued pursuant to this section shall expire three years after the date of issuance and shall be subject to renewal, except as specified in this section. If the tank tester fails to renew the tank tester's license within three years of the license's expiration date, the license shall lapse and the person shall apply for a new tank testing license and shall meet the same requirements of this section for a new applicant. A tank tester shall pay a fee to the board at the time of licensing and at the time of renewal. The board shall adopt a fee schedule for the issuance and renewal of tank testing licenses to cover the necessary and reasonable costs of administering and enforcing this section.

(c) (1) The board may establish any additional qualifications and standards for the licensing of tank testers. Each applicant for licensing as a tank tester shall pass an examination specified by the board and shall have completed a minimum of either of the following:

(A) One year of qualifying field experience by personally testing a number of underground storage tanks specified by the board.

(B) Completed six months of field experience by personally testing a number of underground storage tanks specified by the board and have successfully completed a course of study applicable to tank testing that is satisfactory to the board.

(2) The examination required by paragraph (1) shall, at a minimum, test the applicant's knowledge of all of the following:

(A) General principles of tank and pipeline testing.

(B) Basic understanding of the mathematics relating to tank testing.

(C) Understanding of the specific test procedures, principles, and equipment for which the tank tester will be qualified to operate.

(D) Knowledge of the regulations and laws governing the regulation of underground storage tanks.

(E) Proper safety procedures.

(d) The board shall maintain a current list of all persons licensed pursuant to this section, including a record of enforcement actions taken against these persons. This list shall be made available to local agencies and the public on request.

(e) A tank tester may be liable civilly in accordance with subdivision (g) and, in addition, may be subject to administrative sanctions pursuant to subdivision (f) for performing or causing another to perform, any of the following actions:

(1) Willfully or negligently violating, or causing, or allowing the violation of, this chapter or any regulations adopted pursuant to this chapter.

(2) Willfully or negligently failing to exercise direct and personal control over an unlicensed employee, associate, assistant, or agent during any phase of tank integrity testing.

(3) Without regard to intent or negligence, using or permitting a licensed or unlicensed employee, associate, assistant, or agent to use any method or equipment that is demonstrated to be unsafe or unreliable for tank integrity testing.

(4) Submitting false or misleading information on an application for license.

(5) Using fraud or deception in the course of doing business as a tank tester.

(6) Failing to use reasonable care, or judgment, while performing tank integrity tests.

(7) Failing to maintain competence in approved tank testing procedures.

(8) Failing to use proper tests or testing equipment to conduct tank integrity tests.

(9) Any other action that the board may, by regulation, prescribe.

(f) (1) The board may suspend the license of a tank tester for a period of up to one year, and may revoke, or refuse to grant or renew, a license and may place on probation, or reprimand, the licensee upon any reasonable ground, including, but not limited to, those violations specified in subdivision (e). The board may investigate any licensed tank tester after receiving a written request from a local agency.

(2) The board shall notify the tank tester of any alleged violations and of proposed sanctions, before taking any action pursuant to this subdivision. The tank tester may request a hearing, or submit a written response within 30 days of the date of notice. Any hearing conducted pursuant to this subdivision shall be conducted in accordance with the hearing procedure specified in subdivision (g). After the hearing, or at a time after the 30-day response period, the board may impose the appropriate administrative sanctions authorized by this subdivision if it finds that the tank tester has committed any of the alleged violations specified in the notice.

(g) (1) The board may impose civil liability for a violation of subdivision (a) or (e) in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code, in an amount that shall not exceed five hundred dollars ($500) for each day in which the violation occurs, except that the chief of the division of water quality of the board or any other person designated by the board shall issue the complaint to the violator. The complaint shall be issued based on information developed by board staff or local agencies. Any hearing on the complaint shall be made before the board, or a panel thereof, consisting of one or more board members. The decision of the board shall be final upon issuance and may be reviewed pursuant to Article 3 (commencing with Section 13330) of Chapter 5 of Division 7 of the Water Code within 30 days following issuance of the order.

(2) Civil liability for a violation of subdivision (a) or (e) may be imposed by a superior court at the request of the board in an amount which shall not exceed two thousand five hundred dollars ($2,500) for each day in which the violation occurs.

(h) Any fees or civil liability collected pursuant to this section shall be deposited in the Underground Storage Tank Tester Account which is hereby created in the General Fund. The money in this account is available for expenditure by the board, upon appropriation by the Legislature, for purposes of implementing the tank tester licensing program established by this section and for repayment of the loan made by Section 13 of Chapter 1372 of the Statutes of 1987.

(i) A tank tester who conducts or supervises a tank or piping integrity test shall prepare a report detailing the results of the tank test and shall maintain a record of the report for at least three years, or as otherwise required by the board. The tank tester shall type or print his or her name and include his or her license number on the report and shall endorse the report under penalty of perjury by original signature.

(Amended by Stats. 2002, Ch. 999, Sec. 16. Effective January 1, 2003.)

25285. (a) Except as provided in Section 25285.1, a permit to operate issued by the local agency pursuant to Section 25284 shall be effective for five years. This subdivision does not apply to unified program facility permits.

(b) A local agency shall not issue or renew a permit to operate an underground storage tank if the local agency inspects the tank and determines that the tank does not comply with this chapter.

(c) Except as provided in Section 25404.5, a local agency shall not issue or renew a permit to operate an underground storage tank to any person who has not paid the fee and surcharge required by Section 25287.

(Amended by Stats. 1995, Ch. 639, Sec. 55. Effective January 1, 1996.)

25285.1. (a) A local agency may revoke or modify a permit issued pursuant to Section 25284 for cause, including, but not limited to, any of the following:

(1) Violation of any of the terms or conditions of the permit.

(2) Obtaining the permit by misrepresentation or intentional failure to fully disclose all relevant facts.

(3) A change in any condition that requires modification or termination of the operation of the underground storage tank.

(b) The local agency shall revoke the permit of an underground storage tank issued pursuant to Section 25284 if the owner or operator is not in compliance with Article 3 (commencing with Section 25299.30) of Chapter 6.75 on the date three months after the date on which the owner or operator of the tank first becomes subject to Article 3 (commencing with Section 25299.30) of Chapter 6.75.

(Added by Stats. 1989, Ch. 1442, Sec. 3. Effective October 2, 1989.)

25286. (a) An application for a permit to operate an underground storage tank, or for renewal of the permit, shall be made, by the owner or operator of the tank, or, if there is a CUPA, by the owner or operator of the unified program facility on which the tank is located, on a standardized form provided by the local agency. Except as provided in Section 25404.5, the permit shall be accompanied by the appropriate fee, as specified in Section 25287. As a condition of any permit to operate an underground storage tank, the permittee shall notify the local agency, within the period determined by the local agency, of any changes in the usage of the underground storage tank, including the storage of new hazardous substances, changes in monitoring procedures, and if there has been any unauthorized release from the underground storage tank, as specified in Section 25294 or 25295.

(b) (1) The local agencies shall provide the designee of the board with copies of the completed permit applications, using forms, an industry standard computer readable magnetic tape, diskettes, or any other form in a format acceptable to the board.

(2) The board may enter into a contract with any designee of the board for the purpose of administering the underground storage tank permit data base, and reimburse the designee of the board, upon appropriation by the Legislature, for any costs determined by the board to have been necessary and incurred pursuant to this section, including programming, training, maintenance, actual data processing expenditures, and any incidental costs of the operation of the data base related to the permitting of underground storage tanks. In selecting a contractor pursuant to this paragraph, the board shall consider the fiscal impact upon local agencies of converting to the data base systems and procedures employed by that contractor. The permit application information required in subdivision (c) shall be stored in the data base. The designee of the board shall submit to the board a quarterly report, including any information required by the board concerning permit application data. Each local agency shall provide the designee of the board with a copy of the completed permit application within 30 days after taking final action on the application.

(c) The application form shall include, but not be limited to, requests for the following information:

(1) A description of the age, size, type, location, uses, and construction of the underground storage tank or tanks.

(2) A list of all the hazardous substances which are or will be stored in the underground storage tank or tanks, specifying the hazardous substances for each underground storage tank.

(3) A description of the monitoring program for the underground tank system.

(4) The name and address of the person, firm, or corporation which owns the underground tank system and, if different, the name and address of the person who operates the underground tank system.

(5) The address of the facility at which the underground tank system is located.

(6) The name of the person making the application.

(7) The name and 24-hour phone number of the contact person in the event of an emergency involving the facility.

(8) If the owner or operator of the underground storage tank or the owner or operator of the unified program facility on which the tank is located is a public agency, the application shall include the name of the supervisor of the division, section, or office which owns or operates the tank or owns or operates the unified program facility.

(9) The State Board of Equalization registration number issued to the owner of the tank pursuant to Section 50108.1 of the Revenue and Taxation Code.

(10) If applicable, the name and address of the owner and, if different, the operator of the unified program facility on which the tank is located.

(d) If an underground storage tank is used to store a hazardous substance which is not listed in the application, as required by paragraph (2)

of subdivision (c), the permittee shall apply for a new or amended permit within 30 days after commencing the storage of that hazardous substance.

(Amended by Stats. 1995, Ch. 639, Sec. 56. Effective January 1, 1996.)

25287. (a) Except as provided in subdivision (c), a fee shall be paid to the local agency by each person who submits an application for a permit to operate an underground storage tank or to renew or amend a permit. The governing body of the county, or a city which assumes enforcement jurisdiction, shall establish the amount of the fees at a level sufficient to pay the necessary and reasonable costs incurred by the local agency in administering this chapter, including, but not limited to, permitting and inspection responsibilities. The governing body may provide for the waiver of fees when a state or local government agency makes an application for a permit to operate or an application to renew a permit.

(b) This fee shall include a surcharge, the amount of which shall be determined by the Legislature annually to cover the costs of the board in carrying out its responsibilities under this chapter and the costs of the local agency in collecting the surcharges. The local agency may retain 6 percent of any surcharge collected for costs incurred in its collection. The 6 percent of the surcharge retained by the local agency is the local agency's sole source of reimbursement for the cost of collecting the surcharge. The local agency shall transmit all remaining surcharge revenue collected by the local agency to the board within 45 days after receipt pursuant to subdivision (a). The surcharge shall be deposited in the Underground Storage Tank Fund hereby created in the General Fund. The money in this account is available, upon appropriation by the Legislature, to the board for the purposes of implementing this chapter.

(c) A local agency may waive the fee required by subdivision (a) for an underground storage tank which has a capacity of 5,000 gallons or less, which is located on a farm, and which contains motor vehicle or heating fuel used primarily for agricultural purposes, if the local agency finds that the fee will impose undue economic hardship upon the person applying for the permit. However, the local agency shall not waive the surcharge required under subdivision (b).

(d) A county of the fifth class, as defined in Section 28020 of the Government Code as a county with a population of 1,000,000 and under 1,070,000, and any city located within that county, is exempt from the requirements of collecting or transmitting to the board the surcharge required to be included in fees paid to a local agency pursuant to this section.

(e) This section does not apply in any jurisdiction in which a single fee system, which replaces the fee required by this section, has been implemented pursuant to Section 25404.5.

(Amended by Stats. 1995, Ch. 639, Sec. 57. Effective January 1, 1996.)

25288. (a) The local agency shall inspect every underground tank system within its jurisdiction at least once every year. The purpose of the inspection is to determine whether the tank system complies with the applicable requirements of this chapter and the regulations adopted by the board pursuant to Section 25299.3, including the design and construction standards of Section 25290.1, 25290.2, 25291, or 25292, whichever is applicable, whether the owner or operator has monitored and tested the tank system as required by the permit, and whether the tank system is in a safe operating condition.

(b) After an inspection conducted pursuant to subdivision (a), the local agency shall prepare a compliance report detailing the inspection and shall send a copy of this report to the permitholder and the owner or operator, if the owner or operator is not the permitholder. Any report prepared pursuant to this section shall be consolidated into any other inspection reports required pursuant to Chapter 6.11 (commencing with Section 25404), the requirements listed in subdivision (c) of Section 25404, and the regulations adopted to implement the requirements listed in subdivision (c) of Section 25404.

(c) In lieu of the annual local agency inspections, the local agency may require the permitholder to employ a special inspector to conduct the annual inspection. The local agency shall supply the permitholder with a list of at least three special inspectors that are qualified to conduct the inspection. The permitholder shall employ a special inspector from the list provided by the local agency. The special inspector's authority shall be the same as that of the local agency as set forth in subdivision (a).

(d) Within 60 days after receiving a compliance report or special inspection report prepared in accordance with subdivision (b) or (c), respectively, the permitholder shall file with the local agency a plan to implement all recommendations contained in the compliance report or shall demonstrate, to the satisfaction of the local agency, why these recommendations should not be implemented. Any corrective action conducted pursuant to the recommendations in the report shall be taken pursuant to Sections 25296.10 and 25299.36.

(Amended by Stats. 2003, Ch. 42, Sec. 5. Effective July 7, 2003.)

25289. (a) To carry out the purposes of this chapter or Chapter 6.75 (commencing with Section 25299.10), any duly authorized representative of the local agency, the regional board, or the board has the authority specified in Section 25185, with respect to any place where underground tank systems are located, or in which records relevant to operation of an underground tank system are kept, and in Section 25185.5, with respect to real property which is within 2,000 feet of any place where underground tank systems are located. The authority conferred by this subdivision includes the authority to conduct any monitoring or testing of an underground tank system.

(b) To carry out the purposes of this chapter or Chapter 6.75 (commencing with Section 25299.10), any authorized representative of the local agency, the regional board, or the board may require the owner or operator of an underground storage tank to, upon request, submit any information relevant to the compliance with this chapter or the regulations, to conduct monitoring or testing, and to report the results of that monitoring or testing under penalty of perjury. The burden of the monitoring, testing, and reporting, including costs, shall bear a reasonable relationship to the need for the monitoring, testing, and reporting.

(Amended by Stats. 1996, Ch. 611, Sec. 2. Effective January 1, 1997.)

25290. (a) "Trade secrets," as used in this chapter, includes, but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(b) The board or a local agency may disclose trade secrets received by the board or the local agency pursuant to this chapter to authorized representatives or other governmental agencies only in connection with the board's or local agency's responsibilities pursuant to this chapter. The board and the local agency shall establish procedures to ensure that these trade secrets are utilized only in connection with these responsibilities and are not otherwise disseminated without the consent of the person who provided the information to the board or the local agency.

(c) Any person providing information pursuant to Section 25286 shall, at the time of its submission, identify all information which the person believes is a trade secret. Any information or record not identified as a trade secret is available to the public, unless exempted from disclosure by other provisions of law.

(d) Where the local agency, by ordinance, provides an alternative to the listing of a substance which is a trade secret, the person storing that substance shall provide the identification of the material directly to the board pursuant to this section.

(Added by renumbering Section 25283.6 by Stats. 1984, Ch. 1038, Sec. 11.)

25290.1. (a) Notwithstanding subdivision (o) of Section 25281, for purposes of this section, "product tight" means impervious to the liquid and vapor of the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(b) Notwithstanding Sections 25290.2 and 25291, every underground storage tank installed on or after July 1, 2004, shall meet the requirements of this section.

(c) The underground storage tank shall be designed and constructed to provide primary and secondary levels of containment of the hazardous substances stored in it in accordance with the following performance standards:

(1) Primary containment shall be constructed, operated, and maintained product tight and compatible with the stored product.

(2) Secondary containment shall be constructed, operated, and

maintained product tight. The secondary containment shall also be constructed, operated, and maintained in a manner to prevent structural weakening as a result of contact with any hazardous substances released from the primary containment, and also shall be capable of storing the hazardous substances for the maximum anticipated period of time necessary for the recovery of any released hazardous substance.

(3) Secondary containment shall be constructed, operated, and maintained to prevent any water intrusion into the system by precipitation, infiltration, or surface runoff.

(4) In the case of an installation with one primary tank, the secondary containment shall be large enough to contain at least 100 percent of the volume of the primary tank.

(5) In the case of multiple primary tanks, the secondary containment shall be large enough to contain 150 percent of the volume of the largest primary tank placed in it, or 10 percent of the aggregate internal volume of all primary tanks, whichever is greater.

(d) The underground tank system shall be designed and constructed with a continuous monitoring system capable of detecting the entry of the liquid- or vapor-phase of the hazardous substance stored in the primary containment into the secondary containment and capable of detecting water intrusion into the secondary containment.

(e) The interstitial space of the underground storage tank shall be maintained under constant vacuum or pressure such that a breach in the primary or secondary containment is detected before the liquid or vapor phase of the hazardous substance stored in the underground storage tank is released into the environment. The use of interstitial liquid level measurement methods satisfies the requirements of this subdivision.

(f) The underground storage tank shall be provided with equipment to prevent spills and overfills from the primary tank.

(g) If different substances are stored in the same tank and in combination may cause a fire or explosion, or the production of flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container, those substances shall be separated in both the primary and secondary containment so as to avoid potential intermixing.

(h) Underground pressurized piping that conveys a hazardous substance shall be equipped with an automatic line leak detector.

(i) Before the underground storage tank is covered, enclosed, or placed in use, the standard installation testing requirements for underground storage systems specified in Section 2.4 of the Flammable and Combustible Liquids Code, adopted by the National Fire Protection Association (NFPA 30), as amended and published in the respective edition of the Uniform Fire Code, shall be followed.

(j) Before the underground storage tank is placed in use, the underground storage tank shall be tested after installation using one of the following methods to demonstrate that the tank is product tight:

(1) Enhanced leak detection.

(2) An inert gas pressure test that has been certified by a third party and approved by the board.

(3) A test method deemed equivalent to enhanced leak detection or an inert gas pressure test by the board in regulations adopted pursuant to this chapter. An underground storage tank installed and tested in accordance with this subdivision is exempt from the requirements of Section 25292.5.

(k) Notwithstanding Section 25281.5, for any system installed to meet the requirements of this section, those portions of vent lines, vapor recovery lines, and fill pipes that are beneath the surface of the ground are "pipe" as the term is defined in subdivision (m) of Section 25281, and therefore part of the underground storage tank system.

(Amended by Stats. 2004, Ch. 649, Sec. 1. Effective September 21, 2004.)

25290.1.1. (a) (1) On the effective date of the act adding this section and for 179 days thereafter, a local agency shall only issue a notice to comply pursuant to this section to an owner or operator of an underground storage tank subject to Section 25290.1 that does not maintain the vacuum or pressure that is required by subdivision (e) of Section 25290.1, except as otherwise provided in this section.

(2) If the violation described in paragraph (1) occurs on or after the 180th day from the effective date of the act adding this chapter, the local agency may take any enforcement action authorized by this chapter.

(b) A local agency shall issue the notice to comply alleging a violation described in paragraph (1) of subdivision (a) by presenting a notice to comply to the owner or operator in writing, which meets all of the following requirements:

(1) The notice to comply shall be written in the course of conducting an inspection by an authorized representative of the local agency.

(2) A copy of the notice to comply shall be presented to a person who is an owner, operator, employee, or representative of the facility being inspected at the time that the notice to comply is written.

(3) The notice to comply shall clearly state that a violation described in paragraph (1) of subdivision (a) was discovered, a means by which compliance may be achieved, and a time limit in which to comply, which shall not exceed 60 days. The local agency may provide a one-time extension of the time limit for compliance specified in the notice, not to exceed an additional 60 days, if the local agency determines that an extension is necessary to ensure compliance.

(4) The notice to comply shall contain a statement that the inspected facility may be subject to reinspection at any time.

(c) (1) On or before five working days after the date the violation described in paragraph (1) of subdivision (a) is corrected, the person cited in the notice to comply or an authorized representative of that person shall sign the notice to comply, shall certify that the violation has been corrected, and shall return the notice to the local agency.

(2) A false certification submitted pursuant to paragraph (1) that the violation is corrected is punishable as a misdemeanor.

(3) The effective date of the certification that the violation has been corrected shall be the date that the certification is postmarked.

(d) Notwithstanding subdivision (a), if a person fails to correct the violation within the prescribed period in the notice, the local agency may take any enforcement action authorized by this chapter.

(e) This section does not do any of the following:

(1) Prevent the reinspection of a facility to ensure compliance.

(2) Prevent a local agency, on a case-by-case basis, from requiring a person subject to a notice to comply to submit reasonable and necessary documentation to support a claim of compliance by the person.

(3) Restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

(4) Prevent the local agency, state board, or regional board, from cooperating with, or participating in, a proceeding specified in paragraph (3).

(f) Notwithstanding subdivision (a), if the violation described in paragraph (1) of subdivision (a) is intentional or occurs as the result of gross negligence, the local agency may take any enforcement action authorized by this chapter.

(Added by Stats. 2004, Ch. 649, Sec. 2. Effective September 21, 2004.)

25290.1.2. (a) The board and the State Air Resources Board, under the direction of the California Environmental Protection Agency, shall certify to the best of their knowledge, that the equipment that meets the requirements of Section 94011 of Title 17 of the California Code of Regulations for enhanced vapor recovery systems at gasoline dispensing facilities, as implemented by the State Air Resources Board, also meets the requirements of this chapter. The board and the State Air Resources Board shall make this certification collaboratively, using existing resources.

(b) The board and the State Air Resources Board, under the direction of the California Environmental Protection Agency, when making the certification specified in subdivision (a), shall consult with interested parties, including local implementing agencies, underground storage tank system owners and operators, equipment manufacturers, underground storage tank system installers, and environmental organizations.

(c) The board and the State Air Resources Board shall post the certification and any supporting documentation on their Web sites.

(d) This section shall be implemented by the executive directors of the board and of the State Air Resources Board, or by their designees.

(Added by Stats. 2004, Ch. 649, Sec. 3. Effective September 21, 2004.)

25290.2. (a) Notwithstanding subdivision (o) of Section 25281, for purposes of this section, "product tight" means impervious to the liquid and vapor of the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(b) Notwithstanding Section 25291, every underground storage tank installed on or after July 1, 2003, and before July 1, 2004, shall meet the requirements of this section.

(c) The underground storage tank shall be designed and constructed

to provide primary and secondary levels of containment of the hazardous substances stored in it in accordance with the following performance standards:

(1) Primary containment shall be product tight and compatible with stored product.

(2) Secondary containment shall be product tight and constructed to prevent structural weakening as a result of contact with any hazardous substances released from the primary containment, and also shall be capable of storing the hazardous substances for the maximum anticipated period of time necessary for the recovery of any released hazardous substance.

(3) Secondary containment shall be constructed to prevent any water intrusion into the system by precipitation, infiltration, or surface runoff.

(4) In the case of an installation with one primary tank, the secondary containment shall be large enough to contain at least 100 percent of the volume of the primary tank.

(5) In the case of multiple primary tanks, the secondary containment shall be large enough to contain 150 percent of the volume of the largest primary tank placed in it, or 10 percent of the aggregate internal volume of all primary tanks, whichever is greater.

(d) The underground tank system shall be designed and constructed with a continuous monitoring system capable of detecting the entry of the hazardous substance stored in the primary containment into the secondary containment and capable of detecting water intrusion into the secondary containment.

(e) The underground storage tank shall be provided with equipment to prevent spills and overfills from the primary tank.

(f) If different substances are stored in the same tank and in combination may cause a fire or explosion, or the production of flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container, those substances shall be separated in both the primary and secondary containment so as to avoid potential intermixing.

(g) Underground pressurized piping that conveys a hazardous substance shall be equipped with an automatic line leak detector and shall be tightness tested annually.

(h) Before the underground storage tank is covered, enclosed, or placed in use, the standard installation testing requirements for underground storage systems specified in Section 2.4 of the Flammable and Combustible Liquids Code, adopted by the National Fire Protection Association (NFPA 30), as amended and published in the respective edition of the Uniform Fire Code, shall be followed.

(i) Before the underground storage tank is placed in use, the underground storage tank shall be tested after installation using one of the following methods to demonstrate that the tank is product tight:

(1) Enhanced leak detection.

(2) An inert gas pressure test that has been certified by a third party and approved by the board.

(3) A test method deemed equivalent to enhanced leak detection or an inert gas pressure test by the board in regulations adopted pursuant to this chapter. An underground storage tank installed and tested in accordance with this subdivision is exempt from the requirements of Section 25292.5.

(j) Notwithstanding Section 25281.5, for any system installed to meet the requirements of this section, those portions of vent lines, vapor recovery lines, and fill pipes that are beneath the surface of the ground are "pipe" as the term is defined in subdivision (m) of Section 25281, and therefore part of the underground storage tank system.

(Added by Stats. 2003, Ch. 42, Sec. 7. Effective July 7, 2003.)

25291. Every underground storage tank installed after January 1, 1984, shall meet all of the following requirements:

(a) The underground storage tank shall be designed and constructed to provide primary and secondary levels of containment of the hazardous substances stored in it in accordance with the following performance standards:

(1) Primary containment shall be product-tight and compatible with the substance stored.

(2) Secondary containment shall be constructed to prevent structural weakening as a result of contact with any released hazardous substances, and also shall be capable of storing the hazardous substances for the maximum anticipated period of time necessary for the recovery of any released hazardous substance.

(3) In the case of an installation with one primary container, the secondary containment shall be large enough to contain at least 100 percent of the volume of the primary tank.

(4) In the case of multiple primary tanks, the secondary container shall be large enough to contain 150 percent of the volume of the largest primary tank placed in it, or 10 percent of the aggregate internal volume of all primary tanks, whichever is greater.

(5) If the facility is open to rainfall, then the secondary containment shall be able to additionally accommodate the maximum volume of a 24-hour rainfall as determined by a 25-year storm history.

(6) Single-walled containers do not fulfill the requirement of an underground storage tank providing both a primary and a secondary containment.

However, an underground storage tank with a primary container constructed with a double complete shell shall be deemed to have met the requirements for primary and secondary containment set forth in this section if all of the following criteria are met:

(A) The outer shell is constructed primarily of nonearthen materials, including, but not limited to, concrete, steel, and plastic, which provide structural support and a continuous leak detection system with alarm is located in the space between the shells.

(B) The system is capable of detecting the entry of hazardous substances from the inner container into the space.

(C) The system is capable of detecting water intrusion into the space from the outer shell.

(7) Underground storage tanks for motor vehicle fuels installed before January 1, 1997, may be designed and constructed in accordance with this paragraph in lieu of the requirements of paragraphs (1) to (6), inclusive, if all of the following conditions exist:

(A) The primary containment construction is of glass fiber reinforced plastic, cathodically protected steel, or steel clad with glass fiber reinforced plastic.

(B) Any alternative primary containment is installed in conjunction with a system that will intercept and direct a leak from any part of the underground storage tank to a monitoring well to detect any release of motor vehicle fuels.

(C) The system is designed to provide early leak detection and response, and to protect the groundwater from releases.

(D) The monitoring is in accordance with the alternative method identified in paragraph (4) of subdivision (b) of Section 25292. This subparagraph does not apply to tanks designed, constructed, and monitored in accordance with paragraph (6).

(E) Pressurized piping systems connected to tanks used for the storage of motor vehicle fuels and monitored in accordance with paragraph (4) of subdivision (b) of Section 25292 also meet the conditions of this subdivision if the tank meets the conditions of subparagraphs (A) to (D), inclusive. However, any pipe connected to an underground storage tank installed after July 1, 1987, shall be equipped with secondary containment that complies with paragraphs (1) to (6), inclusive.

(b) The underground tank system shall be designed and constructed with a monitoring system capable of detecting the entry of the hazardous substance stored in the primary containment into the secondary containment.

(c) The underground storage tank shall be provided with equipment to prevent spills and overflows from the primary tank.

(d) If different substances are stored in the same tank and in combination may cause a fire or explosion, or the production of flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container, those substances shall be separated in both the primary and secondary containment to avoid potential intermixing.

(e) If water could enter into the secondary containment by precipitation or infiltration, the facility shall contain a means of monitoring for water intrusion and for removing the water by the owner or operator. This removal system shall also prevent uncontrolled removal of this water and provide for a means of analyzing the removed water for hazardous substance contamination and a means of disposing of the water, if so contaminated, at an authorized disposal facility.

(f) Underground pressurized piping that conveys a hazardous substance shall be equipped with an automatic line leak detector and shall be tightness tested annually.

(g) Before the underground storage tank is covered, enclosed, or placed in use, the standard installation testing for requirements for underground storage systems specified in Section 2-7 of the Flammable and Combustible Liquids Code, adopted by the National Fire Protection Association, (NFPA 30) as amended and published in the respective edition of the Uniform

Fire Code, shall be followed.

(h) Before the underground storage tank is placed in service, the underground tank system shall be tested in operating condition using a tank integrity test.

(i) If the underground storage tank is designed to maintain a water level in the secondary containment, the tank shall be equipped with a safe method of removing any excess water to a holding facility and the owner or operator shall inspect the holding facility monthly for the presence of excess water overflow. If excess water is present in the holding facility, the permitholder shall provide a means to analyze the water for hazardous substance contamination and a means to dispose of the water, if so contaminated, at an authorized disposal facility.

(Amended by Stats. 2002, Ch. 999, Sec. 18.5. Effective January 1, 2003.)

25292. For every underground storage tank installed on or before January 1, 1984, and used for the storage of hazardous substances, the following actions shall be taken:

(a) On or before July 1, 1985, the owner or operator shall outfit the underground tank system with a monitoring system capable of detecting unauthorized releases of any hazardous substances stored in the tank system, and thereafter, the owner or operator shall monitor each tank system, based on materials stored and the type of monitoring installed.

(b) Provide a means for visual inspection of the tank system, wherever practical, for the purpose of the monitoring required by subdivision (a). Alternative methods of monitoring the tank system on a monthly, or more frequent basis, may be required by the local agency, consistent with the regulations of the board.

The alternative monitoring methods include, but are not limited to, the following methods:

(1) Tank integrity testing for proving the integrity of an underground tank system at time intervals specified by the board.

(2) A groundwater monitoring well or wells that are downgradient and adjacent to the underground tank system, vapor analysis within a well where appropriate, and analysis of soil borings at the time of initial installation of the well.

(3) A continuous leak detection and alarm system that is located in monitoring wells adjacent to an underground tank system and which is approved by the local agency.

(4) For monitoring tanks containing motor vehicle fuels, daily gauging and inventory reconciliation by the owner or operator, if all of the following requirements are met:

(A) Inventory records are kept on file for one year and are reviewed quarterly.

(B) The tank system is tested, using the tank integrity test at time intervals specified by the board and whenever there is a shortage greater than the amount which the board shall specify by regulation.

(C) If a pressurized pump system is connected to the tank system, the system has a leak detection device to monitor for leaks in the piping. The leak detection device shall be installed in a manner designed to resist unauthorized tampering and to clearly show by visual inspection if tampering has occurred. The leak detection device shall be tested annually, at a minimum, and all devices found to be not performing in conformance with the manufacturer's leak detection specifications shall be promptly repaired or replaced.

(5) For monitoring underground tank systems that are located on farms and that store motor vehicle or heating fuels used primarily for agricultural purposes, alternative monitoring methods include the following:

(A) If the tank has a capacity of greater than 1,100 gallons but of 5,000 gallons or less, the tank shall be tested using the tank integrity test, at least once every three years, and the owner or operator shall utilize tank gauging on a monthly or more frequent basis, as required by the local agency, subject to the specifications provided in paragraph (7) of subdivision (c) of Section 2641 of Title 23 of the California Code of Regulations, as that section read on August 13, 1985.

(B) If the tank has a capacity of more than 5,000 gallons, the tank shall be monitored pursuant to the methods for all other tanks specified in this subdivision.

(c) The board shall develop regulations specifying monitoring alternatives. The local agency, or any other public agency specified by the local agency, shall approve the location and number of wells, the depth of wells, and the sampling frequency, pursuant to these regulations.

(d) On or before December 22, 1998, the underground storage tank shall be replaced or upgraded to prevent releases due to corrosion or spills or overfills for the underground storage tank's operating life.

(e) (1) All existing underground pressurized piping shall be equipped with an automatic line leak detector on or before December 22, 1990, and shall be retrofitted with secondary containment on or before December 22, 1998. Underground pressurized piping shall be tightness tested annually.

(2) Paragraph (1) does not apply to existing pressurized piping containing motor vehicle fuel, if the pipeline is constructed of glass fiber reinforced plastic, cathodically protected steel, or steel clad with glass fiber reinforced plastic, is equipped with an automatic line leak detector, and is tightness tested annually.

(Amended by Stats. 2003, Ch. 42, Sec. 8. Effective July 7, 2003.)

25292.1. All underground tank systems shall meet the following operational requirements:

(a) The underground tank system shall be operated to prevent unauthorized releases, including spills and overfills, during the operating life of the tank, including during gauging, sampling, and testing for the integrity of the tank.

(b) Where equipped with cathodic protection, the underground tank system shall be operated by a person with sufficient training and experience in preventing corrosion.

(c) The underground tank system shall be structurally sound at the time of upgrade or repair.

(Amended by Stats. 1991, Ch. 1138, Sec. 2.)

25292.2. (a) All owners and operators of an underground tank system shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from the underground tank system, in accordance with regulations adopted by the board pursuant to Section 25299.3. The regulations shall include a schedule that requires that financial responsibility requirements are phased-in for all underground storage tank systems on or before October 26, 1990.

(b) If the owner and the operator are separate persons, either the owner or the operator shall demonstrate compliance with subdivision (a).

(c) An owner may comply with this article by entering into an agreement with the operator of the tank requiring the operator to demonstrate compliance with subdivision (a). However, both the owner and the operator are in violation of subdivision (a) if evidence of financial responsibility is not established and maintained in accordance with this article.

(Added by Stats. 1989, Ch. 1397, Sec. 14.)

25292.3. (a) Upon the discovery of a significant violation of any requirement in this chapter that poses an imminent threat to human health or safety or the environment or of any regulation adopted pursuant to this chapter, the local agency may affix a red tag, in plain view, to the fill pipe of the noncompliant underground storage tank system in order to provide notice that delivery of petroleum into the system is prohibited.

(b) Upon the discovery of a significant violation of any requirement in this chapter or of any regulation adopted pursuant to this chapter, the local agency may issue a notice of significant violation to the owner or operator. The owner or operator who receives a notice of significant violation shall, within seven days from receipt of the notice, correct the violation to the satisfaction of the local agency. If the owner or operator does not correct the violation within seven days, the local agency may affix a red tag, in plain view, to the fill pipe of the noncompliant underground storage tank system to provide notice that delivery of petroleum into the system is prohibited.

(c) No owner or operator of a facility may deposit or allow the deposit of petroleum into an underground storage tank system that has a red tag affixed to the system's fill pipe.

(d) No person may deposit petroleum into an underground storage tank system that has a red tag affixed to its fill pipe.

(e) No person shall remove, deface, alter, or otherwise tamper with a red tag so that the information contained on the tag is not legible.

(f) Upon notification by the owner or operator that the violation has been corrected, the local agency shall inspect the underground storage tank system within five days to determine whether the system continues to be in significant violation. If the local agency determines that the system is no longer in significant violation, the local agency shall immediately remove

the red tag.

(g) The board shall adopt regulations to define significant violations for purposes of this section.

(Repealed and added by Stats. 2002, Ch. 999, Sec. 20. Effective January 1, 2003.)

25292.4. (a) On and after November 1, 2000, an owner or operator of an underground storage tank system with a single-walled component that is located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database, shall implement a program of enhanced leak detection or monitoring, in accordance with the regulations adopted by the board pursuant to subdivision (c).

(b) The board shall notify the owner and operator of each underground storage tank system that is located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database, of the owner's and operator's responsibilities pursuant to this section. The board shall provide each local agency with a list of tank systems within the local agency's jurisdiction that are located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database.

(c) The board shall adopt regulations to implement the enhanced leak detection and monitoring program required by subdivision (a). Before adopting these regulations, the board shall consult with the petroleum industry, local governments, environmental groups, and other interested parties to assess the appropriate technology and procedures to implement the enhanced leak detection and monitoring program required by subdivision (a). In adopting these regulations, the board shall consider existing leak detection technology and external monitoring techniques or procedures for underground storage tanks.

(d) If the results of the enhanced leak detection test indicate that any component of the underground storage tank system is leaking liquid or vapor, the owner or operator shall take appropriate actions to correct the leakage, and the owner or operator shall retest the system using enhanced leak detection until the system is no longer leaking liquid or vapor.

(Amended by Stats. 2002, Ch. 999, Sec. 21. Effective January 1, 2003.)

25292.5. (a) On or before January 1, 2005, the owner or operator of an underground storage tank system that is located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database, and that is not otherwise subject to subdivision (j) of Section 25290.1, subdivision (i) of Section 25290.2, or Section 25292.4, shall test the system once using an enhanced leak detection test. The enhanced leak detection test shall meet the requirements of subsection (e) of Section 2640 of, and Section 2644.1 of, Title 23 of the California Code of Regulations, as those regulations read on January 1, 2003, except that the requirement in those regulations to repeat the test every 36 months shall not apply.

(b) On or before June 1, 2003, the board shall notify the owner and operator of each underground storage tank system that is located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database, of the owner's and operators' responsibilities pursuant to this section. The board shall provide each local agency with a list of tank systems within the local agency's jurisdiction that are within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database.

(c) Notwithstanding subdivision (a), if the results of the enhanced leak detection test indicate that any component of the underground storage tank system is leaking liquid or vapor, the owner or operator shall take appropriate actions to correct the leakage, and the owner or operator shall retest the system using enhanced leak detection until the system is no longer leaking liquid or vapor.

(Amended by Stats. 2003, Ch. 42, Sec. 9. Effective July 7, 2003.)

25293. The owner or operator of the underground tank system shall monitor the tank system using the method specified on the permit for the tank system. Records of monitoring, testing, repairing, and closure shall be kept in sufficient detail to enable the local agency to determine whether the underground tank system is in compliance with the applicable provisions of this chapter, the regulations adopted by the board pursuant to Section 25299.3, and the permit issued for the operation of the tank system.

(Amended by Stats. 2003, Ch. 42, Sec. 10. Effective July 7, 2003.)

25294. Any unauthorized release from the primary containment which the operator is able to clean up within eight hours after the release was detected or should reasonably have been detected, and which does not escape from the secondary containment, does not increase the hazard of fire or explosion, and does not cause any deterioration of the secondary containment of the underground storage tank, shall be recorded on the operator's monitoring reports.

(Added by renumbering Section 25284.3 by Stats. 1984, Ch. 1038, Sec. 15.)

25295. (a) (1) Any unauthorized release which escapes from the secondary containment, or from the primary containment, if no secondary containment exists, increases the hazard of fire or explosion, or causes any deterioration of the secondary containment of the underground tank system shall be reported by the owner or operator to the local agency designated pursuant to Section 25283 within 24 hours after the release has been detected or should have been detected. A full written report shall be transmitted by the owner or operator of the underground tank system to the local agency within five working days of the occurrence of the release. The report shall describe the nature and volume of the unauthorized release, any corrective or remedial actions undertaken, and any further corrective or remedial actions, including investigative actions, which will be needed to clean up the unauthorized release and abate the effects of the release and a time schedule for implementing these actions.

(2) The local agency shall review the permit whenever there has been an unauthorized release or when it determines that the underground tank system is unsafe. In determining whether to modify or terminate the permit, the local agency shall consider the age of the tank, the methods of containment, the methods of monitoring, the feasibility of any required repairs, the concentration of the hazardous substances stored in the tank, the severity of potential unauthorized releases, and the suitability of any other long-term preventive measures which would meet the requirements of this chapter.

(b) The board shall continuously post and update on its Web site, but at a minimum, annually on or before December 1, a report of all unauthorized releases, indicating for each unauthorized release the responsible party, the site name, the hazardous substance, the quantity of the unauthorized release if known, and the actions taken to abate the problem.

(c) The reporting requirements imposed by this section are in addition to any requirements which may be imposed by Sections 13271 and 13272 of the Water Code.

(Amended by Stats. 2004, Ch. 644, Sec. 10. Effective January 1, 2005.)

25295.5. (a) For purposes of this chapter, an unauthorized release includes, but is not limited to, a spill or overfill of a hazardous substance that meets both of the following conditions:

(1) The spill or overfill occurs while the hazardous substance is being placed in an underground storage tank.

(2) The spill or overfill is due to the use of improper equipment, faulty equipment, operator error, or inattention or overfilling.

(b) A person who causes an unauthorized release of a hazardous substance specified in subdivision (a) shall immediately notify the owner or operator of the underground storage tank that a spill has occurred and the owner or operator shall comply with the requirements of Sections 25294 or 25295, whichever is applicable.

(c) A spill or overfill shall not qualify for funds provided pursuant to Section 25299.51.

(Amended by Stats. 2003, Ch. 42, Sec. 12. Effective July 7, 2003.)

25296. (a) If there has been any unauthorized release, as defined in Section 25294 or subdivision (a) of Section 25295, from an underground storage tank containing motor vehicle fuel not under pressure, the permitholder may repair the tank once by an interior-coating process if the tank meets all of the following requirements:

(1) One of the following tests has been conducted to determine the thickness of the storage tank:

(A) An ultrasonic test.

(B) Certification by a special inspector that the shell will provide structural support for the interior lining. The special inspector shall make this certification by entering and inspecting the entire interior surface of the tank and shall base this certification upon the following

procedures and criteria:

(i) If the tank is made of fiberglass, the tank is cleaned so that no residue remains on the tank wall surface. The special inspector shall take interior diameter measurements and, if the cross-section has compressed more than 1 percent of the original diameter, the tank shall not be certified and shall also not be returned to service. The special inspector shall also conduct an interior inspection to identify any area where compression or tension cracking is occurring and shall determine whether additional glass fiber reinforcing is required for certification before the tank may be lined.

(ii) If the tank is made of steel, the tank interior surface shall be abrasive blasted completely free of scale, rust, and foreign matter, as specified in the American Petroleum Institute's recommended practice 16-31, relating to white metal blasting. The special inspection shall sound any perforations or areas showing corrosion pitting with a brass ballpeen hammer to enlarge the perforation or break through a potentially thin steel area. Tanks that have any of the following defects shall not be certified or returned to service:

(I) A tank which has an open seam or a split longer than three inches.

(II) A tank which has a perforation larger than one and one-half inches in diameter, or a gauging opening larger than two and one-half inches in diameter.

(III) A tank with five or more perforations.

(IV) A tank with 20 or more perforations in a 500 square foot area.

(V) A tank with a perforation larger than one-half inch.

(C) A test approved by the board as comparable to the tests specified in subparagraph (A) or (B).

If the person conducting the test determines that the test results indicate that the tank has a serious corrosion problem, the local agency may require additional corrosion protection for the tank or may prohibit the permitholder from making the repair.

(2) The material used to repair the tank by an interior-coating process is compatible with the motor vehicle fuel that is stored, as approved by the board by regulation.

(3) The material used to repair the tank by an interior-coating process is applied in accordance with nationally recognized engineering practices such as the American Petroleum Institute's recommended practice No. 1631 for the interior lining of existing underground storage tanks.

(4) Before the tank is placed back into service following the repair, the tank is tested in the operating condition using the tank integrity test.

(b) The board may adopt regulations, in consultation with the State Fire Marshal, for the repair of underground storage tanks, which may include, but are not limited to, a requirement that a test be conducted to determine whether the interior-coating process has bonded to the wall of the tank. The standards specified in subdivision (a) shall remain in effect until the adoption of these regulations.

(c) The board shall, by regulation, require that monitoring systems be installed when a repair is made pursuant to this section. For purposes of this subdivision, "monitoring system" means a continuous leak detection and alarm system which is located in monitoring wells adjacent to an underground storage tank and which is approved by the board.

(d) If there has not been an unauthorized release, as defined in subdivision (a) of Section 25295, from an underground storage tank containing motor vehicle fuel not under pressure, the permitholder may line the interior of the tank as a preventative measure. If an unauthorized release occurs from a tank which was lined as a preventative measure, the permitholder shall not reline the tank again.

(Amended by Stats. 1987, Ch. 1372, Sec. 8.)

25296.09. (a) (1) If the board enters into an agreement with a local agency and the Santa Clara Valley Water District pursuant to subdivision (j) of Section 25297.1, the Santa Clara Valley Water District shall have the same authority and responsibility as a local agency for purposes of Sections 25296.10 to 25297.2, inclusive, and for purposes of Sections 25299.36, 25299.38, 25299.39.2, 25299.39.3, 25299.51, 25299.53, and 25299.57.

(2) Paragraph (1) shall remain operative only until June 30, 2005.

(3) The inoperation of paragraph (1) does not affect the validity of any action taken by the Santa Clara Valley Water District before June 30, 2005, and does not provide a defense for an owner, operator, or other responsible party who fails to comply with that action.

(4) Nothing in this section implies that the Santa Clara Valley Water District has CUPA authority other than authority for the local oversight program in accordance with paragraph (1).

(b) (1) The Legislature hereby finds and declares that, beginning in 1988, and continuing each year since that date, the Santa Clara Valley Water District has had a role in implementing the requirements of the provisions listed in subdivision (a).

(2) The Legislature hereby finds and declares that the funding provided by the state to the Santa Clara Valley Water District for the work described in paragraph (1) is hereby ratified.

(c) (1) Any action taken by the Santa Clara Valley Water District that a local agency is otherwise authorized to take pursuant to Sections 25296.10 to 25297.2, inclusive, and Sections 25299.36, 25299.38, 25299.39.2, 25299.39.3, 25299.51, 25299.53, and 25299.57, and that was taken by the Santa Clara Valley Water District on and after January 1, 1988, and continuing on and before January 1, 2005, or until the effective date of an agreement entered into pursuant to subdivision (j) of Section 25297.1, whichever date occurs first, is hereby ratified as having been taken pursuant to this chapter and Chapter 6.75 (commencing with Section 25299.10). However, this ratification applies only to an action that would be valid only if an agreement pursuant to subdivision (j) of Section 25297.1 had been in effect at the time of the action and that otherwise complies with applicable law.

(2) This subdivision does not apply to any action taken by the Santa Clara Valley Water District that is the subject of a civil action pending on June 12, 2003.

(Amended by Stats. 2004, Ch. 89, Sec. 1. Effective July 1, 2004.)

25296.10. (a) Each owner, operator, or other responsible party shall take corrective action in response to an unauthorized release in compliance with this chapter and the regulations adopted pursuant to Section 25299.3. In adopting corrective action regulations, the board shall develop corrective action requirements for health hazards and protection of the environment, based on the severity of the health hazards and the other factors listed in subdivision (b). The corrective action regulations adopted by the board pursuant to Section 25299.77 to implement Section 25299.37, as that section read on January 1, 2002, that were in effect before January 1, 2003, shall continue in effect on and after January 1, 2003, until revised by the board to implement this section and shall be deemed to have been adopted pursuant to Section 25299.3.

(b) Any corrective action conducted pursuant to this chapter shall ensure protection of human health, safety, and the environment. The corrective action shall be consistent with any applicable waste discharge requirements or other order issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, and all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code.

(c) (1) When a local agency, the board, or a regional board requires an owner, operator, or other responsible party to undertake corrective action, including preliminary site assessment and investigation, pursuant to an oral or written order, directive, notification, or approval issued pursuant to this section, or pursuant to a cleanup and abatement order or other oral or written directive issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, the owner, operator, or other responsible party shall prepare a work plan that details the corrective action the owner, operator, or other responsible party shall take to comply with the requirements of subdivisions (a) and (b) and the corrective action regulations adopted pursuant to Section 25299.3.

(2) The work plan required by paragraph (1) shall be prepared in accordance with the regulations adopted pursuant to Section 25299.3. The work plan shall include a schedule and timeline for corrective action.

(3) At the request of the owner, operator, or other responsible party, the local agency, the board, or the regional board shall review a work plan prepared pursuant to paragraph (1) and either accept the work plan, if it meets the requirements of the section, or disapprove the work plan if it does not meet those requirements. If the local agency, board, or the regional board accepts the work plan, it shall indicate to the owner, operator, or other responsible party, the actions or other elements of the work plan that are, in all likelihood, adequate and necessary to meet the requirements of this section, and the actions and elements that may be unnecessary. If the local agency, board, or regional board disapproves the work plan, it shall

state the reasons for the disapproval.

(4) In the interests of minimizing environmental contamination and promoting prompt cleanup, the responsible party may begin implementation of the proposed action after the work plan has been submitted but before the work plan has received regulatory agency acceptance, except that implementation of the work plan may not begin until 60 calendar days from the date of submittal, unless the responsible party is otherwise directed in writing by the regulatory agency. However, before beginning implementation pursuant to this paragraph, the responsible party shall notify the regulatory agency of the intent to initiate proposed actions set forth in the submitted work plan.

(5) The owner, operator, or other responsible party shall conduct corrective actions in accordance with the work plan approved pursuant to this section.

(6) When the local agency, the board, or the regional board requires a responsible party to conduct corrective action pursuant to this section, it shall inform the responsible party of its right to request the designation of an administering agency to oversee the site investigation and remedial action at its site pursuant to Section 25262 and, if requested to do so by the responsible party, the local agency shall provide assistance to the responsible party in preparing and processing a request for that designation.

(d) (1) This subdivision applies only to an unauthorized release from a petroleum underground storage tank that is subject to Chapter 6.75 (commencing with Section 25299.10).

(2) Notwithstanding Section 25297.1, the board shall implement a procedure that does not assess an owner, operator, or responsible party taking corrective action pursuant to this chapter for the costs of a local oversight program pursuant to paragraph (4) of subdivision (d) of Section 25297.1. The board shall institute an internal procedure for assessing, reviewing, and paying those costs directly between the board and the local agency.

(e) A person to whom an order is issued pursuant to subdivision (c), shall have the same rights of administrative and judicial appeal and review as are provided by law for cleanup and abatement orders issued pursuant to Section 13304 of the Water Code.

(f) (1) If a person to whom an order is issued pursuant to subdivision (c) does not comply with the order, the board, a regional board, or the local agency may undertake or contract for corrective action.

(2) 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 this subdivision. 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, if there is 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.

(3) The board, a regional board, or local agency may recover its costs incurred under this subdivision pursuant to Section 13304 of the Water Code. If the unauthorized release is from an underground storage tank that is subject to Chapter 6.75 (commencing with Section 25299.10), the board, a regional board, or local agency may also recover its costs pursuant to Section 25299.70.

(g) The following uniform closure letter shall be issued to the owner, operator, or other responsible party taking corrective action at an underground storage tank site by the local agency or the regional board with jurisdiction over the site, or the board, upon a finding that the underground storage tank site is in compliance with the requirements of subdivisions (a) and (b) and with any corrective action regulations adopted pursuant to Section 25299.3 and that no further corrective action is required at the site:

"[Case File Number]

Dear [Responsible Party]

This letter confirms the completion of a site investigation and corrective action for the underground storage tank(s) formerly located at the above-described location. Thank you for your cooperation throughout this investigation. Your willingness and promptness in responding to our inquiries concerning the former underground storage tank(s) are greatly appreciated.

Based on information in the above-referenced file and with the provision that the information provided to this agency was accurate and representative of site conditions, this agency finds that the site investigation and corrective action carried out at your underground storage tank(s) site is in compliance with the requirements of subdivisions (a) and (b) of Section 25296.10 of the Health and Safety Code and with corrective action regulations adopted pursuant to Section 25299.3 of the Health and Safety Code and that no further action related to the petroleum release(s) at the site is required.

This notice is issued pursuant to subdivision (g) of Section 25296.10 of the Health and Safety Code.

Please contact our office if you have any questions regarding this matter.

Sincerely,

[Name of Board Executive Director, Regional Board Executive Officer, or Local Agency Director]"

(h) Any order, directive, notification, or approval issued under Section 25299.37 as that section read on January 1, 2002, that was issued on or before January 1, 2003, shall be deemed to have been issued pursuant to this section.

(Added by Stats. 2002, Ch. 999, Sec. 23. Effective January 1, 2003.)

25296.15. (a) No closure letter shall be issued pursuant to this chapter unless all of the following conditions are met:

(1) The soil or groundwater, or both, where applicable, at the site have been tested for MTBE.

(2) The results of that testing are known to the regional board.

(3) The board, the regional board, or the local agency makes the finding specified in subdivision (g) of Section 25296.10.

(b) Paragraphs (1) and (2) of subdivision (a) do not apply to a closure letter for a tank case for which the board, a regional board, or local agency determines that the tank has only contained diesel or jet fuel.

(Added by renumbering Section 25299.37.1 by Stats. 2002, Ch. 999, Sec. 35. Effective January 1, 2003.)

25296.20. (a) The local agency, the board, or a regional board shall not consider corrective action or site closure proposals from the primary or active responsible party, issue a closure letter, or make a determination that no further corrective action is required with respect to a site upon which there was an unauthorized release from an underground storage tank unless all current record owners of fee title to the site of the proposed action have been notified of the proposed action by the local agency, board, or regional board.

(b) The local agency, board, or regional board shall take all reasonable steps necessary to accommodate responsible landowner participation in the cleanup or site closure process and shall consider all input and recommendations from any responsible landowner wishing to participate.

(Added by Stats. 2002, Ch. 999, Sec. 24. Effective January 1, 2003.)

25296.25. (a) (1) Unless the board, in consultation with local agencies and the regional board, determines that a site is an emergency site, the board, at the request of a responsible party who is eligible for reimbursement of corrective action costs under Chapter 6.75 (commencing with Section 25299.10), may suspend additional corrective action or investigation work at a site, based on a preliminary site assessment conducted in accordance with the corrective action regulations adopted by the board, but the board shall not suspend any of the following activities pursuant to this section:

(A) Removal of, or approved modifications of, existing tanks.

(B) Excavation of petroleum saturated soil or removal of excess petroleum from saturated soil.

(C) Removal of free product from the saturated and unsaturated zones.

(D) Periodic monitoring to ensure that released petroleum is not migrating in an uncontrolled manner that will cause the site to become an emergency site.

(2) For purposes of this subdivision, "emergency site" means a site that, because of an unauthorized release of petroleum, meets one of the following conditions:

(A) The site presents an imminent threat to public health or safety or the environment.

(B) The site poses a substantial probability of causing a condition of contamination or nuisance, as defined in Section 13050 of the Water Code, or of causing pollution of a source of drinking water at a level that is a violation of a primary or secondary drinking water standard adopted by the State Department of Health Services pursuant to Chapter 4 (commencing with

Section 116270) of Part 12 of Division 104.

(b) The suspension shall continue until one of the following occurs:

(1) The board provides the eligible responsible party with a letter of commitment pursuant to Chapter 6.75 (commencing with Section 25299.10) that
the party will receive reimbursement for the corrective action.

(2) The responsible party requests in writing that the suspension be terminated and that the work continue.

(3) The fund established pursuant to Article 6 (commencing with Section 25299.50) of Chapter 6.75 is no longer in existence.

(c) The board shall adopt regulations pursuant to Section 25299.3 that specify the conditions under which a site is an imminent threat to public health or safety or to the environment or poses a substantial probability of causing a condition of contamination, nuisance, or pollution as specified in paragraph (2) of subdivision (a). The board shall not suspend corrective action or investigation work at any site pursuant to this section until the effective date of the regulations adopted by the board pursuant to this subdivision.

(Added by Stats. 2002, Ch. 999, Sec. 25. Effective January 1, 2003.)

25296.30. (a) The board, in consultation with the State Department of Health Services, shall develop guidelines for the investigation and cleanup of methyl tertiary-butyl ether (MTBE) and other ether-based oxygenates in groundwater. The guidelines shall include procedures for determining, to the extent practicable, whether the contamination associated with an unauthorized release of MTBE is from the tank system prior to the system's most recent upgrade or replacement or if the contamination is from an unauthorized release from the current tank system.

(b) The board, in consultation with the State Department of Health Services, shall develop appropriate cleanup standards for contamination associated with a release of methyl tertiary-butyl ether.

(Added by Stats. 2002, Ch. 999, Sec. 26. Effective January 1, 2003.)

25296.35. (a) The board shall develop, implement, and maintain a system for storing and retrieving data from cases involving discharges of petroleum from underground storage tanks to allow regulatory agencies and the general public to use historic data in making decisions regarding permitting, land use, and other matters. The system shall be accessible to government agencies and the general public. A site included in the data system shall be clearly designated as having no residual contamination if, at the time a closure letter is issued for the site pursuant to Section 25296.10 or at any time after that closure letter is issued, the board determines that no residual contamination remains on the site.

(b) For purposes of this section, "residual contamination" means the petroleum that remains on a site after a corrective action has been carried out and the cleanup levels established by the corrective action plan for the site, pursuant to subdivision (g) of Section 2725 of Title 23 of the California Code of Regulations, have been achieved.

(Added by renumbering Section 25299.39.1 by Stats. 2002, Ch. 999, Sec. 40. Effective January 1, 2003.)

25296.40. (a) (1) Any owner or operator, or other responsible party who has a tank case and who believes that the corrective action plan for the site has been satisfactorily implemented, but where closure has not been granted, may petition the board for a review of the case.

(2) Upon receipt of a petition pursuant to paragraph (1), the board may close the tank case or require closure, if the tank case is at a site under the jurisdiction of a regional board or a local agency that is implementing a local oversight program under Section 25297.1 and 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. If a tank case is at a site under the jurisdiction of a local agency that is not implementing a local oversight program pursuant to Section 25297.1, the board may recommend to the local agency that the tank case be closed.

(b) Any aggrieved person may, not later than 30 days from the date of final action by the board, pursuant to 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.

(Added by Stats. 2002, Ch. 999, Sec. 27. Effective January 1, 2003.)

25297. The local agency may request the following agencies to utilize that agency's authority to remedy the effects of, and remove, any hazardous substance which has been released from an underground storage tank:

(a) The department which may take action pursuant to Chapter 6.8 (commencing with Section 25300) and, for this purpose, any unauthorized release shall be deemed a release as defined in Section 25320.

(b) A regional water quality control board may take action pursuant to Division 7 (commencing with Section 13000) of the Water Code and, for this purpose, the discharged hazardous substance shall be deemed a waste as defined in subdivision (d) of Section 13050.

(Added by renumbering Section 25285 by Stats. 1984, Ch. 1038, Sec. 18.)

25297.1. (a) In addition to the authority granted to the board pursuant to Division 7 (commencing with Section 13000) of the Water Code and to the department pursuant to Chapter 6.8 (commencing with Section 25300), the board, in cooperation with the department, shall develop and implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by local agencies. In implementing the local oversight program, the agreement specified in subdivision (b) shall be between the board and the local agency. The board shall select local agencies for participation in the program from among those local agencies that apply to the board, giving first priority to those local agencies that have demonstrated prior experience in cleanup, abatement, or other actions necessary to remedy the effects of unauthorized releases of hazardous substances from underground storage tanks. The board shall select only those local agencies that have implemented this chapter and that, except as provided in Section 25404.5, have begun to collect and transmit to the board the surcharge or fees pursuant to subdivision (b) of Section 25287.

(b) In implementing the local oversight program described in subdivision (a), the board may enter into an agreement with any local agency to perform, or cause to be performed, any cleanup, abatement, or other action necessary to remedy the effects of a release of hazardous substances from an underground storage tank with respect to which the local agency has enforcement authority pursuant to this section. The board may not enter into an agreement with a local agency for soil contamination cleanup or for groundwater contamination cleanup unless the board determines that the local agency has a demonstrated capability to oversee or perform the cleanup. The implementation of the cleanup, abatement, or other action shall be consistent with procedures adopted by the board pursuant to subdivision (d) and shall be based upon cleanup standards specified by the board or regional board.

(c) The board shall provide funding to a local agency that enters into an agreement pursuant to subdivision (b) for the reasonable costs incurred by the local agency in overseeing any cleanup, abatement, or other action taken by a responsible party to remedy the effects of unauthorized releases from underground storage tanks.

(d) The board shall adopt administrative and technical procedures, as part of the state policy for water quality control adopted pursuant to Section 13140 of the Water Code, for cleanup and abatement actions taken pursuant to this section. The procedures shall include, but not be limited to, all of the following:

(1) Guidelines as to which sites may be assigned to the local agency.

(2) The content of the agreements which may be entered into by the board and the local agency.

(3) Procedures by which a responsible party may petition the board or a regional board for review, pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 of the Water Code, or pursuant to Chapter 9.2 (commencing with Section 2250) of Division 3 of Title 23 of the California Code of Regulations, or any successor regulation, as applicable, of actions or decisions of the local agency in implementing the cleanup, abatement, or other action.

(4) Protocols for assessing and recovering money from responsible parties for any reasonable and necessary costs incurred by the local agency in

implementing this section, as specified in subdivision (i), unless the cleanup or abatement action is subject to subdivision (d) of Section 25296.10.

(5) Quantifiable measures to evaluate the outcome of a pilot program established pursuant to this section.

(e) Any agreement between the regional board and a local agency to carry out a local oversight program pursuant to this section shall require both of the following:

(1) The local agency shall establish and maintain accurate accounting records of all costs it incurs pursuant to this section and shall periodically make these records available to the board. The Controller may annually audit these records to verify the hourly oversight costs charged by a local agency. The board shall reimburse the Controller for the cost of the audits of a local agency's records conducted pursuant to this section.

(2) The board and the department shall make reasonable efforts to recover costs incurred pursuant to this section from responsible parties, and may pursue any available legal remedy for this purpose.

(f) The board shall develop a system for maintaining a database for tracking expenditures of funds pursuant to this section, and shall make this data available to the Legislature upon request.

(g) (1) Sections 25355.5 and 25356 do not apply to expenditures from the Toxic Substances Control Account for oversight of abatement of releases from underground storage tanks as part of the local oversight program established pursuant to this section.

(2) A local agency that enters into an agreement pursuant to subdivision (b) shall notify the responsible party, for any site subject to a cleanup, abatement, or other action taken pursuant to the local oversight program established pursuant to this section, that the responsible party is liable for not more than 150 percent of the total amount of site-specific oversight costs actually incurred by the local agency.

(h) Any aggrieved person may petition the board or regional board for review of the action or failure to act of a local agency that enters into an agreement pursuant to subdivision (b), at a site subject to cleanup, abatement, or other action conducted as part of the local oversight program established pursuant to this section, in accordance with the procedures adopted by the board or regional board pursuant to subdivision (d).

(i) (1) For purposes of this section, site-specific oversight costs include only the costs of the following activities, when carried out by the staff of a local agency or the local agency's authorized representative, that are either technical program staff or their immediate supervisors:

(A) Responsible party identification and notification.

(B) Site visits.

(C) Sampling activities.

(D) Meetings with responsible parties or responsible party consultants.

(E) Meetings with the regional board or with other affected agencies regarding a specific site.

(F) Review of reports, workplans, preliminary assessments, remedial action plans, or postremedial monitoring.

(G) Development of enforcement actions against a responsible party.

(H) Issuance of a closure document.

(2) The responsible party is liable for the site-specific oversight costs, calculated pursuant to paragraphs (3) and (4), incurred by a local agency, in overseeing any cleanup, abatement, or other action taken pursuant to this section to remedy an unauthorized release from an underground storage tank.

(3) Notwithstanding the requirements of any other provision of law, the amount of liability of a responsible party for the oversight costs incurred by the local agency and by the board and regional boards in overseeing any action pursuant to this section shall be calculated as an amount not more than 150 percent of the total amount of the site-specific oversight costs actually incurred by the local agency and shall not include the direct or indirect costs incurred by the board or regional boards.

(4) (A) The total amount of oversight costs for which a local agency may be reimbursed shall not exceed one hundred fifteen dollars ($115) per hour, multiplied by the total number of site-specific hours performed by the local agency.

(B) The total amount of the costs per site for administration and technical assistance to local agencies by the board and the regional board entering into agreements pursuant to subdivision (b) shall not exceed a combined total of thirty-five dollars ($35) for each hour of site-specific oversight. The board shall base its costs on the total hours of site-specific oversight work performed by all participating local agencies. The regional board shall base its costs on the total number of hours of site-specific oversight costs attributable to the local agency that received regional board assistance.

(C) The amounts specified in subparagraphs (A) and (B) are base rates for the 1990-91 fiscal year. Commencing July 1, 1991, and for each fiscal year thereafter, the board shall adjust the base rates annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the implicit price deflator for state and local government purchases of goods and services, as published by the United States Department of Commerce or by a successor agency of the federal government.

(5) In recovering costs from responsible parties for costs incurred under this section, the local agency shall prorate any costs identifiable as startup costs over the expected number of cases that the local agency will oversee during a 10-year period. A responsible party who has been assessed startup costs for the cleanup of any unauthorized release that, as of January 1, 1991, is the subject of oversight by a local agency, shall receive an adjustment by the local agency in the form of a credit, for the purposes of cost recovery. Startup costs include all of the following expenses:

(A) Small tools, safety clothing, cameras, sampling equipment, and other similar articles necessary to investigate or document pollution.

(B) Office furniture.

(C) Staff assistance needed to develop computer tracking of financial and site-specific records.

(D) Training and setup costs for the first six months of the local agency program.

(6) This subdivision does not apply to costs that are required to be recovered pursuant to Article 7.5 (commencing with Section 25385) of Chapter 6.8.

(j) (1) Notwithstanding subdivisions (a) and (b), the board may enter into an agreement with a local agency and the Santa Clara Valley Water District to implement the local oversight program in Santa Clara County.

(2) Paragraph (1) shall remain operative only until June 30, 2005.

(3) The inoperation of paragraph (1) does not affect the validity of any action taken by the Santa Clara Valley Water District before June 30, 2005, and does not provide a defense for an owner, operator, or other responsible party who fails to comply with that action.

(k) If the board enters into an agreement with a local agency and the Santa Clara Valley Water District to implement the local oversight program in Santa Clara County, pursuant to subdivision (j), the board may provide funding to the Santa Clara Valley Water District pursuant to subdivision (d) of Section 25299.51 for oversight costs incurred by the district on and after July 1, 2002, to June 30, 2005.

(Amended by Stats. 2006, Ch. 77, Sec. 15. Effective July 18, 2006.)

25297.15. (a) (1) The local agency shall not consider cleanup or site closure proposals from the primary or active responsible party, issue a closure letter, or make a determination that no further action is required with respect to a site upon which there was an unauthorized release of hazardous substances from an underground storage tank subject to this chapter unless all current record owners of fee title to the site of the proposed action have been notified of the proposed action by the primary or active responsible party.

(2) Notwithstanding subdivision (g) of Section 25297.1, the local agency shall also notify the primary or active responsible party of their responsibility under this subdivision.

(3) The primary or active responsible party shall certify to the local agency in writing that the notification requirement in this subdivision has been met and provide a complete mailing list of all record fee title owners to the local agency.

(b) The local agency shall take all reasonable steps necessary to accommodate responsible landowner participation in the cleanup or site closure process and shall consider all input and recommendations from any responsible landowner wishing to participate.

(Added by Stats. 1998, Ch. 255, Sec. 1. Effective January 1, 1999.)

25297.2. Any local agency which performs, or causes to be performed, any cleanup, abatement, or other action necessary to remedy the effects of a release of hazardous substances from an underground storage tank is immune from liability for this action to the same extent as the board or regional board is immune if the board or regional board had performed the cleanup, abatement, or other action.

(Added by Stats. 1988, Ch. 1431, Sec. 2. Effective September 27, 1988.)

25297.3. (a) The Leaking Underground Storage Tank Cost Recovery Fund is hereby created in the General Fund and the money in the fund may be expended, upon appropriation by the Legislature, for the purposes specified in subdivisions (c), (d), and (e).

(b) All of the following amounts shall be deposited in the Leaking Underground Storage Tank Cost Recovery Fund:

(1) All money recovered pursuant to the federal act for purposes of this chapter.

(2) Notwithstanding Section 16475 of the Government Code, all interest earned upon any money deposited in the Leaking Underground Storage Tank Cost Recovery Fund.

(3) Upon receipt of a written request from the board, the Controller shall transfer to the Leaking Underground Storage Tank Cost Recovery Fund the cash balance of the account in the Special Deposit Fund, as specified in Section 16370 of the Government Code, in which is deposited all money recovered pursuant to the federal act.

(c) The board may expend the money in the Leaking Underground Storage Tank Cost Recovery Fund for the purpose of taking any of the following actions with respect to underground storage tanks containing petroleum, as defined in the federal act:

(1) Enforcement activities.

(2) Corrective action and oversight.

(3) Cost recovery.

(4) Relocation of residents and provision of water supplies.

(5) Exposure assessments.

(d) The board may expend the money in the Leaking Underground Storage Tank Cost Recovery Fund for administrative expenses related to carrying out the activities specified in subdivision (c).

(e) The Controller may expend money in the Leaking Underground Storage Tank Cost Recovery Fund, upon appropriation by the Legislature, for the costs that are incurred on behalf of the Controller for corrective action, as defined in Section 25299.14, at the site located at 622 East Lindsay in the City of Stockton.

(f) After the corrective action at the site specified in subdivision (e) is complete, in accordance with a uniform closure letter issued pursuant to subdivision (g) of Section 25296.10, all unencumbered funds in the Leaking Underground Storage Tank Fund, and all net proceeds from the sale or other disposition of the site made on behalf of the Controller, shall be transferred to the Underground Storage Tank Cleanup Fund.

(Amended by Stats. 2007, Ch. 179, Sec. 26. Effective August 24, 2007.)

25298. (a) No person shall abandon an underground tank system or close or temporarily cease operating an underground tank system, except as provided in this section.

(b) An underground tank system that is temporarily taken out of service, but which the owner or operator intends to return to use, shall continue to be subject to all the permit, inspection, and monitoring requirements of this chapter and all applicable regulations adopted by the board pursuant to Section 25299.3, unless the owner or operator complies with subdivision (c) for the period of time the underground tank system is not in use.

(c) No person shall close an underground tank system unless the person undertakes all of the following actions:

(1) Demonstrates to the local agency that all residual amounts of the hazardous substance or hazardous substances which were stored in the tank system prior to its closure have been removed, properly disposed of, and neutralized.

(2) Adequately seals the tank system to minimize any threat to the public safety and the possibility of water intrusion into, or runoff from, the tank system.

(3) Provides for, and carries out, the maintenance of the tank system as the local agency determines is necessary for the period of time the local agency requires.

(4) Demonstrates to the appropriate agency, which has jurisdiction over the site, that the site has been investigated to determine if there are any present, or were past, releases, and if so, that appropriate corrective or remedial actions have been taken.

(Amended by Stats. 2003, Ch. 42, Sec. 13. Effective July 7, 2003.)

25298.5. The analysis of any material that is required to demonstrate compliance with this chapter or Chapter 6.75 (commencing with Section 25299.10) shall be performed by a laboratory accredited by the department pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101.

(Amended by Stats. 1997, Ch. 814, Sec. 6. Effective January 1, 1998.)

25299. (a) Any operator of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) for each underground storage tank for each day of violation for any of the following violations:

(1) Operating an underground tank system which has not been issued a permit, in violation of this chapter.

(2) Violation of any of the applicable requirements of the permit issued for the operation of the underground tank system.

(3) Failure to maintain records, as required by this chapter.

(4) Failure to report an unauthorized release, as required by Sections 25294 and 25295.

(5) Failure to properly close an underground tank system, as required by Section 25298.

(6) Violation of any applicable requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.

(7) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(8) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(9) Tampering with or otherwise disabling automatic leak detection devices or alarms.

(b) Any owner of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) per day for each underground storage tank, for each day of violation, for any of the following violations:

(1) Failure to obtain a permit as specified by this chapter.

(2) Failure to repair or upgrade an underground tank system in accordance with this chapter.

(3) Abandonment or improper closure of any underground tank system subject to this chapter.

(4) Violation of any applicable requirement of the permit issued for operation of the underground tank system.

(5) Violation of any applicable requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.

(6) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(7) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(c) Any person who intentionally fails to notify the board or the local agency when required to do so by this chapter or who submits false information in a permit application, amendment, or renewal, pursuant to Section 25286, is liable for a civil penalty of not more than five thousand dollars ($5,000) for each underground storage tank for which notification is not given or false information is submitted.

(d) (1) Any person who violates any corrective action requirement established by, or issued pursuant to, Section 25296.10 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.

(2) A civil penalty under this subdivision may be imposed in a civil action under this chapter, or may be administratively imposed by the board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(e) Any person who violates Section 25292.3 is liable for a civil penalty of not more than five thousand dollars ($5,000) for each underground storage tank for each day of violation.

(f) (1) Any person who falsifies any monitoring records required by this chapter, or knowingly fails to report an unauthorized release, shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) or more than ten thousand dollars ($10,000), by imprisonment in the county jail for not to exceed one year, or by both that fine and imprisonment.

(2) Any person who intentionally disables or tampers with an automatic leak detection system in a manner that would prevent the automatic leak detection system from detecting a leak or alerting the owner or operator of the leak, shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) or more than ten thousand dollars ($10,000), by

imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(g) In determining both the civil and criminal penalties imposed pursuant to this section, the board, a regional board or the court, as the case may be, 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 who holds the permit.

(h) (1) Each civil penalty or criminal fine imposed pursuant to this section for any separate violation shall be separate, and in addition to, any other civil penalty or criminal fine imposed pursuant to this section or any other provision of law, except that no civil penalty shall be recovered under subdivision (d) for violations for which a civil penalty is recovered pursuant to Section 13268 or 13350 of the Water Code. The penalty or fine shall be paid to the unified program agency, the participating agency, or the state, whichever is represented by the office of the city attorney, district attorney, or Attorney General bringing the action.

(2) Any penalties or fines paid to a uniform program agency or a participating agency pursuant to paragraph (1) shall be deposited into a special account and shall be expended only to fund the activities of the unified program agency or participating agency in enforcing this chapter within that jurisdiction pursuant, to the uniform program specified in Chapter 6.11 (commencing with Section 25404).

(3) All penalties or fines collected by the board or a regional board or collected on behalf of the board or a regional board by the Attorney General shall be deposited in the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund, and are available for expenditure by the board, upon appropriation, pursuant to Section 13441 of the Water Code.

(i) Paragraph (9) of subdivision (a) does not prohibit the owner or operator of an underground storage tank, or his or her designee, from maintaining, repairing, or replacing automatic leak detection devices or alarms associated with that tank.

(Amended by Stats. 2004, Ch. 686, Sec. 2. Effective September 22, 2004.)

25299.01. When any person has engaged in, is engaged in, or is about to engage in any acts or practices which violate this chapter, or Chapter 6.75 (commencing with Section 25299.10) or any rule, regulation, permit, standard, requirement, or order issued, adopted, or executed pursuant to this chapter or Chapter 6.75 (commencing with Section 25299.10), the city attorney of the city in which the acts or practices occur, occurred, or will occur, the district attorney of the county in which the acts or practices occur, occurred, or will occur, or the Attorney General may apply to the superior court for any order enjoining these acts or practices, or for an order directing compliance. The court may grant a permanent or temporary injunction, restraining order, or other order.

(Amended by Stats. 1989, Ch. 1442, Sec. 4. Effective October 2, 1989.)

25299.02. Every civil action brought under this chapter shall be brought by the city attorney, the district attorney, or the Attorney General in the name of the people of the State of California, and any actions relating to the same violations may be joined or consolidated.

(Added by Stats. 1986, Ch. 1390, Sec. 11. Effective September 30, 1986.)

25299.03. Any civil action brought pursuant to this chapter shall be brought in the county in which the violation occurred, the county in which the principal office of the defendant is located, or the county in which the Attorney General has an office nearest to the county in which the principal office of the defendants, or any of them, in this state is located.

(Added by Stats. 1986, Ch. 1390, Sec. 12. Effective September 30, 1986.)

25299.04. In any civil action brought pursuant to this chapter in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any state of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued or that the remedy at law is inadequate. The temporary restraining order, preliminary injunction, or permanent injunction shall be issued without these allegations and without this proof.

(Added by Stats. 1986, Ch. 1390, Sec. 13. Effective September 30, 1986.)

25299.1. (a) Any city or county which prior to January 1, 1984, adopted an ordinance which, at a minimum met the requirements set forth in Sections 25284 and 25284.1, as they read on January 1, 1984, prior to being amended and renumbered, providing for double containment, and monitoring of underground storage tanks which was exempt from this chapter as of December 31, 1989, is not exempt from implementing this chapter and shall implement this chapter on or before January 1, 1991.

(b) Until a city or county specified in subdivision (a) implements this chapter, the city or the county shall, at a minimum, do all of the following:

(1) Submit to the board the application form and annual information specified by Section 25286 and submit a written report of any unauthorized release from an underground storage tank to the Office of Emergency Services within 10 working days from the time the local agency is notified of the unauthorized release.

(2) Collect and transmit to the board the surcharge specified in subdivision (b) of Section 25287.

(3) Issue permits for the operation of an underground storage tank, which, at a minimum, ensure compliance with any applicable requirement of the federal act and any applicable regulation adopted by the board pursuant to Section 25299.3 which the board determines is necessary to assure consistency with the federal act.

(c) A permit issued on or after January 1, 1991, by a city or county specified in subdivision (a) shall require compliance with all applicable requirements of this chapter and with the regulations adopted by the board pursuant to Section 25299.3.

(d) This chapter does not limit or abridge the authority of any city or county to adopt an ordinance requiring information, conducting investigations, inspections, or implementing and enforcing this chapter.

(Amended by Stats. 1989, Ch. 1397, Sec. 20.)

25299.2. (a) Except as provided in subdivision (a) of Section 25299.4, this chapter does not preclude or deny the right of a local agency to adopt and enforce any regulation, requirement, or standard of performance that is more stringent than a regulation, requirement, or standard of performance in effect under this chapter with respect to underground storage tanks, if the regulation, requirement, or standard of performance, as provided in this subdivision, is consistent with this chapter.

(b) This chapter shall not be construed to preclude or deny the right of a local agency to regulate tanks which are not subject to regulation under this chapter or the federal act.

(Amended by Stats. 1991, Ch. 724, Sec. 1. Effective October 9, 1991.)

25299.3. (a) The board shall adopt regulations implementing this chapter.

(b) Every city and county shall undertake its regulatory responsibilities under this chapter. Except as provided in Section 25299.1, every city and county shall implement this chapter not later than July 1, 1985.

(c) Any regulation adopted by the board pursuant to this section shall assure consistency with the requirements for state programs implementing the federal act, and shall include any more stringent requirements necessary to implement this chapter.

(Amended by Stats. 1995, Ch. 639, Sec. 61. Effective January 1, 1996.)

25299.4. (a) (1) Any local agency may apply to the board for authority to implement design and construction standards for the containment of a hazardous substance in underground storage tanks which are in addition to those set forth in this chapter. The application shall include a description of the additional standards and a discussion of the need to implement them. The board shall approve the application if it finds, after an investigation and public hearing, that the local agency has demonstrated by clear and convincing evidence that the additional standards are necessary to adequately protect the soil and the beneficial uses of the waters of the state from unauthorized releases.

(2) The board shall make its determination within six months of the date of application for authority to implement additional standards. If the board's determination upholds the application for authority to implement additional standards, the standards shall be effective as of the date of the determination. If the board's determination does not uphold the application, the additional standards shall not go into effect.

(b) (1) Any permitholder or permit applicant may apply to the regional board having jurisdiction over the location of the permitholder's or applicant's facility for a site-specific variance from Section 25290.1, 25290.2, 25291, or 25292. A site-specific variance is an alternative procedure which is applicable in one local agency jurisdiction. Prior to applying to the regional board, the permitholder shall first contact the local agency pursuant to paragraph (5).

(2) The regional board shall hold a public hearing 60 days after the completion of any documents required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The regional board shall consider the local agency's and the city's, county's, or city and county's recommendations in rendering its decision. Failure of the local agency or city, county, or city and county to join in the variance application pursuant to paragraph (5) shall not affect the request of the applicant to proceed with the variance application.

(4) The regional board shall approve the variance if it finds, after investigation and public hearing, that the applicant has demonstrated by clear and convincing evidence either of the following:

(A) Because of the facility's special circumstances, not generally applicable to other facilities' property, including size, shape, design, topography, location, or surroundings, the strict application of Sections 25290.1, 25290.2, 25291, and 25292 is unnecessary to adequately protect the soil and beneficial uses of the waters of the state from an unauthorized release.

(B) Strict application of the standards of Sections 25290.1, 25290.2, 25291, and 25292 would create practical difficulties not generally applicable to other facilities or property and that the proposed alternative will adequately protect the soil and beneficial uses of the waters of the state from an unauthorized release.

(5) Before applying for a variance, the applicant shall contact the local agency to determine if a site-specific variance is required. If the local agency determines that a site-specific variance is required or does not act within 60 days, the applicant may proceed with the variance procedure in subdivision (a).

(6) At least 30 days before applying to the appropriate regional board, the applicant shall notify and request the city, county, or city and county to join the applicant in the variance application before the regional board.

(A) The city, county, or city and county shall provide notice of the receipt of that request to any person who has requested the notice.

(B) The local agency within the city, county, or city and county which has the jurisdiction for land use decisions shall have 30 days from completion of any documents required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) to act on the applicant's request to join the applicant.

(c) Applicants requesting a variance pursuant to subdivision (b) shall pay a fee determined by the board to be necessary to recover the reasonable cost of administering subdivision (b).

(d) The permit issued for any underground storage tank issued a variance pursuant to subdivision (b) shall require compliance with any conditions prescribed by the board or a regional board in issuing the variance. The conditions prescribed by the board or regional board in the permit shall include any conditions necessary to assure compliance with any applicable requirements of the federal act.

(e) This section does not apply to or within any city or county that was exempt from implementing this chapter as of December 31, 1984.

(Amended by Stats. 2003, Ch. 42, Sec. 15. Effective July 7, 2003.)

25299.5. (a) This chapter shall be construed to assure consistency with the requirements for state programs implementing the federal act.

(b) This chapter shall not be construed to limit or abridge the powers and duties granted to the department by Chapter 6.5 (commencing with Section 25100) and Chapter 6.8 (commencing with Section 25300) or to the board
and each regional board by Division 7 (commencing with Section 13000) of the Water Code.

(Amended by Stats. 1989, Ch. 1397, Sec. 24.)

25299.6. An owner or operator who is required to prepare an accident or spill prevention plan or response plan pursuant to this chapter or pursuant to an underground storage tank ordinance adopted by a city or county may, if the owner or operator elects to do so, use the format adopted pursuant to Section 25503.4.

(Added by Stats. 1993, Ch. 630, Sec. 5. Effective January 1, 1994.)

25299.7. (a) The board is designated as the lead agency in the state for all purposes stated in the federal act and may exercise any powers which a state may exercise pursuant to the federal act.

(b) The board may prepare, as part of any program application submitted to the Environmental Protection Agency for state program approval pursuant to Section 6991c of Title 42 of the United States Code, any procedures and implementation plans necessary to assure compliance with the requirements for a state program implementing the federal act. These procedures and implementation plans may include, but are not limited to, procedures or implementation plans with respect to investigation, compliance monitoring, enforcement, public participation, and sharing of information among local agencies, the board, and the Environmental Protection Agency. If the Environmental Protection Agency approves of the state program, the board, the regional boards, and each local agency shall administer this chapter in accordance with these procedures and implementation plans where required by the memorandum of agreement executed by the board and the Environmental Protection Agency. These procedures and implementation plans shall also apply to any public agency or official who brings a civil enforcement action pursuant to this chapter, and to any city or county specified in Section 25299.1, to the extent required by the memorandum of agreement. The board's approval of the program application and memorandum of agreement is not subject
to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The board shall adopt, pursuant to Section 25299.3, any regulations necessary to obtain state program approval pursuant to Section 6991c of Title 42 of the United States Code. The board shall adopt these regulations as emergency regulations 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 board in furtherance of this section shall be filed with, but may not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the board.

(Amended by Stats. 2002, Ch. 999, Sec. 31. Effective January 1, 2003.)

25299.8. The repeal and addition of Section 25292.3 and the amendment of Section 25284 by the act adding this section during the 2002 portion of the 2001-02 Regular Session, to eliminate the requirement to acquire and display an upgrade compliance certificate, do not constitute a bar to any action, whether administrative, civil, or criminal, brought for a violation of the law that occurred prior to January 1, 2003.

(Added by Stats. 2002, Ch. 999, Sec. 32. Effective January 1, 2003.)

CHAPTER 6.75. PETROLEUM UNDERGROUND STORAGE TANK CLEANUP

(Chapter 6.75 added by Stats. 1989, Ch. 1442, Sec. 5.
Effective October 2, 1989.
Repealed as of January 1, 2016 (except Articles 1, 2, 4, and 13), pursuant to Section 25299.81.)

Article 1. Findings and Declarations

(Article 1 added by Stats. 1989, Ch. 1442, Sec. 5.
Effective October 2, 1989.
Note: This article is not subject to a repeal date.)

25299.10. (a) This chapter shall be known, and may be cited, as the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989.

(b) The Legislature hereby finds and declares all of the following:

(1) In order to help ensure an efficient petroleum underground storage tank cleanup program that adequately protects public health and safety and the environment and provides for the rapid distribution of cleanup funds that will assist the state's recovery, it is in the best interest of the public that the board devote maximum effort to the expedited processing and payment of all claims filed pursuant to Sections 25299.57 and 25299.58.

(2) It is estimated that approximately 90 percent of the underground storage tanks in the state contain petroleum and the remaining 10 percent of the tanks contain various chemical constituents.

(3) Although the exact extent of the problem is unknown, it is thought that a significant number of the underground storage tanks containing petroleum in the state may be leaking.

(4) In recent years, owners or operators of underground storage tanks have been unable to obtain affordable environmental impairment liability insurance coverage to pay for corrective action or the obtainable coverage has been outside their financial means.

(5) There are long-term threats to public health and water quality if a comprehensive, uniform, and efficient corrective action program is not established.

(6) It is in the best interest of the health and safety of the people of the state to establish a fund to pay for corrective action where coverage is not available.

(7) A uniform, comprehensive, and efficient program establishing financial responsibility and corrective action requirements for leaking underground storage tanks containing petroleum will enable private commercial insurers to expand the availability and affordability of insurance coverage.

(8) An efficient program of establishing corrective action requirements and funds or insurance coverage should encourage corrective action to be taken in the first instance by the owner or operator of the leaking underground storage tank containing petroleum.

(9) Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code provides for regulation of underground storage tanks and allows underground storage tanks to be regulated pursuant to a state program, in lieu of a federal program, in states which are authorized to implement these provisions.

(10) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to Chapter 6.7 (commencing with Section 25280), to authorize the state to implement the provisions of Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, including any acts amending or supplementing Subchapter IX and any federal regulations and guidelines adopted pursuant to Subchapter IX.

(11) It is in the public interest for the state to provide financial assistance to small businesses and farms which have limited financial resources, to ensure timely compliance with the law governing underground storage tanks, and to ensure the adequate protection of groundwater.

(12) Nothing in this chapter shall be construed as waiving any immunity provided the state or its departments and agencies by the United States Constitution.

(Amended by Stats. 1999, Ch. 328, Sec. 2. Effective January 1, 2000.)

Article 2. Definitions

(Article 2 added by Stats. 1989, Ch. 1442, Sec. 5.
Effective October 2, 1989.
Note: This article is not subject to a repeal date.)

25299.11. Unless the context indicates otherwise, the definitions in this article govern the construction of this chapter.

(Added by Stats. 1989, Ch. 1442, Sec. 5. Effective October 2, 1989.)

25299.11.5. "Adjudicative proceeding" has the same meaning as defined in Section 11405.20 of the Government Code.

(Added by Stats. 1999, Ch. 328, Sec. 3. Effective January 1, 2000.)

25299.12. "Bodily injury" has the same meaning as used in Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code and the regulations adopted pursuant thereto.

(Added by Stats. 1989, Ch. 1442, Sec. 5. Effective October 2, 1989.)

25299.13. "Claim" means a submittal to the fund for the reimbursement of costs incurred due to an occurrence. A claim consists of several documents, including, but not limited to, the fund application, reimbursement requests, and verification documents.

(Amended by Stats. 2001, Ch. 154, Sec. 2. Effective January 1, 2002.)

25299.14. "Corrective action" includes, but is not limited to, evaluation and investigation of an unauthorized release, initial corrective actions measures, as specified in the federal act, and any actions necessary to investigate and remedy any residual effects remaining after the initial corrective action. Except as provided in the federal act, "corrective action" does not include actions to repair or replace an underground storage tank or its associated equipment.

(Added by Stats. 1989, Ch. 1442, Sec. 5. Effective October 2, 1989.)

25299.15. "Environmental impairment liability insurance" means liability insurance against liability for bodily injury, as defined in Section 25299.12, and for property damage, as defined in Section 25299.22, arising from an occurrence, as defined in Section 25299.19.

(Added by Stats. 1990, Ch. 1217, Sec. 3. Effective September 24, 1990.)

25299.16. "Federal act" means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), or as it may subsequently be amended or supplemented, and the regulations adopted pursuant thereto.

(Added by renumbering Section 25299.15 by Stats. 1990, Ch. 1217, Sec. 2. Effective September 24, 1990.)

25299.17. "Fund" means the Underground Storage Tank Cleanup Fund created pursuant to Section 25299.50.

(Added by renumbering Section 25299.16 by Stats. 1990, Ch. 1217, Sec. 4. Effective September 24, 1990.)

25299.18. "MTBE" means methyl tertiary-butyl ether.

(Added by Stats. 1999, Ch. 812, Sec. 14. Effective January 1, 2000.)

25299.19. "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in an unauthorized release of petroleum from an underground storage tank. Unauthorized releases at the same site which require only a single site investigation shall be considered as one occurrence. An unauthorized release subsequent to a previous unauthorized release at the same site shall only be considered a separate occurrence if an initial site investigation has been completed for the prior unauthorized release.

(Amended by Stats. 1996, Ch. 611, Sec. 4. Effective January 1, 1997.)

25299.20. "Operator" means any person in control of, or having responsibility for, the daily operation of an underground storage tank containing petroleum. "Operator" includes any city, county, or district, or any agency or department thereof, but does not include the state or any agency or department thereof, or the federal government.

(Added by renumbering Section 25299.19 by Stats. 1990, Ch. 1217, Sec. 6. Effective September 24, 1990.)

25299.21. "Owner" means the owner of an underground storage tank containing petroleum.

"Owner" includes any city, county, or district, or any agency or department thereof, but does not include the state or any agency or department thereof, or the federal government.

(Added by renumbering Section 25299.20 by Stats. 1990, Ch. 1217, Sec. 7. Effective September 24, 1990.)

25299.22. "Petroleum" means crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure, which means at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

(Added by renumbering Section 25299.21 by Stats. 1990, Ch. 1217, Sec. 8. Effective September 24, 1990.)

25299.23. "Property damage" has the same meaning as used in Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code and the regulations adopted pursuant thereto.

(Added by renumbering Section 25299.22 by Stats. 1990, Ch. 1217, Sec. 9. Effective September 24, 1990.)

25299.23.1. (a) "Site" means the parcel of real property at which an underground storage tank is located.

(b) If underground storage tanks are located at adjacent parcels of real property, the adjacent parcels together constitute one site if both of the following apply:

(1) The underground storage tanks are, or have been, operated by the same person.

(2) The adjacent parcels are under common ownership or control.

(c) Notwithstanding subdivision (a), the board may consider a parcel of real property as consisting of multiple sites, corresponding to the number of distinct underground storage tank operations at the parcel, if the board makes both of the following findings:

(1) There is more than one underground storage tank located at the parcel.

(2) Each separately operated underground storage tank or group of underground storage tanks is not, and has not been, operated by a person who is operating or has operated another underground storage tank at the same parcel.

(Amended by Stats. 1999, Ch. 328, Sec. 5. Effective January 1, 2000.)

25299.24. "Tank," "underground storage tank," "underground tank system," and "tank system" have the same meaning as defined in Chapter 6.7 (commencing with Section 25280), except as follows:

(a) These terms mean only those tanks that contain only petroleum or, consistent with the federal act, a mixture of petroleum with de minimis quantities of other regulated substances.

(b) These terms include all of the following components that are connected either directly or indirectly to the tank:

(1) Spill containment structures that are substantially or totally beneath the surface of the ground.

(2) Those portions of vent lines, vapor recovery lines, and fill pipes that are beneath the surface of the ground.

(Amended by Stats. 2008, Ch. 616, Sec. 1. Effective January 1, 2009.)

25299.25. For purposes of this chapter, "board," "regional board," "local agency," "person," "unauthorized release," and "facility" shall have the same meanings as defined in Section 25281. Any other term used in this chapter which is not defined by this article has the same meaning as defined in Section 25281.

(Added by Stats. 1989, Ch. 1442, Sec. 5. Effective October 2, 1989.)

Article 3. Financial Responsibility

(Article 3 added by Stats. 1989, Ch. 1442, Sec. 5.
Effective October 2, 1989.
Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.30. Every owner and operator shall comply with Section 25299.31 at the time prescribed in the federal act for the establishment and maintaining of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage arising from operating an underground storage tank, or when the tank is first filled, for use, with petroleum.

(Added by Stats. 1989, Ch. 1442, Sec. 5. Effective October 2, 1989. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.31. (a) Every owner and operator shall establish and maintain evidence of financial responsibility, as provided in this article, for taking corrective action and compensating third parties for bodily injury and property damage arising from operating an underground storage tank.

(b) If the owner and the operator are separate persons, either the owner or the operator shall demonstrate compliance with subdivision (a).

(c) An owner may comply with this article by entering into an agreement with the operator of the tank requiring the operator to demonstrate compliance with subdivision (a). However, both the owner and the operator are in violation of subdivision (a) if evidence of financial responsibility is not established and maintained in accordance with this article.

(Added by Stats. 1989, Ch. 1442, Sec. 5. Effective October 2, 1989. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.32. (a) (1) Claimants who meet the qualifications of paragraph (1) of subdivision (b) of Section 25299.52 shall be deemed in compliance with Section 25299.31 if the claimant is eligible for reimbursement from the fund pursuant to Section 25299.54 and subdivision (d) of Sections 25299.57 and 25299.58.

(2) For claimants who meet the qualifications of paragraph (2) or (3) of subdivision (b) of Section 25299.52, the level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be at least five thousand dollars ($5,000) for each occurrence and at least five thousand dollars ($5,000) annual aggregate coverage for taking corrective action.

(3) For claimants who meet the qualifications of paragraph (4) of subdivision (b) of Section 25299.52, the level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be at least ten thousand dollars ($10,000) for each occurrence, and at least ten thousand dollars ($10,000) annual aggregate coverage for taking corrective action.

(b) The level of financial responsibility required to be obtained pursuant to Section 25299.31 for each occurrence for bodily injury and property damage shall be in the amount specified by the board in the regulations adopted pursuant to Section 25299.77.

(c) The level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be in the amount specified by the board for annual aggregate coverage for both corrective action and bodily injury and property damage.

(d) The board may periodically increase the minimum level of financial responsibility specified in subdivision (a) upon its determination that private insurance is available and affordable.

(e) The changes made to this section by the act adding this subdivision shall apply to all claimants with claims, or portions of claims, for corrective action at sites that have not been completed, and for which reimbursement by the fund has not been fully paid by the board.

(Amended by Stats. 1994, Ch. 1191, Sec. 1. Effective January 1, 1995. Operative July 1, 1995, by Sec. 8 of Ch. 1191. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.33. (a) An owner and operator subject to Section 25299.30 may establish evidence of financial responsibility pursuant to this article by any one or more of the means specified in the federal act.

(b) An owner or operator shall submit evidence of financial responsibility on a prepared form to the local agency which has issued a permit for the operation of the tank pursuant to Section 25284.

(Added by Stats. 1989, Ch. 1442, Sec. 5. Effective October 2, 1989. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.34. (a) The total liability of any guarantor under this chapter is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator pursuant to this article. This section does not limit any other state or federal statutory, contractual, or common-law liability of a guarantor to its owner or operator, including, but not limited to, the liability of the guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim.

(b) For the purposes of this section, "guarantor" means any

person, including the insurance fund or the fund, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to Section 25299.31.

(Added by Stats. 1989, Ch. 1442, Sec. 5. Effective October 2, 1989. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

Article 4. Corrective Action

(Article 4 added by Stats. 1989, Ch. 1442, Sec. 5. Effective October 2, 1989. Note: This article is not subject to a repeal date.)

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) 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. The manager, with approval of the tank owner or operator, may make a recommendation to the board for closure. The board may close the tank case or require the closure of a tank case at a site under the jurisdiction of a regional board or a local agency implementing a local oversight program under Section 25297.1 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. If a tank case is at a site under the jurisdiction of a local agency that is not implementing a local oversight program under Section 25297.1, the board may recommend to the local agency that the case be closed.

(b) Any aggrieved person may, not later than 30 days from the date of final action by the board, pursuant to 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. 2002, Ch. 999, Sec. 41. Effective January 1, 2003.)

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.)

Article 5. Fees

(Article 5 added by Stats. 1989, Ch. 1442, Sec. 5. Effective October 2, 1989. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.40. The Legislature hereby declares that the storage fees imposed by this article do not constitute a tax and are not collected for purposes of increasing state revenues pursuant to Section 3 of Article XIII A of the California Constitution.

(Repealed and added by Stats. 1990, Ch. 1366, Sec. 10. Effective September 27, 1990. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.41. For purposes of implementing this chapter, every owner of an underground storage tank for which a permit is required pursuant to Section 25284 shall pay a storage fee of six mills ($0.006) for each gallon of petroleum placed in an underground storage tank which he or she owns. The fee imposed pursuant to this section shall be paid to the State Board of Equalization pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

(Amended by Stats. 1995, Ch. 639, Sec. 62. Effective January 1,

1996. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.42. (a) The State Board of Equalization may adopt regulations to carry out Section 25299.41, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

(b) The State Board of Equalization shall collect the fee imposed by this article commencing on the first day of the first calendar quarter which begins more than 90 days after the effective date of the act adding this article.

(c) The State Board of Equalization shall deposit all fees collected pursuant to this article in the fund.

(Repealed and added by Stats. 1990, Ch. 1366, Sec. 14. Effective September 27, 1990. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.43. (a) To implement the changes to this chapter made by the act adding this section, and consistent with Section 25299.40, effective January 1, 1995, every owner subject to Section 25299.41 shall pay a storage fee of one mill ($0.001) for each gallon of petroleum placed in an underground storage tank which the person owns, in addition to the fee required by Section 25299.41.

(b) On and after January 1, 1996, the storage fee imposed under subdivision (a) shall be increased by two mills ($0.002) for each gallon of petroleum placed in an underground storage tank.

(c) On and after January 1, 1997, the storage fee increased under subdivision (b) shall be increased by an additional three mills ($0.003) for each gallon of petroleum placed in an underground storage tank.

(d) On and after January 1, 2005, the storage fee increased under subdivision (c) shall be increased by an additional one mill ($0.001) for each gallon of petroleum placed in an underground storage tank.

(e) On and after January 1, 2006, the storage fee increased under subdivision (d) shall be increased by an additional one mill ($0.001) for each gallon of petroleum placed in an underground storage tank.

(f) The fee imposed under this section shall be paid to the State Board of Equalization under Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code in the same manner as, and consistent with, the fees imposed under Section 24299.41.

(g) The State Board of Equalization shall amend the regulations adopted under Section 25299.41 to carry out this section.

(Amended by Stats. 2004, Ch. 774, Sec. 2. Effective January 1, 2005. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

Article 6. Underground Storage Tank Cleanup Fund

(Article 6 added by Stats. 1989, Ch. 1442, Sec. 5.
Effective October 2, 1989.
Repealed as of January 1, 2016 (except Sections 25299.50.3 and 25299.50.4), pursuant to Section 25299.81.)

25299.50. (a) The Underground Storage Tank Cleanup Fund is hereby created in the State Treasury. The money in the fund may be expended by the board, upon appropriation by the Legislature, for purposes of this chapter. From time to time, the board may modify existing accounts or create accounts in the fund or other funds administered by the board, which the board determines are appropriate or necessary for proper administration of this chapter.

(b) Except for funds transferred to the Drinking Water Treatment and Research Fund created pursuant to subdivision (c) of Section 116367, all of the following amounts shall be deposited in the fund:

(1) Money appropriated by the Legislature for deposit in the fund.

(2) The fees, interest, and penalties collected pursuant to Article 5 (commencing with Section 25299.40).

(3) Notwithstanding Section 16475 of the Government Code, any interest earned upon the money deposited in the fund.

(4) Any money recovered by the fund pursuant to Section 25299.70.

(5) Any civil penalties collected by the board or regional board pursuant to Section 25299.76.

(c) (1) Notwithstanding subdivision (a), any funds appropriated by the Legislature in the annual Budget Act for payment of a claim for the costs of a corrective action in response to an unauthorized release, that are encumbered for expenditure for a corrective action pursuant to a letter of credit issued by the board pursuant to subdivision (e) of Section 25299.57, but are subsequently not expended for that corrective action claim, may be reallocated by the board for payment of other claims for corrective action pursuant to Section 25299.57.

(2) Notwithstanding Section 7550.5 of the Government Code, the board shall report at least once every three months on the implementation of this subdivision to the Senate Committee on Budget and Fiscal Review, the Senate Committee on Environmental Quality, the Assembly Committee on Budget, and the Assembly Committee on Environmental Safety and Toxic Materials, or to any successor committee, and to the Director of Finance.

(Amended by Stats. 1999, Ch. 812, Sec. 17. Effective January 1, 2000. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.50.2. (a) The Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund is hereby established in the State Treasury.

(b) The sum of ten million dollars ($10,000,000) is hereby transferred, for each of the 2008-09, 2009-10, and 2010-11 fiscal years, from the Underground Storage Tank Cleanup Fund to the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund, for expenditure upon appropriation by the Legislature, for the costs of response actions to remediate the harm caused by a petroleum contamination, including contamination caused by a refined product of petroleum or a petroleum derivative, at a site that meets all of the following conditions:

(1) The site meets the conditions described in paragraph (2) of subdivision (a) of Section 25395.20.

(2) The petroleum contamination is the principal source of contamination at the site.

(3) The source of the petroleum contamination is, or was, an underground storage tank.

(4) A financially responsible party has not been identified to pay for remediation at the site.

(c) Any funds in the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund that are not expended in the 2009 -10, 2010-11, or 2011-12 fiscal years shall remain in the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund until they are encumbered.

(d) Notwithstanding Section 16304.1 of the Government Code, a disbursement in liquidation of an encumbrance may be made before or during the four years following the last day the appropriation is available for encumbrance.

(e) A recipient of a grant that was awarded pursuant to former Section 25299.50.2, as that section read on December 31, 2007, and whose encumbrance under the grant was not liquidated within the time period prescribed in Section 16304.1 of the Government Code, may receive the undisbursed balance of the encumbrance from the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund consistent with the terms of the grant until June 30, 2011.

(Added by Stats. 2008, Ch. 616, Sec. 2. Effective January 1, 2009. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.50.3. (a) For purposes of this section, "school district" means a school district as defined in Section 80 of the Education Code, or a county office of education.

(b) The School District Account is hereby created in the Underground Storage Tank Cleanup Fund, for expenditure by the board to pay a claim filed by a district that is a school district and has a priority based on paragraph (4) of subdivision (b) of Section 25299.52. Notwithstanding Section 25299.52, in the 2009-10, 2010-11, and 2011-12 fiscal years, the board shall pay a claim filed by a district that is a school district and has a priority based on paragraph (4) of subdivision (b) of Section 25299.52 only from funds appropriated from the School District Account.

(c) (1) The sum of ten million dollars ($10,000,000) per year shall be transferred, in the 2009-10, 2010-11, and 2011-12 fiscal years, from the Underground Storage Tank Cleanup Fund to the School District Account, for expenditure upon appropriation by the Legislature for the payment of claims filed by a district that is a school district with a priority based on paragraph (4) of subdivision (b) of Section 25299.52.

(2) The board shall consult with the Department of Toxic Substances Control in allocating the funds transferred to the School District Account.

(3) The board shall pay claims from the School District Account in the order of the date of the filing of the claim application to the Underground Storage Tank Cleanup Fund.

(d) Funds in the School District Account that are not expended in the 2009-10 or 2010-11 fiscal years shall remain in the School District

Account. Unencumbered funds remaining in the School District Account on July 1, 2012, shall be transferred to the Underground Storage Tank Cleanup Fund. Encumbered funds remaining in the School District Account on July 1, 2012, shall remain in the School District Account. Those encumbered funds remaining in the School District Account on July 1, 2012, shall be liquidated on or before June 30, 2014.

(e) The board shall include information on the expenditure of the funds transferred to the School District Account, as well as the amount of all claims filed by districts that are school districts and the amount of reimbursements made to districts that are school districts from the Underground Storage Tank Cleanup Fund, in its annual report, and shall, in consultation with the Department of Toxic Substances Control, estimate the amount of funds needed to reimburse anticipated future claims by districts that are school districts. The board shall provide a copy of this report to the State Allocation Board and the State Department of Education.

(f) This section does not affect the priority of a district that is a school district and has a priority based on paragraph (2) or (3) of subdivision (b) of Section 25299.52.

(g) This section shall remain in effect only until July 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2014, deletes or extends that date.

(Added by Stats. 2008, Ch. 644, Sec. 1. Effective January 1, 2009. Repealed as of July 1, 2014, by its own provisions. If not repealed by its own provisions, this section is repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.50.4. (a) It is the intent of the Legislature that the board and the Department of Toxic Substances Control, using information gathered and reported pursuant to subdivision (e) of Section 25299.50.3, propose changes to Section 25299.50.3 that may be necessary to ensure that adequate funds are available to reimburse anticipated future claims by districts that are school districts and have a priority based on paragraph (4) of subdivision (b) of Section 25299.52.

(b) This section shall remain in effect only until July 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2014, deletes or extends that date.

(Added by Stats. 2008, Ch. 644, Sec. 2. Effective January 1, 2009. Repealed as of July 1, 2014, by its own provisions. If not repealed by its own provisions, this section is repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.50.5. Upon the repeal of Section 25299.50.3, all moneys in the School District Account and all moneys due that account shall revert to, and accrue to the benefit of, the Underground Storage Tank Cleanup Fund in the State Treasury.

(Added by Stats. 2008, Ch. 644, Sec. 3. Effective January 1, 2009. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.51. The board may expend the money in the fund for all the following purposes:

(a) In addition to the purposes specified in subdivisions (c), (d), and (e), for the costs of implementing this chapter and for implementing Section 25296.10 for a tank that is subject to this chapter.

(b) To pay for the administrative costs of the State Board of Equalization in collecting the fee imposed by Article 5 (commencing with Section 25299.40).

(c) To pay for the reasonable and necessary costs of corrective action pursuant to Section 25299.36, up to one million five hundred thousand dollars ($1,500,000) per occurrence. The Legislature may appropriate the money in the fund for expenditure by the board, without regard to fiscal year, for prompt action in response to any unauthorized release.

(d) To pay for the costs of an agreement for the abatement of, and oversight of the abatement of, an unauthorized release of hazardous substances from underground storage tanks, by a local agency, as authorized by Section 25297.1 or by any other provision of law, except that, for the purpose of expenditure of these funds, only underground storage tanks, as defined in Section 25299.24, shall be the subject of the agreement.

(e) To pay for the costs of cleanup and oversight of unauthorized releases at abandoned tank sites. The board shall not expend more than 25 percent of the total amount of money collected and deposited in the fund annually for the purposes of this subdivision and subdivision (h).

(f) To pay claims pursuant to Section 25299.57.

(g) To pay, upon order of the Controller, for refunds pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

(h) To pay for the reasonable and necessary costs of corrective action pursuant to subdivision (f) of Section 25296.10, in response to an unauthorized release from an underground storage tank subject to this chapter.

(i) To pay claims pursuant to Section 25299.58.

(j) To pay for expenditures by the board associated with discovering violations of, and enforcing, or assisting in the enforcement of, the requirements of Chapter 6.7 (commencing with Section 25280) with regard to petroleum underground storage tanks.

(k) For transfer to the Petroleum Underground Storage Tank Financing Account, for purposes of Chapter 6.77 (commencing with Section 25299.200).

(Amended by Stats. 2004, Ch. 649, Sec. 4. Effective September 21, 2004. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.52. (a) The board shall adopt a priority ranking list at least annually for awarding claims pursuant to Section 25299.57 or 25299.58. Any owner or operator eligible for payment of a claim pursuant to Section 25299.54 shall file an application with the board within a reasonable period, to be determined by the board, prior to adoption of the priority ranking list.

(b) Except as provided in subdivision (c), in awarding claims pursuant to Section 25299.57 or 25299.58, the board shall pay claims in accordance with the following order of priority:

(1) Owners of tanks who are eligible to file a claim pursuant to subdivision (e) of Section 25299.54.

(2) Owners and operators of tanks that are either of the following:

(A) An owner or operator of a tank that is a small business, by meeting the requirements of subdivision (d) of Section 14837 of the Government Code. An owner or operator that meets that definition of small business, but who is domiciled or has its principal office outside of the state, shall be classified in this category if the owner or operator otherwise meets the requirements of subdivision (d) of Section 14837 of the Government Code with regard to the number of employees and the total annual revenues received.

(B) An owner or operator that is a city, county, district, or nonprofit organization that receives total annual revenues of not more than seven million dollars ($7,000,000). In determining the amount of a nonprofit organization's annual revenues, the board shall calculate only those revenues directly attributable to the particular site at which the tank or tanks for which the claim is submitted are located.

(3) Owners or operators of tanks that are either of the following:

(A) The owner or operator owns and operates a business that employs fewer than 500 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation.

(B) The owner or operator is a city, county, district, or nonprofit organization that employs fewer than 500 full-time and part-time employees. In determining the number of employees employed by a nonprofit organization, the board shall calculate only those employees employed at the particular site at which a tank for which the claim is being submitted is located.

(4) All other tank owners and operators.

(c) (1) In any year in which the board is not otherwise authorized to award at least 15 percent of the total amount of funds committed for that year to tank owners or operators in those categories set forth in paragraph (3) or (4) of subdivision (b) due to the priority ranking list award limitations set forth in subdivision (b), the board shall allocate between 14 and 16 percent of the total amount of funds committed for that year to each category that is not otherwise entitled to at least that level of committed funding for that year.

(2) If the total amount of claims outstanding in one or more of the priority categories specified in paragraph (3) or (4) of subdivision (b) is less than 15 percent of the total amount annually appropriated from the fund for the purpose of awarding claims, the board shall reserve for making claims in that category only the amount that is necessary to satisfy the outstanding claims in that category.

(d) The board shall give priority to a claim that is filed before September 24, 1993, by a city, county, or district that is eligible for payment pursuant to Section 25299.54 in the following manner:

(1) The board shall determine whether the priority category specified for a city, county, or district pursuant to subparagraph (B) of paragraph (2), or pursuant to subparagraph (B) of paragraph (3), of subdivision (b) requires that the priority ranking of the claim be changed.

(2) If the priority ranking of the claim is changed and the claim is placed into either the priority category specified in subparagraph (B) of paragraph (2), or specified in subparagraph (B) of paragraph (3), of subdivision (b), the board shall pay all other claims that were assigned to that priority category prior to January 1, 2000, before paying the claim of the city, county, or district.

(e) The board may, to carry out the intent specified in paragraph (1) of subdivision (b) of Section 25299.10 and to expedite the processing and awarding of claims pursuant to Sections 25299.57 and 25299.58, implement the contracting procedures required by Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, as may be necessary, to alleviate the claims processing and award backlog. If, at the conclusion of any fiscal year, 25 percent or more of the funds appropriated annually for awards to claimants during that year have not actually been obligated by the board, the board shall, at its next regularly scheduled meeting, determine, in a public hearing, whether, given the circumstances of the awards backlog, it is appropriate to implement those contracting procedures for some, or all, of the claims filed with the board.

(f) For purposes of this section, the following definitions shall apply:

(1) "Nonprofit organization" means a nonprofit public benefit organization incorporated pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code.

(2) "Annual revenue," with respect to public entities, means the total annual general purpose revenues, excluding all restricted revenues over which the governing agency has no discretion, as reported in the Annual Report of Financial Transactions submitted to the Controller, for the latest fiscal year ending prior to the date the fund application was filed.

(3) "Annual revenue," with respect to nonprofit organizations, means the total annual revenues, as shown in an annual fiscal report filed with the Registry of Charitable Trusts of state and federal tax records, based on the latest fiscal year ending prior to the date the fund application was filed.

(4) "General purpose revenues," as used in paragraph (2), means revenues consisting of all of the following: secured and unsecured revenues; less than countywide funds, secured and unsecured; prior year secured and unsecured penalties and delinquent taxes; sales and use taxes; transportation taxes (nontransit); property transfer taxes; transient lodging taxes; timber yield taxes; aircraft taxes; franchise taxes; fines, forfeitures, and penalties; revenues from use of money and property; motor vehicle in-lieu taxes; trailer coach in-lieu taxes; homeowner property tax relief; open-space tax relief; and cigarette taxes.

(Amended by Stats. 2001, Ch. 154, Sec. 5. Effective January 1, 2002. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.53. (a) A regional board or a local agency taking, or contracting for, corrective action pursuant to subdivision (f) of Section 25296.10 in response to an unauthorized release from an underground storage tank subject to this chapter shall, before commencing the corrective action, take both of the following actions:

(1) The regional board or local agency shall notify the board of the planned corrective action. If an owner, operator, or other responsible party is taking the corrective action in accordance with Section 25296.10, the regional board or local agency shall not initiate a corrective action pursuant to this chapter or Chapter 6.7 (commencing with Section 25280).

(2) If an owner, operator, or other responsible party is not taking or has not taken the action specified in paragraph (1), the regional board or local agency shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate. The regional board or local agency shall obtain approval of the corrective action and the cost estimate before taking, or contracting for, any corrective action.

(b) If the board approves the request of the regional board or local agency made pursuant to paragraph (2) of subdivision (a), the board shall, after making the determination specified in subdivision (c), pay for the costs of corrective action performed by a regional board, local agency, or qualified contractor.

(c) The board shall not make any payment pursuant to subdivision (b) unless the board determines that the owner, operator, or other responsible party of the tank has failed or refused to comply with a final order for corrective action issued pursuant to Section 25296.10 with respect to the unauthorized release of petroleum from the tank.

(d) Upon making any payment to a regional board or local agency pursuant to subdivision (b), the board shall recover the amount of payment pursuant to Section 25299.70.

(Amended by Stats. 2002, Ch. 999, Sec. 45. Effective January 1, 2003. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.54. (a) Except as provided in subdivisions (b), (c), (d), (e), (g), and (h), an owner or operator, required to perform corrective action pursuant to Section 25296.10, or an owner or operator who, as of January 1, 1988, is required to perform corrective action, who has initiated this action in accordance with Division 7 (commencing with Section 13000) of the Water Code, who is undertaking corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, or Chapter 6.7 (commencing with Section 25280), may apply to the board for satisfaction of a claim filed pursuant to this article.

(b) A person who has failed to comply with Article 3 (commencing with Section 25299.30) is ineligible to file a claim pursuant to this section.

(c) An owner or operator of an underground storage tank containing petroleum is ineligible to file a claim pursuant to this section if the person meets both of the following conditions:

(1) The person knew, before January 1, 1988, of the unauthorized release of petroleum which is the subject of the claim.

(2) The person did not initiate, on or before June 30, 1988, any corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code concerning the release, or the person did not, on or before June 30, 1988, initiate corrective action in accordance with Chapter 6.7 (commencing with Section 25280) or the person did not initiate action on or before June 30, 1988, to come into compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code concerning the release.

(d) An owner or operator who violates Section 25296.10 or a corrective action order, directive, notification, or approval order issued pursuant to this chapter, Chapter 6.7 (commencing with Section 25280) of this code, or Division 7 (commencing with Section 13000) of the Water Code, is liable for a corrective action cost that results from the owner's or operator's violation and is ineligible to file a claim pursuant to this section.

(e) Notwithstanding this chapter, a person who owns a tank located underground that is used to store petroleum may apply to the board for satisfaction of a claim, and the board may pay the claim pursuant to Section 25299.57 without making the finding specified in paragraph (3) of subdivision (d) of Section 25299.57 if all of the following apply:

(1) The tank meets one of the following requirements:

(A) The tank is located at the residence of a person on property used exclusively for residential purposes at the time of discovery of the unauthorized release of petroleum.

(B) The tank owner demonstrates that the tank is located on property that, on and after January 1, 1985, is not used for agricultural purposes, the tank is of a type specified in subparagraph (B) of paragraph (1) of subdivision (y) of Section 25281, and the petroleum in the tank is used solely for the purposes specified in subparagraph (B) of paragraph (1) of subdivision (y) of Section 25281 on and after January 1, 1985.

(2) The tank is not a tank described in subparagraph (A) of paragraph (1) of subdivision (y) of Section 25281 and the tank is not used on or after January 1, 1985, for the purposes specified in that subparagraph.

(3) The claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280), or the claimant is not subject to the requirements of those provisions.

(f) Whenever the board has authorized the prepayment of a claim pursuant to Section 25299.57, and the amount of money available in the fund is insufficient to pay the claim, the owner or operator shall remain obligated to undertake the corrective action in accordance with Section 25296.10.

(g) The board shall not reimburse a claimant for any eligible costs for which the claimant has been, or will be, compensated by another person. This subdivision does not affect reimbursement of a claimant from the fund under either of the following circumstances:

(1) The claimant has a written contract, other than an insurance contract, with another person that requires the claimant to reimburse the person for payments the person has provided the claimant pending receipt of reimbursement from the fund.

(2) An insurer has made payments on behalf of the claimant pursuant

to an insurance contract and either of the following applies:

(A) The insurance contract explicitly coordinates insurance benefits with the fund and requires the claimant to do both of the following:

(i) Maintain the claimant's eligibility for reimbursement of costs pursuant to this chapter by complying with all applicable eligibility requirements.

(ii) Reimburse the insurer for costs paid by the insurer pending reimbursement of those costs by the fund.

(B) The claimant received a letter of commitment prior to June 30, 1999, for the occurrence and the claimant is required to reimburse the insurer for any costs paid by the insurer pending reimbursement of those costs by the fund.

(h) (1) Except as provided in paragraph (2), a person who purchases or otherwise acquires real property on which an underground storage tank or tank specified in subdivision (e) is situated shall not be reimbursed by the board for a cost attributable to an occurrence that commenced prior to the acquisition of the real property if both of the following conditions apply:

(A) The purchaser or acquirer knew, or in the exercise of reasonable diligence would have discovered, that an underground storage tank or tank specified in subdivision (e) was located on the real property being acquired.

(B) A person who owned the site or owned or operated an underground storage tank or tank specified in subdivision (e) at the site during or after the occurrence and prior to acquisition by the purchaser or acquirer would not have been eligible for reimbursement from the fund.

(2) Notwithstanding paragraph (1), if the claim is filed on or after January 1, 2003, the board may reimburse the eligible costs claimed by a person who purchases or otherwise acquires real property on which an underground storage tank or tank specified in subdivision (e) is situated, if all of the following conditions apply:

(A) The claimant is the owner or operator of the underground storage tank or tank specified in subdivision (e) that had an occurrence that commenced prior to the owner's acquisition of the real property.

(B) The claimant satisfies all eligibility requirements, other than those specified in paragraph (1).

(C) The claimant is not an affiliate of a person whose act or omission caused or would cause ineligibility for the fund.

(3) If the board reimburses a claim pursuant to paragraph (2), a person specified in subparagraph (B) of paragraph (1), other than a person who is ineligible for reimbursement from the fund solely because the property was acquired from another person who was ineligible for reimbursement from the fund, shall be liable for the amount paid from the fund. The Attorney General, upon request of the board, shall bring a civil action to recover the liability imposed under this paragraph. All money recovered by the Attorney General under this paragraph shall be deposited in the fund.

(4) The liability established pursuant to paragraph (3) does not limit or supersede liability under any other provision of state or federal law, including common law.

(5) For purposes of this subdivision, the following definitions shall apply:

(A) "Affiliate" means a person who has one or more of the following relationships with another person:

(i) Familial relationship.

(ii) Fiduciary relationship.

(iii) A relationship of direct or indirect control or shared interests.

(B) Affiliates include, but are not limited to, any of the following:

(i) Parent corporation and subsidiary.

(ii) Subsidiaries that are owned by the same parent corporation.

(iii) Business entities involved in a reorganization, as defined in Section 181 of the Corporations Code.

(iv) Corporate officer and corporation.

(v) Shareholder that owns a controlling block of voting stock and the corporation.

(vi) Partner and the partnership.

(vii) Member and a limited liability company.

(viii) Franchiser and franchisee.

(ix) Settlor, trustee, and beneficiary of a trust.

(x) Debtor and bankruptcy trustee or debtor-in-possession.

(xi) Principal and agent.

(C) "Familial relationship" means relationships between family members, including, and limited to, a husband, wife, child, stepchild, parent, grandparent, grandchild, brother, sister, stepbrother, stepsister, stepmother, stepfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, and, if related by blood, uncle, aunt, niece, or nephew.

(D) "Purchases or otherwise acquires real property" means the acquisition of fee title ownership or the acquisition of the lessee's interest in a ground lease of real property on which one or more underground storage tanks are located if the lease has an initial original term, including unilateral extension or renewal rights, of not less than 35 years.

(i) The Legislature finds and declares that the changes made to subparagraph (A) of paragraph (1) of subdivision (e) by Chapter 1290 of the Statutes of 1992 are declaratory of existing law.

(j) The Legislature finds and declares that the amendment of subdivisions (a) and (g) by Chapter 328 of the Statutes of 1999 is declaratory of existing law.

(Amended by Stats. 2008, Ch. 616, Sec. 3. Effective January 1, 2009. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.55. The board shall prescribe appropriate forms and procedures for claims filed pursuant to Section 25299.54 that shall include, at a minimum, all of the following:

(a) A provision requiring the claimant to make a sworn verification of the claim to the best of the claimant's knowledge.

(b) A full description, supported by appropriate evidence from government agencies, of the unauthorized release of petroleum into the environment from an underground storage tank claimed to be the subject of the third-party judgment specified in Section 25299.58 or the corrective action performed pursuant to Section 25296.10.

(c) Certification by the claimant of all costs that have been, or will be, incurred in undertaking corrective action after January 1, 1988.

(Amended by Stats. 2002, Ch. 999, Sec. 47. Effective January 1, 2003. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.56. (a) The board shall determine an applicant's eligibility for a claim for corrective action costs or third-party compensation costs pursuant to Section 25299.57 or 25299.58 and notify the applicant of that determination within 60 days from the date of the receipt of the fund application. The board may classify the claimant's application pursuant to Section 25299.52 after that 60-day period. If the board sends an applicant a determination of eligibility pursuant to this subdivision, the board shall not revoke that determination of eligibility, unless the application contained fraudulent information or a misrepresentation. However, the board may suspend making a reimbursement for a claim until the claimant corrects any deficiencies that are the basis for the suspension. Reinstatement of reimbursement shall occur when funds are available and that reinstatement shall be made ahead of any new letters of commitment issued as of the date of reinstatement.

(b) A claimant may request review of any claim or portion of a claim not paid. The review shall be conducted and a decision rendered within 30 days from the date of receipt of the request.

(c) A claimant may file a petition for review, in writing, with the board with regard to any unpaid claim that is unresolved to the satisfaction of the claimant upon expiration of the 30-day period specified in subdivision (b) and the board shall take final action on the petition within 90 days of the board's receipt of a complete petition for review, except that if the board initiates an adjudicative proceeding on the petition, the board shall take final action within 270 days of the board's receipt of a complete petition for review.

(d) Final action on a petition taken by the board is a final agency action for the purposes of judicial review of a board decision.

(e) A claimant may, not later than 30 days from the date of final action by the board pursuant to subdivision (c), file with the superior court a petition for writ of mandate for review of the decision. If the claimant 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 the court. Section 1094.5 of the Code of Civil Procedure shall govern the proceeding for a petition 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.

(f) Except as specified in subdivision (g), the procedures in Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and in Section 11513 of, the Government Code apply to any adjudicative proceedings conducted by the board pursuant to this article.

(g) (1) Notwithstanding subdivision (f), Sections 801, 802, 803, 804, and 805 of the Evidence Code apply to any adjudicative proceeding conducted by the board pursuant to this article.

(2) This section is not a limitation on the authority of the board to authorize the use of the procedure provided in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 2001, Ch. 154, Sec. 6. Effective January 1, 2002. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.57. (a) If the board makes the determination specified in subdivision (d), the board may only pay for the costs of a corrective action that exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million five hundred thousand dollars ($1,500,000) for each occurrence. In the case of an owner or operator who, as of January 1, 1988, was required to perform corrective action, who initiated that corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), and who is undertaking the corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), the owner or operator may apply to the board for satisfaction of a claim filed pursuant to this article. The board shall notify claimants applying for satisfaction of claims from the fund of eligibility for reimbursement in a prompt and timely manner and that a letter of credit or commitment that will obligate funds for reimbursement shall follow the notice of eligibility as soon thereafter as possible.

(b) (1) For claims eligible for reimbursement pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the actual cost of corrective action to the board, which shall either approve or disapprove the costs incurred as reasonable and necessary. At least 15 days before the board proposes to disapprove the reimbursement of corrective action costs that have been incurred on the grounds that the costs were unreasonable or unnecessary, the board shall issue a notice advising the claimant and the lead agency of the proposed disallowance, to allow review and comment.

(2) The board shall not reject any actual costs of corrective action in a claim solely on the basis that the invoices submitted fail to sufficiently detail the actual costs incurred, if all of the following apply:

(A) Auxiliary documentation is provided that documents to the board's satisfaction that the invoice is for necessary corrective action work.

(B) The costs of corrective action work in the claim are reasonably commensurate with similar corrective action work performed during the same time period covered by the invoice for which reimbursement is sought.

(C) The invoices include a brief description of the work performed, the date that the work was performed, the vendor, and the amount.

(c) (1) For claims eligible for prepayment pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate.

(2) If the claim is for reimbursement of costs incurred pursuant to a performance-based contract, Article 6.5 (commencing with Section 25299.64) shall apply to that claim.

(d) Except as provided in subdivision (j), a claim specified in subdivision (a) may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant is required to undertake or contract for corrective action pursuant to Section 25296.10, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code.

(3) The claimant has complied with Section 25299.31.

(4) (A) Except as provided in subparagraphs (B), (C), and (F), the claimant has complied with the permit requirements of Chapter 6.7 (commencing with Section 25280). A claimant shall obtain a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim when the claimant becomes subject to subdivision (a) of Section 25284 or when the applicable local agency begins issuing permits pursuant to subdivision (a) of Section 25284, whichever occurs later.

(B) A claimant who acquires real property on which an underground storage tank is situated and, despite the exercise of reasonable diligence, was unaware of the existence of the underground storage tank when the real property was acquired, has obtained a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim within a reasonable period, not to exceed one year, from when the claimant should have become aware of the existence of the underground storage tank, or when the applicable local agency began issuing permits pursuant to Section 25284, whichever occurs later.

(C) All claimants who file their claim on or after January 1, 2008, and who do not obtain a permit required by subdivision (a) of Section 25284 in accordance with subparagraph (A) or (B) may seek a waiver of the requirement to obtain a permit. The board shall waive the provisions of subparagraphs (A) and (B) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement, and upon becoming aware of the permit requirement, the claimant complies with either subdivision (a) of Section 25284 or Section 25298 and the regulations adopted to implement those sections within a reasonable period, not to exceed one year, from when the claimant became aware of the permit requirement.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) of this code and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(D) (i) A claimant exempted pursuant to subparagraph (C) and who has complied, on or before December 22, 1998, either with subdivision (a) of Section 25284 or Section 25298 and the regulations adopted to implement those sections, shall obtain a level of financial responsibility twice as great as the amount that the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32, but not less than ten thousand dollars ($10,000). All other claimants exempted pursuant to subparagraph (C) shall obtain a level of financial responsibility that is four times as great as the amount that the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32, but not less than twenty thousand dollars ($20,000).

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (C) were satisfied prior to the causing of any contamination. That demonstration may be made through a certification issued by the permitting agency based on a site evaluation and tank tests at the time of permit application or in any other manner acceptable to the board.

(E) All claimants who file a claim before January 1, 2008, and who are not eligible for a waiver of the permit requirements pursuant to applicable statutes or regulations in effect on the date of the filing of the claim may resubmit a new claim pursuant to subparagraph (C) on or after January 1, 2008. The board shall rank all claims resubmitted pursuant to subparagraph (C) lower than all claims filed before January 1, 2008, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(F) The board shall waive the provisions of subparagraph (A) as a condition for payment from the fund for a claimant who filed his or her claim on or after January 1, 2008, and before July 1, 2009, but is not eligible for a waiver of the permit requirement pursuant to the regulations adopted by the board in effect on the date of the filing of the claim, and who did not obtain or apply for a permit required by subdivision (a) of Section 25284, if the board finds all of the following:

(i) The claim is filed pursuant to paragraph (2) of subdivision (h) of Section 25299.54 and the claim otherwise satisfies the eligibility requirements of that paragraph.

(ii) The claimant became the owner or de facto owner of an underground storage tank prior to December 22, 1998.

(iii) The claimant did not, and does not, operate the underground storage tank.

(iv) Within three years after becoming the owner or de facto owner of the underground storage tank but not after December 22, 1998, the claimant caused the underground storage tank to be removed and closed in accordance

with applicable law, and commenced no later than December 22, 1998, to perform corrective action pursuant to Section 25296.10 of this code or pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(G) The board shall rank all claims submitted pursuant to subparagraph (F) in their respective priority classes specified in subdivision (b) of Section 25299.52 in the order in which the claims are received by the board, but subsequent to any claim filed on a previous date in each of those priority classes.

(H) For purposes of clauses (ii) and (iv) of subparagraph (F), "de facto owner of an underground storage tank" means a person who purchases or otherwise acquires real property, as defined in subparagraph (D) of paragraph (5) of subdivision (h) of Section 25299.54, and has actual possession of, and control over, an underground storage tank that has been abandoned by its previous owner.

(5) The board has approved either the costs incurred for the corrective action pursuant to subdivision (b) or the estimated costs for corrective action pursuant to subdivision (c).

(6) The claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 29299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(e) The board shall provide the claimant, whose cost estimate has been approved, a letter of commitment authorizing payment of the costs from the fund.

(f) The claimant may submit a request for partial payment to cover the costs of corrective action performed in stages, as approved by the board.

(g) (1) A claimant who submits a claim for payment to the board shall submit multiple bids for prospective costs as prescribed in regulations adopted by the board pursuant to Section 25299.77.

(2) A claimant who submits a claim to the board for the payment of professional engineering and geologic work shall submit multiple proposals and fee estimates, as required by the regulations adopted by the board pursuant to Section 25299.77. The claimant's selection of the provider of these services is not required to be based on the lowest estimated fee, if the fee estimate conforms with the range of acceptable costs established by the board.

(3) A claimant who submits a claim for payment to the board for remediation construction contracting work shall submit multiple bids, as required in the regulations adopted by the board pursuant to Section 25299.77.

(4) Paragraphs (1), (2), and (3) do not apply to a tank owned or operated by a public agency if the prospective costs are for private professional services within the meaning of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and those services are procured in accordance with the requirements of that chapter.

(h) The board shall provide, upon the request of a claimant, assistance to the claimant in the selection of contractors retained by the claimant to conduct reimbursable work related to corrective actions. The board shall develop a summary of expected costs for common corrective actions. This summary of expected costs may be used by claimants as a guide in the selection and supervision of consultants and contractors.

(i) The board shall pay, within 60 days from the date of receipt of an invoice of expenditures, all costs specified in the work plan developed pursuant to Section 25296.10, and all costs that are otherwise necessary to comply with an order issued by a local, state, or federal agency.

(j) (1) The board shall pay a claim of not more than three thousand dollars ($3,000) per occurrence for regulatory technical assistance to an owner or operator who is otherwise eligible for reimbursement under this chapter.

(2) For the purposes of this subdivision, regulatory technical assistance is limited to assistance from a person, other than the claimant, in the preparation and submission of a claim to the fund. Regulatory technical assistance does not include assistance in connection with proceedings under Section 25296.40, 25299.39.2, or 25299.56 or any action in court.

(k) (1) Notwithstanding any other provision of this section, the board shall pay a claim for the costs of corrective action to a person who owns property on which is located a release from a petroleum underground storage tank that has been the subject of a completed corrective action and for which additional corrective action is required because of additionally discovered contamination from the previous release, only if the person who carried out the earlier and completed corrective action was eligible for, and applied for, reimbursement pursuant to subdivision (b), and only to the extent that the amount of reimbursement for the earlier corrective action did not exceed the amount of reimbursement authorized by subdivision (a). Reimbursement to a claimant on a reopened site shall occur when funds are available, and reimbursement commitment shall be made ahead of any new letters of commitment to be issued, as of the date of the reopening of the claim, if funding has occurred on the original claim, in which case funding shall occur at the time it would have occurred under the original claim.

(2) For purposes of this subdivision, a corrective action is completed when the local agency or regional board with jurisdiction over the site or the board issues a closure letter pursuant to subdivision (g) of Section 25296.10.

(Amended by Stats. 2008, Ch. 616, Sec. 4. Effective January 1, 2009. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.58. (a) Except as provided in subdivision (d), if the board makes the determination specified in subdivision (b), the board may reimburse only those costs that are related to the compensation of third parties for bodily injury and property damages and that exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million dollars ($1,000,000) for each occurrence.

(b) A claim may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant has been ordered to pay a settlement or final judgment for third-party bodily injury or property damage arising from operating an underground storage tank.

(3) The claimant has complied with Section 25299.31.

(4) (A) Except as provided in subparagraphs (B) and (C), the claimant has complied with the permit requirements of Chapter 6.7 (commencing with Section 25280). A claimant shall obtain a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim when the claimant becomes subject to subdivision (a) of Section 25284 or when the applicable local agency begins issuing permits pursuant to subdivision (a) of Section 25284, whichever occurs later.

(B) A claimant who acquires real property on which an underground storage tank is situated and, despite the exercise of reasonable diligence, was unaware of the existence of the underground storage tank when the real property was acquired, has obtained a permit required by subdivision (a) of Section 25284 for the underground storage tank that is the subject of the claim within a reasonable period, not to exceed one year, from when the claimant should have become aware of the existence of the underground storage tank, or when the applicable local agency began issuing permits pursuant to Section 25284, whichever occurs later.

(C) All claimants who file their claim on or after January 1, 2008, and who do not obtain a permit required by subdivision (a) of Section 25284 in accordance with subparagraph (A) or (B) may seek a waiver of the requirement to obtain a permit. The board shall waive the provisions of subparagraphs (A) and (B) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement, and upon becoming aware of the permit requirement, the claimant complies with subdivision (a) of Section 25284 or Section 25298 and the regulations adopted to implement those sections within a reasonable period, not to exceed one year, from when the claimant became aware of the permit requirement.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) of this chapter and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(D) (i) A claimant who is exempted pursuant to subparagraph (C) and who has complied, on or before December 22, 1998, with subdivision (a) of Section 25284 or Section 25298 and the regulations adopted to implement those sections, shall obtain a level of financial responsibility in an amount twice as great as the amount that the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32, but in no event less than ten thousand dollars ($10,000). All other claimants exempted pursuant to subparagraph (C) shall obtain a level of financial responsibility that is four times as great as the amount that the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32, but in no event less than twenty thousand dollars ($20,000).

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (C) were satisfied prior to any contamination having been caused. The demonstration may be made through a certification issued by the permitting agency based on a site evaluation and tank tests at the time of permit application or in any other manner as may be acceptable to the board.

(E) All claimants who file a claim before January 1, 2008, and who are not eligible for a waiver of the permit requirements pursuant to applicable statutes or regulations in effect on the date of the filing of the claim may resubmit a new claim pursuant to subparagraph (C) on or after January 1, 2008. The board shall rank all claims resubmitted pursuant to subparagraph (C) lower than all claims filed before January 1, 2008, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(5) The claimant is required to undertake or contract for corrective action pursuant to Section 25296.10, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280).

(6) The claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 29299.40) of this chapter and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(c) A claimant may be reimbursed by the fund for compensation of third parties for only the following:

(1) Medical expenses.

(2) Actual lost wages or business income.

(3) Actual expenses for remedial action to remedy the effects of damage to the property of the third party caused by the unauthorized release of petroleum from an underground storage tank.

(4) The fair market value of the property rendered permanently unsuitable for use by the unauthorized release of petroleum from an underground storage tank.

(d) The board shall pay a claim submitted pursuant to subdivision (d) of Section 25299.54 for the costs related to the compensation of third parties for bodily injury and property damages that exceed the level of financial responsibility required to be obtained pursuant to paragraph (2) of subdivision (a) of Section 25299.32, but not more than one million dollars ($1,000,000) for each occurrence.

(Amended by Stats. 2008, Ch. 179, Sec. 149. Effective January 1, 2009. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.59. (a) If the board has paid out of the fund for any costs of corrective action, the board shall not pay any other claim out of the fund for the same costs.

(b) Notwithstanding Sections 25299.57 and 25299.58, the board shall not reimburse or authorize prepayment of any claim in an aggregate amount exceeding one million five hundred thousand dollars ($1,500,000), less the minimum level of financial responsibility specified in Section 25299.32, for a claim arising from the same event or occurrence. If a claim exceeds one million dollars ($1,000,000) for an occurrence, the board may only reimburse costs submitted pursuant to Section 25299.57 for those costs in excess of one million dollars ($1,000,000).

(c) The board may conduct an audit of any corrective action claim honored pursuant to this chapter. The claimant shall reimburse the state for any costs disallowed in the audit. A claimant shall preserve, and make available, upon request of the board or the board's designee, all records pertaining to the corrective action claim for a period of three years after the final payment is made to the claimant.

(Amended by Stats. 1999, Ch. 812, Sec. 21. Effective January 1, 2000. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.60. (a) The board shall not pay any claims against or presented to the fund pursuant to this article if the claim exceeds the total money in the fund at any one time. The board shall pay these claims only when additional money is collected, appropriated, or otherwise added to the fund. If the total claims outstanding at any time exceed the current balance of the fund, the board shall pay these claims in full to the extent authorized pursuant to this article.

(b) Any claim filed against the fund pursuant to this article may be paid only out of the fund. This chapter does not authorize the payment by the state of any additional amount with respect to any claim out of any source other than the fund.

(c) (1) Except as provided in paragraph (2), notwithstanding this article, the board shall not pay out any claims pursuant to this article to a claimant if the total amount paid to the claimant is greater than 5 percent of the total amount annually appropriated by the Legislature from the fund for purposes of paying claims pursuant to this article. For purposes of determining the total amount paid to a claimant for purposes of this section, the board shall include any payments made to any person or entity which has a relationship with the claimant specified in subsection (b) of Section 267 of Title 26 of the United States Code.

(2) The board may exempt a claim from the requirements of paragraph (1) if the board determines all of the following:

(A) The exemption would provide for an equitable and timely use of available fund moneys.

(B) The exemption would help to ensure an efficient petroleum underground storage tank cleanup program that adequately protects public health and safety and the environment.

(C) All claims subject to the exemption are awarded in accordance with the priority rankings established pursuant to Section 25299.52.

(Amended by Stats. 1993, Ch. 432, Sec. 8. Effective September 24, 1993. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.61. The board shall not pay any claims against or presented to the fund pursuant to this article if the claims are in connection with an unauthorized release of petroleum into the environment from an underground storage tank resulting from the gross negligence or the intentional or reckless acts of the claimant.

(Added by Stats. 1990, Ch. 1366, Sec. 26. Effective September 27, 1990. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.62. All reimbursement requests that are approved shall be forwarded to the Controller within 10 days from the date of approval, for payment by the Controller.

(Amended by Stats. 2001, Ch. 154, Sec. 9. Effective January 1, 2002. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.63. This article does not require any person to pursue a claim against the board pursuant to this article before seeking any other remedy. This section does not affect the requirement for exhaustion of administrative remedies before obtaining judicial review of any action of the board on a claim or petition for closure of a tank case.

(Added by Stats. 1999, Ch. 328, Sec. 21. Effective January 1, 2000. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

Article 6.5. Performance-Based Contract

(Article 6.5 added by Stats. 2003, Ch. 689, Sec. 3.
Effective January 1, 2004.
Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.64. (a) For purposes of this article, the following definitions shall apply:

(1) "Baseline concentration" means the initial concentration of a constituent of concern prior to conducting corrective action pursuant to a performance-based contract.

(2) "Constituent of concern" means the chemical element, compound, or grouping, including, but not limited to, total petroleum hydrocarbons, as in gasoline, that is present in the soil or groundwater and subject to corrective action.

(3) "Performance-based contract" means a written agreement approved by the board between a claimant and an appropriately licensed contractor, where the contractor agrees for a fixed price to take corrective action to reduce the concentrations of designated constituents of concern to specified concentrations.

(4) "Remediation milestone" means that a specified reduction in the concentrations of constituents of concern from baseline concentrations has been attained through corrective action. The reduction is expressed as a percentage of the total reduction required by the performance-based contract.

(b) The board may pay a claim pursuant to Section 25299.57 to reimburse the cost of a performance-based contract if the board approves the

contract as being consistent with this article.

(c) A performance-based contract includes, but is not limited to, the total fixed price contract amount, designated constituents of concern, baseline concentrations, and if appropriate, a payment schedule indicating the amount to be paid when specified remediation milestones are attained.

(d) The board shall make payments based upon the reduction in the concentrations of designated constituents of concern to specified concentrations. If corrective action is estimated to take six months or more to achieve these concentrations and the remediation technology proposed is a pump-and-treat or other type of mechanical remediation technology, the board may pay a portion of the fixed price based on the attainment of specified remediation milestones or other performance parameters, in the following manner:

(1) The first payment shall include the amount of incurred capital costs upon successful installation and startup of the mechanical remediation system.

(2) The second payment shall be an amount equal to the agreed upon percent of the total contract price when the 25 percent remediation milestone is attained.

(3) The third payment shall be equal to an agreed upon percent of the total contract price when the 50 percent remediation milestone is attained.

(4) The fourth payment shall be equal to an agreed upon percent of the total contract price when the 75 percent remediation milestone is attained.

(5) The fifth payment shall be equal to an agreed upon percent of the total contract price when the 100 percent remediation milestone is attained.

(6) The final payment shall be the amount of the remaining contract price that shall be paid when the 100 percent remediation milestone has been maintained for one year following cessation of all active remediation.

(Added by Stats. 2003, Ch. 689, Sec. 3. Effective January 1, 2004. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.65. (a) The claimant shall submit multiple bids for a performance-based contract in accordance with paragraph (1) of subdivision (g) of Section 25299.57 and any regulations adopted by the board to implement that section.

(b) To assist claimants in soliciting bids for performance-based contract projects, the board shall advertise bid solicitations for these projects through the board's Web site. The board shall be the receiving address for the bids, and shall offer other assistance, upon request, in accordance with the regulations adopted pursuant to this chapter. The bids shall be sealed prior to submittal to the board. This subdivision does not prevent the board from approving a performance-based contract covering multisite cleanups, if the board determines that economies of scale will assist claimants in soliciting bids or reducing overall costs.

(c) The sites for which the board may consider approving a performance-based contract include, but are not limited to, all of the following:

(1) A site that had an unauthorized release reported to the board, the regional board, or local agency five or more years ago and active remediation has not begun.

(2) A site where corrective action has been implemented for two or more years pursuant to a corrective action plan that was approved by the board, the regional board, or local agency, but that corrective action has not been effective in reducing the concentrations of the constituents of concern to the satisfaction of that board or agency.

(3) A site where corrective action costs are expected to exceed the maximum fund reimbursement amount prior to case closure.

(4) A site where the board, the regional board, or local agency has recently determined that an unauthorized release has occurred that has the potential to impact nearby receptors or otherwise cause significant impact to the waters of the state.

(5) A site where an unauthorized release of MTBE, as defined in paragraph (2) of subdivision (a) of Section 25299.97, has occurred and corrective action has not been initiated or satisfactorily conducted, as determined by the board, the regional board, or local agency, or according to any regulations adopted pursuant to Section 25296.30.

(6) A site where the board, the regional board, or local agency has determined that corrective action other than ongoing monitoring of groundwater is more likely to reduce the concentrations of constituents of concern sooner and at a lower cost.

(d) This article does not preclude a claimant from requesting board approval of a performance-based contract to conduct corrective action at the claimant's site.

(Added by Stats. 2003, Ch. 689, Sec. 3. Effective January 1, 2004. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.66. This article does not limit or abridge the powers and duties granted to the board, the regional board, or local agency pursuant to any other provision of law.

(Added by Stats. 2003, Ch. 689, Sec. 3. Effective January 1, 2004. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

Article 7. Cost Recovery, Enforcement, and Administration

(Article 7 added by Stats. 1989, Ch. 1442, Sec. 5.
Effective October 2, 1989.
Repealed as of January 1, 2016, pursuant to Section 25299.81.
Note: Prior to Sept. 27, 1990, this article comprised Sections 25299.60 to 25299.68.)

25299.70. (a) Any costs incurred and payable from the fund pursuant to subdivisions (c), (e), and (h) of Section 25299.51 shall be recovered by the Attorney General, upon request of the board, 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 Attorney General 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. 2002, Ch. 999, Sec. 50. Effective January 1, 2003. Repealed as of January 1, 2016, 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. Repealed as of January 1, 2016, 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. Repealed as of January 1, 2016, 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. Repealed as of January 1, 2016, 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. Repealed as of January 1, 2016, 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. Repealed as of January 1, 2016, 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. Repealed as of January 1, 2016, 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) An owner or operator shall furnish, under penalty of perjury, any information on fees imposed pursuant to Article 5 (commencing with Section 25299.40), financial responsibility, unauthorized releases, or corrective action as the local agency, regional board, or board may require.

(Amended by Stats. 2001, Ch. 154, Sec. 10. Effective January 1, 2002. Repealed as of January 1, 2016, 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. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

Article 8. Long-Term Study

(Article 8 added by Stats. 1989, Ch. 1442, Sec. 5.
Effective October 2, 1989.
Repealed as of January 1, 2016, pursuant to Section 25299.81.
Note: Section 25299.80, this article's only section, was repealed on Jan. 1, 2005.)

Article 9. Sunset Provision

(Article 9 added by Stats. 1989, Ch. 1442, Sec. 5.
Effective October 2, 1989.
Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.81. (a) Except as provided in subdivisions (b) and (c), this chapter shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2016, deletes or extends that date.

(b) Notwithstanding subdivision (a), Article 1 (commencing with Section 25299.10), Article 2 (commencing with Section 25299.11), and Article 4 (commencing with Section 25299.36) shall not be repealed and shall remain in effect on January 1, 2016.

(c) The repeal of certain portions of this chapter does not terminate any of the following rights, obligations, or authorities, or any provision necessary to carry out these rights and obligations:

(1) The filing and payment of claims against the fund, including the costs specified in subdivisions (c), (e), and (h) of Section 25299.51, and claims for commingled plumes, as specified in Article 11 (commencing with Section 25299.90), until the moneys in the fund are exhausted. Upon exhaustion of the fund, any remaining claims shall be invalid.

(2) The repayment of loans, outstanding as of January 1, 2016, due and payable to the board.

(3) The recovery of moneys reimbursed to a claimant to which the claimant is not entitled, or the resolution of any cost recovery action.

(4) The collection of unpaid fees that are imposed pursuant to Article 5 (commencing with Section 25299.40), as that article read on December 31, 2015, or have become due before January 1, 2016, including any interest or penalties that accrue before, on, or after January 1, 2016, associated with those unpaid fees.

(5) (A) The filing of an application for funds from, and the making of payments from, the Underground Storage Tank Petroleum Contamination Orphan
Site Cleanup Fund pursuant to Section 25299.50.2, any action for the recovery of moneys paid pursuant to Section 25299.50.2 to which the recipient is not entitled, and the resolution of that cost recovery action.

(B) Upon liquidation of funds in the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund, the obligation to make a payment from the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund is terminated.

(d) The board shall continuously post and update on its Internet Web site, but at a minimum, annually on or before September 30, information that describes the status of the fund and shall make recommendations, when appropriate, to improve the efficiency of the program.

(Amended by Stats. 2008, Ch. 616, Sec. 5. Effective January 1, 2009. Repealed as of January 1, 2016, by its own provisions. Note: This repeal date applies to Chapter 6.75 (except Articles 1, 2, 4, and 13), commencing with Section 25299.10.)

Article 11. Commingled Plume Account

(Heading of Article 11 amended by Stats. 1997, Ch. 17, Sec. 70.
Effective January 1, 1998.
Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.90. The Legislature hereby finds and declares all of the following:

(a) Commingled plumes of petroleum contaminated groundwater involve serious water quality impacts.

(b) Unauthorized releases from underground storage tanks are a major source of commingled plumes of petroleum contaminated groundwater.

(c) Unless corrective action is performed in a coordinated manner, remedial action of commingled plumes may be ineffective.

(d) Disagreement over shared liability among parties responsible for underground storage tank leaks which contributed to commingled plumes may result in substantial expenditures for legal costs and the expense of necessary cleanup.

(e) Reimbursing claimants jointly will result in more efficient cleanups, lower total corrective action costs, and reduced legal costs for commingled plumes.

(Added by Stats. 1996, Ch. 611, Sec. 18. Effective January 1, 1997. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.91. As used in this article, the following terms have the following meaning:

(a) "Commingled plume" means the condition that exists when groundwater contaminated with petroleum from two or more discrete unauthorized
releases have mixed or encroached upon one another to the extent that the corrective action performed on one plume will necessarily affect the other. A commingled plume does not include either of the following:

(1) Contaminated groundwater plumes resulting from unauthorized releases or discharges from a single site.

(2) Soil contamination, unless it can be demonstrated that the contaminated soil is an immediate threat to groundwater.

(b) "Contributing site" means a site on which an unauthorized release or discharge of waste has occurred or is occurring and has impacted or threatens to impact groundwater.

(Added by Stats. 1996, Ch. 611, Sec. 18. Effective January 1, 1997. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.92. A sum not to exceed ten million dollars ($10,000,000) from Item 3940-001-0439 of Section 2.00 of the Budget Act of 1996 (Ch. 162, Stats. 1996) shall be available for expenditure for the 1996-97 fiscal year for the purposes of this article. In subsequent fiscal years, it is the intent of the Legislature that an appropriation be made in the annual Budget Act to carry out this article.

(Amended by Stats. 1997, Ch. 17, Sec. 71. Effective January 1, 1998. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.93. (a) A joint claim may be submitted for reimbursement of corrective action costs for a commingled plume if all of the following conditions are met:

(1) Each person named in the joint claim is an owner, operator, or other responsible party ordered to perform corrective action or remedial action pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), or Division 7 (commencing with Section 13000) of the Water Code.

(2) After performing a soil and water investigation in accordance with Article 11 (commencing with Section 2720) of Chapter 16 of Division 3 of Title 23 of the California Code of Regulations, the joint claimants demonstrate to the satisfaction of the local or regulatory agency and the board that a commingled plume exists and that every identified unauthorized release or discharge has contributed substantially to the commingled plume.

(3) At least 85 percent of the commingled plume is comprised of petroleum contamination resulting from an unauthorized release from a tank whose owner or operator is eligible for payment of a claim pursuant to Section 25299.54.

(4) At least two contributing sites involve an unauthorized release.

(5) The joint claimants have coordinated corrective action as soon as practicable.

(6) The joint claimants agree to seek preapproval of corrective action costs in accordance with subdivision (c) of Section 25299.57.

(7) The joint claimants have entered into a written agreement that provides for a coordinated corrective action plan. The written agreement shall require the joint claimants to do the following:

(A) Appoint one of the joint claimants to represent the joint claimants for purposes of interacting with the local or regulatory agency and the board.

(B) Permit the joint claimants reasonable access to contributing sites as necessary to perform corrective action.

(C) Identify any corrective action costs incurred at contributing sites and assess if any of those costs may be eligible for reimbursement under this chapter.

(D) Estimate responsibility among the joint claimants and provide a formula or method for apportioning costs that are not eligible for reimbursement under this chapter or which exceed the limitations prescribed in Section 25299.94.

(E) Identify all money or other compensation received by any joint claimant which is related to contamination at any contributing site or the commingled groundwater plume.

(b) A joint claim may be submitted for reimbursement of third parties as provided in Section 25299.58 subject to both of the following conditions:

(1) The conditions set forth in subdivision (a) are satisfied.

(2) An owner or operator named in the joint claim is liable for a third-party compensation claim.

(Added by Stats. 1996, Ch. 611, Sec. 18. Effective January 1, 1997. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.94. (a) The board may pay the cost of corrective actions and third-party compensation claims that are submitted as part of a joint claim and which exceed the amount specified in subdivision (b), but do not exceed an amount equal to one million five hundred thousand dollars ($1,500,000) per occurrence, for which an owner or operator named in the joint claim is eligible for reimbursement under this chapter. If a claim from a contributing site exceeds one million dollars ($1,000,000) for an occurrence, the board may only reimburse costs submitted pursuant to Section 25299.57 for those costs in excess of one million dollars ($1,000,000).

(b) For each joint claim, the board may only pay for the costs of corrective action and third-party compensation claims that exceed the aggregate of the levels of financial responsibility required pursuant to Section 25299.32 for each owner or operator named in the joint claim.

(c) The costs of corrective action determined eligible for reimbursement shall be paid before third-party compensation claims.

(d) Except as provided in paragraph (1) of subdivision (e), reimbursement for costs of corrective action is limited to costs incurred by the joint claimants after executing an agreement under paragraph (7) of subdivision (a) of Section 25299.93.

(e) Both of the following costs of corrective action incurred at a contributing site may be reimbursed in accordance with subdivision (f):

(1) Costs incurred by an owner or operator before executing an agreement described in paragraph (7) of subdivision (a) of Section 25299.93.

(2) Costs relating to unauthorized releases that do not contribute to the commingled plume, but which are included in the occurrence which is the subject of the joint claim.

(f) An owner or operator may seek reimbursement of costs described in subdivision (e) by doing either of the following:

(1) Including a payment request for those corrective action costs with the claim filed under this article.

(2) Filing a claim or maintaining an existing claim under Article 6 (commencing with Section 25299.50).

(g) Any reimbursement received pursuant to subdivision (f) and any amount excluded from the payment based on the amount of financial responsibility required to be maintained shall be applied toward the limitations prescribed in subdivision (a).

(h) The board shall not reimburse a claimant or joint claimant for any eligible costs for which the claimant or joint claimant has been, or will be, compensated by another party.

(Amended by Stats. 1999, Ch. 812, Sec. 23. Effective January 1, 2000. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.95. (a) An owner or operator named in a joint claim filed under this article may not file or maintain a claim under Article 6 (commencing with Section 25299.50) for the same occurrence.

(b) When a joint claim under this article has been approved, the board shall remove any claims filed under Article 6 (commencing with Section 25299.50) by an owner or operator named in the approved claim.

(c) If an owner or operator withdraws from a claim filed under this

article, the owner or operator may submit or resubmit a claim pursuant to Article 6 (commencing with Section 25299.50).

(d) Any claims filed pursuant to subdivision (c) shall be assigned to a priority class pursuant to Section 25299.52 and ranked in accordance with the procedures contained in regulations adopted by the board pursuant to Section 25299.77.

(e) This section does not apply to a claim filed for a separate occurrence at a contributing site or a claim authorized pursuant to paragraph (2) of subdivision (f) of Section 25299.94.

(Added by Stats. 1996, Ch. 611, Sec. 18. Effective January 1, 1997. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

25299.96. The priority for payment of a joint claim submitted under this article shall be based on the date on which the board receives a complete application. For purposes of this section, an application shall not be considered complete until the applicable local agency or other regulatory agency confirms the existence of a commingled plume and the joint claimant submits an agreement which complies with paragraph (7) of subdivision (a) of Section 25299.93.

(Added by Stats. 1996, Ch. 611, Sec. 18. Effective January 1, 1997. Repealed as of January 1, 2016, pursuant to Section 25299.81.)

Article 12. Drinking Water Well Protection

(Article 12 added by Stats. 1997, Ch. 814, Sec. 7.
Effective January 1, 1998.
Repealed as of January 1, 2016, pursuant to Section 25299.81.
See the identical Article 12 added by Stats. 1997, Ch. 815.)

25299.97. (a) For the purposes of this article, the following definitions shall apply:

(1) "Public drinking water well" means a wellhead that provides drinking water to a public water system, as that term is defined in Section 116275, that is regulated by the State Department of Health Services and that is subject to Section 116455.

(2) "MTBE" means methyl tertiary-butyl ether.

(3) "GIS mapping system" means a geographic information system that collects, stores, retrieves, analyzes, and displays environmental geographic data in a data base that is accessible to the public.

(4) "Motor vehicle fuel" includes gasoline, natural gasoline, blends of gasoline and alcohol or gasoline and oxygenates and any inflammable liquid, by whatever name the liquid may be known or sold, which is used or usable for propelling motor vehicles operated by the explosion type engine. It does not include kerosine, liquefied petroleum gas, or natural gas, in liquid or gaseous form.

(5) "Oxygenated motor vehicle fuel" is motor vehicle fuel, as defined in paragraph (4), that meets the federal definition for "Oxygenated Fuel" as defined in Section 7545(m) of Title 42 of the United States Code.

(6) "Oxygenate" means an organic compound containing oxygen that has been approved by the United States Environmental Protection Agency as a gasoline additive to meet the requirements for an "oxygenated fuel" pursuant to Section 7545 of Title 42 of the United States Code.

(b) The State Water Resources Control Board shall upgrade the data base created by Section 25299.39.1. This upgrade shall include the establishment of a statewide GIS mapping system as described in this section only upon an appropriation by the Legislature for this purpose.

(c) (1) For purposes of subdivision (b), the board shall create a GIS Mapping and Data Management Advisory Committee. The committee shall give the board advice on location standards, protocols, metadata, and the appropriate data to expand the data base to create a cost-effective GIS mapping system that will provide the appropriate information to allow agencies to better protect public drinking water wells and, if feasible, nearby aquifers that are reasonably expected to be used as drinking water, from contamination by motor vehicle fuel from underground storage tanks and intrastate and interstate pipelines that are regulated by the State Fire Marshal pursuant to the California Pipeline Safety Act of 1981, Chapter 5.5 (commencing with Section 51010.5) of Part 1 of Division 1 of Title 5 of the Government Code.

(2) The advisory committee shall include, at a minimum, members from appropriate state and local agencies, affected industry and business, the water agencies that provide drinking water in Santa Monica, the water agencies that provide drinking water in the Santa Clara Valley, nonprofit environmental groups dedicated to the conservation and preservation of natural resources, and underground storage tank owners.

(d) (1) The board shall create two pilot projects, the Santa Monica Groundwater Pilot Project and the Santa Clara Valley Groundwater Pilot Project, which shall terminate on July 1, 1999.

(2) The board shall create the pilot projects with the advice of the advisory committee so as to expedite and prioritize the upgrading of the data base for those regions of the state where groundwater provides, or would be called on in an emergency to provide, a significant portion of the region's drinking water.

(3) The board shall use the pilot projects to define and assess the parameters of the data base, identify data needs, develop opportunities to electronically link data bases and electronic submission of information, offer access to the public via the Internet, streamline existing processes, and work out the details for data management and a GIS mapping system as described in this article.

(4) The pilot projects shall study appropriate modification to public water systems and response times.

(e) To upgrade the data base as required by this section, the board, in consultation with the advisory committee, shall do all of the following:

(1) Coordinate with the Department of Water Resources and the State Department of Health Services to obtain the location of existing drinking water wells and appropriate water resource and quality data to meet the requirements of this article.

(2) Coordinate with local agencies authorized to implement this chapter to obtain the location of all underground storage tanks that store motor vehicle fuel that are within 1,000 feet of a public drinking water well.

(3) Coordinate with local agencies authorized to implement this chapter to add the location of all known releases of motor vehicle fuel from underground storage tanks that are within 1,000 feet of a drinking water well.

(4) Coordinate with the State Fire Marshal to add the location and leak history of all pipelines or segments of pipelines that transport motor vehicle fuel and that are regulated by the State Fire Marshal pursuant to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code that are within 1,000 feet of an existing public drinking water well.

(f) The board may expend up to four hundred thousand dollars ($400,000) from the Underground Storage Tank Cleanup Fund for the purposes set
forth in Section 25299.36 to fund the GIS mapping system projects referred to in this section.

(Amended (as added by Stats. 1997, Ch. 814) by Stats. 2001, Ch. 745, Sec. 134. Effective October 12, 2001. Repealed as of January 1, 2016, pursuant to Section 25299.81. See identical section in the Article 12 added by Stats. 1997, Ch. 815.)

Article 13. Drinking Water Treatment and Research

(Article 13 repealed and added by Stats. 1998, Ch. 997, Sec. 4.
Effective January 1, 1999.
Repealed as of January 1, 2010, pursuant to Section 25299.99.2.)

25299.99.1. (a) The board shall annually transfer five million dollars ($5,000,000) from the Underground Storage Tank Cleanup Fund, created pursuant to Section 25299.50, to the Drinking Water Treatment and Research Fund created by Section 116367, to be expended for the purposes set forth in Section 116367 if a public drinking water well has been contaminated by an oxygenate and there is substantial evidence that the contamination was caused by a release from an underground storage tank.

(b) This section shall become operative June 30, 1999.

(Added by Stats. 1998, Ch. 997, Sec. 4. Effective January 1, 1999. Section operative June 30, 1999, by its own provisions. Repealed as of January 1, 2010, pursuant to Section 25299.99.2.)

25299.99.2. This article, notwithstanding Section 25299.81, shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date.

(Amended by Stats. 1999, Ch. 812, Sec. 24. Effective January 1, 2000. Repealed as of January 1, 2010, by its own provisions. Note: Repeal affects Article 13, comprising Sections 25299.99.1 to 25299.99.3.)

25299.99.3. In any fiscal year, if the department determines that less than two million dollars ($2,000,000) of unencumbered funds remain in the fund, it shall notify the board and the board shall transfer five million dollars ($5,000,000) from the Underground Storage Tank Cleanup Fund to the Drinking Water Treatment and Research Fund, to be expended for the purposes set forth in Section 116367, if a drinking water well has been contaminated with oxygenate and there is substantial evidence that the contamination was caused by a release from an underground storage tank.

(Added by Stats. 1999, Ch. 812, Sec. 25. Effective January 1, 2000. Repealed as of January 1, 2010, pursuant to Section 25299.99.2.)

HEALTH AND SAFETY CODE

CHAPTER 6.76. LOANS FOR REPLACING, REMOVING, OR UPGRADING UNDERGROUND STORAGE TANKS

(Chapter 6.76 added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.100. For purposes of this chapter, the following definitions apply:

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

(b) "Loan applicant" means a small business that applies to the board for a loan pursuant to this chapter.

(c) "Grant applicant" means a small business that applies to the board for a grant pursuant to this chapter.

(d) "Tank" means an underground storage tank, as defined in Section 25281, used for the purpose of storing petroleum, as defined in Section 25299.22. "Tank" also includes under-dispenser containment systems, spill containment systems, enhanced monitoring and control systems, and vapor recovery systems and dispensers connected to the underground piping and the underground storage tank.

(e) "Project tank" means one or more tanks that would be upgraded, replaced, or removed with loan or grant funds.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.101. (a) The board shall conduct a loan program pursuant to this chapter, to assist small businesses in upgrading, replacing, or removing tanks to meet applicable local, state, or federal standards. Loan funds may also be used for corrective actions, as defined in Section 25299.14.

(b) The board shall also conduct a grant program, pursuant to this chapter, to assist small businesses to comply with Sections 25284.1 and 25292.4.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.102. The board shall only make loan funds available to loan applicants that meet all of the following eligibility requirements:

(a) The loan applicant is a small business, either as defined in Section 632 of Title 15 of the United States Code, and in the federal regulations adopted to implement that section, as specified in Part 121 (commencing with Section 121.1011) of Chapter 1 of Title 13 of the Code of Federal Regulations, or employs fewer than 500 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation. In either case, the principal office of the small business shall be domiciled in the state, and the officers of the small business shall be domiciled in this state. The board shall give priority to awarding loans to small businesses that meet the definition of small business specified in subdivision (d) of Section 14837 of the Government Code.

(b) The loan applicant owns or operates a project tank.

(c) Loan funds are not obtainable, upon reasonable terms, from private financial institutions, the California Pollution Control Financing Authority, or any other government board.

(d) The loan applicant demonstrates the ability to repay the loan, and the availability of adequate collateral to secure the loan.

(e) All tanks owned and operated by the loan applicant are subject to compliance with Chapter 6.7 (commencing with Section 25280), and the regulations adopted pursuant to that chapter.

(f) The loan applicant has complied, or will comply, with the financial responsibility requirements specified in Section 25299.31 and the regulations adopted pursuant to this section.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.103. (a) A complete loan application shall include all of the following:

(1) Evidence of eligibility.

(2) An environmental audit, as specified in Section 5268 of Title 10 of the California Code of Regulations.

(3) Financial and legal documents necessary to demonstrate the applicant's ability to repay and provide collateral for the loan. The department shall develop a standard list of documents required of all applicants, and may also request from individual applicants additional financial and legal documents not provided on this list.

(4) An explanation of the reasons why the project tank is not in compliance with applicable local, state, or federal standards, and evidence that tanks not included in the list of project tanks are currently in compliance with applicable local, state, or federal standards.

(5) A detailed cost estimate of the tasks which are required to be completed in order for the project tanks to comply with applicable local, state, or federal standards.

(6) Any other information that the department determines to be necessary to include in an application form.

(b) Notwithstanding paragraph (4) of subdivision (a), the department may not refuse to grant a loan to an applicant solely because the applicant has failed to obtain a permit pursuant to the requirements of Chapter 6.7 (commencing with Section 25280).

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.104. (a) The minimum amount that the board may loan an applicant is ten thousand dollars ($10,000), and the maximum amount that the board may loan an applicant is seven hundred fifty thousand dollars ($750,000).

(b) The term of the loan shall be for a maximum of 20 years if secured by real property, and for 10 years if not secured by real property. The interest rate for loans shall be set at the rate earned by the Surplus Money Investment Fund at the time of the loan commitment.

(c) Loan funds may be used to finance up to 100 percent of the costs necessary to upgrade, remove, or replace project tanks, including corrective actions, to meet applicable local, state, or federal standards, including, but not limited to, any design, construction, monitoring, operation, or maintenance requirements adopted pursuant to Sections 25284.1 and 25292.4.

(d) The repeal of this chapter pursuant to Section 25299.117 shall not extinguish a loan obligation and shall not impair the deed of trust or other collateral made pursuant to this chapter or the authority of the state to pursue appropriate action for collection.

(e) The board may charge a loan fee to loan applicants of up to 2 percent of the requested loan amount. The loan fee shall be deposited in the Petroleum Financing Collection Account.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.105. (a) The board shall make grant funds available from the Petroleum Underground Storage Tank Financing Account to eligible grant applicants who meet all of the following eligibility requirements:

(1) The grant applicant is a small business, pursuant to the following requirements:

(A) The grant applicant meets the conditions for a small business concern as defined in Section 632 of Title 15 of the United States Code, and in the federal regulations adopted to implement that section, as specified in Part 121 (commencing with Section 121.101) of Chapter I of Title 13 of the Code of Federal Regulations.

(B) The grant applicant employs fewer than 20 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation.

(2) The principal office of the grant applicant is domiciled in the state, and the officers of the grant applicant are domiciled in this state.

(3) The grant applicant, the applicant's family, or an affiliated entity, has owned or operated the project tank since January 1, 1997.

(4) All tanks owned and operated by the grant applicant are subject to compliance with Chapter 6.7 (commencing with Section 25280), and the regulations adopted pursuant to that chapter.

(5) The facility where the project tank is located has sold at retail less than 900,000 gallons of gasoline annually for each of the two years preceding the submission of the grant application. The number of gallons sold shall be based upon taxable sales figures provided to the State Board of Equalization for that facility.

(6) The grant applicant owns or operates a tank that is in compliance with Section 25290.1, 25290.2, or 25291, or subdivisions (d) and (e) of Section 25292, and the regulations adopted to implement those sections.

(7) The facility where the project tank is located was legally in business retailing gasoline after January 1, 1999.

(b) Grant funds may only be used to pay the costs necessary to comply with the requirements of Section 25284.1, 25292.4, or 25292.5.

(c) If the total amount of grant requests by eligible grant applicants to the board pursuant to this section exceeds, or is anticipated to exceed, the amount in the Petroleum Underground Storage Tank Financing Account, the board may adopt a priority ranking list to award grants based upon the level of demonstrated financial hardship of the eligible grant applicant, or the relative impact upon the local community where the project tank is located if the claim is denied.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.106. A complete grant application shall include all of the following information:

(a) Evidence of eligibility.

(b) Financial and legal documents necessary to demonstrate the applicant's financial hardship, if any. The board shall develop a standard list of documents required of all applicants, and may also request from individual applicants additional financial and legal documents not provided on this list.

(c) An explanation of the actions the applicant is required to take to comply with the requirements of Sections 25284.1 and 25292.4.

(d) A detailed cost estimate of the actions that are required to be completed for the project tanks to comply with applicable local, state, or federal standards.

(e) Any other information that the department determines to be necessary to include in an application form.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.107. (a) The minimum amount that the board may grant an applicant is three thousand dollars ($3,000), and the maximum amount that the board may grant an applicant is fifty thousand dollars ($50,000).

(b) Grant funds may be used to finance up to 100 percent of the costs necessary to comply with Sections 25284.1, 25292.4, and 25292.5. No person or entity is eligible to receive more than fifty thousand dollars ($50,000) in grant funds pursuant to this chapter.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.108. The board shall adopt regulations necessary to implement and make specific this chapter as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date unless the board complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 pursuant to subdivision (e) of Section 11346.1 of the Government Code.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.109. (a) The Petroleum Underground Storage Tank Financing Account is hereby created in the State Treasury. The Petroleum Underground Storage Tank Financing Account is created for both of the following purposes:

(1) Receiving federal, state, and local money.

(2) Receiving repayments of loans and interest and late fees on those accounts.

(b) Upon appropriation by the Legislature, funds in the account shall be used by the board only to make loans and grants pursuant to this chapter.

(c) The board shall annually make available not more than 33 percent of the available funds from the account for the purposes of providing grants pursuant to this chapter.

(d) Notwithstanding Section 16305.7 of the Government Code, all interest or other increments resulting from the investment of the funds in the Petroleum Underground Storage Tank Financing Account pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code shall be deposited in a subaccount of the Petroleum Underground Storage Tank Financing Account, and expended only pursuant to Section 25299.113.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.110. (a) There is hereby created, in the California Economic Development Grant and Loan Fund, the Petroleum Financing Collection Account. The Petroleum Financing Collection Account is created solely for the purpose of receiving charges, fees, and income, including, but not limited to, the charges and costs collected pursuant to subdivision (c).

(b) To defray the costs of the board in administrating the loan program created pursuant to this chapter, the board may do all of the following:

(1) Impose reasonable charges on all applications and impose the loan fee specified in subdivision (e) of Section 25299.104.

(2) Recover collection costs from the borrower or other party.

(3) Earn income on any asset recovered pursuant to a loan default.

(c) The board shall deposit the charges and costs collected pursuant to subdivision (b), including the loan fees charged pursuant to subdivision (e) of Section 25299.104, in the Petroleum Financing Collection Account. Notwithstanding Section 13340 of the Government Code, all money deposited in the Petroleum Financing Collection Account shall be continuously appropriated to the board for those costs necessary to protect the state's position as a lender-creditor. These costs shall be broadly construed to include, but not be limited to, foreclosure expenses, auction fees, title searches, appraisals, real estate brokerage fees, attorney fees, mortgage payments, insurance payments, utility costs, repair costs, removal and storage costs for repossessed equipment and inventory, and additional expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.111. If this chapter is repealed pursuant to Section 25299.117, then following the day on which the authority ceases to exist, all moneys in the Petroleum Underground Storage Tank Financing Account and all moneys due that account shall revert to, and accrue to the benefit of, the Underground Storage Tank Cleanup Fund in the State Treasury.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.112. On or before January 1 of each year, the board shall submit a report to the Legislature concerning the performance of the grant and loan program established by this chapter, including the number and size of grants and loans made, characteristics of grant and loan recipients, the number of underground storage tanks removed and upgraded as a result of the grant and loan program, and the amount of money spent on administering the program. Copies of the report shall be submitted to the appropriate fiscal and policy committees of the Legislature and, upon request, to individual Members of the Legislature.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.113. (a) The board may, upon appropriation by the Legislature in the annual Budget Act, expend the funds in the subaccount established in the Petroleum Underground Storage Tank Financing Account in subdivision (d) of Section 25299.109 for the administrative expenses in carrying out this chapter.

(b) Commencing on the effective date of this chapter, the Controller shall do all of the following:

(1) Transfer the interest payments from loan applicants and interest earned on the funds in the Petroleum Underground Storage Tank Financing Account received from July 1, 2002, to the effective date of this chapter, inclusive, into the subaccount established in subdivision (d) of Section 25299.109.

(2) Direct to the Petroleum Underground Storage Tank Financing Account repayments of principal of loans issued pursuant to former Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code, as that chapter existed on December 31, 2003.

(3) Direct to the subaccount established in subdivision (d) of Section 25299.109, the payment of interest on loans issued pursuant to former

Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code, as that chapter existed on December 31, 2003.

(c) For the 2004-05 fiscal year, using funds available in the subaccount established in subdivision (d) of Section 25299.109, the Department of Finance may augment the board's budget for the reasonable amount necessary to implement this chapter and may administratively establish necessary positions. Pursuant to subdivision (a), the board shall request the continuation of the necessary positions and funding for the 2005-06 fiscal year, and succeeding years, through the annual Budget Act.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.114. All persons serving in an exempt position engaged in the performance of a function described in former Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code as repealed by Chapter 229 of the Statutes of 2003 or the administration of the program described in that chapter shall be transferred to the board subject to approval by the Department of Finance. This transfer shall not affect the status, positions, and rights of these persons. Section 19050.9 of the Government Code shall apply to the transfer of persons serving in state civil service who are engaged in the performance of a function or the administration of that chapter.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.115. The repeal of former Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code by Chapter 229 of the Statutes of 2003 shall not be construed to terminate any obligation to pay claims filed, repay loans outstanding, or resolve any cost recovery action filed on or before January 1, 2004.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.116. A recipient of a grant that was awarded pursuant to former Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code, as that chapter existed on December 31, 2003, and that expired after December 31, 2003, may receive grant funds from the Petroleum Underground Storage Tank Financing Account consistent with the terms of the grant, for one year following enactment of this chapter, notwithstanding expiration of the grant.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, pursuant to Section 25299.117.)

25299.117. This chapter is repealed as of January 1, 2011, unless a later enacted statute that is enacted on or before January 1, 2011, deletes or extends that date.

(Added by Stats. 2004, Ch. 624, Sec. 1. Effective September 21, 2004. Repealed as of January 1, 2011, by its own provisions. Note: Repeal affects Chapter 6.76, commencing with Section 25299.100.)

HEALTH AND SAFETY CODE

CHAPTER 6.77. GRANTS FOR INSTALLING UNDERGROUND STORAGE TANKS

(Chapter 6.77 added by Stats. 2004, Ch. 649, Sec. 5. Effective September 21, 2004.)

25299.200. For purposes of this chapter, the following definitions apply:

(a) "Account" means the Petroleum Underground Storage Tank Financing Account.

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

(c) "Grant applicant" means a small business, as described in paragraph (1) of subdivision (a) of Section 25299.202, that applies to the board for a grant pursuant to this chapter.

(d) "Tank" means an underground storage tank, as defined in Section 25281, installed in accordance with the requirements of Section 25290.1 on and after July 1, 2004, but before June 30, 2009, that is used for the purpose of storing petroleum, as defined in Section 25299.22.

(Added by Stats. 2004, Ch. 649, Sec. 5. Effective September 21, 2004.)

25299.201. (a) The board shall conduct a grant program pursuant to this chapter, to assist small businesses in meeting the requirements of subdivisions (e) and (j) of Section 25290.1.

(b) For purposes of this chapter, a grant provided to assist a small business in complying with subdivision (j) of Section 25290.1 may include the cost of pretesting the underground storage tank prior to backfill, in order to evaluate the underground storage tank's ability to pass the test required by subdivision (j) of Section 25290.1.

(Added by Stats. 2004, Ch. 649, Sec. 5. Effective September 21, 2004.)

25299.202. (a) The board shall make grant funds available from the Petroleum Underground Storage Tank Financing Account to eligible grant applicants that meet the following conditions:

(1) The grant applicant is a small business that employs fewer than 500 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation.

(2) The principal office of the grant applicant is domiciled in the state, and the officers of the grant applicant are domiciled in the state.

(3) All tanks owned and operated by the grant applicant are subject to compliance with Chapter 6.7 (commencing with Section 25280), and the regulations adopted pursuant to that chapter.

(b) A grant applicant may expend grant funds only to pay the costs necessary to comply with subdivision (j) of Section 25290.1, and to finance the leak detection equipment costs necessary to meet with the requirements of subdivision (e) of Section 25290.1.

(Added by Stats. 2004, Ch. 649, Sec. 5. Effective September 21, 2004.)

25299.203. (a) The board may issue a grant pursuant to this chapter before the installation of the tank, or within 12 months after the tank has been installed and placed in use.

(b) A complete grant application shall include all of the following information:

(1) Evidence of eligibility.

(2) A detailed cost estimate of the work and equipment required to be completed or installed for the tank to comply with subdivision (e) or (j) of Section 25290.1, as applicable.

(3) A detailed description of the costs incurred to perform the work and install the equipment required for the tank to comply with subdivision (e) or (j) of Section 25290.1, as applicable.

(4) Any other information the board determines is necessary to be included in the application form.

(Added by Stats. 2004, Ch. 649, Sec. 5. Effective September 21, 2004.)

25299.204. (a) A grant recipient may use grant funds to finance or reimburse up to 100 percent of the costs necessary to comply with subdivision (j) of Section 25290.1, and to finance or reimburse the leak detection equipment costs necessary to meet the requirements of subdivision (e) of Section 25290.1.

(b) The board, pursuant to this chapter, shall not grant more than fifteen thousand dollars ($15,000) per facility, as defined in Section 25281, to assist a grant applicant in meeting the requirements of subdivision (e) of Section 25290.1.

(c) The board, pursuant to this chapter, shall not grant more than fifteen thousand dollars ($15,000) per facility, as defined in Section 25281, to assist a grant applicant in meeting the requirements of subdivision (j) of Section 25290.1.

(Added by Stats. 2004, Ch. 649, Sec. 5. Effective September 21, 2004.)

25299.205. (a) (1) The Petroleum Underground Storage Tank Financing Account is hereby created in the State Treasury.

(2) The funds deposited into the account may be expended by the board, upon appropriation by the Legislature, for making grants pursuant to this chapter and administering this chapter.

(b) (1) This section shall not become operative if Assembly Bill 1068 of the 2003-04 Regular Session of the Legislature is enacted and takes effect on or before January 1, 2005, that bill creates the Petroleum Underground Storage Tank Financing Account in the State Treasury, and the bill adding this section takes effect on or after the effective date of Assembly Bill 1068.

(2) If the act adding this section is enacted and takes effect before the effective date of Assembly Bill 1068, this section shall become operative on the effective date of that act, and shall become inoperative on the effective date of Assembly Bill 1068. On the date this section becomes inoperative, the Controller shall transfer all moneys in the account to the Petroleum Underground Storage Tank Financing Account established pursuant to Section 25299.109.

(Added by Stats. 2004, Ch. 649, Sec. 5. Effective September 21, 2004. Section is nonoperative pursuant to (and except for) paragraph (1) of subdivision (b).)

25299.206. (a) The board shall transfer the sum of three million five hundred thousand dollars ($3,500,000) for the 2004-05 fiscal year, from the Underground Storage Tank Cleanup Fund to the account. Those funds are hereby appropriated to the board in each of those fiscal years for making grants pursuant to this chapter and administering this chapter.

(b) At the end of each fiscal year, any funds transferred from the Underground Storage Tank Cleanup Fund that remain in the account shall revert to the Underground Storage Tank Cleanup Fund.

(Added by Stats. 2004, Ch. 649, Sec. 5. Effective September 21, 2004.)

HEALTH AND SAFETY CODE

CHAPTER 6.8. HAZARDOUS SUBSTANCE ACCOUNT

(Chapter 6.8 repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

Article 1. Short Title and Legislative Intent

(Article 1 added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25300. This chapter shall be known and may be cited as the Carpenter-Presley-Tanner Hazardous Substance Account Act.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25301. It is the intent of the Legislature to do all of the following:

(a) Establish a program to provide for response authority for releases of hazardous substances, including spills and hazardous waste disposal sites that pose a threat to the public health or the environment.

(b) Compensate persons, under certain circumstances, for out-of-pocket medical expenses and lost wages or business income resulting from injuries proximately caused by exposure to releases of hazardous substances.

(c) Make available adequate funds in order to permit the State of California to assure payment of its 10-percent share of the costs mandated pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

Article 2. Definitions

(Article 2 added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25310. The definitions set forth in this article shall govern the interpretation of this chapter. Unless the context requires otherwise and except as provided in this article, the definitions contained in Section 101 of the federal act (42 U.S.C. Sec. 9601) shall apply to the terms used in this chapter.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25310.5. "Agency" means the California Environmental Protection Agency.

(Added by Stats. 2000, Ch. 912, Sec. 6. Effective September 29, 2000.)

25311. "Contract competitor" means any person competing for a state contract pursuant to subdivision (c) of Section 25358.3.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25312. "Department" means the Department of Toxic Substances Control.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25313. "Director" means the Director of Toxic Substances Control.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25314. "Feasibility study" means the identification and evaluation of technically feasible and effective remedial action alternatives to protect public health and the environment, at a hazardous substance release site, or other activities deemed necessary by the department for the development of a remedial action plan.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25315. "Federal act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25316. "Hazardous substance" means:

(a) Any substance designated pursuant to Section 1321 (b)(2)(A) of Title 33 of the United States Code.

(b) Any element, compound, mixture, solution, or substance designated pursuant to Section 102 of the federal act (42 U.S.C. Sec. 9602).

(c) Any hazardous waste having the characteristics identified under or listed pursuant to Section 6921 of Title 42 of the United States Code, but not including any waste the regulation of which under the Solid Waste Disposal Act (42 U.S.C. Sec. 6901 et seq.) has been suspended by act of Congress.

(d) Any toxic pollutant listed under Section 1317 (a) of Title 33 of the United States Code.

(e) Any hazardous air pollutant listed under Section 7412 of Title 42 of the United States Code.

(f) Any imminently hazardous chemical substance or mixture with respect to which the Administrator of the United States Environmental Protection Agency has taken action pursuant to Section 2606 of Title 15 of the United States Code.

(g) Any hazardous waste or extremely hazardous waste as defined by Sections 25117 and 25115, respectively, unless expressly excluded.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25317. "Hazardous substance" does not include:

(a) Petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance in subdivisions (a) to (f), inclusive, of Section 25316, and natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), or the ash produced by a resource recovery facility utilizing a municipal solid waste stream.

(b) Nontoxic, nonflammable, noncorrosive stormwater runoff drained from underground vaults, chambers, or manholes into gutters or storm sewers.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25318.5. "Operation and maintenance" means those activities initiated or continued at a hazardous substance release site following completion of a response action that are deemed necessary by the department or regional board in order to protect public health or safety or the environment, to maintain the effectiveness of the response action at the site, or to achieve or maintain the response action standards and objectives established by the final remedial action plan or final removal action work plan applicable to the site.

(Amended by Stats. 2000, Ch. 912, Sec. 7. Effective September 29, 2000.)

25319. "Person" means an individual, trust, firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. "Person" also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities, to the extent permitted by law.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25319.1. "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been, or may have been, a release of a hazardous substance based on reasonably available information about the property and general vicinity. A phase I environmental assessment may include, but is not limited to, a review of public and private records, current and historical land uses, prior releases of a hazardous material, data base searches, reviews of relevant files of federal, state, and local agencies, visual and other surveys of the property and general vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of a phase I environmental assessment.

(Added by Stats. 2000, Ch. 912, Sec. 8. Effective September 29, 2000.)

25319.5. "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past hazardous substance management practices have resulted in a release or threatened release of a hazardous substance that poses a threat to the public health or the environment and is conducted in a manner that complies with the guidelines published by the department entitled "Preliminary Endangerment Assessment: Guidance Manual," or as those guidelines may be amended by the department. A preliminary endangerment assessment includes all of the following activities:

(a) Sampling and analysis of a site.

(b) A preliminary determination of the type and extent of hazardous material contamination of a site.

(c) A preliminary evaluation of the risks the hazardous materials contamination of a site may pose to public health or the environment.

(Repealed and added by Stats. 2000, Ch. 912, Sec. 10. Effective September 29, 2000.)

25319.6. "Regional board" means a California regional water quality control board.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25320. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25321. "Release" does not include any of the following:

(a) Any release that results in exposure to persons solely within a workplace, with respect to a claim those exposed persons may assert against their employer.

(b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine.

(c) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. Sec. 2011, et seq.), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 2210 of Title 42 of the United States Code or, for the purposes of Section 104 of the federal act (42 U.S.C. Sec. 9604) or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under Section 7912(a)(1) or 7942(a) of Title 42 of the United States Code, which sections are a part of the Uranium Mill Tailings Radiation Control Act of 1978.

(d) The normal application of fertilizer, plant growth regulants, and pesticides.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25322. "Remedy" or "remedial action" includes all of the following:

(a) Those actions that are consistent with a permanent remedy, that are taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous substance into the environment, as further defined by Section 101(24) of the federal act (42 U.S.C. Sec. 9601(24)), except that any reference in Section 101(24) of the federal act (42 U.S.C. Sec. 9601(24)) to the President, relating to determinations regarding the relocation of residents, businesses, and community facilities shall, for the purposes of this chapter, be deemed to be a reference to the Governor and any other reference in that section to the President shall, for the purposes of this chapter, be deemed a reference to the Governor, or the director, if designated by the Governor.

(b) Those actions that are necessary to monitor, assess, and evaluate a release or a threatened release of a hazardous substance.

(c) Site operation and maintenance.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25322.1. "Remedial design" means the detailed engineering plan to implement the remedial action alternative or initial remedial measure approved by the department.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25322.2. "Remedial investigation" means those actions deemed necessary by the department to determine the full extent of a hazardous substance release at a site, identify the public health and environment threat posed by the release, collect data on possible remedies, and otherwise evaluate the site for purposes of developing a remedial action plan.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25323. "Remove" or "removal" includes the cleanup or removal of released hazardous substances from the environment or the taking of other actions as may be necessary to prevent, minimize, or mitigate damage which may
otherwise result from a release or threatened release, as further defined by Section 101(23) of the federal act (42 U.S.C. Sec. 9601(23)).

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25323.1. "Removal action work plan" means a work plan prepared or approved by the department or a California regional water quality control board that is developed to carry out a removal action, in an effective manner, that is protective of the public health and safety and the environment. The removal action work plan shall include a detailed engineering plan for conducting the removal action, a description of the onsite contamination, the goals to be achieved by the removal action, and any alternative removal options that were considered and rejected and the basis for that rejection.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25323.3. "Response," "respond," or "response action" have the same meanings as defined in Section 9601(25) of the federal act (42 U.S.C. Sec. 9601(25)). The enforcement and oversight activities of the department and regional board are included within the meaning of "response," "respond," or "response action."

(Amended by Stats. 2000, Ch. 912, Sec. 11. Effective September 29, 2000.)

25323.5. (a) (1) "Responsible party" or "liable person," for the purposes of this chapter, means those persons described in Section 107(a) of the federal act (42 U.S.C. Sec. 9607(a)).

(2) (A) Notwithstanding paragraph (1), but except as provided in subparagraph (B), a person is not a responsible party or liable person, for purposes of this chapter, for the reason that the person has developed or implemented innovative investigative or innovative remedial technology with regard to a release site, if the use of the technology has been approved by the department for the release site and the person would not otherwise be a responsible party or liable person. Upon approval of the use of the technology, the director shall acknowledge, in writing, that, upon proper completion of the innovative investigative or innovative remedial action at the release site, the immunity provided by this subparagraph shall apply to the person.

(B) Subparagraph (A) does not apply in any of the following cases:

(i) Conditions at the release site have deteriorated as a result of the negligence of the person who developed or implemented the innovative investigative or innovative remedial technology.

(ii) The person who developed or implemented the innovative investigative or innovative remedial technology withheld or misrepresented information that was relevant to the potential risks or harms of the technology.

(iii) The person who implemented the innovative investigative or innovative remedial technology did not follow the implementation process approved by the department.

(b) For the purposes of this chapter, the defenses available to a responsible party or liable person shall be those defenses specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)).

(c) Any person who unknowingly transports hazardous waste to a solid waste facility pursuant to the exemption provided in subdivision (e) of Section 25163 shall not be considered a responsible party for purposes of this chapter solely because of the act of transporting the waste. Nothing in this

subdivision shall affect the liability of this person for his or her negligent acts.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25323.9. "Site" has the same meaning as the term "facility" is defined by Section 101(9) of the federal act (42 U.S.C. Sec. 9601(9)).

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25324. (a) "State account" means the Toxic Substances Control Account established pursuant to Section 25173.6.

(b) Notwithstanding any other provision of this section, any costs incurred and payable from the Hazardous Substance Account, the Hazardous Waste
Control Account, or the Site Remediation Account prior to July 1, 2006, to implement this chapter, shall be recoverable from the liable person or persons pursuant to Section 25360 as if the costs were incurred and payable from the state account.

(Amended by Stats. 2006, Ch. 77, Sec. 16. Effective July 18, 2006.)

25325. "Federally permitted release" has the same meaning as defined in Section 101 (10) of the federal act (42 U.S.C. Sec. 9601 (10)).

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25326. "A release authorized or permitted pursuant to state law" means any release into the environment which is authorized by statute, ordinance, regulation, or rule of any state, regional, or local agency or government or by any specific permit, license, or similar authorization from such an agency, including one of the foregoing, that recognizes a standard industry practice, including variances obtained from the agency which allow operations for facilities during a period of time when releases from the facilities do not conform with relevant statutes, ordinances, regulations, or rules. The term includes a federally permitted release, as defined by Section 25325, and releases that are in accordance with any court order or consent decree.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25326.3. "Secretary" means the Secretary for Environmental Protection.

(Added by Stats. 2000, Ch. 912, Sec. 13. Effective September 29, 2000.)

25326.5. "Site cleanup evaluation" means an evaluation by the department of the effectiveness of a removal or remedial action conducted by a responsible party, to reduce or eliminate actual or potential public health and environmental threats posed by a hazardous substance release site if the action itself is not the subject of oversight by the department.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25327. "Tier" means a grouping of hazardous substance release sites that require removal and remedial actions, that are listed alphabetically, and that are of a roughly equivalent priority for removal and remedial action.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

Article 3. Hazardous Substance Account

(Article 3 added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25330.2. Funds in the Site Remediation Account appropriated for removal or remedial action pursuant to this chapter are available for encumbrance for three fiscal years subsequent to the fiscal year in which the funds are appropriated and are available for disbursement in liquidation of encumbrances pursuant to Section 16304.1 of the Government Code.

(Amended by Stats. 2006, Ch. 77, Sec. 18. Effective July 18, 2006.)

25330.4. (a) Notwithstanding any other provision of law, the Controller shall establish a separate subaccount in the state account, for any funds received from a settlement agreement or the General Fund for a removal or remedial action to be performed at a specific site.

(b) Notwithstanding Section 13340 of the Government Code, funds deposited in the subaccount for those removal or remedial actions are hereby continuously appropriated to the department, without regard to fiscal years, for removal or remedial action at the specific site, and for administrative costs associated with the removal or remedial action at the specific site.

(c) Notwithstanding any other provision of law, money in the subaccount for those removal or remedial actions shall not revert to the General Fund or be transferred to any other fund or account in the State Treasury, except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(d) Notwithstanding Section 16305.7 of the Government Code, all interest or other increment resulting from investment of the funds specified in subdivision (a) pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code shall be deposited in the subaccount for removal or remedial action at the specific sites.

(e) At the conclusion of all removal or remedial actions at the specific site, any unexpended funds in any subaccounts established pursuant to this section shall be transferred to the subaccount for site operation and maintenance established pursuant to Section 25330.5, if necessary, for those activities at the site, or, if not needed for site operation and maintenance at the site, to the Toxic Substances Control Account.

(f) (1) There is hereby created a subaccount in the state account as the successor fund to the Stringfellow Insurance Proceeds Account created pursuant to former Section 25330.6, as that section read on January 1, 2013. All assets, liabilities, and surplus in the Stringfellow Insurance Proceeds Account shall be transferred to, and become a part of, this subaccount for the Stringfellow Superfund Site in Riverside County, as provided in Section 16346 of the Government Code. All appropriations from the Stringfellow Insurance Proceeds Account, to the extent encumbered, shall continue to be available from the subaccount for expenditure for the same purposes and periods.

(2) This subdivision shall become operative on July 1, 2013.

(Amended by Stats. 2007, Ch. 178, Sec. 8. Effective August 24, 2007. Note: This amendment added subdivision (f), which becomes operative on July 1, 2013.)

25330.5. (a) The Controller shall establish a separate subaccount for site operation and maintenance in the state account. All of the following amounts shall be deposited in the subaccount:

(1) Funds received from responsible parties for site operation and maintenance.

(2) Funds received from the federal government pursuant to the federal act for site operation and maintenance.

(3) Funds received from cities, counties, or any other state or local agency for site operation and maintenance.

(4) Funds appropriated from the state account by the Legislature for site operation and maintenance.

(b) Notwithstanding Section 13340 of the Government Code, funds deposited in the subaccount for site operation and maintenance are hereby continuously appropriated to the department, without regard to fiscal years, for site operation and maintenance, and for administrative costs associated with site operation and maintenance.

(c) Notwithstanding any other provision of law, money in the subaccount for site operation and maintenance shall not revert to the General Fund or be transferred to any other fund or account in the State Treasury, except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(d) Notwithstanding Section 16305.7 of the Government Code, all interest or other increment resulting from investment of the funds specified in subdivision (a) pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code shall be deposited in the subaccount for site operation and maintenance.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25330.6. (a) The Stringfellow Insurance Proceeds Account is hereby created in the State Treasury and shall be administered by the director.

(b) The funds deposited in the account are available for expenditure, upon appropriation by the Legislature, for activities related to the Stringfellow Superfund Site in Riverside County, to carry out the 2002 Consent Decree, incorporating the 2002 Memorandum of Understanding and the December 1998 Stringfellow Site Agreement between the state and the participating defendants, as defined in those agreements, to the extent any portion of those agreements remain in force and effect.

(c) Funds in the account appropriated by the Legislature for contract costs for investigation, removal, remedial, or operation and maintenance activities at the Stringfellow Superfund Site are available for encumbrance for three fiscal years, including the fiscal year in which the funds are appropriated, and are available for disbursement in liquidation of encumbrances pursuant to Section 16304.1 of the Government Code.

(d) Any requirement that insurance proceeds recovered by the state in connection with the Stringfellow Superfund Site be deposited in the account and distributed under the terms of the 1998 Site Agreement, is hereby declared null and void, in accordance with the 2002 Consent Decree specified in subdivision (b).

(e) This section shall become inoperative on July 1, 2013, and, as of January 1, 2014, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended by Stats. 2007, Ch. 178, Sec. 9. Effective August 24, 2007. Inoperative July 1, 2013. Repealed as of January 1, 2014, by its own provisions.)

25331. The state account may sue and be sued in its own name.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25334.7. (a) The department shall report to the Governor and the Legislature on the progress of the cleanup of the San Gabriel Valley groundwater sites in Los Angeles County, and on the progress of enforcement actions relating to those sites, in the biennial report specified in Section 25178. The report shall include, but not be limited to, all of the following:

(1) State expenditures and planned expenditures.

(2) Actions accomplished at the sites.

(3) Actions planned, including a time schedule for the accomplishment of planned actions.

(b) The report may be prepared in cooperation with other state and federal agencies involved with the sites, and shall include a summary of the activities of those additional agencies.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25337. (a) There is in the General Fund the Site Remediation Account, which shall be administered by the director. The account shall be funded by money transferred from the state account, upon appropriation by the Legislature. Consistent with the requirements of Section 114(c) of the federal act (42 U.S.C. Sec. 9614(c)), the moneys in the account may be expended by the department, upon appropriation by the Legislature, for direct site remediation costs.

(b) (1) For purposes of this section, "direct site remediation costs" means payments to contractors for investigations, characterizations, removal, remediation, or long-term operation and maintenance at sites contaminated or suspected of contamination by hazardous materials, where those actions are authorized pursuant to this chapter.

(2) "Direct site remediation costs" also means the state-mandated share pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

(3) "Direct site remediation costs" does not include the department's administrative expenses or the department's expenses for staff to perform oversight of investigations, characterizations, removals, remediations, or long-term operation and maintenance.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

Article 4. Fees

(Article 4 added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25342. The Director of Finance shall schedule in the annual Budget Act the projects proposed in any fiscal year, that will incur direct costs for removal and remedial actions at hazardous substance release sites.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25343. (a) Except as provided in subdivisions (b) and (c), any potentially responsible party at a site, or any person who has notified the department of that person's intent to undertake removal or remediation at a site, shall reimburse the department, pursuant to Chapter 6.66 (commencing with Section 25269), for the costs incurred by the department for its oversight of any preliminary endangerment assessment at that site.

(b) This section does not apply to any notice of intent submitted to the department prior to July 1, 1998. Any person who submitted such a notice shall pay the fee, if not already paid, as required by this section as it read on December 31, 1997, unless the department and that person mutually agree to enter into a reimbursement agreement in lieu of any unpaid portion of the required fee.

(c) The changes made in this section by Chapter 870 of the Statutes of 1997 do not require amendment of, or otherwise affect, any agreement entered into prior to July 1, 1998, pursuant to which any person has agreed to reimburse the department for the costs incurred by the department for its oversight of a preliminary endangerment assessment.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

Article 5. Uses of the State Account

(Article 5 added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25350. For response actions taken pursuant to the federal act, only those costs for actions that are consistent with the priorities, guidelines, criteria, and regulations contained in the national contingency plan, as revised and republished pursuant to Section 105 of the federal act (42 U.S.C. Sec. 9605), shall qualify for appropriation by the Legislature and expenditure by the director pursuant to Sections 25351, 25352, and 25354. For response actions not taken pursuant to the federal act or for response actions taken that are not specifically addressed by the priorities, guidelines, criteria, and regulations contained in the national contingency plan, as revised and republished, the costs thereof shall also qualify for appropriation by the Legislature and expenditure by the department pursuant to Sections 25351, 25352, and 25354 provided they are, to the maximum extent possible, consistent with the priorities, guidelines, criteria, and regulations contained in the national contingency plan for similar releases, situations, or events. No response actions taken pursuant to this chapter by the department or regional or local agencies shall duplicate federal response actions.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25351.2. (a) A city or county may initiate a removal or remedial action for a site listed pursuant to Section 25356 in accordance with this section. Except as provided in subdivision (d), the city or county shall, before commencing the removal or remedial action, take all of the following actions:

(1) The city or county shall notify the department of the planned removal or remedial action. Upon receiving this notification, the department shall make a reasonable effort to notify any person identified by the department as a potentially responsible party for the site. If a potentially responsible party is taking the removal or remedial action properly and in a timely fashion, or if a potentially responsible party will commence such an action within 60 days of this notification, the city or county may not initiate a removal or remedial action pursuant to this section.

(2) If a potentially responsible party for the site has not taken the action specified in paragraph (1), the city or county shall submit the estimated cost of the removal or remedial action to the department, which shall, within 30 days after receiving the estimate, approve or disapprove the reasonableness of the cost estimate. If the department disagrees with the cost estimate, the city or county and the department shall, within 30 days, attempt to enter into an agreement concerning the cost estimate.

(3) The city or county shall demonstrate to the department that it has sufficient funds to carry out the approved removal or remedial action

without taking into account any costs of the action that may be, or have been, paid by a potentially responsible party.

(b) If the director approves the request of the city or county to initiate a removal or remedial action and a final remedial action plan has been issued pursuant to Section 25356.1 for the hazardous substance release site, the city or county shall be deemed to be acting in place of the department for purposes of implementing the remedial action plan pursuant to this chapter.

(c) Upon reimbursing a city or county for the costs of a removal or remedial action, the department shall recover these costs pursuant to Section 25360.

(d) In order for a city or county to be reimbursed for the costs of a removal or remedial action incurred by the city or county from the state account, the city or county shall obtain the approval of the director before commencing the removal or remedial action. The director shall grant an approval only when all actions required by law prior to implementation of a remedial action plan have been taken.

(Amended by Stats. 2006, Ch. 77, Sec. 22. Effective July 18, 2006.)

25351.5. The department shall adopt any regulations necessary to carry out its responsibilities pursuant to this chapter, including, but not limited to, regulations governing the expenditure of, and accounting procedures for, moneys allocated to state, regional, and local agencies pursuant to this chapter.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25351.7. Any treatment, storage, transfer, or disposal facility built on the Stringfellow Quarry Class I Hazardous Waste Disposal Site, that was built for the purpose of a remedial or removal action at that site, shall only be used to treat, store, transfer, or dispose of hazardous substances removed from that site.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25351.8. Notwithstanding any other provision of law, including, but not limited to, Sections 25334.5 and 25356, the department shall place the highest priority on taking removal and remedial actions at the Stringfellow Quarry Class I Hazardous Waste Disposal Site and shall devote sufficient resources to accomplish the tasks required by this section.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25352. Money deposited in the state account may also be appropriated by the Legislature to the department on a specific site basis for the following purposes:

(a) For all costs incurred in restoring, rehabilitating, replacing, or acquiring the equivalent of, any natural resource injured, degraded, destroyed, or lost as a result of any release of a hazardous substance, to the extent the costs are not reimbursed pursuant to the federal act and taking into account processes of natural rehabilitation, restoration, and replacement.

(b) For all costs incurred in assessing short-term and long-term injury to, degradation or destruction of, or any loss of any natural resource resulting from a release of a hazardous substance, to the extent that the costs are not reimbursed pursuant to the federal act. No costs may be incurred for any release of a hazardous substance from any facility or project pursuant to subdivision (a) or this subdivision for injury, degradation, destruction, or loss of any natural resource where the injury, degradation, destruction, or loss was specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement prepared under the authority of the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.), or was identified as a significant environmental effect to the natural resources which cannot be avoided in an environmental impact report prepared pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), and a decision to grant a permit, license, or similar authorization for any facility or project is based upon a consideration of the significant environmental effects to the natural resources, and the facility or project was otherwise operating within the terms of its permit, license, or similar authorization at the time of release.

(c) Notwithstanding Section 25355, the Governor, or the authorized representative of the state, shall act on behalf of the public as trustee of the natural resources to recover costs expended pursuant to subdivision (a) or (b).

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25353. (a) Except as provided in (b), the department may not expend funds from the state account for a removal or remedial action with respect to a hazardous substance release site owned or operated by the federal government or a state or local agency at the time of disposal to the extent that the federal government or the state or local agency would otherwise be liable for the costs of that action, except that the department may expend those funds, upon appropriation by the Legislature, to oversee the carrying out of a removal or remedial action at the site by another party.

(b) Except as provided in subdivision (f), the department may expend funds from the state account, upon appropriation by the Legislature, to take a removal or remedial action at a hazardous substance release site which was owned or operated by a local agency at the time of release, if all of the following requirements are met:

(1) The department has substantial evidence that a local agency is not the only responsible party for the site.

(2) The department has issued a cleanup order to, or entered into an enforceable agreement with, the local agency pursuant to Section 25355.5 and has made a final determination that the local agency is not in compliance with the order or enforceable agreement.

(c) The department shall recover any funds expended pursuant to subdivision (a) or (b) to the maximum possible extent pursuant to Section 25360.

(d) If a local agency is identified as a potentially responsible party in a remedial action plan prepared pursuant to Section 25356.1, and the department expends funds pursuant to this chapter to pay for the local agency's share of the removal and remedial action, the expenditure of these funds shall be deemed to be a loan from the state to the local agency. If the department determines that the local agency is not making adequate progress toward repaying the loan made pursuant to this section, the State Board of Equalization shall, upon notice by the department, withhold the unpaid amount of the loan, in increments from the sales and use tax transmittals made pursuant to Section 7204 of the Revenue and Taxation Code, to the city or county in which the local agency is located. The State Board of Equalization shall structure the amounts to be withheld so that complete repayment of the loan, together with interest and administrative charges, occurs within five years after a local agency has been notified by the department of the amount which it owes. The State Board of Equalization shall deposit any funds withheld pursuant to this section into the state account.

(e) The department may not expend funds from the state account for the purposes specified in Section 25352 where the injury, degradation, destruction, or loss to natural resources, or the release of a hazardous substance from which the damages to natural resources resulted, has occurred prior to September 25, 1981.

(f) The department may not expend funds from the state account for a removal or remedial action at any waste management unit owned or operated by a local agency if it meets both of the following conditions:

(1) It is classified as a class III waste management unit pursuant to Subchapter 15 (commencing with Section 2510) of Chapter 3 of Title 23 of the California Administrative Code.

(2) It was in operation on or after January 1, 1988.

(Amended by Stats. 2006, Ch. 77, Sec. 24. Effective July 18, 2006.)

25353.5. (a) (1) Notwithstanding Section 12439 of the Government Code, the Controller may not eliminate any direct or indirect position that provides oversight and related support of remediation and hazardous substance management at a military base, including a closed military base, that is funded through an agreement with a party responsible for paying the department's costs, and may not eliminate any direct or indirect position that is funded by a federal grant that does not require a state match funded from the General Fund.

(2) Notwithstanding any other provision of law, including Section 4.10 of the Budget Act of 2003, for the 2003-04 and 2004-05 fiscal years, the Director of Finance may not eliminate any direct or indirect position that provides oversight and related support of remediation and hazardous substance management at a military base, including a closed military base, that is funded through an agreement with a party responsible for paying the department's costs, and may not eliminate any direct or indirect position that is funded by a federal grant that does not require a state match funded from the General Fund.

(b) Neither the Controller nor the Department of Finance may impose any hiring freeze or personal services limitations, including any position reductions, upon any direct or indirect position of the department that provides oversight and related support of remediation and hazardous substance management at a military base, including a closed military base, that is funded through an agreement with a party responsible for paying the department's costs, or on any direct or indirect position that is funded by a federal grant that does not require a state match funded from the General Fund.

(c) The Controller and Department of Finance shall exclude, from the department's base for purposes of calculating any budget or position reductions required by any state agency or any state law, the specific amounts and direct or indirect positions that provide oversight and related support of remediation and hazardous substance management at a military base, including a closed military base, that are funded through an agreement with a party responsible for paying the department's costs, and shall exclude the specific amounts and any direct or indirect positions that are funded by a federal grant that does not require a state match funded from the General Fund.

(d) Notwithstanding any other provision of law, neither the Controller nor the Department of Finance may require the department to reduce authorized positions or other appropriations for other department programs, including personal services, to replace the reductions precluded by subdivisions (a), (b), and (c).

(e) Notwithstanding any other provision of law, upon the request of the department, and upon review and approval by the Department of Finance, the Controller shall augment any Budget Act appropriations, except for appropriations from the General Fund, necessary to implement this section.

(f) (1) This section does not apply to any department appropriation or expenditure of General Fund moneys.

(2) This section does not limit the authority of the Department of Finance to eliminate a position when funding for the position, through an agreement with a party or by a federal grant, is no longer available.

(Added by Stats. 2003, Ch. 869, Sec. 1. Effective January 1, 2004.)

25354. (a) There is hereby continuously appropriated from the state account to the department the sum of one million dollars ($1,000,000) for each fiscal year as a reserve account for emergencies, notwithstanding Section 13340 of the Government Code. The department shall expend moneys available in the reserve account only for the purpose of taking immediate corrective action necessary to remedy or prevent an emergency resulting from a fire or an explosion of, or human exposure to, hazardous substances caused by the release or threatened release of a hazardous substance.

(b) (1) Notwithstanding any other provision of law, the department may enter into written contracts for corrective action taken or to be taken pursuant to subdivision (a).

(2) Notwithstanding any other provision of law, the department may enter into oral contracts, not to exceed ten thousand dollars ($10,000) in obligation, when, in the judgment of the department, immediate corrective action is necessary to remedy or prevent an emergency specified in subdivision (a).

(3) The contracts made pursuant to this subdivision, whether written or oral, may include provisions for the rental of tools or equipment, either with or without operators furnished, and for the furnishing of labor and materials necessary to accomplish the work.

(4) If the department finds that the corrective action includes the relocation of individuals, the department may contract with those individuals for out-of-pocket expenses incurred in moving for an amount of not more than one thousand dollars ($1,000).

(c) The department shall include in the biennial report specified in Section 25178 an accounting of the moneys expended pursuant to this section. Once the appropriation made pursuant to subdivision (a) is fully expended, the director may file a report with the Legislature if it is in session or, if it is not in session, with the Committee on Rules of the Assembly and the Senate as to the moneys expended pursuant to this section. The Legislature may appropriate moneys from the state account, in addition to those moneys appropriated pursuant to subdivision (a), to the department for the purpose of taking corrective action pursuant to subdivision (a).

(d) Except as provided in subdivision (c), the amount deposited in the reserve account and appropriated pursuant to this section shall not exceed one million dollars ($1,000,000) in any fiscal year. On June 30 of each year, the unencumbered balance of the reserve account shall revert to and be deposited in the state account.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25354.5. (a) A state or local law enforcement officer or investigator or other law enforcement agency employee who, in the course of an official investigation or enforcement action regarding the manufacture of any illegal controlled substance, comes in contact with, or is aware of, the presence of a substance that the person suspects is a hazardous substance at a site where an illegal controlled substance is or was manufactured, shall notify the department for the purpose of taking removal action, as necessary, to prevent, minimize, or mitigate damage that might otherwise result from the release or threatened release of the hazardous substance, except for samples required under Section 11479.5 to be kept for evidentiary purposes.

(b) (1) Notwithstanding any other provision of law, upon receipt of a notification pursuant to subdivision (a), the department shall take removal action, as necessary, with respect to any hazardous substance that is an illegal controlled substance, a precursor of a controlled substance, a material intended to be used in the unlawful manufacture of a controlled substance and any container for such a material, a waste material from the unlawful manufacture of a controlled substance, or any other item contaminated with a hazardous substance used or intended to be used in the manufacture of a controlled substance. The department may expend funds appropriated from the Illegal Drug Lab Cleanup Account created pursuant to subdivision (f) to pay the costs of removal actions required by this section. The department may enter into oral contracts, not to exceed ten thousand dollars ($10,000) in obligation, when, in the judgment of the department, immediate corrective action to a hazardous substance subject to this section is necessary to remedy or prevent an emergency.

(2) The department shall, as soon as the information is available, report the location of any removal action that will be carried out pursuant to paragraph (1), and the time that the removal action will be carried out, to the local environmental health officer within whose jurisdiction the removal action will take place, if the local environmental officer does both of the following:

(A) Requests, in writing, that the department report this information to the local environmental health officer.

(B) Provides the department with a single 24-hour telephone number to which the information can be reported.

(c) (1) For purposes of Chapter 6.5 (commencing with Section 25100), Chapter 6.9.1 (commencing with Section 25400.10), or this chapter, any person who is found to have operated a site for the purpose of manufacturing an illegal controlled substance or a precursor of an illegal controlled substance is the generator of any hazardous substance at, or released from, the site that is subject to removal action pursuant to this section.

(2) During the removal action, for purposes of complying with the manifest requirements in Section 25160, the department, the county health department, the local environmental health officer, or their designee may sign the hazardous waste manifest as the generator of the hazardous waste. In carrying out that action, the department, the county health department, the local environmental health officer, or their designee shall be considered to have acted in furtherance of their statutory responsibilities to protect the public health and safety and the environment from the release, or threatened release, of hazardous substances, and the department, the county health department, the local environmental health officer, or their designee are not responsible parties for the release or threatened release of the hazardous substances.

(3) The officer, investigator, or agency employee specified in subdivision (a) is not a responsible party for the release or threatened release of any hazardous substances at, or released from, the site.

(d) The department may adopt regulations to implement this section in consultation with appropriate law enforcement and local environmental agencies.

(e) (1) The department shall develop sampling and analytical methods for the collection of methamphetamine residue.

(2) On or before October 1, 2007, the department, using guidance developed by the Office of Environmental Health Hazard Assessment, shall develop a health-based target remediation standard for methamphetamine.

(3) On or before October 1, 2008, the department shall, to the extent funding is available, develop health-based target remediation standards for iodine, methyl iodide, and phosphine.

(4) To the extent that funding is available, the department, using

guidance developed by the Office of Environmental Health Hazard Assessment, may develop additional health-based target remediation standards for additional precursors and byproducts of methamphetamine.

(5) On or before October 1, 2009, the department shall adopt investigation and cleanup procedures for use in the remediation of sites contaminated by the illegal manufacturing of methamphetamine. The procedures shall assure that contamination by the illegal manufacturing of methamphetamine can be remediated to meet the standards adopted pursuant to paragraphs (2) to (4), inclusive, to protect the health and safety of all future occupants of the site.

(6) The department shall implement this subdivision in accordance with subdivision (d).

(f) The Illegal Drug Lab Cleanup Account is hereby created in the General Fund and the department may expend any money in the account, upon appropriation by the Legislature, to carry out the removal actions required by this section and to implement subdivision (e), including, but not limited to, funding any interagency agreement entered into with the Office of Environmental Health Hazard Assessment to provide guidance services. The account shall be funded by moneys appropriated directly from the General Fund.

(g) The responsibilities assigned to the department by this section apply only to the extent that sufficient funding is made available for that purpose.

(Amended by Stats. 2005, Ch. 587, Sec. 1. Effective January 1, 2006.)

25355. (a) The Governor is responsible for the coordination of all state response actions for sites identified in Section 25356 in order to assure the maximum use of available federal funds.

(b) The director may initiate removal or remedial action pursuant to this chapter unless these actions have been taken, or are being taken properly and in a timely fashion, by any responsible party.

(c) (1) At least 30 days before initiating removal or remedial actions, the department shall make a reasonable effort to notify the persons identified by the department as potentially responsible parties and shall also publish a notification of this action in a newspaper of general circulation pursuant to the method specified in Section 6061 of the Government Code. This subdivision does not apply to actions taken pursuant to subdivision (b) of Section 25358.3 or immediate corrective actions taken pursuant to Section 25354. A responsible party may be held liable pursuant to this chapter whether or not the person was given the notice specified in this subdivision.

(2) (A) Notwithstanding subdivision (a) of Section 25317, any person may voluntarily enter into an enforceable agreement with the department pursuant to this subdivision that allows removal or remedial actions to be conducted under the oversight of the department at sites with petroleum releases from sources other than underground storage tanks, as defined in Section 25299.24.

(B) If the department determines that there may be an adverse impact to water quality as a result of a petroleum release, the department shall notify the appropriate regional board prior to entering into the enforceable agreement pursuant to subparagraph (A). The department may enter into an enforceable agreement pursuant to subparagraph (A) unless, within 60 days of the notification provided by the department, the regional board provides the department with a written notice that the regional board will assume oversight responsibility for the removal or remedial action.

(C) Agreements entered into pursuant to this paragraph shall provide that the party will reimburse the department for all costs incurred including, but not limited to, oversight costs pursuant to the enforceable agreement associated with the performance of the removal or remedial actions and Chapter 6.66 (commencing with Section 25269).

(d) The department shall notify the owner of the real property of the site of a hazardous substance release within 30 days after listing a site pursuant to Section 25356, and at least 30 days before initiating a removal or remedial action pursuant to this chapter, by sending the notification by certified mail to the person to whom the real property is assessed, as shown upon the last equalized assessment roll of the county, at the address shown on the assessment roll. The requirements of this subdivision do not apply to actions taken pursuant to subdivision (b) of Section 25358.3 or to immediate corrective actions taken pursuant to Section 25354.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25355.2. (a) Except as provided in subdivision (c), the department or the regional board shall require any responsible party who is required to comply with operation and maintenance requirements as part of a response action, to demonstrate and to maintain financial assurance in accordance with this section. The responsible party shall demonstrate financial assurance prior to the time that operation and maintenance activities are initiated and shall maintain it throughout the period of time necessary to complete all required operation and maintenance activities.

(b) (1) For purposes of subdivision (a), the responsible party shall demonstrate and maintain one or more of the financial assurance mechanisms set forth in subdivisions (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations.

(2) As an alternative to the requirement of paragraph (1), a responsible party may demonstrate and maintain financial assurance by means of a financial assurance mechanism other than those listed in paragraph (1), if the alternative financial assurance mechanism has been submitted to, and approved by, the department or the regional board as being at least equivalent to the financial assurance mechanisms specified in paragraph (1). The department or the regional board shall evaluate the equivalency of the proposed alternative financial assurance mechanism principally in terms of the certainty of the availability of funds for required operation and maintenance activities and the amount of funds that will be made available. The department or the regional board shall require the responsible party to submit any information necessary to make a determination as to the equivalency of the proposed alternative financial assurance mechanism.

(c) The department or the regional board shall waive the financial assurance required by subdivision (a) if the department or the regional board makes one of the following determinations:

(1) The responsible party is a small business and has demonstrated all of the following:

(A) The responsible party cannot qualify for any of the financial assurance mechanisms set forth in subdivisions (b), (c), and (d) of Section 66265.143 of Title 22 of the California Code of Regulations.

(B) The responsible party financially cannot meet the requirements of subdivision (a) of Section 66265.143 of Title 22 of the California Code of Regulations.

(C) The responsible party is not capable of meeting the eligibility requirements set forth in subdivision (e) of Section 66265.143 of Title 22 of the California Code of Regulations.

(2) The responsible party is a small business and has demonstrated that the responsible party financially is not capable of establishing one of the financial assurance mechanisms set forth in subdivisions (a) to (e), inclusive, of Section 66265.143 of Title 22 of the California Code of Regulations while at the same time financing the operation and maintenance requirements applicable to the site.

(3) The responsible party is not separately required to demonstrate and maintain a financial assurance mechanism for operation and maintenance activities at a site because of all of the following conditions:

(A) The site is a multiple responsible party site.

(B) Financial assurance that operation and maintenance activities at the site will be carried out is demonstrated and maintained by a financial assurance mechanism established jointly by all, or some, of the responsible parties.

(C) The financial assurance mechanism specified in subparagraph (B) meets the requirements of subdivisions (a) and (b).

(4) The responsible party is a federal, state, or local government entity.

(d) The department or the regional board shall withdraw a waiver granted pursuant to paragraph (1) or (2) of subdivision (c) if the department or the regional board determines that the responsible party that obtained the waiver no longer meets the eligibility requirements for the waiver.

(e) Notwithstanding Section 7550.5 of the Government Code, on or before January 15, 2001, the department shall report to the Legislature all of the following:

(1) The number of requests the department and the regional boards have received for waivers from the financial assurance requirements of this section during the period between May 26, 1999, and January 1, 2001.

(2) The disposition of the requests that were received and the reasons for granting the waivers that were allowed and rejecting the waivers that were disallowed.

(3) The total number of businesses or other entities that were required by this section to demonstrate and maintain financial assurance, the number of businesses or other entities that were able to comply with the

requirement, the number that were unable to comply and the reasons why they could not or did not comply, and the history of compliance with this chapter and Chapter 6.5 (commencing with Section 25100) by responsible parties that requested waivers.

(4) Financial assurance mechanisms other than the financial assurance mechanisms referenced in paragraph (1) of subdivision (b) that may be available to responsible parties.

(f) For purposes of this section, "small business" is a business that meets the requirements set forth in subdivision (d) of Section 14837 of the Government Code.

(Amended by Stats. 2000, Ch. 912, Sec. 14. Effective September 29, 2000.)

25355.5. (a) Except as provided in subdivisions (b), (c), and (d), no money shall be expended from the state account for removal or remedial actions on any site selected for inclusion on the list established pursuant to Section 25356, unless the department first takes both of the following actions:

(1) The department issues one of the following orders or enters into the following agreement:

(A) The department issues an order specifying a schedule for compliance or correction pursuant to Section 25187.

(B) The department issues an order establishing a schedule for removing or remedying the release of a hazardous substance at the site, or for correcting the conditions that threaten the release of a hazardous substance. The order shall include, but is not limited to, requiring specific dates by which necessary corrective actions shall be taken to remove the threat of a release, or dates by which the nature and extent of a release shall be determined and the site adequately characterized, a remedial action plan shall be prepared, the remedial action plan shall be submitted to the department for approval, and a removal or remedial action shall be completed.

(C) The department enters into an enforceable agreement with a potentially responsible party for the site that requires the party to take necessary corrective action to remove the threat of the release, or to determine the nature and extent of the release and adequately characterize the site, prepare a remedial action plan, and complete the necessary removal or remedial actions, as required in the approved remedial action plan.

Any enforceable agreement entered into pursuant to this section may provide for the execution and recording of a written instrument that imposes an easement, covenant, restriction, or servitude, or combination thereof, as appropriate, upon the present and future uses of the site. The instrument shall provide that the easement, covenant, restriction, or servitude, or combination thereof, as appropriate, is subject to the variance or removal procedures specified in Sections 25233 and 25234. Notwithstanding any other provision of law, an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, executed pursuant to this section and recorded so as to provide constructive notice runs with the land from the date of recordation, is binding upon all of the owners of the land, their heirs, successors, and assignees, and the agents, employees, or lessees of the owners, heirs, successors, and assignees, and is enforceable by the department pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5.

(2) The department determines, in writing, that the potentially responsible party or parties for the hazardous substance release site have not complied with all of the terms of an order issued pursuant to subparagraph (A) or (B) of paragraph (1) or an agreement entered into pursuant to subparagraph (C) of paragraph (1). Before the department determines that a potentially responsible party is not in compliance with the order or agreement, the department shall give the potentially responsible party written notice of the proposed determination and an opportunity to correct the noncompliance or show why the order should be modified. After the department has made the final determination that a potentially responsible party is not in compliance with the order or agreement, the department may expend money from the state account for a removal or remedial action.

(b) Subdivision (a) does not apply, and money from the state account shall be available, upon appropriation by the Legislature, for removal or remedial actions, if any of the following conditions apply:

(1) The department, after a reasonable effort, is unable to identify a potential responsible party for the hazardous substance release site.

(2) The department determines that immediate corrective action is necessary, as provided in Section 25354.

(3) The director determines that removal or remedial action at a site is necessary because there may be an imminent and substantial endangerment to the public health or welfare or to the environment.

(c) Notwithstanding subdivision (a), the department may expend funds, upon appropriation by the Legislature, from the state account to conduct activities necessary to verify that an uncontrolled release of hazardous substances has occurred at a suspected hazardous substance release site, to issue an order or enter into an enforceable agreement pursuant to paragraph (1) of subdivision (a), and to review, comment upon, and approve or disapprove remedial action plans submitted by potentially responsible parties subject to the orders or the enforceable agreement.

(d) Notwithstanding subdivision (a), the department may expend funds, upon appropriation by the Legislature, from the state account, to provide for oversight of removal and remedial actions, or, if the site is also listed on the federal act (42 U.S.C. Sec. 9604(c)(3)), to provide the state's share of a removal or remedial action.

(e) A responsible party who fails, as determined by the department in writing, to comply with an order issued pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a), or to comply with all of the terms of an enforceable agreement entered into pursuant to subparagraph (C) of paragraph (1) of subdivision (a), shall be deemed, for purposes of subdivision (b) of Section 25355, to have failed to take action properly and in a timely fashion with respect to a hazardous substance release or a threatened release.

(Amended by Stats. 2006, Ch. 77, Sec. 25. Effective July 18, 2006.)

25355.6. (a) The State Water Resources Control Board or a California regional water quality control board that has jurisdiction over a hazardous substance release site pursuant to Division 7 (commencing with Section 13000) of the Water Code may refer the site to the department as a candidate for listing pursuant to Section 25356. After determining that the site meets the criteria adopted pursuant to subdivision (a) of Section 25356, the department may place the site on the list of sites subject to this chapter and establish its priority ranking pursuant to Section 25356.

(b) If a hazardous substance release site is referred to the department and is listed pursuant to subdivision (a), the department may expend money from the state account for removal or remedial action at the site, upon appropriation by the Legislature, without first issuing an order or entering into an agreement pursuant to paragraph (1) of subdivision (a) of Section 25355.5, if all of the following apply:

(1) The State Water Resources Control Board or a California regional water quality control board has issued either a cease and desist order pursuant to Section 13301 of the Water Code or a cleanup and abatement order pursuant to Section 13304 of the Water Code to the potentially responsible party for the site.

(2) The State Water Resources Control Board or the California regional water quality control board has made a final finding that the potentially responsible party has not complied with the order issued pursuant to paragraph (1).

(3) The State Water Resources Control Board or the California regional water quality control board has notified the potentially responsible party of the determination made pursuant to paragraph (2) and that the hazardous substance release site has been referred to the department pursuant to subdivision (a).

(c) If a hazardous substance release site is referred to the department pursuant to subdivision (a), and the department makes either of the following determinations, the department shall notify the appropriate California regional water quality control board and the State Water Resources Control Board:

(1) The department determines that the site does not meet the criteria established pursuant to subdivision (a) and the site cannot be placed, pursuant to Section 25356, on the list of sites subject to this chapter.

(2) The department determines that a removal or remedial action at the site will not commence for a period of one year from the date of listing due to a lack of funds or the low priority of the site.

(d) If a California regional water resources control board or the State Water Resources Control Board receives a notice pursuant to subdivision (c), the regional board or state board may take any further action concerning the hazardous substance release site which the regional board or state board determines to be necessary or feasible, and which is authorized by this chapter or Division 7 (commencing with Section 13000) of the Water Code.

(Amended by Stats. 2006, Ch. 77, Sec. 26. Effective July 18, 2006.)

25355.7. The department and the State Water Resources Control Board concurrently shall establish policies and procedures consistent with this chapter that the department's representatives shall follow in overseeing and supervising the activities of responsible parties who are carrying out the investigation of, and taking removal or remedial actions at, hazardous substance release sites. The policies and procedures shall be consistent with the policies and procedures established pursuant to Section 13307 of the Water Code, and shall include, but are not limited to, all of the following:

(a) The procedures the department will follow in making decisions as to when a potentially responsible party may be required to undertake an investigation to determine if a hazardous substance release has occurred.

(b) Policies for carrying out a phased, step-by-step investigation to determine the nature and extent of possible soil and groundwater contamination at a site.

(c) Procedures for identifying and utilizing the most cost-effective methods for detecting contamination and carrying out removal or remedial actions.

(d) Policies for determining reasonable schedules for investigation and removal or remedial action at a site. The policies shall recognize the dangers to public health and the environment posed by a release and the need to mitigate those dangers, while taking into account, to the extent possible, the financial and technical resources available to a responsible party.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25355.8. (a) The department shall not agree to oversee the preparation of, or to review, a preliminary endangerment assessment for property if action is, or may be, necessary to address a release or threatened release of a hazardous substance, and the department shall not issue a letter stating that no further action is necessary with regard to property, unless the person requesting the department action does either of the following:

(1) Provides the department with all of the following:

(A) Proof of the identity of all current record owners of fee title to the property and their mailing addresses.

(B) Written evidence that the owners of record have been sent a notice that describes the actions completed or proposed by the requesting person.

(C) An acknowledgment of the receipt of the notice required in subparagraph (B), from the property owners or proof that the requesting person has made reasonable efforts to deliver the notice to the property owner and was unable to do so.

(2) Proof of the identity of all current record owners of fee title to the property and proof that the requesting person has made reasonable efforts to locate the property owners and was unable to do so.

(b) The department shall take all reasonable steps necessary to accommodate property owner participation in the site remediation process and shall consider all input and recommendations received from the owner of property which is the subject of the proposed action.

(c) This section only applies to instances where a person requests the department to oversee the preparation of, or to review, a preliminary endangerment assessment, or requests the department to issue a letter stating that no further action is necessary with regard to property. Nothing in this section imposes a condition upon, limits, or impacts in any way, the department's authority to compel any potentially responsible party to take any action in response to a release or threatened release of a hazardous substance or to recover costs incurred from any potentially responsible party.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25356. (a) (1) The department shall adopt, by regulation, criteria for the selection of hazardous substance release sites for a response action under this chapter. The criteria shall take into account pertinent factors relating to public health, safety and the environment, which shall include, but are not necessarily limited to, potential hazards to public health, safety or the environment, the risk of fire or explosion, and toxic hazards, and shall also include the criteria established pursuant to Section 105(8) of the federal act (42 U.S.C. Sec. 9605(8)).

(2) The criteria adopted pursuant to paragraph (1) may include a minimum hazard threshold, below which sites shall not be listed pursuant to this section, if the sites are subject to the authority of the department to order a response action, or similar action, pursuant to Chapter 6.5 (commencing with Section 25100).

(b) (1) The department shall publish and revise, at least annually, a listing of the hazardous substance release sites selected for, and subject to, a response action under this chapter. The department shall list the sites based upon the criteria adopted pursuant to subdivision (a) and the extent to which deferral of a response action at a site will result, or is likely to result, in a rapid increase in response costs at the site or in a significant increase in risk to human health or safety or the environment.

(2) The list of sites established pursuant to this subdivision shall be published by the department and made available to the public or any interested person upon request and without cost. The department shall list sites alphabetically within each priority tier, as specified in subdivision (c), and shall update the list of sites at least annually to reflect new information regarding previously listed sites or the addition of new sites requiring response actions.

(c) The department shall assign each site listed pursuant to subdivision (b) to one of the following priority tiers for the purpose of informing the public of the relative hazard of listed sites:

(1) "Priority tier one" shall include any site that the department determines, using the criteria described in subdivision (b), meets any of the following conditions:

(A) The site may pose a known or probable threat to public health or safety through direct human contact.

(B) The site may pose a substantial probability of explosion or a fire or a significant risk due to hazardous air emissions.

(C) The site has a high potential to contaminate or to continue to contaminate groundwater resources that are present or possible future sources of drinking water.

(D) There is a risk that the costs of a response action will increase rapidly or risks to human health or safety or the environment will increase significantly if response action is deferred.

(2) "Priority tier two" shall include any site that poses a substantial but less immediate threat to public health or safety or the environment and any site that will require a response action, but presents only a limited and defined threat to human health or safety or the environment. Priority tier two may contain sites previously listed in priority tier one if the department determines that direct threats to human health or safety have been removed and if physical deterioration of the site has been stabilized so that threats to the environment are not significantly increasing.

(d) Hazardous substance release sites listed by the department pursuant to subdivision (b) are subject to this chapter and all actions carried out in response to hazardous substance releases or threatened releases at listed sites shall comply with the procedures, standards, and other requirements set forth in this chapter or established pursuant to the requirements of this chapter.

(e) (1) The adoption of the minimum hazard threshold pursuant to paragraph (2) of subdivision (a), the department's development and publication of the list of sites pursuant to subdivision (b), and the assignment of sites to a tier pursuant to subdivision (c), including the classification of a site as within a minimum threshold pursuant to subdivision (c), are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The adoption of the criteria used by the department pursuant to subdivision (b) to determine the extent to which deferral of a response action at a site will result, or is likely to result, in a rapid increase in response costs at a site or in a significant increase in risk to human health or safety or the environment is subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) (1) Except as provided in paragraph (2), the department shall expend all funds appropriated to the department for any response action pursuant to this chapter, and shall take all response action pursuant to this chapter, in conformance with the assignment of sites to priority tiers pursuant to subdivision (c).

(2) The department may expend funds appropriated for a response action and take a response action, without conforming to the listing of sites by tier pursuant to subdivision (c), or at a site that has not been listed pursuant to subdivision (b), if any of the following apply:

(A) The department is monitoring a response action conducted by a responsible party at a site listed pursuant to subdivision (b) or at a site that is not listed but is being voluntarily remediated by a responsible party

or another person.

(B) The expenditure of funds is necessary to pay for the state share of a response action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

(C) The department is assessing, evaluating, and characterizing the nature and extent of a hazardous substance release at a site for which the department has not been able to identify a responsible party, the responsible party is defunct or insolvent, or the responsible party is not in compliance with an order issued, or an enforceable agreement entered into, pursuant to subdivision (a) of Section 25355.5.

(D) The department is carrying out activities pursuant to paragraph (2) or (3) of subdivision (b) of, or subdivision (c) or (d) of, Section 25355.5.

(3) The department may, at any one time, expend funds and take a response action at more than one site on the list established pursuant to subdivision (b). In addition, the department may, at any one time, oversee the performance of any activities conducted by a responsible party on more than one site on the list established pursuant to subdivision (b).

(g) This section does not require the department to characterize every site listed pursuant to subdivision (b) before the department begins response actions at those sites.

(h) The department, or, if appropriate, the California regional water quality board, is the state agency with sole responsibility for ensuring that required action in response to a hazardous substance release or threatened release at a listed site is carried out in compliance with the procedures, standards, and other requirements set forth in this chapter, and shall, as appropriate, coordinate the involvement of interested or affected agencies in the response action.

(Repealed and added by Stats. 2000, Ch. 912, Sec. 16. Effective September 29, 2000.)

25356.1. (a) For purposes of this section, "regional board" means a California regional water quality control board and "state board" means the State Water Resources Control Board.

(b) Except as provided in subdivision (h), the department, or, if appropriate, the regional board shall prepare or approve remedial action plans for the sites listed pursuant to Section 25356.

(c) A potentially responsible party may request the department or the regional board, when appropriate, to prepare or approve a remedial action plan for a site not listed pursuant to Section 25356, if the department or the regional board determines that a removal or remedial action is required to respond to a release of a hazardous substance. The department or the regional board shall respond to a request to prepare or approve a remedial action plan within 90 days of receipt. This subdivision does not affect the authority of a regional board to issue and enforce a cleanup and abatement order pursuant to Section 13304 of the Water Code or a cease and desist order pursuant to Section 13301 of the Water Code.

(d) All remedial action plans prepared or approved pursuant to this section shall be based upon Section 25350, Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), and any amendments thereto, and upon all of the following factors, to the extent that these factors are consistent with these federal regulations and do not require a less stringent level of cleanup than these federal regulations:

(1) Health and safety risks posed by the conditions at the site. When considering these risks, the department or the regional board shall consider scientific data and reports which may have a relationship to the site.

(2) The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources.

(3) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses. The department or the regional board shall consider the extent to which remedial action measures are available that use, as a principal element, treatment that significantly reduces the volume, toxicity, or mobility of the hazardous substances, as opposed to remedial actions that do not use this treatment. The department or the regional board shall not select remedial action measures that use offsite transport and disposal of untreated hazardous substances or contaminated materials if practical and cost-effective treatment technologies are available.

(4) Site-specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(5) Cost-effectiveness of alternative remedial action measures. In evaluating the cost-effectiveness of proposed alternative remedial action measures, the department or the regional board shall consider, to the extent possible, the total short-term and long-term costs of these actions and shall use, as a major factor, whether the deferral of a remedial action will result, or is likely to result, in a rapid increase in cost or in the hazard to public health or the environment posed by the site. Land disposal shall not be deemed the most cost-effective measure merely on the basis of lower short-term cost.

(6) The potential environmental impacts of alternative remedial action measures, including, but not limited to, land disposal of the untreated hazardous substances as opposed to treatment of the hazardous substances to remove or reduce its volume, toxicity, or mobility prior to disposal.

(e) A remedial action plan prepared pursuant to this section shall include the basis for the remedial action selected and shall include an evaluation of each alternative considered and rejected by the department or the regional board for a particular site. The plan shall include an explanation for rejection of alternative remedial actions considered but rejected. The plan shall also include an evaluation of the consistency of the selected remedial action with the requirements of the federal regulations and the factors specified in subdivision (d), if those factors are not otherwise adequately addressed through compliance with the federal regulations. The remedial action plan shall also include a nonbinding preliminary allocation of responsibility among all identifiable potentially responsible parties at a particular site, including those parties which may have been released, or may otherwise be immune, from liability pursuant to this chapter or any other provision of law. Before adopting a final remedial action plan, the department or the regional board shall prepare or approve a draft remedial action plan and shall do all of the following:

(1) Circulate the draft plan for at least 30 days for public comment.

(2) Notify affected local and state agencies of the removal and remedial actions proposed in the remedial action plan and publish a notice in a newspaper of general circulation in the area affected by the draft remedial action plan. The department or the regional board shall also post notices in the location where the proposed removal or remedial action would be located and shall notify, by direct mailing, the owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll.

(3) Hold one or more meetings with the lead and responsible agencies for the removal and remedial actions, the potentially responsible parties for the removal and remedial actions, and the interested public, to provide the public with the information that is necessary to address the issues that concern the public. The information to be provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the removal and remedial actions, and a description of the proposed removal and remedial actions.

(4) Comply with Section 25358.7.

(f) After complying with subdivision (e), the department or the regional board shall review and consider any public comments, and shall revise the draft plan, if appropriate. The department or the regional board shall then issue the final remedial action plan.

(g) (1) A potentially responsible party named in the final remedial action plan issued by the department or the regional board may seek judicial review of the final remedial action plan by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure within 30 days after the final remedial action plan is issued by the department or the regional board. Any other person who has the right to seek judicial review of the final remedial action plan by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure shall do so within one year after the final remedial action plan is issued. No action may be brought by a potentially responsible party to review the final remedial action plan if the petition for writ of mandate is not filed within 30 days of the date that the final remedial action plan was issued. No action may be brought by any other person to review the final remedial action plan if the petition for writ of mandate is not filed within one year of the date that the final remedial action plan was issued. The filing of a petition for writ of mandate to review the final remedial action plan shall not stay any removal or remedial action specified in the final plan.

(2) For purposes of judicial review, the court shall uphold the final remedial action plan if the plan is based upon substantial evidence

available to the department or the regional board, as the case may be.

(3) This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction, including, but not limited to, enjoining the expenditure of funds pursuant to paragraph (2) of subdivision (b) of Section 25385.6.

(h) (1) This section does not require the department or a regional board to prepare a remedial action plan if conditions present at a site present an imminent or substantial endangerment to the public health and safety or to the environment or, if the department, a regional board, or a responsible party takes a removal action at a site and the estimated cost of the removal action is less than two million dollars ($2,000,000). The department or a regional board shall prepare or approve a removal action work plan for all sites where a nonemergency removal action is proposed and where a remedial action plan is not required. For sites where removal actions are planned and are projected to cost less than two million dollars ($2,000,000), the department or a regional board shall make the local community aware of the hazardous substance release site and shall prepare, or direct the parties responsible for the removal action to prepare, a community profile report to determine the level of public interest in the removal action. Based on the level of expressed interest, the department or regional board shall take appropriate action to keep the community informed of project activity and to provide opportunities for public comment which may include conducting a public meeting on proposed removal actions.

(2) A remedial action plan is not required pursuant to subdivision (b) if the site is listed on the National Priority List by the Environmental Protection Agency pursuant to the federal act, if the department or the regional board concurs with the remedy selected by the Environmental Protection Agency's record of decision. The department or the regional board may sign the record of decision issued by the Environmental Protection Agency if the department or the regional board concurs with the remedy selected.

(3) The department may waive the requirement that a remedial action plan meet the requirements specified in subdivision (d) if all of the following apply:

(A) The responsible party adequately characterizes the hazardous substance conditions at a site listed pursuant to Section 25356.

(B) The responsible party submits to the department, in a form acceptable to the department, all of the following:

(i) A description of the techniques and methods to be employed in excavating, storing, handling, transporting, treating, and disposing of materials from the site.

(ii) A listing of the alternative remedial measures which were considered by the responsible party in selecting the proposed removal action.

(iii) A description of methods that will be employed during the removal action to ensure the health and safety of workers and the public during the removal action.

(iv) A description of prior removal actions with similar hazardous substances and with similar public safety and environmental considerations.

(C) The department determines that the remedial action plan provides protection of human health and safety and for the environment at least equivalent to that which would be provided by a remedial action plan prepared in accordance with subdivision (c).

(D) The total cost of the removal action is less than two million dollars ($2,000,000).

(4) For purposes of this section, the cost of a removal action includes the cleanup of removal of released hazardous substances from the environment or the taking of other actions that are necessary to prevent, minimize, or mitigate damage that may otherwise result from a release or threatened release, as further defined by Section 9601 (23) of Title 42 of the United States Code.

(5) Paragraph (2) of this subdivision does not apply to a removal action paid from the state account.

(i) Article 2 (commencing with Section 13320), Article 3 (commencing with Section 13330), Article 5 (commencing with Section 13350), and Article 6 (commencing with Section 13360) of Chapter 5 of Division 7 of the Water Code apply to an action or failure to act by a regional board pursuant to this section.

(Amended by Stats. 2008, Ch. 644, Sec. 4. Effective January 1, 2009.)

25356.1.3. (a) In exercising its authority at a hazardous substance release site pursuant to subdivision (a) of Section 25355.5 or 25358.3, the department shall issue orders to the largest manageable number of potentially responsible parties after considering all of the following:

(1) The adequacy of the evidence of each potentially responsible party's liability.

(2) The financial viability of each potentially responsible party.

(3) The relationship or contribution of each potentially responsible party to the release, or threat of release, of hazardous substances at the site.

(4) The resources available to the department.

(b) The department shall schedule a meeting pursuant to Section 25269.5 and notify all identified potentially responsible parties of the date, time, and location of the meeting.

(c) A person issued an order pursuant to Section 25355.5 or 25358.3 may identify additional potentially responsible parties for the site to which the order is applicable and may request the department to issue an order to those parties. The request shall include, with appropriate documentation, the factual and legal basis for identifying those parties as potentially responsible parties for the site. The department shall review the request and accompanying information and, within a reasonable period of time, determine if there is a factual and legal basis for identifying other persons as potentially responsible parties, and notify the person that made the request of the action the department will take in response to the request.

(d) Any determination made by the department regarding the largest manageable number of potentially responsible parties or the identification of other persons as potentially responsible parties pursuant to this section is not subject to judicial review. This subdivision does not affect the rights of any potentially responsible party or the department under any other provision of this chapter.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25356.1.5. (a) Any response action taken or approved pursuant to this chapter shall be based upon, and no less stringent than, all of the following requirements:

(1) The requirements established under federal regulation pursuant to Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), as amended.

(2) The regulations established pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code, and all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, to the extent that the department or the regional board determines that those regulations, plans, and policies do not require a less stringent level of remediation than the federal regulations specified in paragraph (1) and to the degree that those regulations, plans, and policies do not authorize decisionmaking procedures that may result in less stringent response action requirements than those required by the federal regulations specified in paragraph (1).

(3) Any applicable provisions of this chapter, to the extent those provisions are consistent with the federal regulations specified in paragraph (1) and do not require a less stringent level of remediation than, or decisionmaking procedures that are at variance with, the federal regulations set forth in paragraph (1).

(b) Any health or ecological risk assessment prepared in conjunction with a response action taken or approved pursuant to this chapter shall be based upon Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), the policies, guidelines, and practices of the United States Environmental Protection Agency developed pursuant to the federal act, and the most current sound scientific methods, knowledge, and practices of public health and environmental professionals who are experienced practitioners in the fields of epidemiology, risk assessment, environmental contamination, ecological risk, fate and transport analysis, and toxicology. Risk assessment practices shall include the most current sound scientific methods for data evaluation, exposure assessment, toxicity assessment, and risk characterization, documentation of all assumptions, methods, models, and calculations used in the assessment, and any health risk assessment shall include all of the following:

(1) Evaluation of risks posed by acutely toxic hazardous substances based on levels at which no known or anticipated adverse effects on health will occur, with an adequate margin of safety.

(2) Evaluation of risks posed by carcinogens or other hazardous substances that may cause chronic disease based on a level that does not pose

any significant risk to health.

(3) Consideration of possible synergistic effects resulting from exposure to, or interaction with, two or more hazardous substances.

(4) Consideration of the effect of hazardous substances upon subgroups that comprise a meaningful portion of the general population, including, but not limited to, infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations, that are identifiable as being at greater risk of adverse health effects due to exposure to hazardous substances than the general population.

(5) Consideration of exposure and body burden level that alter physiological function or structure in a manner that may significantly increase the risk of illness and of exposure to hazardous substances in all media, including, but not limited to, exposures in drinking water, food, ambient and indoor air, and soil.

(c) If currently available scientific data are insufficient to determine the level of a hazardous substance at which no known or anticipated adverse effects on health will occur, with an adequate margin of safety, or the level that poses no significant risk to public health, the risk assessment prepared in conjunction with a response action taken or approved pursuant to this chapter shall be based on the level that is protective of public health, with an adequate margin of safety. This level shall be based exclusively on public health considerations, shall, to the extent scientific data are available, take into account the factors set forth in paragraphs (1) to (5), inclusive, of subdivision (b), and shall be based on the most current principles, practices, and methods used by public health professionals who are experienced practitioners in the fields of epidemiology, risk assessment, fate and transport analysis, and toxicology.

(d) The exposure assessment of any risk assessment prepared in conjunction with a response action taken or approved pursuant to this chapter shall include the development of reasonable maximum estimates of exposure for both current land use conditions and reasonably foreseeable future land use conditions at the site.

(e) The exposure assessment of any risk assessment prepared in conjunction with a response action taken or approved pursuant to this chapter shall include the development of reasonable maximum estimates of exposure to volatile organic compounds that may enter structures that are on the site or that are proposed to be constructed on the site and may cause exposure due to accumulation of those volatile organic compounds in the indoor air of those structures.

(Amended by Stats. 2007, Ch. 597, Sec. 1. Effective January 1, 2008.)

25356.2. (a) There is hereby created in the Office of Environmental Health Hazard Assessment a Hazardous Substance Cleanup Arbitration Panel.

(b) The panel shall apportion liability for the costs of removal and remedial actions in accordance with Sections 25356.3 and 25356.4. All meetings and records of the panel are exempt from Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of, and Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, the Government Code.

(c) The panel shall be comprised of independent private arbitrators who have applied to the Office of Environmental Health Hazard Assessment for membership on the panel. Panel members shall have (1) relevant arbitration background and (2) expertise in engineering, expertise in the physical, biological, or health sciences, or other relevant experience and qualifications. Three arbitrators shall be selected from the panel to apportion liability for a single hazardous wastesite. A majority of the arbitrators selected for a single site may apportion liability for the panel under this chapter.

(d) The arbitrators shall be selected for an individual hazardous wastesite as follows:

(1) One arbitrator shall be selected by the department or by the regional water quality control board.

(2) One arbitrator shall be selected by the potentially responsible party, or a majority of the potentially responsible parties, who have submitted to binding arbitration by the panel.

(3) The two arbitrators selected pursuant to paragraphs (1) and (2) shall jointly select a third arbitrator.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25356.3. (a) The department or the California regional water quality control board shall serve a copy by mail of the draft remedial action plan upon all potentially responsible parties identified in the plan. Within 15 days after the issuance of a final remedial action plan, any potentially responsible parties with aggregate alleged liability in excess of 50 percent of the costs of removal and remedial action, as set forth in the statement of reasons issued pursuant to subdivision (d) of Section 25356.1, but excluding any costs that are the subject of an agreement under which any party agrees to assume liability for those costs, may convene an arbitration proceeding by agreeing to submit to binding arbitration by the panel. The filing of a demand to convene an arbitration panel shall not stay any removal or remedial actions specified in the plan. If an arbitration panel is convened pursuant to this section, any other potentially responsible party may elect to submit to binding arbitration by the panel. Any person submitting to arbitration under this section shall agree not to contest the fact of liability in the arbitration. The panel shall, and the parties are entitled to, address the proper apportionment of liability pursuant to subdivision (b). Submission to arbitration under this section is not an admission of liability for any other purpose or in any other proceeding, including a subsequent arbitration proceeding concerning the same site. The department or the regional water quality control board, whichever issued the final remedial action plan, shall participate in the arbitration proceedings to the same extent as the potentially responsible parties which have submitted to the arbitration.

(b) The panel shall apportion liability for the costs of all removal and remedial actions specified in the final remedial action plan.

(c) In panel proceedings, liability for the costs of removal and remedial actions shall be apportioned among all identifiable potentially responsible parties regardless of whether those parties are before the panel or have otherwise been released, or are immune, from liability pursuant to this chapter or any other provision of law. The panel shall apportion liability based on all of the following criteria:

(1) The amount of hazardous substance for which each party may be responsible.

(2) The degree of toxicity of the hazardous substance.

(3) The degree of involvement of the potentially responsible parties in the generation, transportation, treatment, or disposal of the hazardous substance.

(4) The degree of care exercised by the potentially responsible parties with respect to the hazardous substances, taking into account the characteristics of the substance.

(5) The degree of cooperation by the potentially responsible parties with federal, state, and local officials to prevent harm to human health and the environment.

(d) The panel may issue subpoenas and subpoenas duces tecum to require attendance of a person or the production of documents, at the request of any person identified as potentially responsible in the remedial action plan, on its own motion, or at the request of the department or the appropriate regional water quality control board. A person requesting a subpoena duces tecum shall comply with Section 1985 of the Code of Civil Procedure. The jurisdiction of subpoenas and subpoenas duces tecum issued by the panel extends to all parts of the state. The subpoenas and subpoenas duces tecum shall be served pursuant to Sections 1987 and 1988 of the Code of Civil Procedure.

If the panel determines that a person is refusing to respond to a subpoena or subpoena duces tecum, or is guilty of a misconduct during the arbitration and negotiation process, the panel shall certify the facts to the superior court of the county in which the site is located. The court shall thereupon issue an order directing the person to appear before the court and show cause why the person should not be punished for contempt pursuant to Section 1209 of the Code of Civil Procedure. The order and a copy of the certified statement shall be served on the person, and thereafter the court shall have jurisdiction of the matter. The same proceedings shall be followed, the same penalties may be imposed, and the person charged may be purged of contempt in the same way as if the person has committed a contempt in the trial of a civil action before a superior court.

After receipt of documents pursuant to a subpoena duces tecum, any party may request the panel for a continuance for a reasonable period of time to review the documents prior to proceeding with the arbitration. The panel may grant a continuance for that purpose upon a showing of good cause.

(e) This chapter does not require a regional water quality control board or the State Water Resources Control Board to engage in arbitration pursuant to this section or Section 25356.2 for any enforcement action taken

pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(f) The costs of conducting the arbitration shall be borne by the potentially responsible parties submitting to the arbitration pursuant to subdivision (a), except that any filing fees, witness fees, costs of discovery, or any other costs necessarily incurred by one party shall not be shared by any other party.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25356.4. (a) After making an apportionment of liability among the potentially responsible parties pursuant to Section 25356.3, the panel shall prepare a draft arbitration decision which contains a statement of reasons supporting the apportionment and shall circulate the draft arbitration decision for at least 30 days for public comment. After review and consideration of any public comment, the panel shall issue the final arbitration decision within 30 days after the comment period.

(b) Each potentially responsible party whose liability has been apportioned by the panel is liable to the department or the regional water quality control board for its apportioned share of the costs of all removal and remedial actions at the site which is the subject of the final remedial action plan issued pursuant to Section 25356.1. The department or the regional water quality control board and one or more potentially responsible parties may enter into a cleanup agreement which is consistent with the remedial action plan and which provides for the satisfaction of the liability of a potentially responsible party by the party's performance of specified removal or remedial actions at the site.

(c) The moneys in the state account may be expended, upon appropriation by the Legislature, to pay any share of those potentially responsible parties who did not submit to binding arbitration pursuant to Section 25356.3 or did not otherwise agree to pay the costs of the removal and remedial actions specified in the remedial action plan.

(d) The department or the regional water quality control board shall identify, and the Attorney General shall pursue recovery from, those potentially responsible parties who have not submitted to binding arbitration pursuant to Section 25356.3 or who have not discharged their obligations required by the final arbitration decision or the cleanup agreement.

(e) Advances from the state account, upon appropriation by the Legislature, shall be made available, where appropriate, to those responsible parties who are required by a cleanup agreement to perform specified removal or remedial actions pursuant to the remedial action plan or, if the money advanced derives from the proceeds of bonds sold pursuant to Article 7.5 (commencing with Section 25385), for the purposes specified in Section 25385.6.

(Amended by Stats. 2006, Ch. 77, Sec. 28. Effective July 18, 2006.)

25356.5. The department shall include in the biennial report specified in Section 25178 an accounting of all of the following:

(a) The actual funds expended for each site listed during the preceding two years pursuant to Section 25356.

(b) Removal and remedial actions at hazardous substance release sites pursuant to Section 25356.

(c) The state's efforts to obtain available federal funds for the purposes of this chapter.

(d) Federal funds which have been obtained by, or committed to, the state for purposes of this chapter.

(e) The state's efforts to obtain contributions to removal or remedial actions from potentially responsible parties.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25356.6. (a) Notwithstanding any other provision of state law or any local ordinance or regulation, except as provided in subdivision (b), to encourage the prompt and effective cleanup of hazardous substance release sites, a potentially responsible party has no additional civil liability to any governmental entity under state or local law, for any prior acts or omissions associated with the conditions addressed in the remedial action plan which is the subject of the arbitration decision, if the potentially responsible party has submitted to binding arbitration and has discharged its obligations under the arbitration decision, either by paying that party's apportioned share of the costs of all removal and remedial actions to the department or the regional water quality control board, or by performing the specified removal and remedial actions pursuant to a cleanup agreement. The release from liability specified in this section is conditioned on complete implementation of the remedial action plan, including, where appropriate, adequate sampling, testing, and maintenance of the site to which the remedial action plan is applicable to ensure that the level of cleanup required is achieved and maintained. However, this section does not affect the liability of any person for costs recoverable under Section 25352, unless these costs are specifically addressed in the arbitration decision or cleanup agreement. Where these costs are not addressed in the arbitration decision or cleanup agreement, the liability for these costs shall be determined pursuant to the applicable sections of this chapter and may be apportioned among the potentially responsible parties pursuant to Sections 25356.3 and 25356.4.

(b) The department, the California regional water quality control board, any party to the arbitration decision, or any party substantially affected by the arbitration decision may petition the panel to modify the apportionment of liability in an arbitration decision. Upon a showing of a material change in the facts known to the parties to the arbitration decision at the time it was issued, the panel shall modify the apportionment of liability specified in the arbitration decision, as appropriate, to reflect these changed facts. Upon a showing of a material change in the facts known to the department at the time it issued the final remedial action plan, or the discovery of new facts, the department or regional board shall modify the remedial action plan, as appropriate, to reflect new or additional facts. The arbitration panel shall then modify its arbitration decision to reflect any modification of the remedial action plan made by the department.

(c) This section does not affect the existing rights of any individual to recover civil damages or to obtain equitable relief against any person, including a potentially responsible party, for physical injury or property damage caused by the release of hazardous substances at the site covered by the arbitration decision or at any other location.

(d) A party who has submitted to arbitration pursuant to this article and whose liability has been apportioned by the arbitration panel in an arbitration proceeding may seek indemnity from any other person liable for the party's apportioned share of the removal and remedial actions taken at a site which is the subject of the arbitration decision, including any department, agency contractor, or any other governmental agency. A potentially responsible party who does not submit to binding arbitration pursuant to this article, but whose liability has been apportioned in the arbitration decision and is subsequently found liable under this chapter has no right to indemnification for any removal or remedial action which is the subject of the arbitration decision from any party to that arbitration decision who has discharged its obligation under the arbitration decision or the cleanup agreement.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25356.7. In order to encourage rapid resolution of differences among responsible parties and to speed the cleanup of sites, and notwithstanding any other provision of law, the following evidence is admissible in a court of law only to show the good faith of the parties who have discharged their obligations under an arbitration decision issued, or cleanup agreement entered into, pursuant to Section 25356.4 or that the following removal and remedial actions specified in the remedial action plan were to be performed:

(a) A preliminary allocation of responsibility pursuant to Section 25356.1.

(b) The fact that any person has either participated or has not participated in a panel arbitration proceeding.

(c) The fact that any person has voluntarily implemented a remedial action plan, regardless of whether the plan is final for purposes of Section 25356.1.

(d) Any finding of fact or conclusion of law by the panel, including the apportionment of liability pursuant to Section 25356.3.

(e) Admissions made during the arbitration proceeding.

(f) Documents prepared by a party which has submitted to binding arbitration if the documents are prepared after the remedial action plan has been issued, and if the documents are prepared solely for the arbitration.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25356.8. (a) Judicial review of the arbitration decision on the apportionment of liability is limited to a showing of fraud by a party to the arbitration proceeding or an abuse of discretion by the panel, or both.

(b) Judicial review of a decision by the department or the regional water quality control board modifying the remedial action plan pursuant to subdivision (b) of Section 25356.6 shall be conducted pursuant to Section 1085

of the Code of Civil Procedure and the standard of review shall be the same as that specified in subdivision (f) of Section 25356.1.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25356.9. (a) The provisions of this chapter relating to the preparation, approval, and issuance of remedial action plans and to procedures for the apportionment of liability by the Hazardous Substance Cleanup Arbitration Panel do not do either of the following:

(1) Apply to any actions taken pursuant to Chapter 6.5 (commencing with Section 25100).

(2) Prohibit the department or the Attorney General, upon the request of the department, from pursuing the remedies specified in subdivision (a) of Section 25358.3 when the director determines that there may be an imminent or substantial endangerment to the public health or welfare or to the environment, because of a release or a threatened release of a hazardous substance.

(b) The department and the Attorney General may pursue any existing legal, equitable, or administrative remedies, pursuant to federal or state law, against any potentially responsible party named in a remedial action plan if the party does not submit to arbitration pursuant to Section 25356.3 or if the party has not discharged that party's obligations under an arbitration decision or cleanup agreement.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25356.10. The Office of Environmental Health Hazard Assessment shall adopt, and may, from time to time, modify, revise, or repeal, regulations, consistent with this article, to implement the provisions of this article concerning arbitration proceedings. The regulations may include, but are not required to be limited to, all of the following:

(a) The method of initiating arbitration.

(b) The place of hearing, based upon the convenience of the parties.

(c) Procedures for the selection of neutral arbitrators.

(d) Procedure for conducting hearings.

(e) The providing of experts to assist the arbitrators if assistance is needed.

(f) Procedures for reimbursing the expenses which the panel incurs in conducting arbitrations.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25357. Expenditures from the state account shall not be made in excess of the total amount of money in the state account at any one time. Expenditures in excess of such amount may be made only when additional money is collected or otherwise added to the state account.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25357.5. (a) In any judicial action under this chapter, judicial review of any issues concerning the adequacy of any response action taken or ordered by the department shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

(b) If the court finds that the selection of the response action was not in accordance with law, the court shall award only the response costs or damages that are not inconsistent with the National Contingency Plan, as specified in Part 300 (commencing with Section 300.1) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations, and any other relief that is consistent with the National Contingency Plan.

(c) In reviewing an action brought by the department under this chapter, in which alleged procedural errors by the department are raised as a defense, the court may impose costs or damages only if the errors were serious and related to matters of central relevance to the action, so that the action would have been significantly changed had the errors not been made.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25358. The state shall actively seek to obtain all federal funds to which it is entitled under the federal act and shall take all actions necessary to enter into contractual or cooperative agreements under Sections 104 (c) (3) and 104 (d) (1) of the federal act (42 U.S.C. Sec. 9604 (c) (3) and 42 U.S.C. Sec. 9604 (d) (1)).

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25358.1. (a) The department, a representative of the department, or any person designated by the director may take the actions specified in this section only if there is a reasonable basis to believe that there may be a release or threatened release of a hazardous substance, and only for the purpose of determining under this chapter the need for a response action, the choosing or taking of a response action, or otherwise for the purpose of enforcing this chapter.

(b) Any officer or employee of the department, a representative of the director, or a person designated by the director may require any potentially responsible party, or any person who has, or may have, acquired information relevant to any of the following matters in the course of a commercial, ownership, or contractual relationship with any potentially responsible party, to furnish, upon reasonable notice, information or documents relating to the following matters:

(1) The identification, nature, and quantity of materials which have been, or are, generated, treated, stored, or disposed of at a hazardous substance release site or which have been, or are, transported to a hazardous substance release site.

(2) The nature or extent of a release or a threatened release of a hazardous substance at, or from, a hazardous substance release site.

(c) A person who is required to provide information pursuant to subdivision (b) shall, in accordance with subdivision (h), allow the officer, employee, representative, or designee, upon reasonable notice and at reasonable times, to have access to, and copy, all records relating to the hazardous substances for purposes of assisting the department in determining the need for an action in response to a release or threatened release pursuant to this chapter.

(d) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with subdivision (h), enter, at reasonable times, any of the following properties:

(1) Any nonresidential establishment or other place or property where any hazardous substances may be, or have been, produced, stored, treated, disposed of, or transported from.

(2) Any nonresidential establishment or other place or property from which, or to which, a hazardous substance has been, or may have been, released.

(3) Any nonresidential establishment or other place or property where a hazardous substance release is, or may be, threatened.

(4) Any nonresidential establishment or other place or property where entry is needed to determine the need for a response action, or the appropriate remedial action, to effectuate a response action under this chapter.

(5) Any residential place or property which, if it were a nonresidential establishment or other place or property, would otherwise meet the criteria described in paragraphs (1) to (4), inclusive, if the department, representative, or person designated by the director is able to establish, based upon reasonably available evidence, that hazardous substances have been released onto or under the residential place or real property and if entry is made only at reasonable times and after reasonable notification to the owners and occupants.

(e) Any officer or employee of the department, representative of the director, or person designated by the director may, in accordance with subdivision (h), carry out any of the following activities:

(1) Inspect and obtain samples from any establishment or other place or property specified in subdivision (d) or from any location of any suspected hazardous substance.

(2) Inspect and obtain samples of any substances from any establishment or place or property specified in subdivision (d).

(3) Inspect and obtain samples of any containers or labeling for the suspected hazardous substances, and samples of the soil, vegetation, air, water, and biota on the premises.

(4) Set up and maintain monitoring equipment for the purpose of assessing or measuring the actual or potential migration of hazardous substances.

(5) Survey and determine the topographic, geologic, and hydrogeologic features of the land.

(6) Photograph any equipment, sample, activity, or environmental condition described in paragraphs (2) to (5) inclusive.

(f) (1) If photographs are to be taken pursuant to paragraph (6) of subdivision (e), the department shall do all of the following:

(A) Comply with all procedures established pursuant to subdivision (b) of Section 25358.2.

(B) Notify the person whose facility is photographed prior to public disclosure of the photographs.

(C) Upon the request of the person owning the facility, submit a copy of any photograph to the person for the purpose of determining whether trade secret information, as defined in Section 25358.2, or facility security, would be revealed by the photograph.

(2) "Disclosure," as used in Section 25358.2, for purposes of this paragraph, does not include the review of the photograph by a court of competent jurisdiction or by an administrative law judge. A court or judge may review the photograph in camera.

(g) An officer, employee, representative, or designee who enters a place, establishment, or property pursuant to this section shall make a reasonable effort to inform the owner or the owners' authorized representative of the inspection and shall provide split samples to the owner or the representative upon request.

(h) If the owner or the owner's authorized representative does not voluntarily grant access to a place, establishment, or property pursuant to this section, the officer, employee, representative, or designee shall first obtain a warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, if there is an emergency posing an immediate threat to public health and safety, the officer, employee, representative, or designee may enter the place, establishment, or property without the consent of the owner or owner's authorized representative and without the issuance of a warrant.

(i) The department, and any person authorized by the department to enter upon any lands for the purpose of taking removal or remedial action pursuant to this chapter, shall not be held liable, in either a civil or criminal proceeding, for trespass or for any other acts which are necessary to carry out the corrective action.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25358.2. (a) "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information
which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, develop, or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(b) The department may disclose trade secrets received by the department pursuant to this chapter to authorized representatives, contractors, or other governmental agencies only in connection with the department's responsibilities pursuant to this chapter. The department shall establish procedures to ensure that these trade secrets are utilized only in connection with these responsibilities and are not otherwise disseminated without the consent of the person who provided the information to the department.

(c) The department may also make available to the Environmental Protection Agency any and all information required by law to be furnished to that agency. The sharing of information between the department and that agency pursuant to this section does not constitute a waiver by the department or any affected person of any privilege or confidentiality provided by law which pertains to the information.

(d) Any person providing information pursuant to subdivision (a) of Section 25358.1 shall, at the time of its submission, identify all information which the person believes is a trade secret. Any information or record not identified as a trade secret is available to the public, unless exempted from disclosure by other provisions of law.

(e) Any person who knowingly and willfully disseminates information protected by this section or procedures established by the department pursuant to subdivision (b) shall, upon conviction, be punished by a fine of not more than five thousand dollars ($5,000), imprisonment in the county jail not to exceed one year, or by both that fine and imprisonment.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25358.3. (a) Whenever the director determines that there may be an imminent or substantial endangerment to the public health or welfare or to the environment, because of a release or a threatened release of a hazardous substance, the director may do any or all of the following:

(1) Order any responsible party or parties to take or pay for appropriate removal or remedial action necessary to protect the public health and safety and the environment. No order under this section shall be made to an owner of real property solely on the basis of that ownership as specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)). The director shall give the responsible party an opportunity to assert all defenses to the order.

(2) Take or contract for any necessary removal or remedial action.

(3) Request the Attorney General to secure such relief as may be necessary from the responsible party or parties to abate the danger or threat. The superior court of the county in which the threat or danger occurs shall have jurisdiction to grant the relief which the public interest and equities of the case may require to protect public health and welfare and the environment. Upon a showing by the department that a release or threatened release of a hazardous substance has occurred or is occurring, and that there may be an imminent or substantial endangerment to the public health and safety or to the environment, the court may grant a temporary restraining order or a preliminary or permanent injunction pursuant to subdivision (e).

(b) When the director determines that a release of a hazardous substance has occurred or is about to occur, the director may do any or all of the following:

(1) Undertake those investigations, monitoring, surveys, testing, and other information gathering necessary to identify the existence, source, nature, and extent of the hazardous substances involved and the extent of danger to the public health or environment.

(2) Undertake those planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations which are necessary or appropriate to plan and direct response actions, to recover the cost of those actions, and to enforce this chapter.

(c) Whenever there is a release or threatened release of a hazardous substance into the environment, the director may take or contract for any necessary removal or remedial action and may take or contract for any actions authorized by subdivision (b), in compliance with the provisions of this chapter, including, but not limited to, subdivision (b) of Section 25355.

(d) Any person bidding for a contract specified in subdivision (c) shall submit a disclosure statement, as specified by Section 25112.5, except for a federal, state, or local agency. The director may prohibit a person from bidding on such a contract if the director makes any of the following determinations:

(1) The director determines, in writing, that the bidder, or, if the bidder is a business entity, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in or debt liability of that business entity, has engaged in activities resulting in any federal or state conviction which are significantly related to the fitness of the bidder to perform the bidder's duties or activities under the contract. For purposes of this paragraph, "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department may take pursuant to this subdivision relating to the department's refusal to permit a person to bid on the contract may be based upon a conviction for which any of the following has occurred:

(A) The time for appeal has elapsed.

(B) The judgment of conviction has been affirmed on appeal.

(C) Any order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Section 1203.4 of the Penal Code permitting that person to withdraw the plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(2) The director determines, in writing, that the bidder, or, if the bidder is a business entity, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in or debt liability of that business entity, has violated or failed to comply with this chapter or Chapter 6.5 (commencing with Section 25100) or Chapter 6.7 (commencing with Section 25280) of this division, the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Authorization Act of 1994, as amended (49 U.S.C. Sec. 5101 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal or state statute or any requirement or regulation adopted pursuant thereto relating to the generation,
transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in Section 25316, or a hazardous material, as defined in Section 353

of the Vehicle Code, if the violation or failure to comply shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(3) The director determines, in writing, that the bidder has had a license, permit, or registration for the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous substances revoked or suspended.

(e) Whenever there is a release or threatened release of a hazardous substance, the director may request the Attorney General to secure such relief as may be necessary from the responsible party or parties to abate the release or threatened release. The superior court of the county in which the release or threatened release occurs has jurisdiction to grant that relief which the public interest and equities of the case may require to protect the public health and safety and the environment. Upon a showing by the department that a release or threatened release of a hazardous substance has occurred or is occurring, and that there may be an imminent or substantial endangerment to the public health and safety or to the environment, the court may grant a temporary restraining order or a preliminary or permanent injunction.

(f) Upon the failure of any person to comply with any order issued by the department pursuant to this section or Section 25355.5, the director may request the Attorney General to petition the superior court for the issuance of an injunction requiring that person to comply with the order. The superior court shall have jurisdiction to grant a temporary restraining order or a preliminary or permanent injunction.

(g) In any civil action brought pursuant to this chapter in which a temporary restraining order or a preliminary or permanent injunction is sought, the department shall prove that the defendant is a responsible party and that there is a release or threatened release of a hazardous substance. It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order or the preliminary or permanent injunction not be issued, or that the remedy at law is inadequate; and the temporary restraining order or the preliminary or permanent injunction shall issue without those allegations and without that proof.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25358.4. The analysis of any material that is required to demonstrate compliance with this chapter shall be performed by a laboratory accredited by the State Department of Health Services pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101.

(Amended by Stats. 2000, Ch. 912, Sec. 17. Effective September 29, 2000.)

25358.5. Any removal or remedial action taken or contracted by the department pursuant to Section 25354 or subdivision (a) of Section 25358.3 shall be exempt from all of the following provisions:

(a) State Contract Act (Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code).

(b) Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(c) Section 10295 of, and Article 4 (commencing with Section 10335) of, and Article 5 (commencing with Section 10355) of, Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

(Amended by Stats. 2000, Ch. 912, Sec. 18. Effective September 29, 2000.)

25358.6. (a) The department may prequalify bidders for remedial or removal actions taken pursuant to Section 25354 or subdivision (a) of Section 25358.3. The department may reject the bid of any prospective bidder that has not been prequalified.

(b) To prequalify bidders, the department shall adopt and apply a uniform system of rating bidders. In order to obtain information for such rating, the department may require from prospective bidders answers to questions, including, but not limited to, questions about the bidder's financial ability, the bidder's experience in removal and remedial action involving hazardous substances, the bidder's past safety record, and the bidder's past performance on federal, state, or local government projects. The department may also require prospective bidders to submit financial statements.

(c) The department shall utilize the business financial data and information submitted by a bidder pursuant to subdivision (b) only for the purposes of prequalifying bidders pursuant to this section and shall not otherwise disseminate this data or information.

(d) The system of rating bidders may be adopted by the department as emergency regulations 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 purposes of that chapter, when these regulations are adopted as emergency regulations pursuant to Section 11349.6 of the Government Code, the regulations shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. It is the intent of the Legislature that emergency regulations adopted pursuant to this subdivision shall remain in effect until the regulations are adopted as final regulations, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25358.6.1. (a) For purposes of this section, the following definitions shall apply:

(1) "Engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services" includes professional services of an engineering, architectural, environmental, landscape architectural, construction project management, land surveying, or similar nature, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(2) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of engineering, architecture, environmental, landscape architecture, construction project management, or land surveying.

(3) "Prequalified list" means a list of engineering, architectural, environmental, landscape architectural, construction project management, or land surveying firms that possess the qualifications established by the department to perform specific types of engineering, architectural, environmental, landscape architectural, construction project management, and land surveying services, with each firm ranked in order of its qualifications and costs.

(b) Notwithstanding Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, the department may advertise and award a contract, in accordance with this section, for engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services pursuant to this chapter or Chapter 6.5 (commencing with Section 25100), if the contract is individually in an amount equal to, or less than, one million dollars ($1,000,000).

(c) The department may establish prequalified lists of engineering, architectural, environmental, landscape architectural, construction project management, or land surveying firms in accordance with the following process:

(1) For each type of engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services work for which the department elects to use this section for advertising and awarding contracts, the department may request annual statements of qualifications from interested firms. The request for statements of qualifications shall be announced statewide through the California State Contracts Register and publications, Internet Web sites, or electronic bulletin boards of respective professional societies that are intended, designed, and maintained by the professional societies to communicate with their memberships. Each announcement shall describe the general scope of services to be provided within each generic project category for engineering, architectural, environmental, landscape architectural, construction project management, or land surveying services that the department anticipates may be awarded during the period covered by the announcement.

(2) The department shall define a generic project category so that each specific project to be awarded within that generic project category is substantially similar to all other projects within that generic project category, may be within the same size range and geographical area, and requires substantially similar skills and magnitude of professional effort as every other project within that generic project category. The generic categories shall provide a basis for evaluating and establishing the type, quality, and costs, including hourly rates for personnel and field activities and equipment, of the services that would be provided by the firm.

(3) The department shall evaluate the statements of qualifications received pursuant to paragraph (1) and the department shall develop a short list of the most qualified firms that meet the criteria established and

published by the department. The department shall hold discussions regarding each firm's qualifications with all firms listed on the short list. The department shall then rank the firms listed on the short list according to each firm's qualifications and the evaluation criteria established and published by the department.

(4) The department shall maintain prequalified lists of civil engineering, architectural, environmental, landscape architectural, construction project management, or land surveying firms ranked pursuant to paragraph (3) on an ongoing basis, except that no firm may remain on a list developed pursuant to paragraph (3) based on a single qualification statement for more than three years. The department shall include in each prequalified list adopted pursuant to paragraph (3) no less than three firms, unless the department certifies that the scope of the prequalified list is appropriate for the department's needs, taking into account the nature of the work, that the department made reasonable efforts to solicit qualification statements from qualified firms, and that the efforts were unsuccessful in producing three firms that met the established criteria. A firm may remain on the prequalified list up to three years without resubmitting a qualification statement, but the department may add additional firms to that list and may annually rank these firms. For purposes of annual adjustment to the ranking of firms already on the prequalified list developed pursuant to paragraph (3), the department shall rely on that firm's most recent annual qualification statement, if the statement is not more than three years old.

(5) During the term of the prequalified list developed pursuant to paragraph (3), as specific projects are identified by the department as being eligible for contracting under the procedures adopted pursuant to subdivision (d), the department shall contact the highest ranked firm on the appropriate prequalified list to determine if that firm has sufficient staff and is available for performance of the project. If the highest ranked firm is not available, the department shall continue to contact firms on the prequalified list in order of rank until a firm that is available is identified.

(6) The department may enter into a contract for the services with a firm identified pursuant to paragraph (5), if the contract is for a total price that the department determines is fair and reasonable to the department and otherwise conforms to all matters and terms previously identified and established upon participation in the prequalified list.

(7) If the department is unable to negotiate a satisfactory contract with a firm identified pursuant to paragraph (6), the department shall terminate the negotiations with that firm and the department shall undertake negotiations with the next ranked firm that is available for performance. If a satisfactory contract cannot be negotiated with the second identified firm, the department shall terminate these negotiations and the department shall continue the negotiation process with the remaining qualified firms, in order of their ranking, until the department negotiates a satisfactory contract. If the department is unable to negotiate a satisfactory contract with a firm on two separate occasions, the department may remove that firm from the prequalified list. The department may award a contract to a firm on a prequalified list that is to be executed, including amendments, for a term that extends beyond the expiration date of that firm's tenure on the prequalified list.

(8) Once a satisfactory contract is negotiated and awarded to a firm from any prequalified list for a generic project category involving a site or facility investigation or characterization, a feasibility study, or a remedial design, for a specific response action or corrective action, including, but not limited to, a corrective action carried out pursuant to Section 25200.10, the department shall not enter into a contract with that firm for purposes of construction or implementation of any part of that same response action or corrective action.

(d) The department may adopt guidelines or regulations as necessary and consistent with this section, to define the manner of advertising, generic project categories, type, quantity and cost of services, qualification standards and evaluation criteria, content and submittal requirements for statements of qualification, procedures for ranking of firms and administration of the prequalified list, the scope of matters addressed by participation on a prequalified list, manner of notification of, negotiation with, and awarding of contracts to, prequalified firms, and procedures for protesting the award of contracts under this section, or any other matter that is appropriate for implementation of this section.

(e) Any removal or remedial action taken or contracted by the department pursuant to Section 25354 or subdivision (a) of Section 25358.3 is exempt from this section.

(f) This section does not exempt any contract from compliance with Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code.

(Amended by Stats. 2002, Ch. 626, Sec. 4. Effective January 1, 2003.)

25358.7. (a) The department or the regional board, as appropriate, shall take the actions specified in this section to provide an opportunity for meaningful public participation in response actions undertaken for sites listed pursuant to Section 25356.

(b) The department, or the regional board, as appropriate, shall inform the public, and in particular, persons living in close proximity to a hazardous substance release site listed pursuant to Section 25356, of the existence of the site and the department's or regional board's intention to conduct a response action at the site, and shall conduct a baseline community survey to determine the level of public interest and desire for involvement in the department's or regional board's activities, and to solicit concerns and information regarding the site from the affected community. Based on the results of the baseline survey, the department or regional board shall develop a public participation plan that shall establish appropriate communication and outreach measures commensurate with the level of interest expressed by survey respondents. The public participation plan shall be updated as necessary to reflect any significant changes in the degree of public interest as the site investigation and cleanup process moves toward completion.

(c) The department or regional board shall provide any person affected by a response action undertaken for sites listed pursuant to Section 25356 with the opportunity to participate in the department's or regional board's decisionmaking process regarding that action by taking all of the following actions:

(1) Provide access to information which the department or regional board is required to release pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), relating to the action, except for the following:

(A) Trade secrets, as defined in subdivision (a) of Section 25358.2.

(B) Business financial data and information, as specified in subdivision (c) of Section 25358.6.

(C) Information which the department or regional board is prohibited from releasing pursuant to any state or federal law.

(2) Provide factsheets, based on the expressed level of public interest, regarding plans to conduct the major elements of the site investigation and response actions. The factsheets shall present the relevant information in nontechnical language and shall be detailed enough to provide interested persons with a good understanding of the planned activities. The factsheets shall be made available in languages other than English if appropriate.

(3) Provide notification, upon request, of any public meetings held by the department or regional board concerning the action.

(4) Provide the opportunity to attend and to participate at those public meetings.

(5) Based on the results of the baseline community survey, provide opportunities for public involvement at key stages of the response action process, including the health risk assessment, the preliminary assessment, the site inspection, the remedial investigation, and the feasibility study stages of the process. If the department or regional board determines that public meetings or other opportunities for public comment are not appropriate at any of the stages listed in this section, the department or regional board shall provide notice of that decision to the affected community.

(d) The department or regional board shall develop and make available to the public a schedule of activities for each site for which remedial action is expected to be taken by the department or regional board pursuant to this chapter and shall make available to the public any plan provided to the department or regional board by any responsible party, unless the department is prohibited from releasing the information pursuant to any state or federal law.

(e) In making decisions regarding the methods to be used for removal or remedial actions taken pursuant to this chapter, the department or regional board shall incorporate or respond in writing to the advice of persons affected by the actions.

(f) This section does not apply to emergency actions taken pursuant to Section 25354.

(Amended by Stats. 2000, Ch. 912, Sec. 19. Effective September 29, 2000.)

25358.7.1. (a) At each site, a community advisory group may be established by the affected community to review any response action and comment on the response action to be conducted in that community. The department or regional board shall regularly communicate, and confer as appropriate, with the community advisory committee. The department or regional board shall also advise local environmental regulatory agencies and other appropriate local agencies of planned response actions and provide opportunities for review and comment. If the department or regional board, whichever is overseeing a response action, receives a petition signed by at least 50 members of a community affected by the response action at a site or a resolution adopted by the legislative body of the jurisdiction within which the response action has been or will be initiated, the department or regional board shall assist the petitioners or the legislative body to establish a community advisory group to review the response action at the site.

(b) To the extent possible, the composition of each community advisory group shall reflect the composition of the affected community and the diversity of interests of the community by including all of the following types of individuals on the community advisory group:

(1) Persons owning or residing on property located near the hazardous substance release site or in an adjacent community, or other persons who may be directly affected by the response action.

(2) Individuals from the local business community.

(3) Local political or government agency representatives.

(4) Local citizen, civic, environmental, or public interest group members residing in the community.

(c) The following entities may participate in community advisory group meetings in order to provide information and technical expertise:

(1) The department or regional boards.

(2) Representatives of local environmental regulatory agencies.

(3) The potentially responsible parties or other persons who are conducting the response action.

(d) The existence of a community advisory group shall not diminish any other obligation of the department or regional board with respect to public participation requirements specified in Section 25358.7. Nothing in this section shall affect the status of any citizen advisory group formed before the enactment of this section, a federal Department of Defense Restoration Advisory Board, or a federal Department of Energy Advisory Board.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25358.7.2. (a) On or before July 1, 2000, the department and the State Water Resources Control Board shall establish two community service offices, one to serve northern California and the other to serve southern California. With regard to sites listed pursuant to Section 25356 where the department or regional board is taking action to investigate or remediate the site, the community assistance offices shall facilitate communication between the department or regional board, the responsible parties, and the affected community, including any community advisory group that may have been formed in the community where the hazardous substance release site is located.

(b) Notwithstanding subdivision (c) of Section 25390.3, the department and, if appropriate, the State Water Resources Control Board shall expend a total of four hundred thousand dollars ($400,000) per year from the Orphan Share Reimbursement Trust Fund established pursuant to Article 7.8 (commencing with Section 25390) on the operation of the community service offices established pursuant to this section. The offices shall use these funds to provide direct technical and logistical support to any community advisory group established pursuant to Section 25358.7.1. Funds allocated pursuant to this subdivision shall supplement, and not supplant, any funds expended for the purposes of developing and implementing other public participation activities required to be undertaken pursuant to this chapter, including, but not limited to, activities undertaken pursuant to the National Contingency Plan or the public participation workplan required to be adopted by the department pursuant to Section 25358.7.

(c) The State Water Resources Control Board may contract with the department to provide this service on behalf of a regional board if the State Water Resources Control Board finds that it would be more practical and economical to do so.

(d) In implementing this section, the department and the regional boards are not obligated to expend funds beyond the amounts appropriated in any fiscal year for purposes of developing and implementing public participation activities required by other provisions of this chapter unless the Orphan Share Reimbursement Trust Fund contains funding at the level specified in subdivision (b).

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25358.8. A community advisory group established pursuant to Section 25358.7.1 may request, in writing, and a potentially responsible party or parties may fund, a technical assistance grant for a site for the purpose of providing technical assistance to the community advisory group.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25358.9. (a) To the extent consistent with the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the department may exclude any portion of a response action conducted entirely onsite from the hazardous waste facility permit requirements of Section 25201 if both of the following apply:

(1) The removal or remedial action is carried out pursuant to a removal action work plan or a remedial action plan prepared pursuant to Section 25356.1.

(2) The removal action work plan or the remedial action plan requires that the response action complies with all laws, rules, regulations, standards, and requirements, criteria, or limitations applicable to the construction, operation, and closure of the type of facility at the hazardous substance release site and with any other condition imposed by the department as necessary to protect public health and safety and the environment.

(b) The department may enforce in the court for the county in which a response action exempted pursuant to subdivision (a) is located any federal or state law, rule, regulation, standard, requirements, criteria, or limitation with which the remedial or removal action is required to comply. Any consent decree entered into pursuant to an enforcement action authorized by this subdivision shall require the parties to attempt expeditiously to informally resolve any disagreements concerning the implementation of the response action with the appropriate federal and state agencies and shall provide for administrative enforcement. The consent decree shall stipulate that the penalty for violation of the consent decree shall be an amount not more than twenty-five thousand dollars ($25,000) per day, which may be enforced by the state. These penalties do not impair or affect the authority of the court to order compliance with the specific terms of the consent decree.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25359. (a) Any person who is liable for a release, or threat of a release, of hazardous substances and who fails, without sufficient cause, as determined by the court, to properly provide a removal or remedial action upon order of the director or the court, pursuant to Section 25358.3, is liable to the department for damages equal to three times the amount of any costs incurred by the state account pursuant to this chapter as a result of the failure to take proper action.

(b) No treble damages shall be imposed under this section against an owner of real property who did not generate, treat, transport, store, or dispose of any hazardous substance on, in, or at the facility located on that real property, as specified in Sections 101(35) and 107(b) of the federal act (42 U.S.C. Secs. 9601(35) and 9607(b)).

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25359.1. There shall be no recovery of punitive damages under Section 25359 for an injury to or loss of natural resources that occurred wholly before September 25, 1981. This section shall not be construed as precluding the recovery of punitive damages for injury to or loss of natural resources in an action brought pursuant to any other provision of law.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25359.2. Any person subject to a removal or remedial action order or other order issued pursuant to Section 25355.5 or 25358.3 who does not comply with that order without sufficient cause shall be subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day of noncompliance. Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to Section 25359.3.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25359.3. (a) The department may issue a complaint to any person subject to a penalty pursuant to Sections 25359.2 and 25359.4. The complaint shall allege the acts or failures to act that constitute a basis for liability and the amount of the proposed penalty. The complaint shall be served by

personal service or certified mail and shall inform the party so served of the right to a hearing. Any person served with a complaint pursuant to this subdivision may, within 45 days after service of the complaint, request a hearing by filing a notice of defense with the department. A notice of defense is deemed to be filed within a 45-day period if it is postmarked within the 45-day period. If no notice of defense is filed within 45 days after service of the complaint, the department shall issue an order setting liability in the amount proposed in the complaint, unless the department and the party have entered into a settlement agreement, in which case the department shall issue an order setting liability in the amount specified in the settlement agreement. Where the party has not filed a notice of defense or where the department and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(b) Any hearing required under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all powers granted by those provisions. In making a determination, the administrative law judge shall consider the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety or the environment, the violator's ability to pay the proposed penalty, and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole.

(c) All penalties collected under this section and Section 25359.2 shall be deposited in the state account and shall be available for expenditure by the department upon appropriation by the Legislature.

(Amended by Stats. 2006, Ch. 77, Sec. 29. Effective July 18, 2006.)

25359.4. (a) A person shall not release, or allow or cause a release of, a reportable quantity of a hazardous substance into the environment that is not authorized or permitted pursuant to state law.

(b) Any release of a reportable quantity of hazardous substance shall be reported to the department in writing within 30 days of discovery, unless any of the following apply:

(1) The release is permitted or in the permit process.

(2) The release is authorized by state law.

(3) The release requires immediate reporting to the Office of Emergency Services pursuant to Section 11002 or 11004 of Title 42 of the United States Code, or pursuant to Section 25507.

(4) The release has previously been reported to the department or the Office of Emergency Services.

(5) The release occurred prior to January 1, 1994.

(c) For the purposes of this section, "reportable quantity" means either of the following:

(1) The quantity of a hazardous substance established in Part 302 (commencing with Section 302.1) of Title 40 of the Code of Federal Regulations, the release of which requires notification pursuant to that part.

(2) Any quantity of a hazardous substance that is not reportable pursuant to paragraph (1), but that may pose a significant threat to public health and safety or to the environment. The department may establish guidelines for determining which releases are reportable under this paragraph.

(d) The owner of property on which a reportable release has occurred and any person who releases, or causes a reportable release and who fails to make the written report required by subdivision (b), shall be liable for a penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation and for each day that a violation continues. Each day on which the released hazardous substance remains is a separate violation unless the person has either filed the report or is in compliance with an order issued by a local, state, or federal agency with regard to the release.

(e) Liability under this section may be imposed in a civil action or may be administratively imposed by the department pursuant to Section 25359.3.

(f) If the violation of subdivision (b) results in, or significantly contributes to, an emergency, including, but not limited to, a fire, to which a county, city, or district is required to respond, the responsible party may be assessed the full cost of the emergency response by the city, county, or district.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25359.4.5. (a) A responsible party who has entered into an agreement with the department and is in compliance with the terms of that agreement, or who is in compliance with an order issued by the department, may seek, in addition to contribution, treble damages from any contribution defendant who has failed or refused to comply with any order or agreement, was named in the order or agreement, and is subject to contribution. A contribution defendant from whom treble damages are sought in a contribution action shall not be assessed treble damages by any court where the contribution defendant, for sufficient cause, as determined by the court, failed to comply with an agreement or with an order issued by the department, or where the contribution defendant is an owner of real property who did not generate, treat, transport, store, or dispose of the hazardous substance on, in, or at the facility located on that real property, as specified in Sections 101 (35) and 107 (b) of the federal act (42 U.S.C. Secs. 9601 (35) and 9607 (b)), or where the principles of fundamental fairness would be violated, as determined by the court. A party seeking treble damages pursuant to this section shall show that the party, the department, or another entity provided notice, by means of personal service or certified mail, of the order or agreement to the contribution defendant from whom the party seeks treble damages.

(b) One-half of any treble damages awarded pursuant to this section shall be paid to the department, for deposit in the state account. Nothing in this subdivision affects the rights of any party to seek contribution pursuant to any other statute or under common law.

(c) A contribution defendant from whom treble damages are sought pursuant to this section shall be deemed to have acted willfully with respect to the conduct that gave rise to this liability for purposes of Section 533 of the Insurance Code.

(Amended by Stats. 2006, Ch. 77, Sec. 30. Effective July 18, 2006.)

25359.5. (a) After making a determination, based upon a preliminary site assessment that there has been a release of a hazardous substance on, under, or into the land on a site, the department or a county health officer shall order the property owner to secure the site if all of the following conditions apply to that site:

(1) The release does not comply with the terms of a current permit or interim status document or regulation of the department.

(2) The site poses a public health risk if human contact is made with the hazardous waste or the surrounding contaminated area.

(3) There is a likelihood of human or domestic animal contact.

(b) The order to secure the site shall require, within five days after receiving notification of the order, the posting of the site with signs. The order shall also require, within five days after receiving notification of the order, that the site be enclosed with a fence, unless it is physically and economically infeasible or unless the fencing is unnecessary because it will not alleviate the danger to the public health.

(c) If fencing is ordered, the fences shall be maintained at the site to prevent unauthorized persons from gaining access to the site. The signs shall be maintained and shall meet all of the following requirements:

(1) The signs shall be bilingual, appropriate to the local area, and may include international symbols, as required by the department.

(2) The signs shall have lettering which is legible from a distance of at least 25 feet.

(3) The signs shall read: "Caution: Hazardous Substance Area, Unauthorized Persons Keep Out" and shall have the name and phone number of the department or the county health officer that ordered the posting.

(4) The signs shall be visible from the surrounding contaminated area and posted at each route of entry into the site, including those routes which are likely to be used by unauthorized persons, at access roads leading to the site, and facing navigable waterways where appropriate.

(5) The signs shall be of a material able to withstand the elements.

(d) A property owner who fails to comply with an order of the department or the county health officer is subject to a civil penalty of up to twenty-five thousand dollars ($25,000). In determining the amount of a civil penalty to be imposed, the court shall consider all relevant circumstances, including, but not limited to, the economic assets of the property owner and whether the property owner has acted in good faith.

If the property owner fails to secure and post the site, the department or the county health officer shall secure and post the site pursuant to subdivision (b) within 30 days of the expiration of the five-day period and shall seek recovery of the costs of that securing and posting from the property owner. If the site is an abandoned site, as defined in Section 25359.6, if the site cannot be traced to a specific owner, or if the owner has

been declared bankrupt, the department or the county health officer shall secure and post the site, using any source of funds, pursuant to subdivision (b).

(e) The department or the county health officer shall advise other agencies on the public health risks and the need for fencing and posting of sites when those agencies confirm the release of a hazardous substance pursuant to subdivision (a).

(f) The remedies and penalties specified in this section and Section 25359.6 are in addition to, and do not affect, any other remedies, enforcement actions, requirements, or penalties otherwise authorized by law.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25359.6. (a) The director shall notify, within 20 working days, each of the appropriate county health officers as to all the potential abandoned sites of which the department has knowledge or which the department is investigating for releases of hazardous substances that may have occurred or might be occurring at abandoned sites. The county health officers may request quarterly updates on the status of the investigations of these sites.

As used in this section, "abandoned site" means an inactive disposal, treatment, or storage facility which cannot, with reasonable effort, be traced to a specific owner, a site whose owner has been determined bankrupt, or a location where a hazardous substance has been illegally disposed.

(b) Within 10 working days of the identification of an abandoned site, the department or a county health officer shall notify the other agency of the status of the site. The department and the county health officer shall inform the other agency of orders to fence and post these sites and the status of compliance with those orders. The department or the county health officers may request quarterly updates of the testing, enforcement action, and remedial or removal actions that are proposed or ongoing.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25359.7. (a) Any owner of nonresidential real property who knows, or has reasonable cause to believe, that any release of hazardous substance has come to be located on or beneath that real property shall, prior to the sale, lease, or rental of the real property by that owner, give written notice of that condition to the buyer, lessee, or renter of the real property. Failure of the owner to provide written notice when required by this subdivision to the buyer, lessee, or renter shall subject the owner to actual damages and any other remedies provided by law. In addition, where the owner has actual knowledge of the presence of any release of a material amount of a hazardous substance and knowingly and willfully fails to provide written notice to the buyer, lessee, or renter, as required by this subdivision, the owner is liable for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation.

(b) Any lessee or renter of real property who knows or has reasonable cause to believe that any release of a hazardous substance has come or will come to be located on or beneath that real property shall, within a reasonable period of time, either prior to the release or following the discovery by the lessee or renter of the presence or believed presence of the hazardous substance release, give written notice of that condition to the owner of the real property or to the lessor under the lessee's or renter's lease or rental agreement.

(1) A lessee or renter who fails to provide written notice when required by this subdivision to the owner or lessor is subject to actual damages and any other remedy provided by law.

(2) If the lessee or renter has knowledge of the presence of a release of a material amount of a hazardous substance, or of a hazardous substance release that is required to be reported to a state or local agency pursuant to law, on or under the real property leased or rented by the lessee or renter and knowingly and willfully fails to provide written notice when required by this subdivision to the owner or lessor, both of the following shall apply:

(A) The failure is deemed to constitute a default, upon the owner's or lessor's written notice to the lessee or renter, under the lessee's or renter's lease or rental agreement, except that this subparagraph does not apply to lessees and renters of property used exclusively for residential purposes.

(B) The lessee or renter is liable for a civil penalty not to exceed five thousand dollars ($5,000) for each separate violation.

(3) A lessee or renter may cure a default under the lessee's or renter's lease or rental agreement which resulted from a violation of this subdivision, by promptly commencing and completing the removal of, or taking other appropriate remedial action with respect to, the hazardous substance release. The removal or remedial action shall be conducted in accordance with all applicable laws and regulations and in a manner which is reasonably acceptable to, and which is approved in writing by, the owner or lessor. This paragraph does not relieve the lessee or renter of any liability for actual damages or for any civil penalty for a violation of this subdivision.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

Article 5.5. Cleanup of Santa Susana Field Laboratory

(Article 5.5 added by Stats. 2007, Ch. 729, Sec. 1. Effective January 1, 2008.)

25359.20. (a) Notwithstanding paragraph (1) of subdivision (b) of Section 25187 of the Health and Safety Code, the department may use any legal remedies available pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.5 (commencing with Section 25100) to compel a responsible party or parties to take or pay for appropriate removal or remedial action necessary to protect the public health and safety and the environment at the Santa Susana Field Laboratory site in Ventura County.

(b) A response action taken or approved at the Santa Susana Field Laboratory site shall be conducted in accordance with the provisions of this chapter.

(c) A response action taken or approved pursuant to this chapter for the Santa Susana Field Laboratory site shall be based upon, and be no less stringent than, the provisions of Section 25356.1.5. In calculating the risk, the cumulative risk from radiological and chemical contaminants at the site shall be summed, and the land use assumption shall be either suburban residential or rural residential (agricultural), whichever produces the lower permissible residual concentration for each contaminant. In the case of radioactive contamination, the department shall use as its risk range point of departure the concentrations in the Preliminary Remediation Goals issued by the Superfund Office of the United States Environmental Protection Agency in effect as of January 1, 2007.

(d) Notwithstanding any other provision of law regarding transfers of land, no person or entity shall sell, lease, sublease, or otherwise transfer land presently, or formerly occupied by the Santa Susana Field Laboratory, except as provided in subdivision (e).

(e) As a condition for a sale, lease, sublease, or transfer of land presently or formerly occupied by the Santa Susana Field Laboratory, the Director of the Department of Toxic Substances Control or his or her designee shall certify that the land has undergone complete remediation pursuant to the most protective standards in subdivisions (a) to (c), inclusive.

(Added by Stats. 2007, Ch. 729, Sec. 1. Effective January 1, 2008.)

Article 6. Recovery Actions

(Article 6 added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25360. (a) Any costs incurred by the department or regional board in carrying out this chapter shall be recoverable pursuant to state or federal law by the Attorney General, upon the request of the department or regional board, from the liable person or persons. The amount of any response action costs that may be recovered pursuant to this section shall include interest on any amount paid. The interest on amounts paid from the state account or the Site Remediation Account shall be calculated at the rate of return earned on investment in the Surplus Money Investment Fund pursuant to Section 16475 of the Government Code.

(b) A person who is liable for costs incurred at a site shall have the liability reduced by any reimbursements that were paid by that person for that site pursuant to Section 25343.

(c) The amount of cost determined pursuant to this section shall be recoverable at the discretion of the department, either in a separate action or by way of intervention as of right in an action for contribution or indemnity. Nothing in this section deprives a party of any defense that the party may have.

(d) Money recovered by the Attorney General pursuant to this section shall be deposited in the state account.

(Amended by Stats. 2006, Ch. 77, Sec. 31. Effective July 18, 2006.)

25360.1. Any monetary obligation to the department pursuant to Chapter 6.5 (commencing with Section 25100) or this chapter shall be subject to interest from the date of the demand at the same rate of return earned on investment in the Surplus Money Investment Fund pursuant to Section 16475 of the Government Code, except the department may waive the interest if the obligation is satisfied within 60 days from the date of invoice.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25360.2. (a) For purposes of this section, the following definitions apply:

(1) "Owner" means either (A) the owner of property who occupies a single-family residence or one-half of a duplex constructed on the property, or (B) the owner of common areas within a residential common interest development who owns those common areas for the benefit of the residential homeowners. This paragraph does not include the developer of the common interest development.

(2) "Property" means either (A) real property of five acres or less which is zoned for, and on which has been constructed, a single-family residence, or (B) common areas within a residential common interest development.

(b) (1) Notwithstanding any other provision of this chapter, an owner of property that is the site of a hazardous substance release is presumed to have no liability pursuant to this chapter for either of the following:

(A) A hazardous substance release that has occurred on the property.

(B) A release of a hazardous substance to groundwater underlying the property if the release occurred at a site other than the property.

(2) The presumption may be rebutted as provided in subdivision (d).

(c) An action for recovery of costs or expenditures incurred from the state account pursuant to this chapter in response to a hazardous substance release may not be brought against an owner of property unless the department first certifies that, in the opinion of the department, one of the following applies:

(1) The hazardous substance release that occurred on the property occurred after the owner acquired the property.

(2) The hazardous substance release that occurred on the property occurred before the owner acquired the property and at the time of acquisition the owner knew or had reason to know of the hazardous substance release.

(3) The owner of property where there has been a release of a hazardous substance to groundwater underlying the property took, or is taking, one or more of the following actions:

(A) Caused or contributed to a release of a hazardous substance to the groundwater.

(B) Fails to provide the department, or its authorized representative, with access to the property.

(C) Interferes with response action activities.

(d) In an action brought against an owner of property to recover costs or expenditures incurred from the state account pursuant to this chapter in response to a hazardous substance release, the presumption established in subdivision (b) may be rebutted if it is established by a preponderance of the evidence that the facts upon which the department made the certification pursuant to paragraph (1), (2), or (3) of subdivision (c) are true.

(e) Notwithstanding any other provision of this chapter, this section governs liability pursuant to this chapter for an owner of property, as defined in subdivision (a).

(Amended by Stats. 2006, Ch. 77, Sec. 32. Effective July 18, 2006.)

25360.3. (a) For the purposes of this section, the following terms have the following meaning:

(1) "Easement" means a conservation easement, as defined in Section 815.1 of the Civil Code.

(2) "Environmental assessment" means an investigation of real property, conducted by an independent qualified environmental consultant, to discover the presence or likely presence of a release or a threat of a release of a hazardous substance at, on, to, or from the real property. An environmental assessment shall include, but is not limited to, an investigation of the historical use of the real property, any prior releases, records, consultant reports and regulatory agency correspondence, a visual survey of the real property, and, if warranted, sampling and analytical testing.

(3) "Owner" means either of the following:

(A) An independent special district, as defined in Section 56044 of the Government Code.

(B) An entity or organization that holds an easement.

(4) "Property" means either of the following:

(A) Real property acquired by a special district by means of a gift or donation for which an environmental assessment was completed prior to the transfer or conveyance of the real property to the special district.

(B) An easement for which an environmental assessment was completed prior to the transfer or conveyance of the easement to an entity or organization authorized to accept the easement pursuant to Section 815.3 of the Civil Code.

(b) (1) Notwithstanding any other provision of this chapter, if an environmental assessment of property discovers no evidence of the presence or likely presence of a release or a threat of a release of a hazardous substance, and a hazardous substance release is subsequently discovered on, to, or from that property, the owner of that property is entitled to a rebuttable presumption, affecting the burden of producing evidence, that the owner is not a liable person or responsible party for purposes of this chapter. An owner is entitled to this presumption whether the action is brought by the state or by a private party seeking contribution or indemnification.

(2) In an action brought against an owner of property to recover costs or expenditures incurred from the state account pursuant to this chapter in response to a hazardous substance release, the presumption may be rebutted if it is established by a preponderance of the evidence that the facts upon which the department made the certification pursuant to paragraph (1), (2), (3), or (4) of subdivision (c) are true.

(c) An action for recovery of costs or expenditures incurred from the state account pursuant to this chapter in response to a hazardous substance release shall not be brought against an owner of property unless the department first certifies that, as found by the department, one of the following situations applies:

(1) The hazardous substance release occurred on or after the date that the owner acquired the property.

(2) The hazardous substance release occurred before the date that the owner acquired the property and, at the time of the acquisition, the owner knew, or had reason to know, of the hazardous substance release.

(3) The environmental assessment applicable to the property was not properly carried out, was fraudulently completed, or involves the negligent or intentional nondisclosure of information.

(4) The hazardous substance release was discovered on or after the date of acquisition and the owner failed to exercise due care with respect to the release, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances.

(d) Notwithstanding any other provision of this chapter, this section governs liability pursuant to this chapter for an owner of property, as defined in subdivision (a).

(e) This section is applicable only to property that is acquired by the owner on or after January 1, 1995.

(Amended by Stats. 2006, Ch. 77, Sec. 33. Effective July 18, 2006.)

25360.4. (a) An action under Section 25360 for the recovery of the costs of removal or remedial action incurred by the department from the state account, or any other source authorized by law, or for the recovery of administrative costs incurred by the department in connection with any removal or remedial action performed by the department or by any responsible party, shall be commenced within three years after completion of the removal or remedial action has been certified by the department.

(b) An action under subdivision (c) of Section 25352 for costs incurred by the department for the purposes specified in subdivision (a) or (b) of Section 25352 shall be commenced within three years after certification by the department of the completion of the activities authorized under subdivisions (a) and (b) of Section 25352.

(c) In any action described in subdivision (a) or (b) for recovery of the costs of a removal action, a remedial action, administrative costs, or damages, where the court has entered a judgment for these past costs or damages, the court shall also enter an order reserving jurisdiction over the case and the court shall have continuing jurisdiction to determine any future liability and the amount. The department may immediately enforce the judgment

for past costs and damages. The department may apply for a court judgment as to future costs and damages that have been incurred at any time during the removal and remedial actions or during the performance of the activities authorized by Section 25352, but the application shall be made not later than three years after the certification of completion of the actions or activities.

(d) An action may be commenced under Section 25360 or subdivision (c) of Section 25352 at any time prior to expiration of the three-year limitation period provided for by this section.

(Amended by Stats. 2006, Ch. 77, Sec. 34. Effective July 18, 2006.)

25360.6. (a) The department shall, if it determines that it is practicable and in the public interest, propose a final administrative or judicial expedited settlement with potentially responsible parties if the settlement involves only a minor portion of the response costs at a facility and, if in the judgment of the department, either of the following conditions are met:

(1) The amount of hazardous substances and the toxic or other hazardous effects of the hazardous substances contributed by the potentially responsible party to the facility are minimal in comparison to the amount and effects of other hazardous substances at the facility.

(2) The potentially responsible party is the owner of the real property on or in which the facility is located, did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility, and did not contribute to the release or threat of release of a hazardous substance at the facility through any act or omission. This paragraph does not apply if the potentially responsible party, at the time of the purchase of the real property, knew or should have known that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(b) A party who has resolved its liability to the state under this section shall not be liable for claims for contribution regarding matters addressed in the settlement. A settlement under this section does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(c) Any person who enters into a settlement under this section shall provide any information relevant to the administration of this chapter that is requested by the department. In order to obtain the contribution protection provided by subdivision (b), a potentially responsible party participating in a de minimis settlement shall certify that it has responded fully and accurately to all of the department's requests for information, and that it has provided all of the relevant documents pertaining to the facility to the department.

(d) Nothing in this section shall be construed to affect the authority of the department or regional board to reach settlements with other potentially responsible parties under this chapter.

(Amended by Stats. 2004, Ch. 183, Sec. 205. Effective January 1, 2005.)

25361. (a) The state account shall be a party in any action for recovery of costs or expenditures under this chapter incurred from the state account.

(b) In the event a district attorney or a city attorney has brought an action for civil or criminal penalties pursuant to Chapter 6.5 (commencing with Section 25100) against any person for the violation of any provision of that chapter, or any rule, regulation, permit, covenant, standard, requirement, or order issued, adopted, or executed thereunder, and the department has expended moneys from the state account pursuant to Section 25354 for immediate corrective action in response to a release, or threatened release, of a hazardous substance which has resulted, in whole or in part, from the person's acts or omissions, the state account may be made a party to that action for the purpose of recovering the costs against that person. If the state account is made a party to the action, the Attorney General shall represent the state account for the purpose of recovering the moneys expended from the account. Notwithstanding any other provision of law, and under terms that the Attorney General and the department deem appropriate, the Attorney General may delegate the authority to recover the costs to the district attorney or city attorney who has brought the action pursuant to Chapter 6.5 (commencing with Section 25100). The failure to seek the recovery of moneys expended from the state account as part of the action brought pursuant to Chapter 6.5 (commencing with Section 25100) does not foreclose the Attorney General from recovering the moneys in a separate action.

(Amended by Stats. 2006, Ch. 77, Sec. 35. Effective July 18, 2006.)

25362. 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 under this chapter.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25363. (a) Except as provided in subdivision (f), any party found liable for any costs or expenditures recoverable under this chapter who establishes by a preponderance of the evidence that only a portion of those costs or expenditures are attributable to that party's actions, shall be required to pay only for that portion.

(b) Except as provided in subdivision (f), if the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures under subdivision (a), the court shall apportion those costs or expenditures, to the extent practicable, according to equitable principles, among the defendants.

(c) The state account shall pay any portion of the judgment in excess of the aggregate amount of costs or expenditures apportioned under subdivisions (a) and (b).

(d) The standard of liability for any costs or expenses recoverable pursuant to this chapter is strict liability.

(e) Any person who has incurred removal or remedial action costs in accordance with this chapter or the federal act may seek contribution or indemnity from any person who is liable pursuant to this chapter, except that no claim may be asserted against a person whose liability has been determined and which has been or is being, fully discharged pursuant to Section 25356.6, or against a person who is actively participating in a pending apportionment proceeding pursuant to Section 25356.6. An action to enforce a claim may be brought as a cross-complaint by any defendant in an action brought pursuant to Section 25360 or this section, or in a separate action after the person seeking contribution or indemnity has paid removal or remedial action costs in accordance with this chapter or the federal act. Any plaintiff or cross complainant seeking contribution or indemnity shall give written notice to the director upon filing an action or cross complaint under this section. In resolving claims for contribution or indemnity, the court may allocate costs among liable parties using those equitable factors which are appropriate.

(f) Notwithstanding this chapter, any response action contractor who is found liable for any costs or expenditures recoverable under this chapter and who establishes by a preponderance of the evidence that only a portion of those costs or expenditures are attributable to the response action contractor's actions, shall be required to pay only that portion of the costs or expenditures attributable to the response action contractor's actions.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25363.5. (a) Notwithstanding any other provision of this article, the costs incurred by a state agency to take a hazardous substance response action at the BKK Landfills Site in West Covina shall be deemed to be a contribution towards any potential liability for response costs or damages imposed pursuant to state law upon a state agency that arranged for the disposal or treatment of a hazardous substance at that site.

(b) The Legislature declares its intent that the costs incurred by a state agency to take action in response to a hazardous substance release at the BKK Landfills Site in West Covina shall be deemed to be a contribution towards any potential liability for response costs or damages imposed pursuant to the federal act upon a state agency that arranged for the disposal or treatment of a hazardous substance at that site.

(Added by Stats. 2005, Ch. 81, Sec. 2. Effective July 19, 2005.)

25364. Except as provided in Section 25364.1, no indemnification, hold harmless, conveyance, or similar agreement shall be effective to transfer any liability for cost or expenditures recoverable under this chapter. This section shall not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs or expenditures under this chapter.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25364.1. (a) For purposes of this section, the following definitions shall apply:

(1) "Affiliate" means any entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the responsible party owner. For purposes of this paragraph, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, or ownership of shares or interests in the entity possessing more than 50 percent of the voting power.

(2) "Qualified independent consultant" means either a geologist who is registered pursuant to Section 7850 of the Business and Professions Code or a professional engineer who is registered pursuant to Section 6762 of the Business and Professions Code.

(3) "Responsible party owner" means the owner of all or part of the site on January 1, 1993, or if all or a part of the site is transferred to a joint venture formed for purposes of development of the site, the owner of the site immediately prior to that transfer.

(4) "Site" means the site of the former Kaiser Steel Corporation steel mill located near the City of Fontana.

(b) Notwithstanding any other provision of law, except as provided in subdivisions (c) and (e), the director may release from liability under this chapter or Chapter 6.5 (commencing with Section 25100), and from liability for any claims of the state for recovery of response costs under the federal act, any of the following persons, with regard to a removal or remedial action at the site:

(1) Any person who provides financing for all, or a substantial part of, the costs of performing a removal or remedial action at the site pursuant to a remedial action plan prepared by a qualified independent consultant and issued by the department pursuant to subdivision (e) of Section 25356.1, except that the release from liability shall not release the person providing this financing from liability for any hazardous substance release or threatened release resulting from that person's exercise of decisionmaking control over the performance of the removal or remedial action while the responsible party owner remains in possession of the site.

(2) Any person who enters into an agreement with the responsible party owner to provide development services for the development of all, or a part of, the site, including a developer, who becomes a partner in a joint venture partnership with the responsible party owner, if the joint venture is formed for purposes of the development of the site and legal title to the site is transferred by the responsible party owner to the joint venture. If a release from liability is granted to a developer pursuant to this paragraph and the legal title to the site is transferred by the responsible party owner to a joint venture between the developer and the responsible party owner of the site, the responsible party owner shall not be relieved of liability under this chapter.

(3) Any person who acquires an ownership or leasehold interest in all or a part of the site after performance of the removal or remedial action specified in the remedial action plan for the site, or part of the site, has been completed to the satisfaction of the department.

(c) A release from liability shall not be granted pursuant to subdivision (b) unless all of the following conditions are met:

(1) A responsible party owner has entered into a stipulated settlement of an order issued by the department pursuant to Section 25187, 25355.5, or 25358.3 to perform the removal or remedial action at the site in accordance with the remedial action plan and has arranged financing, contingent only upon obtaining releases from potential liability pursuant to subdivision (b), for the costs of performing the removal or remedial action.

(2) A responsible party owner agrees to pay all applicable oversight fees required by Section 25343 and to pay any additional costs that are recoverable pursuant to Section 25360.

(3) No person to be released from liability pursuant to subdivision (b) is a responsible party or an affiliate of a responsible party, with respect to any hazardous substance release existing at the site at the time the release from liability is granted.

(4) The stipulated settlement requires the responsible party owner to provide irrevocable financial assurances for full performance of the remedial action plan. The financial assurances may consist of one or more of the financial assurance instruments described in Section 66264.143 of Title 22 of the California Code of Regulations. Upon the approval of the department, the forms of these instruments may be revised as appropriate to apply to the costs of performing the removal or remedial action specified in the remedial action plan.

(5) The director finds that the release from liability to be granted will promote the purposes and goals of this chapter and encourage private investment in property that is in need of remediation.

(d) The site may be subdivided to create subdivided parcels of land, pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), in order to facilitate removal or remedial action at the site, secure financing for removal or remedial action, or secure financing for development which would generate funds for removal or remedial action at the site.

(e) Notwithstanding any other provision of this section, a release from liability granted pursuant to subdivision (b) shall not extend to any of the following:

(1) Any person who was a responsible party for a hazardous substance release existing at the site before the release from liability was granted, and any entity which is an affiliate of such a responsible party.

(2) Any contractor who prepares the remedial action plan or performs the removal or remedial action provided for in the remedial action plan.

(3) Any person who obtains a release pursuant to subdivision (b) by fraud or negligent or intentional nondisclosure or misrepresentation.

(4) Any liability for a release or threatened release of a hazardous substance first deposited at the site by a person released from liability pursuant to subdivision (b) after the release from liability is granted.

(f) Any release from liability granted by the director pursuant to this section shall contain the following provision: "If, for any reason, the responsible party does not complete the removal or remedial action, this release does not extend to any subsequent actions or activities performed by the released party that exacerbate the conditions at the site."

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25364.7. The repeal of Section 25364.6 shall not affect any indemnity provided pursuant to that section for any cause of action brought because of any act or omission which occurs before the repeal of that section.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25365. The entry of judgment against any party to the action shall not be deemed to bar any future action by the state account against any person who is later discovered to be potentially liable for costs and expenditures paid by the state account.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25365.6. (a) Any costs or damages incurred by the department or regional board pursuant to this chapter constitutes a claim and lien upon the real property owned by the responsible party that is subject to, or affected by, the removal and remedial action. This lien shall attach regardless of whether the responsible party is insolvent. A lien established by this section shall be subject to the notice and hearing procedures required by due process of the law and shall arise at the time costs are first incurred by the department or regional board with respect to a response action at the site.

(b) The department shall not be considered a responsible party for a hazardous substance release site because a claim and lien is imposed pursuant to this section.

(c) The lien provided by this section shall continue until the liability for these costs or damages, or a judgment against the responsible party, is satisfied. However, if it is determined by the court that the judgment against the responsible party will not be satisfied, the department may exercise its rights under the lien.

(d) The lien imposed by this section shall have the force and effect of, and the priority of, a judgment lien upon its recordation in the county in which the property subject to the lien is located. The lien shall contain the legal description of the real property, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll. The lien shall also contain a legal description of the property which is the site of the hazardous substance release, the assessor's parcel number for that property, and the name of the owner of record, as shown on the latest equalized assessment roll, of that property.

(e) All funds recovered pursuant to this section shall be deposited

in the state account.

(Amended by Stats. 2006, Ch. 77, Sec. 36. Effective July 18, 2006.)

25366. (a) This chapter shall not be construed as imposing any new liability associated with acts that occurred on or before January 1, 1982, if the acts were not in violation of existing state or federal laws at the time they occurred.

(b) Nothing in this chapter shall be construed as authorizing recovery for response costs or damages resulting from any release authorized or permitted pursuant to state law or a federally permitted release.

(c) Except as provided in Sections 25360, 25361, 25362, and 25363, nothing in this chapter shall affect or modify in any way 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 a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of the hazardous substance.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25366.5. (a) Any public agency operating a household hazardous waste collection program or any person operating such a program under a written agreement with a public agency, or, for material received from the public as used oil, any person operating a certified used oil collection center as provided in Section 48660 of the Public Resources Code, shall not be held liable in any cost recovery action brought pursuant to Section 25360 , including, but not limited to, any action to recover the fees imposed by Section 25343 or any action brought pursuant to subdivision (e) of Section 25363, for any waste that has been properly handled and transported to an authorized hazardous waste treatment, storage, or disposal facility at a location other than that of the collection program.

(b) For purposes of this section, "household hazardous waste collection program" means a program or facility, specified in Section 25218.1, in which hazardous wastes from households and conditionally exempt small quantity generators, are collected and ultimately transferred to an authorized hazardous waste treatment, storage, or disposal facility.

(c) Except as provided in subdivision (a), this section does not affect or modify the obligations or liabilities of any person imposed pursuant to any state or federal law.

(Amended by Stats. 2002, Ch. 992, Sec. 2. Effective January 1, 2003.)

25367. Any person who commits any of the following acts shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation, or for continuing violations, for each day during which that violation continues:

(a) Intentionally makes any false statement or representation in any report or information furnished pursuant to Section 25358.1.

(b) Intentionally fails to provide any information requested pursuant to Section 25358.1.

(c) Refuses or prevents, without sufficient cause, any activity authorized pursuant to Section 25358.1 or 25358.3.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

Article 6.3. Technology Demonstration Program

(Article 6.3 added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25368. Notwithstanding Section 25355.5, the department shall carry out a program of full-scale demonstrations to evaluate treatment technologies that can be safely utilized for removal and remedial actions to hazardous substance releases.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25368.1. For the purposes of this article, the following definitions apply:

(a) "Treatment technologies" means methods, techniques, or processes, including proprietary or patented methods, that permanently alter the composition of hazardous substances at hazardous substance release sites through chemical, biological, or physical means so as to make the substances nonhazardous or to significantly reduce the toxicity, mobility, or volume, or any combination thereof, of the hazardous substances or contaminated materials being treated.

(b) "Full-scale demonstration" means a demonstration of a technology that is of a size or capacity which permits valid comparison of the technology to the technical performance and cost of conventional technologies, that is likely to be cost-effective, and that will result in a substantial or complete remedial or removal action to a hazardous substance release site.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25368.2. The department shall select technology demonstration projects to be evaluated pursuant to this article using criteria that include, at a minimum, all of the following requirements:

(a) The project proposal includes complete and adequate documentation of technical feasibility.

(b) The project proposal includes evidence that a technology has been sufficiently developed for full-scale demonstration and can likely operate on a cost-effective basis.

(c) The department has determined that a site is available and suitable for demonstrating the technology or technologies, taking into account the physical, biological, chemical, and geological characteristics of the site, the extent and type of contamination found at the site, and the capability to conduct demonstration projects in a manner to ensure the protection of human health and the environment.

(d) The technology to be demonstrated preferably has widespread applicability in removal and remedial actions at other sites in the state.

(e) The project will be developed to the extent that a successful demonstration on a hazardous substance release site may lead to commercial utilization by responsible parties at other sites in the state.

(f) The department has determined that adequate funding is available from one or more of the following sources:

(1) Responsible parties.

(2) The Environmental Protection Agency.

(3) The state account.

(Amended by Stats. 2006, Ch. 77, Sec. 37. Effective July 18, 2006.)

25368.3. The department shall identify hazardous substance release sites, listed pursuant to Section 25356, that are particularly well-suited for technology demonstration projects. In identifying hazardous substance release sites, the department shall consider, at a minimum, all of the following:

(a) The state's priority ranking for removal and remedial actions to hazardous substance release sites adopted pursuant to Section 25356.

(b) The volume and variability of the hazardous substance release at the site.

(c) The availability of data characterizing the hazardous substance release.

(d) The accessibility of the hazardous substance release.

(e) Availability of required utilities.

(f) Support of federal and local governments.

(g) Potential for adverse effects to public health and the environment.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25368.4. (a) The department shall annually, on or before July 1, publish a solicitation for proposals to conduct treatment demonstration projects which utilize technologies which are at a stage of development suitable for full-scale demonstrations at hazardous substance release sites. The solicitation notice shall prescribe information to be included in the proposal, including technical and economic data derived from the applicant's own research and development efforts, and any other information which may be prescribed by the department to assess the technology's potential and safety and the types of removal or remedial action to which it may be applicable.

(b) Any person and private or public entity may submit an application to the department in response to the solicitation. The application shall contain a proposed treatment demonstration plan setting forth how the treatment demonstration project is to be carried out and any other information which the department may require.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25368.5. (a) On or before January 1, after reviewing all proposals submitted pursuant to Section 25368.4, the department shall annually select at least two treatment demonstration projects, to be commenced during that calendar year, using, at a minimum, the criteria specified in Section 25368.2.

(b) If the department determines that the required number of demonstrations required by subdivision (a) cannot be initiated consistent with the criteria specified in Section 25368.2 in any fiscal year, the department shall inform the appropriate committees of the Legislature of the reasons for its inability to conduct these demonstration projects.

(c) Each treatment demonstration project selected pursuant to this section shall be performed by the applicant, or by a person approved by the applicant and the department.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25368.6. Notwithstanding Section 25360, if the department determines that using an alternative treatment technology to conduct a removal or remedial action at a hazardous substance release site listed pursuant to paragraph (2) or (3) of subdivision (b) of Section 25356 would be more costly than another available and feasible removal or remedial action method that would also achieve satisfactory results, the department may determine not to attempt to recover from the liable person the incremental costs of the removal or remedial action attributable to the alternative treatment technology.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25368.7. The department shall conduct a technology transfer program that shall include the development, collection, evaluation, coordination, and dissemination of information relating to the utilization of alternative or innovative hazardous waste treatment technologies demonstrated pursuant to this article. The information shall include an evaluation of each treatment demonstration project's efficacy relating to performance and cost in achieving permanent and significant reduction in risks from hazardous substance releases. The information shall also include documentation of the testing procedures utilized in the project, the data collected, and the quality assurance and quality control which was conducted. The information shall also include the technology's applicability, pretreatment and posttreatment measurements, and the technology's advantages or disadvantages compared to other available technologies.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25368.8. Notwithstanding paragraph (5) of subdivision (c) of Section 25356.1, when preparing or approving a remedial action plan for a site listed pursuant to paragraph (2) or (3) of subdivision (b) of Section 25356, that has been selected for a treatment demonstration project pursuant to this article, the department shall consider the cost-effectiveness of the project but is not required to choose the most cost-effective measure.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

Article 6.5. Abandoned Site Program

(Article 6.5 added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25369. The department shall establish an abandoned site program to survey counties where abandoned site surveys have not been completed. As part of the program, the department shall do all of the following:

(a) Develop protocols and procedures for conducting an abandoned site survey of rural unsurveyed counties. These protocols shall address all types of sites likely to be found in these counties, including, but not limited to, crop-duster airstrips, abandoned mining operations, pesticide formulators and manufacturers, abandoned wells, oil exploration and extraction, wood treatment plants, land disposal sites, and scrap metal operations.

(b) Notify the California regional water quality control boards, the Department of Fish and Game, local health officers, county directors of environmental health, county agricultural commissioners, and state and federal land management agencies of the abandoned site program. Notifications shall consist of the following:

(1) Explanation of the abandoned site program.

(2) Description of the California Superfund Program, including the availability of state funds for cleaning up abandoned hazardous waste sites, and that discovery of a site does not impose liability for cleanup.

(3) Provide a copy of the program's protocols and procedures outlining sites the state is attempting to identify.

(4) Request that, as part of each respective agency's duties, it report to the state abandoned site program any suspected abandoned waste site.

(5) Request that each participating agency, as a part of its regular activities, notify the department of sites identified in writing at least quarterly.

(c) Prepare an inventory of suspected abandoned hazardous substance release sites.

(d) Contact the owners and occupants of suspected abandoned sites.

(e) Maintain individual records for each suspected abandoned site.

(f) Develop a methodology for screening sites identified.

(g) Conduct a field assessment of those sites which the screening procedures specified in subdivision (f) indicate require this assessment.

(h) Rank the assessed sites, in order of priority, as presenting a potential hazard to public health or the environment consistent with Section 25356 or regulations adopted pursuant to that section.

(i) Report to the Legislature quarterly, on an update on the progress of the abandoned sites survey, identifying which agencies have identified and reported sites to the department, as well as which agencies have reported that they do not intend to participate in the program.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

Article 7. Compensation

(Article 7 added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25370. "Board," as used in this article, means the California Victim Compensation and Government Claims Board.

(Amended by Stats. 2006, Ch. 538, Sec. 386. Effective January 1, 2007.)

25372. Any person may apply to the board, pursuant to Section 25373, for compensation of a loss caused by the release, in California, of a hazardous substance if any of the following conditions are met:

(a) The source of the release of the hazardous substance, or the identity of the party liable for damages in connection therewith or responsible for the costs of removal of the hazardous substance, is unknown or cannot, with reasonable diligence, be determined.

(b) The loss was not compensable pursuant to law, including Chapter 6.5 (commencing with Section 25100), because there is no liable party or the judgment could not be satisfied, in whole or part, against the party determined to be liable for the release of the hazardous substance.

(c) The person has presented a written demand for compensation, which sets forth the basis for the claim, to the party which the person reasonably believes is liable for a loss specified in paragraph (1) of subdivision (a) of Section 25375 which was incurred by that person and is compensable pursuant to this article, the person has presented the board with a copy of the demand, and, within 60 days after presenting the demand, the party has either rejected, in whole or in part, the demand to be compensated for a loss specified in paragraph (1) of subdivision (a) of Section 25375, or has not responded to the demand. Only losses specified in paragraph (1) of subdivision (a) of Section 25375 are compensable under a claim filed pursuant to this subdivision.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25373. The board shall prescribe appropriate forms and procedures for claims filed pursuant to this article, which shall include, as a minimum, all of the following:

(a) A provision requiring the claimant to make a sworn verification of the claim to the best of his or her knowledge.

(b) A full description, supported by appropriate evidence from government agencies of the release of the hazardous substance claimed to be the cause of the physical injury or illness or loss of income.

(c) Certification by the claimant of dates and places of residence for the five years preceding the date of the claim.

(d) Certification of the medical history of the claimant for the five years preceding the date of the claim, along with certification of the alleged physical injury or illness and expenses for the physical injury or illness. The certification shall be made by hospitals, physicians, or other qualified medical authorities.

(e) The claimant's income as reported on the claimant's federal income tax return for the preceding three years in order to compute lost wages or income.

(f) Any person who knowingly gives, or causes to be given, any false information as a part of any such claim shall be guilty of a misdemeanor and shall, upon conviction, be fined up to five thousand dollars ($5,000), or imprisoned for not more than one year, or both.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25374. All decisions rendered by the board shall be in writing, with notification to all appropriate parties, and shall be rendered within 90 days of submission of a claim to the board unless all the parties to the claim agree in writing to an extension of time. The decision shall be considered a final agency action for the purposes of judicial review of the decision by any party to the proceedings resulting in the decision.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25375. (a) If the board makes the determination, specified in subdivision (b), that losses resulted from the claimant's damages, injury, or disease, only the following losses are compensable pursuant to this article:

(1) One hundred percent of uninsured, out-of-pocket medical expenses, for up to three years from the onset of treatment.

(2) Eighty percent of any uninsured, actual lost wages, or business income in lieu of wages, caused by injury to the claimant or the claimant's property, not to exceed fifteen thousand dollars ($15,000) per year for three years.

(3) One hundred percent of uninsured, out-of-pocket expenses for remedial action on the claimant's property undertaken to address a release of a hazardous substance when all of the following apply:

(A) The claimant's property is an owner-occupied single-family residence.

(B) The remedial action was ordered by federal, state, or local authorities due to a release of a hazardous substance.

(C) The department makes one of the following determinations:

(i) The release of the hazardous substance originated outside the boundaries of the property.

(ii) The release of the hazardous substance occurred on the property, was the result of an action which violated state or federal law, and the responsible party cannot be identified or cannot be located, or a judgment against the responsible party cannot be satisfied.

The maximum compensation under this paragraph is limited to twenty-five thousand dollars ($25,000) per residence and to one hundred thousand dollars ($100,000) for five contiguous residential properties. Any compensation provided shall be reduced by the amount that the remedial action results in a capital improvement to the claimant's residence.

(4) One hundred percent of the fair market value of owner-occupied real property that is rendered permanently unfit for occupancy because of the release of a hazardous substance. For purposes of this paragraph, real property is rendered permanently unfit for occupancy only if a state or federal agency requires that it be evacuated for a period of six or more months because of the release of a hazardous substance. The fair market value of the real property shall be determined by an independent appraiser, and shall be considered by the independent appraiser as being equal to the value of the real property prior to the release of the hazardous substance that caused the evacuation of the property. Where compensation is made by the board pursuant to this paragraph, sole ownership of the real property shall be transferred to the state and any proceeds resulting from the final disposition of the real property shall be deposited into the state account, for expenditure by the department upon appropriation by the Legislature. To be eligible for compensation pursuant to this paragraph, claims for compensation shall be made within 12 months of the date on which the evacuation was ordered.

(5) One hundred percent of the expenses incurred due to the evacuation of a residence ordered by a state or federal agency. For purposes of this paragraph, "evacuation expenses" include the cost of shelter and any other emergency expenditures incurred due to an evacuation ordered by a state or federal agency. The board may provide compensation, pursuant to this paragraph, only if it finds that the evacuation expenses represent reasonable costs for the goods or services purchased, and would not have been incurred if an evacuation caused by a hazardous substance release had not occurred. The board may provide compensation for these evacuation expenses only if they were incurred within 12 months from the date on which evacuation was ordered.

(b) A loss specified in subdivision (a) is compensable if the board makes all of the following findings, based upon a preponderance of the evidence:

(1) A release of a hazardous substance occurred.

(2) The claimant or the claimant's property was exposed to the release of the hazardous substance.

(3) The exposure of the claimant to the release of the hazardous substance was of such a duration, and to such a quantity of the hazardous substance, that the exposure caused the damages, injury, or disease which resulted in the claimant's loss.

(4) For purposes of paragraphs (4) and (5) of subdivision (a), the hazardous substance release, or the order which resulted in the claim for compensation occurred on or after January 1, 1986.

(5) The conditions and requirements of this article including, but not limited to, the conditions of Sections 25372 and 25373, have been met.

(c) No money shall be used for the payment of any claim authorized by this chapter, where the claim is the result of long-term exposure to ambient concentrations of air pollutants.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25375.5. (a) Except as specified in subdivision (b), the procedures specified in Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and in Section 11513 of, the Government Code apply to the proceedings conducted by the board pursuant to this article.

(b) Notwithstanding subdivision (a), Sections 801, 802, 803, 804, and 805 of the Evidence Code apply to the proceedings conducted by the board pursuant to this article.

(c) The board may consider evidence presented by any person against whom a demand was made pursuant to subdivision (c) of Section 25372. The evidence presented by that person shall become a part of the record upon which the board's decision shall be based.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25376. No claim may be presented to the board pursuant to this article later than three years from the date of discovery of the loss or from January 1, 1982, whichever is later.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25377. Nothing in this article shall require, or be deemed to require, pursuit of any claim against the board as a condition precedent to any other remedy.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25378. (a) Compensation of any loss pursuant to this article shall preclude indemnification or reimbursement from any other source for the identical loss, and indemnification or reimbursement from any other source shall preclude compensation pursuant to this article.

(b) If a claimant recovers any compensation from a party in a civil or administrative action for a loss for which the claimant has received compensation pursuant to this article, the claimant shall reimburse the state account in an amount equal to the compensation which the claimant has received from the state account pursuant to this article. The Attorney General may bring an action against the claimant to recover the amount which the claimant is required to reimburse the state account, and until the account is reimbursed, the state shall have a lien of first priority on the judgment or award recovered by the claimant. If the state account is reimbursed pursuant to this subdivision, the state shall not acquire, by subrogation, the claimant's rights pursuant to Section 25380.

(c) The Legislature hereby finds and declares that it is the purpose of this section to prevent double recovery for a loss compensable pursuant to this article.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25379. (a) The following evidence is not admissible as evidence in any civil or criminal proceeding, including a subrogation action by the state pursuant to Section 25380, to establish the liability of any person for any damages alleged to have been caused by a release of a hazardous substance:

(1) A final decision made by the board pursuant to this article.

(2) A decision made by the board to admit or not admit any evidence.

(3) Any finding of fact or conclusion of law entered by the board in a proceeding for a claim pursuant to this article.

(4) The fact that any person has done any of the following in a proceeding for a claim pursuant to Section 25372:

(A) Chosen to participate or appear.

(B) Chosen not to participate or appear.

(C) Failed to appear.

(D) Settled or offered to settle the claim.

(b) Subdivision (a) does not apply to any civil action or writ by a claimant against the board for any act, decision, or failure to act on a claim submitted by the claimant.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25380. Compensation of any loss pursuant to this article shall be subject to the state's acquiring, by subrogation, all rights of the claimant to recover the loss from the party determined to be liable therefor. Upon the request of the board, the Attorney General shall commence an action in the name of the people of the State of California to recover any amount paid in compensation for any loss pursuant to this article against any party who is liable to the claimant for any loss compensable pursuant to this article in accordance with the procedures set forth in Sections 25360 to 25364, inclusive. Moneys recovered pursuant to this section shall be deposited in the state account.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25381. (a) The board shall, in consultation with the department, adopt, and revise when appropriate, all rules and regulations necessary to implement this article, including methods that provide for establishing that a claimant has exercised reasonable diligence in satisfying the conditions specified in Sections 25372, 25373, 25375, and 25375.5, and regulations that specify the proof necessary to establish a loss compensable pursuant to this article.

(b) Claims approved by the board pursuant to this article shall be paid from the state account.

(c) The Legislature may appropriate up to two million dollars ($2,000,000) annually from the state account to be used by the board for the payment of awards pursuant to this article.

(d) Claims against or presented to the board shall not be paid in excess of the amount of money appropriated for this purpose from the state account. These claims shall be paid only when additional money is collected, appropriated, or otherwise added to that account.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25382. The board may expend from the state account those sums of money as are reasonably necessary to administer and carry out this article.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

Article 7.5. Hazardous Substance Cleanup Bond Act of 1984

(Article 7.5 added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25385. This article shall be known and may be cited as the Johnston-Filante Hazardous Substance Cleanup Bond Act of 1984.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25385.1. For purposes of this article, and for purposes of Section 16722 of the Government Code as applied to this article, the following definitions apply:

(a) "Board" means the Department of Toxic Substances Control.

(b) "Committee" means the Hazardous Substance Cleanup Committee created pursuant to Section 25385.4.

(c) "Director" means the Director of Toxic Substances Control.

(d) "Fund" means the state account.

(e) "Orphan site" means a site with a release or threatened release of a hazardous substance with no reasonably identifiable responsible parties.

(f) "Orphan share" means those costs of removal or remedial action at sites with a release or threatened release of hazardous substances, which costs are in excess of amounts included in a cleanup agreement.

(g) "Responsible party" means a person who is, or may be, responsible or liable for carrying out, or paying for the costs of, a removal or remedial action.

(Amended by Stats. 2006, Ch. 77, Sec. 38. Effective July 18, 2006.)

25385.2. The State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code) is adopted for the purpose of the issuance, sale, and repayment of, and otherwise providing with respect to, the bonds authorized to be issued pursuant to this article, and the provisions of that law are included in this article as though set out in full in this article, except that, notwithstanding anything in the State General Obligation Bond Law, the maximum maturity of bonds shall not exceed 30 years from the date of the bonds, or from the date of each respective series. The maturity of each respective series shall be calculated from the date of the series.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25385.4. The Hazardous Substance Cleanup Committee, which is hereby created, shall consist of the Governor, the Director of Finance, the Treasurer, the Controller, and the Secretary for Environmental Protection.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25385.5. The committee may create a debt or debts, liability or liabilities, of the State of California, in the aggregate of one hundred million dollars ($100,000,000), in the manner provided in this article. The debt or debts, liability or liabilities, shall be created for the purpose of providing moneys, for deposit in the fund, for the purposes specified in Section 25385.6.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25385.6. (a) The moneys in the state account that are the proceeds of bonds issued and sold pursuant to this article may be used, upon appropriation by the Legislature, for the purposes specified in this section.

(b) The board may expend moneys in the fund, that are the proceeds of bonds issued and sold pursuant to this article upon the authorization of the committee, for all of the following purposes:

(1) To provide the state share of a removal or remedial action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)) if the site is the subject of a final remedial action plan issued pursuant to Section 25356.1.

(2) To pay all costs of a removal or remedial action incurred by the state, or by any local agency with the approval of the director, in response to a release or threatened release of a hazardous substance at a site which is listed in the priority ranking of sites pursuant to Section 25356 and is the subject of a final remedial action plan issued pursuant to Section 25356.1, to the extent that the costs are not paid by responsible parties or are reimbursed by the federal act.

(3) To pay for site characterization of a release of hazardous substances, even if a remedial action plan has not been prepared, approved, adopted, or made final for that site.

(Amended by Stats. 2006, Ch. 77, Sec. 40. Effective July 18, 2006.)

25385.7. (a) All bonds authorized by this article, which are sold and delivered as provided in this article, constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California are hereby pledged for the punctual payment of both principal and interest thereon.

(b) There shall be collected annually, in the same manner and at the same time as other state revenue is collected, that sum, in addition to the ordinary revenues of the state, which is required to pay the principal of, and interest on, the bonds as provided in this article, and all officers charged by law with any duty in regard to the collection of the revenue shall perform each and every act which is necessary to collect this additional sum.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25386. Notwithstanding Section 25386.5, the money deposited in the fund is available for transfer to the General Fund if money was deposited in the fund pursuant to any provision of law requiring repayments to the state for assistance financed by the proceeds of the bonds issued pursuant to this article. When transferred to the General Fund, that money shall be applied as a reimbursement to the General Fund for the principal and interest payments on the bonds which have been paid from the General Fund.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25386.1. There is hereby appropriated from the General Fund in the State Treasury, for the purpose of this article, an amount equal to the sum of

all of the following:

(a) The sum, annually, which will be necessary to pay the principal of, and the interest on, the bonds issued and sold pursuant to this article, as the principal and interest become due and payable.

(b) The sum which is necessary to carry out Section 25386.2, which sum is appropriated without regard to fiscal years, notwithstanding Section 13340 of the Government Code.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25386.2. For the purpose of carrying out this article, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of amounts not to exceed the amount of the unsold bonds which the committee has, by resolution, authorized to be sold for the purpose of carrying out this article. Any amounts withdrawn shall be deposited in the fund and shall be disbursed by the board in accordance with this article. Any moneys made available pursuant to this section shall be returned to the General Fund from moneys received from the sale of bonds sold for the purpose of carrying out this article.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25386.25. Notwithstanding any other provision of this bond act, or of the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), if the Treasurer sells bonds pursuant to this bond act that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law, or take any other action with respect to the investment and use of those bond proceeds, as may be required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25386.3. Upon the request of the board, and supported by a statement of the proposed actions to be taken pursuant to Section 25385.6, the committee shall determine whether it is necessary or desirable to issue any bonds authorized pursuant to this article in order to take these actions, and if so, the amount of bonds which should be issued and sold. Successive issues of bonds may be authorized and sold to take these actions progressively, and it is not necessary that all of the bonds authorized by this article to be issued are sold at any one time.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25386.4. The committee may authorize the Treasurer to sell all, or any part of, the bonds authorized under this article at the time or times as may be fixed by the Treasurer.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25386.5. Except as provided in subdivision (c) of Section 25385.3 and Section 25386, all proceeds from the sale of bonds, except those derived from premiums and accrued interest, are available for the purposes specified in Section 25385.6, but are not available for transfer to the General Fund to pay the principal of, and interest on, the bonds.

(Repealed and added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

Article 7.8. Orphan Share Reimbursement Trust Fund

(Article 7.8 added by Stats. 1999, Ch. 23, Sec. 2.
Effective May 26, 1999.
Operative as provided in Section 25390.9.)

25390. For purposes of this article, the following definitions shall apply:

(a) "Fund" means the Orphan Share Reimbursement Trust Fund established pursuant to Section 25390.3.

(b) "Orphan share" means the share of liability for the costs of response action that is attributable to the activities of persons who are defunct or insolvent, as determined pursuant to Section 25390.5.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999. Operative as provided in Section 25390.9.)

25390.1. The Legislature finds and declares all of the following:

(a) This article, which establishes an Orphan Share Reimbursement Trust Fund, operates in conjunction with the federal liability scheme under the federal act as in effect on July 1, 1998, for the recovery of response costs expended by government agencies.

(b) Under federal liability, at sites where there are insolvent or defunct parties that cannot contribute to the cost of cleanup, viable responsible parties pay the share of liability for that cleanup that may be attributable to insolvent and defunct parties.

(c) The Orphan Share Reimbursement Trust Fund is created to mitigate the payment of an insolvent or defunct party's liability share by viable responsible parties, to the extent money in the fund is available, and to encourage responsible parties to quickly and efficiently remediate contamination.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999. Operative as provided in Section 25390.9.)

25390.2. (a) This article does not prohibit, and is not intended to prohibit, the department, the regional board, or the Attorney General from pursuing any existing legal, equitable, or administrative remedies, pursuant to federal or state law, against any potentially responsible party.

(b) No liability or obligation is imposed upon the state pursuant to this article, and the state shall not incur a liability or obligation beyond the payment of claims pursuant to this article, to the extent that money is available and has been allocated by the administrator under subdivision (c) of Section 25390.4. No legal action may be brought against the Orphan Share Reimbursement Trust Fund in its own name.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999. Operative as provided in Section 25390.9.)

25390.3. (a) The Orphan Share Reimbursement Trust Fund is hereby created in the State Treasury.

(b) The administrator of the fund may expend the money deposited in the fund as provided in this article, upon appropriation by the Legislature. The administrator of the fund shall act in a fiduciary capacity, shall prudently administer the fund, and shall protect the fund from any unreasonable or unjustified claims, including any unreasonable or unjustified determinations of the orphan share percentage.

(c) Except as provided in subdivision (d) and subdivision (b) of Section 25358.7.2, the administrator of the fund may expend the money in the fund for all of the following purposes:

(1) To pay claims for reimbursement of all, or any part of, the orphan share at a site paid by the responsible party filed pursuant to Section 25390.4.

(2) For the costs of implementing this article.

(3) To pay the reasonable costs of the department and the regional board for performance of its duties under this article, including, but not limited to, its participation in the orphan share determination process set forth in Section 25390.5, unless those costs are paid by a potentially responsible party under an agreement specified in paragraph (3) of subdivision (a) of Section 25390.4. The expenditures from the fund for purposes of this paragraph shall not exceed 5 percent of the total amount appropriated from the fund in the annual Budget Act for purposes of this subdivision for that fiscal year.

(4) To pay the portion of costs attributable to the orphan share incurred by the department and the regional boards to oversee actions of potentially responsible parties, unless those costs are paid by a potentially responsible party under an agreement specified in paragraph (3) of subdivision (a) of Section 25390.4.

(d) If an appropriation from the General Fund is made to the fund in any fiscal year and an amount greater than five million dollars ($5,000,000) in unexpended funds, beyond any amount approved by the administrator of the fund to pay claims pursuant to this article from that General Fund appropriation, remain in the fund at the end of that fiscal year, and if the department determines that additional funding for orphan sites

beyond that appropriated from the Toxic Substances Control Account is required for the next fiscal year, the administrator may expend the amount in excess of five million dollars ($5,000,000) from the General Fund appropriation to pay for response costs incurred by the department or the regional boards under this chapter at sites listed pursuant to Section 25356 where no viable responsible parties exist.

(Amended by Stats. 2000, Ch. 912, Sec. 20. Effective September 29, 2000. Section operative as provided in Section 25390.9.)

25390.4. (a) A potentially responsible party may file a claim pursuant to paragraph (1) of subdivision (c) of Section 25390.3 only if all of the following apply:

(1) The site is listed pursuant to Section 25356.

(2) The department or the regional board has approved a final remedy for the site under Section 25356.1.

(3) The department and the potentially responsible party have entered into a written, enforceable cleanup agreement or order embodied in a consent order issued pursuant to Section 25355.5 or 25358.3, or the regional board and the potentially responsible party have entered into a written, enforceable cleanup agreement or order that provides for the completion of all response actions necessary at the site, conducted pursuant to this chapter and under the oversight and at the direction of the department or the regional board. The agreement shall provide for the payment by the potentially responsible party of the department's or the regional board's response costs.

(4) The potentially responsible party demonstrates, and the department or the regional board finds, that the potentially responsible party has and will have sufficient financial resources to complete all required response actions.

(5) The potentially responsible party is in compliance with the agreement provided in paragraph (3), and with any other applicable order or agreement pertaining to the potentially responsible party's obligations with respect to the site.

(6) The potentially responsible party has prepared and provided the information required under subdivision (b) of Section 25390.5.

(7) The claim for reimbursement is for the costs incurred for response actions that were subject to the oversight and approval of the department or the regional board.

(b) The administrator of the fund shall prescribe appropriate application forms and procedures for claims filed pursuant to paragraph (1) of subdivision (c) of Section 25390.3 that shall include all of the following:

(1) Requirements that the claimant provide, at a minimum, all of the following documentation:

(A) A sworn verification of the claim to the best of the information known to the claimant or within the claimant's possession or control.

(B) All records and information pertaining to the site and relevant to the ownership, operation, or control of the site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the site, within the possession or control of the claimant, including, but not limited to, the information specified in subdivision (b) of Section 25358.1.

(C) Certification of all response costs that have been, or will be, incurred at the site by the potentially responsible party, and an estimate of the total cost of completion of the approved final remedy at the site.

(2) Procedures specifying that claims shall be filed only at the two following specific time periods during the performance of a response action:

(A) After the final remedy is selected under Section 25356.1.

(B) After the department or the regional board determines that the response action is complete. The department or the regional board shall not include operation and maintenance activities in determining whether the response action is complete under this subparagraph.

(c) The administrator of the fund shall annually, on a fiscal year basis, pay claims for reimbursement from the fund filed by potentially responsible parties under paragraph (1) of subdivision (c) of Section 25390.3, in accordance with the following procedures:

(1) Claims for funds available during each fiscal year shall be filed with the administrator by July 30 of that fiscal year.

(2) For sites with multiple responsible parties, all potentially responsible parties that have entered into the cleanup agreement specified in paragraph (3) of subdivision (a) of Section 25390.4 shall file a single claim.

(3) (A) The administrator shall allocate the money available in the fund for the fiscal year among the claims filed by the July 30 deadline. The allocation shall be based on the determination of the orphan share percentage at the facility under the process set forth in Section 25390.5, the long-term financial stability and short-term resources available in the fund, and the administrator's fiduciary duty with respect to the fund. Except as provided in subparagraph (B), the administrator shall pay claims for funds in the order in which they are received.

(B) Notwithstanding subparagraph (A), if an appropriation from the General Fund is made to the fund in any fiscal year, the administrator may alter the order of payment of claims required by subparagraph (A) by using funds appropriated from the General Fund to pay claims based on the threat to public health or the environment posed by a site or the need to improve economic and environmental conditions in redeveloping communities.

(4) The total amount allocated to any one site shall not exceed 10 percent of the total amount available each fiscal year in the fund. If, due to this limit or to the unavailability of funds, a claimant receives only partial or no reimbursement of the orphan share paid by that claimant, the claim shall be paid in the following fiscal year and shall be given priority over all claims filed after the claim was initially received, subject to the discretion of the administrator set forth in paragraph (3).

(5) The administrator's proposed allocation shall be subject to public review and comment for 30 days.

(d) The state and the fund have no obligation to provide full reimbursement to a claimant. The fund shall be allocated at the discretion of the administrator, subject to the requirements of this article. In enacting this article, the Legislature intends that claimants be reimbursed only to the extent that money is available in the fund and is allocated to the claimant by the administrator.

(Amended by Stats. 2000, Ch. 135, Sec. 95. Effective January 1, 2001. Section operative as provided in Section 25390.9.)

25390.5. For the purposes of this article, the orphan share shall be determined in the following manner:

(a) The orphan share shall be expressed as a percentage in multiples of five, up to, and, including, but not greater than, 75 percent.

(b) The potentially responsible party filing a claim for reimbursement of the orphan share shall provide the administrator of the fund with a written potentially responsible party search report that shall include a list of all potentially responsible parties identified for the site, the factual and legal basis for identifying those parties, and a proposed orphan share percentage. The potentially responsible party shall also provide the administrator with the factual documentation necessary to support the proposed orphan share percentage.

(c) Upon receipt of the information required by subdivision (a), the administrator of the fund shall invite all identified potentially responsible parties and the department and the regional board to submit any additional information relating to the proposed orphan share percentage or to the list of identified potentially responsible parties.

(d) The administrator of the fund, in consultation with the department or the regional board, shall determine a final orphan share percentage based on the volume, toxicity, and difficulty of removal of the contaminants contributed to the site by the party or parties responsible for the orphan share. The administrator shall determine the orphan share timely and efficiently and is not required to precisely determine all relevant factors, as long as the determination is generally equitable. In addition, the administrator may consider the results of any apportionment or allocation conducted by voluntary arbitration or mediation or by a civil action filed by a potentially responsible party, or any other apportionment or allocation decision that is helpful when determining the orphan share percentage.

(e) A potentially responsible party shall not assert, and the administrator of the fund shall not determine, that the orphan share percentage includes the share of liability attributable to a potentially responsible party's acts that occurred before January 1, 1982, unless that share of responsibility is attributable to a person who is defunct or insolvent.

(f) In determining the orphan share percentage under this section, the administrator of the fund may perform any of the activities authorized in subdivisions (b) and (c) of Section 25358.1.

(g) The administrator of the fund shall issue all orphan share percentage determinations in writing, with notification to all appropriate parties. The decision of the administrator with respect to either apportionment or payment of claims is a final agency action for the purposes

of judicial review of the decision by any party to the proceedings resulting in the decision; however, judicial review of the administrator's decision is limited to a showing of fraud by a party submitting information under this subdivision. The administrator shall be represented by the Attorney General in any action brought under this article.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999. Operative as provided in Section 25390.9.)

25390.6. (a) Any costs paid from the fund pursuant to paragraphs (1) and (4) of subdivision (c) of Section 25390.3 shall be recoverable by the Attorney General, at the request of the administrator of the fund, from any liable person or persons who have not entered into, or are not in compliance with, a written cleanup agreement entered into pursuant to paragraph (3) of subdivision (a) of Section 25390.4 that provides for the completion of all response actions necessary at the site under the oversight and at the direction of the department or the regional board.

(b) Any potentially responsible party who withholds information required to be submitted under this section, or who submits false information, is subject to a civil penalty of up to twenty-five thousand dollars ($25,000) for each piece of information withheld or for each piece of false information submitted.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999. Operative as provided in Section 25390.9.)

25390.7. A claim for reimbursement under paragraph (1) of subdivision (c) of Section 25390.3 shall not be filed for any of the following:

(a) Sites listed on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605(a)(8)(B)).

(b) Sites remediated pursuant to Chapter 6.85 (commencing with Section 25396).

(c) Sites, or portions of sites, for which the potentially responsible party has agreed to take all response action required by the department or the regional board at the site, and that agreement is embodied in a written, enforceable settlement agreement, including, but not limited to, a judicial consent decree, entered into prior to January 1, 1999.

(d) Sites, or portions of sites, that have been fully remediated for which the department or the regional board has determined that the response action is complete prior to January 1, 1999. The department or the regional board shall not include operation and maintenance activities in determining whether the response action is complete under this section.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999. Operative as provided in Section 25390.9.)

25390.8. (a) Any costs incurred and payable from the fund by the administrator pursuant to this article shall constitute a claim and lien upon the real property owned by a responsible party which is subject to, or affected by, a response action. A lien established by this subdivision shall have all of the following properties:

(1) The lien shall not exceed the increase in fair market value of the site attributable to the response action at the time of a subsequent sale or other disposition of the site.

(2) The lien shall attach regardless of whether the responsible party property owner is solvent.

(3) The lien shall arise at the time costs to the fund are first incurred by the administrator.

(4) The lien shall be subject to the notice and hearing procedures that due process of the law requires.

(b) Neither the administrator of the fund nor the fund shall be considered a responsible party for a hazardous substance release site because a claim and lien is imposed pursuant to this section.

(c) The lien imposed by this section shall have the force and effect of, and the priority of, a judgment lien upon its recordation in the county in which the property subject to the lien is located. The lien shall contain the legal description of the property, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll. The lien shall also contain a legal description of the property that is the site of the hazardous substance release, the assessor's parcel number for that property, and the name of the owner of record, as shown on the latest equalized assessment roll, of that property.

(d) All funds recovered pursuant to this subdivision shall be deposited in the fund.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999. Operative as provided in Section 25390.9.)

25390.9. (a) This article shall become operative on the operative date of the statute that does either, or both, of the following:

(1) Appropriates funds to the fund to implement this article.

(2) Establishes a revenue source for the fund.

(b) Notwithstanding subdivision (a), the operation of this article shall be suspended during any fiscal year in which both no funds are appropriated to the fund to implement this article and no revenue source for the fund is operative.

(Amended by Stats. 2000, Ch. 912, Sec. 21. Effective September 29, 2000. Note: Operational conditions apply to Article 7.8, commencing with Section 25390.)

Article 8. Private Site Management

(Article 8 added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25395.1. As used in this article, the following terms have the following meaning:

(a) "Private site manager" means an individual who is registered as a class II environmental assessor pursuant to Section 25570.3.

(b) "Private site management team" means a group coordinated by a private site manager, which may consist of any or all of the following persons:

(1) A person holding a four-year bachelor of science degree from an accredited college or university who has done significant work in biological, chemical, physical, environmental or soil geology, hydrology, hydrogeology, environmental health, environmental engineering, toxicology, industrial hygiene, or a related field.

(2) An environmental engineer holding a four-year bachelor of science in engineering degree from an accredited college or university.

(3) An engineer registered in the State of California.

(4) A geologist registered in the State of California.

(5) A certified hydrogeologist registered in the State of California.

(6) A certified engineering geologist registered in the State of California.

(7) A geophysicist registered in the State of California.

(8) An industrial hygienist or safety engineer registered in the State of California.

(9) A process engineer holding a four-year bachelor of science degree in engineering from an accredited college or university.

(10) A petroleum engineer holding a four-year bachelor of science degree in engineering from an accredited college or university.

(11) The necessary technical support personnel and equipment operators, as determined by the private site manager.

(c) "Project proponent" means any person who applies to the department for approval to conduct the response to a release or threatened release of hazardous substances pursuant to this article.

(d) "Independent," as used in subdivision (b) of Section 25395.3, means that the private site manager or the members of the private site management team meet all of the following requirements:

(1) The site manager or team member is not an employee of the project proponent, a known responsible party, or a prospective buyer of the site property.

(2) The site manager or team member is not a general partner, or a limited partner, with any project proponent, known responsible party, or prospective buyer of the site property.

(3) The site manager or team member is not a shareholder in the project proponent entity, known responsible party, or a prospective buyer of the site property.

(4) The site manager or team member does not receive any source of income from the project proponent, known responsible party, or a prospective buyer of the site property, other than the payment of fees for professional services.

(5) The site manager or team member does not accept, or agree to accept, any payment that is in any way contingent upon the completion of a response action of the site as a private site management project.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25395.2. A private site manager may conduct investigations of potential hazardous substance release sites using preliminary endangerment assessment procedures approved by the department. If, upon completion of an investigation, a private site manager determines that because a significant release of hazardous substances has not occurred, site conditions do not require any further investigation or remedial action, the private site manager may submit a report to the department certifying that no further action is required at the site. Unless the department issues a written notice of disagreement to the private site manager within 60 days from the date of receipt of the report, the department shall be deemed to be in agreement with the report and shall designate the site as a site which requires no further action. The department may subsequently change that site designation status upon receipt and confirmation of evidence that the physical environment of the site conditions differ from the findings of a report submitted by a private site manager. The department shall not designate a site under this section as a site that requires no further action if the release of hazardous substances has caused, or threatens to cause, discharges to waters of the state.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25395.3. If, upon completion of a site investigation, a private site manager or the department determines that a significant release of a hazardous substance has occurred, or is likely to have occurred, a project proponent may submit an application to the department requesting that a response action be conducted under private site management pursuant to this article. The application for a response action shall include both of the following:

(a) Where a site investigation was conducted by a private site manager, the private site manager shall provide the department with a report of the site findings based on the investigation. In all cases, the application shall set forth reasons why the site is appropriate for a private response action and management based on the information available at the time that the application is submitted to the department. Sites shall be deemed appropriate for private site management if all the following conditions exist:

(1) There is a substantial likelihood that no further significant environmental damage or exposure to humans will occur as the response action is implemented.

(2) The site is not adjacent to residential property, as defined in Section 1675 of the Civil Code, or a school, day care center for children, or a hospital.

(3) The site is not, or is not being used as, residential property, as defined in Section 1675 of the Civil Code, or a school, day care center for children, or a hospital.

(4) Releases of hazardous substances at the site did not result in discharges to groundwater.

(5) An enforceable agreement that specifies how response action will be conducted is not applicable to the site.

(b) The name and a statement of qualifications of any private site manager proposed for the site. The proposed private site manager shall be independent of the project proponent, all known responsible parties, and prospective buyers of the site property.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25395.4. (a) If the department approves an application for private site management, a private site management team shall be designated to perform the activities authorized by this article. The professional staff of the private site management team shall be comprised, at a minimum, of persons with qualifications and levels of experience which shall be specified by the department based upon the conditions at the site which require response action.

(b) At least one member of the proposed team shall have demonstrable experience or training in public participation, risk communication, and community involvement, except that the member shall not be required to be a registered or certified professional. Each member of the proposed team shall be independent of the project proponent, known responsible parties, and prospective buyers of the site property.

(c) If, at any time, the documented physical conditions at the site change or physical conditions previously unknown to the department are identified, the department may rescind approval of the proposed project or may require the private site management team to include additional professional staff members with expertise appropriate to the physical conditions at the site. The addition of new professional level team members proposed by the private site manager shall be approved by the department, but the department shall not unreasonably withhold that approval.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25395.5. (a) If the private site management team determines that the response action will include a removal or remedial action, the approved private site management team shall prepare a draft removal action work plan or remedial action plan. The draft removal action work plan or remedial action plan may be prepared without oversight by the department, but shall be prepared in accordance with all of the requirements of this chapter, or Chapter 6.85 (commencing with Section 25396) in the case of sites selected pursuant to Section 25396.6, and other applicable regulations and guidance documents adopted or issued by the department.

(b) The private site management team shall submit the draft removal action work plan or remedial action plan to the department for approval, and the department shall approve or reject the work plan or remedial action plan within 60 days from the date of submittal by a private site manager. If a plan is rejected, the department shall identify the principal reasons for the rejection, and shall describe the actions needed to adequately address deficiencies in the plan.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25395.6. (a) The private site management team shall, in the case of sites selected pursuant to Section 25396.6, prepare a remedial design for the implementation of the response action that is selected in the final remedial action plan that is prepared and approved in accordance with the requirements of this chapter, or Chapter 6.85 (commencing with Section 25396), and applicable regulations and guidance documents adopted or issued by the department. The remedial design may be prepared by the private site management team without oversight by the department, and shall be submitted to the department for approval.

(b) The department shall approve or reject a final remedial design within 60 days from the date of submittal by a private site management team. If a design is rejected, the department shall identify the principal reasons for the rejection, and shall describe the actions needed to adequately address deficiencies in the design.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25395.7. The private site management team shall implement the response action set forth in the approved final removal action work plan or remedial action plan and remedial design. The implementation of the response action may be conducted without oversight by the department.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25395.8. (a) Upon completion of a response action, the private site manager shall file a request for a certificate of completion from the department. The request for a certificate of completion submitted by a private site manager shall include all of the information required by the department, and, at a minimum, shall include all of the following additional information:

(1) A summary of all response action taken.

(2) All sample results for a certified laboratory confirming that the site has been fully remediated as required by the final removal action work plan or remedial action plan and in accordance with the remedial design approved by the department.

(b) In addition, the department may require submittal of any or all of the following documentation:

(1) A north-south and east-west cross section of the site geology, that is signed by a geologist, geophysicist, engineering geologist, or hydrogeologist who is registered in the State of California, and that evaluates the hydrogeologic conditions of the site.

(2) Horizontal and vertical surveys of all wells, caps, and facilities that are required by the final removal action work plan or final remedial action plan approved by the department.

(3) As-built drawings of any physical construction that is required by the removal action work plan or remedial action plan approved by the department, and that is signed by an engineer registered in the State of California.

(4) Copies of land use controls that are required by the removal action work plan or remedial action plan approved by the department, and that have been recorded by the county recorder in the county in which the site is located.

(5) A plan for the implementation of any operation and maintenance

measures that are required by the final removal action work plan or remedial action plan approved by the department.

(c) The department shall review the request for a certificate of completion, and shall approve or reject a request for certificate of completion within 30 days from the date of submittal by the private site manager. If a request is rejected, the department shall identify the principal reasons for the rejection and describe the actions needed to amend the application to adequately address the deficiencies that are identified by the department.

(d) If the department approves the request for a certificate of completion, it shall prepare a certification which shall include a certificate of completion, requirements for ongoing reporting and operation and maintenance, and a description of applicable land use controls of a site. The certification shall be provided to the project proponent, all known responsible parties, owners of properties located adjacent to the site, and shall be made available to the public.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25395.9. No designated officer or employee of the California Environmental Protection Agency or its constituent boards, departments, or offices shall serve as a private site manager or member of a private site management team for the first 12 months following the termination of the officer's or employee's appointment or employment with the agency, constituent board, department, or office.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25395.10. (a) The private site manager and each member of a private site management team shall sign and certify all work performed by, and or directed by, that person.

(b) The private site manager and each member of the professional staff of the private site management team shall have appropriate insurance as required by the department.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25395.11. Except as otherwise specified in this article, all the requirements of this chapter, or Chapter 6.85 (commencing with Section 25396) in the case of sites selected pursuant to Section 25396.6, and any other applicable regulation and guidance document or manual adopted or issued by the department, shall apply to sites approved for private site management. The requirements of Division 13 (commencing with Section 21000) of the Public Resources Code shall apply to response actions conducted pursuant to this article in the same manner, and to the same extent, that the requirements apply to response actions otherwise conducted pursuant to this chapter or Chapter 6.85 (commencing with Section 25396). If, at any time, the department finds that a private site manager or a private site management team is not in compliance with the requirements of this chapter or Chapter 6.85 (commencing with Section 25396), the department may, pursuant to this article, withdraw its approval for the conduct of a response action on the site.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25395.12. (a) The department shall conduct audits of a minimum of 25 percent of the sites where a private site manager or private site management team has conducted a site investigation or response action without oversight by the department, except with respect to cases where oversight is otherwise required under this article, and where the department has been requested to issue or has issued a certificate of completion.

(b) A private site manager and any member of a private site management team shall provide an authorized representative of the department with complete access, at any reasonable hour of the day, to all technical data, reports, records, environmental samples, photographs, maps, and files that are materially related to a response action conducted pursuant to this article.

(Amended by Stats. 2002, Ch. 626, Sec. 5. Effective January 1, 2003.)

25395.13. (a) Any private site manager or member of a private site management team who commits any of the following acts shall be punished, upon
conviction, by a fine of not less than two thousand dollars ($2,000) or by imprisonment in the county jail for not more than one year, or both that fine and imprisonment, if the private site manager or any member of a private site management team does any of the following:

(1) Knowingly makes any materially false or inaccurate statement in any application, record, report, certification, plan, design, or statement that the private site manager or the private site management team submits to the department.

(2) Knowingly makes any materially false or inaccurate statement in any record, report, plan, file, log, or register that the private site management team keeps, or is required to keep, pursuant to any law.

(3) Knowingly and materially falsifies, tampers with, alters, destroys, or disturbs any mechanism, recovery, or control system, or any monitoring device or method that the private site manager or the private site management team maintains, or that is required to be maintained pursuant to any law, regulation, or order for the protection of the public health and safety or the environment.

(4) Knowingly allows or orders any of the private site manager's or the private site management team's employees, agents, or contractors to do any of the actions specified in paragraphs (1) to (3), inclusive.

(b) Any private site manager or member of a site private management team who knowingly, or with reckless disregard for the risk, treats, handles, transports, disposes of, or stores any hazardous substance in a manner that causes any unreasonable risk of fire, explosion, serious injury, or death, is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) nor more than two hundred fifty thousand dollars ($250,000) for each day of a violation, by imprisonment in the county jail for not more than one year, by imprisonment in the state prison for 16, 24, or 36 months, or by both that fine and imprisonment.

(c) Any private site manager or member of a private site management team who knowingly, at the time the manager or member takes any of the actions specified in subdivision (b), places another person in imminent danger of death or serious bodily injury, is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) or more than two hundred fifty thousand dollars ($250,000) for each day of the violation.

(d) Each day that a violation of subdivision (a) occurs, or continues to occur, shall be considered a separate offense. A fine imposed pursuant to subdivision (a) shall not exceed, in the aggregate, twenty-five thousand dollars ($25,000), and the term of imprisonment shall not exceed, in the aggregate, one year.

(e) Notwithstanding any other provision of law, all penalties collected pursuant to this section shall be transferred to the department for deposit in the trust fund for expenditure by the department, upon appropriation by the Legislature, to administer and enforce this article.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25395.14. The project proponent for a site subject to response action pursuant to this article shall fully reimburse the department for all reasonable costs incurred by the department, including those costs associated with the department's involvement in the investigation, remediation, certification, and audit process at that site. Any of the reasonable costs that are incurred by the department which relate to the specific project costs, and that are not reimbursed by the project proponent shall be recovered from the responsible parties pursuant to Section 25360.

(Added by Stats. 1999, Ch. 23, Sec. 2. Effective May 26, 1999.)

25395.15. The department shall adopt minimum standards of performance that shall apply to the activities and conduct of private site managers and members of private site management teams that conduct response actions pursuant to this article. The standards shall be consistent with the requirements of this article and with generally accepted professional standards that apply to persons who engage in the types of work that are required to conduct hazardous substance release response actions pursuant to this chapter. The minimum standards of performance shall be adopted as expeditiously as possible, but not later than six months from the date that the department first begins accepting applications pursuant to Section 25395.3.

(Amended by Stats. 2002, Ch. 626, Sec. 6. Effective January 1, 2003.)

Article 8.5. Cleanup Loans and Environmental Assistance to Neighborhoods

(Article 8.5 repealed and added by Stats. 2000, Ch. 912, Sec. 23. Effective September 29, 2000.)

25395.20. (a) For purposes of this article, the following definitions shall apply:

(1) "Account" means the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to subdivision (b).

(2) (A) "Brownfield" means property that meets all of the following conditions:

(i) It is located in an urban area.

(ii) It was previously the site of an economic activity that is no longer in operation at that location.

(iii) It has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of application for a loan pursuant to this article.

(B) "Brownfield" does not include any of the following:

(i) Property listed, or proposed for listing, on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property is a brownfield described in subparagraph (C) of paragraph (6).

(3) "Cleanup and abatement order" means an order issued by a regional board pursuant to Section 13304 of the Water Code.

(4) "Cleanup Loans and Environmental Assistance to Neighborhoods Program" or "CLEAN" means the loan program established by the department pursuant to Section 25395.22, to finance the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible property.

(5) "Economic activity" means a governmental activity, a commercial, agricultural, industrial, or not-for-profit enterprise, or other economic or business concern.

(6) "Eligible property" means a site that is any of the following:

(A) A brownfield.

(B) An underutilized property that is any of the following:

(i) A property described in clause (v) of subparagraph (D) of paragraph (16).

(ii) A property located in an enterprise zone established pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to Article 4 (commencing with Section 33300) of Chapter 4 of Part 1 of Division 24, or in an eligible area, as determined pursuant to paragraph (2) of subdivision (c) of Section 7072 of the Government Code.

(iii) A property, the redevelopment of which will result in any of the following:

(I) An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the economic activity located on the property before redevelopment occurred.

(II) An increase in property taxes paid to the local government that is at least 100 percent greater than the property taxes paid by the property owner before redevelopment occurred.

(III) Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the property after the redevelopment occurs.

(IV) Housing for very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(V) The construction of new or expanded school facilities, public day care centers, parks, or community recreational facilities.

(C) A brownfield or an underutilized property described in clause (ii) of subparagraph (B) that will be the site of a contiguous expansion of an operating industrial or commercial facility owned or operated by one of the following:

(i) A small business.

(ii) A nonprofit corporation formed under the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or the Nonprofit Religious Corporation Law (Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code).

(iii) A small business incubator that is undertaking the expansion with the assistance of a grant authorized by Section 15339.3 of the Government Code or a loan guarantee provided pursuant to Section 14090 of the Corporations Code.

(7) "Eligible property" does not include any of the following:

(A) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(B) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(C) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property meets the criteria specified in subparagraph (C) of paragraph (6).

(8) (A) "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:

(i) A hazardous substance, as defined in Section 25281 or 25316, including the substances specified in Section 25317.

(ii) A hazardous waste, as defined in Section 25117.

(iii) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

(B) "Hazardous material" does not include undisturbed naturally occurring hazardous material unless it will adversely affect the reasonable use of a property after response action is completed.

(9) "Implementation costs," for purposes of the expenditure of any funds pursuant to this article, includes, but is not limited to, the costs of overseeing and reviewing preliminary endangerment assessments and response actions that are financed by a loan issued pursuant to this article, including oversight conducted by a regional board pursuant to Section 25395.28.

(10) "Investigating site contamination program" means the loan program established by the department pursuant to Section 25395.21 to conduct a preliminary endangerment assessment of a brownfield or an underutilized urban property.

(11) "Leaking underground fuel tank" has the same meaning as "tank," as defined in Section 25299.24.

(12) "No longer in operation" means an economic activity that is, or previously was, located on a property that is not conducting operations on the property of the type usually associated with the economic activity.

(13) "Project" means any response action, and the planned future development, included in an application for a loan pursuant to Section 25395.22.

(14) "Property" means real property, as defined in Section 658 of the Civil Code.

(15) "Small business" means an independently owned and operated business, that is not dominant in its field of operation, that, together with affiliates, has 100 or fewer employees, and that has average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years, or a business that is a manufacturer, as defined in Section 14837 of the Government Code, with 100 or fewer employees.

(16) "Underutilized property" means property that meets all of the following conditions:

(A) It is located in an urban area.

(B) An economic activity is conducted on the property.

(C) It is the subject of a proposal for development pursuant to this article.

(D) One of the following applies:

(i) The economic activity on the property is irregular or intermittent in nature and uses the property for productive purposes less than four months in any calendar year.

(ii) The economic activity on the property employs less than 25 percent of the property for productive purposes.

(iii) The structures, infrastructure, and other facilities on the property are antiquated, obsolete, or in such poor repair that they cannot be used for the purposes for which they were originally constructed and require replacement in order to implement the redevelopment proposal.

(iv) The economic activity conducted on the property is a parking facility or an activity that offers a similar marginal economic service and the facility or activity will be replaced when the property is redeveloped.

(v) The property is adjacent to one or more brownfields or underutilized properties that are the subject of a project under this article and its inclusion in the project is necessary in order to ensure that the redevelopment of the brownfield or brownfields or underutilized property or underutilized properties occurs.

(E) An underutilized property does not include any of the following:

(i) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property is an underutilized property described in subparagraph (C) of paragraph (6).

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

(18) "State board" means the State Water Resources Control Board.

(19) "Urban area" means either of the following:

(A) The central portion of a city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile.

(B) An urbanized area as defined in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code.

(b) The Cleanup Loans and Environmental Assistance to Neighborhoods Account is hereby established in the General Fund to provide low-interest loans to qualified applicants for the purpose of funding preliminary endangerment assessments and response actions at brownfields and underutilized properties located in the state pursuant to this article, and for any other purpose determined by the department to stimulate the redevelopment of brownfields and underutilized properties, if the department determines that the redevelopment will result in the overall improvement of the community in which the property is located and will provide a reasonable economic or social benefit, in accordance with subdivision (c). All of the following moneys shall be deposited in the account:

(1) Funds appropriated by the Legislature for the purposes of this article.

(2) Notwithstanding Section 16475 of the Government Code, any interest earned upon money deposited into the account.

(3) Proceeds from loan repayments.

(4) Proceeds from the sale of property pursuant to this article that is the subject of foreclosure or its equivalent, as defined in subdivision (f) of Section 25548.1, and proceeds from the enforcement of any other security interest.

(c) (1) Except as provided in paragraph (2), notwithstanding Section 13340 of the Government Code, the money in the account is continuously appropriated without regard to fiscal years to the department for the purpose of providing loans pursuant to Sections 25395.21 and 25395.22 and for the purpose of providing subsidies for environmental insurance pursuant to Article 8.7 (commencing with Section 25395.40), the California Financial Assurance and Insurance for Redevelopment Program.

(2) The money in the account may be expended by the department, a regional board, the state board, and the agency for the implementation and administration of this article and for implementation and administration of the California Financial Assurance and Insurance for Redevelopment Program (Article 7 (commencing with Section 25395.40)), only upon appropriation by the Legislature in the annual Budget Act or in another measure.

(Amended by Stats. 2004, Ch. 225, Sec. 41. Effective August 16, 2004.)

25395.21. (a) The department, with the approval of the secretary, shall establish an Investigating Site Contamination Program to provide loans to eligible persons to conduct preliminary endangerment assessments of brownfields and underutilized properties. A loan provided pursuant to this section shall not be used for the cost of a phase I environmental assessment or the department's oversight of the preparation and approval of the preliminary endangerment assessment.

(b) The department shall develop a loan application form for an investigating site contamination program loan and shall include, in the form, any provisions that the department considers to be appropriate. The application form shall be signed by the loan applicant and shall be submitted to the department with all of the following documentation:

(1) The phase I environmental assessment for the property that is the subject of the loan application.

(2) Information that demonstrates that the property is a brownfield or an underutilized property.

(3) If the owner of the property that is the subject of the loan application is not the loan applicant, one of the following:

(A) Documentation that demonstrates that the owner consents to the performance of the preliminary endangerment assessment of the property.

(B) A copy of an agreement between the property owner and the loan applicant that gives the loan applicant an option to purchase the property.

(C) If the loan applicant is a local government entity, or a developer or prospective purchaser acting together with a local government entity pursuant to an enforceable agreement, a demonstration to the department that the local government entity, or developer or prospective purchaser acting together with the local government entity pursuant to an enforceable agreement, has legal access to perform the preliminary endangerment assessment at the property, or will have legal access, prior to receiving loan funds.

(4) Any other information the department deems necessary.

(c) The department shall determine whether to approve a loan application pursuant to this section based upon the information submitted pursuant to subdivision (b). In making a decision regarding whether to approve a loan application, the department shall approve a loan pursuant to this section for a property only if the department determines the property is a brownfield or an underutilized property.

(d) The maximum amount of a loan granted pursuant to this section shall not exceed one hundred thousand dollars ($100,000).

(e) (1) Except as provided in paragraph (2) and in subdivision (f), upon approval of the loan application by the department, the loan recipient shall execute an agreement with the department to repay the loan over a period not to exceed three years.

(2) If the loan is to a local government entity, or to a developer or prospective purchaser acting together with a local government entity pursuant to an enforceable agreement, the department may delay the beginning of the loan repayment period.

(3) Except as provided in paragraph (4), the agreement made pursuant to paragraph (1) shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the loan application, any money so recovered, except for reasonable costs and the fees incurred to recover that money, shall be used first to repay the loan or repay the grant.

(4) Notwithstanding paragraph (3), a loan recipient is not required to first use the money recovered to repay the loan or grant, if the recipient can demonstrate, to the satisfaction of the department, that the recovered money is necessary to, and is being applied to, the total environmental remediation of the property, and that the total of the recovered money and the loan amount does not exceed the cost of remediation.

(f) If a loan recipient who is not the owner of the property and the department determine, after the completion of the preliminary endangerment assessment, that the sum of the cost of remediation and the property purchase price makes the redevelopment of the property not economically feasible, the department may waive the repayment of up to 75 percent of the loan, and the amount waived shall be deemed a grant to the loan recipient. If the department waives the repayment of part of the loan, the recipient shall repay the remaining portion of the loan within one year of that waiver.

(g) Upon approval of a loan, the recipient shall enter into an agreement with the department for the department to provide regulatory oversight of the preparation and approval of the preliminary endangerment assessment.

(h) Notwithstanding any requirement of this division regarding cost recovery or reimbursement for oversight costs, a loan recipient is not liable for paying the department's cost associated with the oversight of the preparation and approval of the preliminary endangerment assessment if the department determines there are sufficient funds in the account to reimburse the department for that oversight. If the department determines that the account has insufficient funds to pay for the oversight costs associated with the oversight of the preparation and approval of the preliminary endangerment assessment, the loan recipient shall pay the department the amount of those costs.

(Amended by Stats. 2001, Ch. 548, Sec. 3. Effective October 7, 2001.)

25395.22. (a) The department, with the approval of the secretary, shall establish a Cleanup Loans and Environmental Assistance to Neighborhoods Program to provide loans to finance the performance of any action necessary to respond to the release or threatened release of hazardous material at an eligible property. A recipient of a loan to perform an action to respond to a release or threatened release of a hazardous material at an eligible property that is granted pursuant to this section may also use the loan funds to pay the premium for environmental insurance products to facilitate the development of the site, if the insurance company has an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger and is authorized to offer environmental insurance in California. The department shall take those necessary actions to promote the use of loans under the CLEAN program by local governments. A loan provided pursuant to this section shall not be used to pay for a phase I environmental assessment, a preliminary endangerment assessment, the department's oversight of actions necessary to respond to the release or threatened release of hazardous material at an eligible property, or any operation and maintenance activity at a site.

(b) The department shall develop an application form for a loan under the CLEAN program and shall include, in the form, any provisions that the department determines to be appropriate to carry out the CLEAN program. The application shall be signed by the loan applicant and shall be accompanied by all of the following:

(1) A preliminary endangerment assessment that has been approved by the department, or an environmental assessment with equivalent information, that discloses the presence of a release or threatened release of a hazardous material at the property at concentrations that may pose a risk to public health and safety and the environment.

(2) The name and address of the project coordinator for the site and the resume of the coordinator that demonstrates that the coordinator possesses the requisite qualifications to manage the response action at the site.

(3) Documentation that the property is an eligible property and, if the department has implemented the priority scoring system set forth in Section 25395.23, sufficient information to enable the department to determine the priority score for the property.

(4) Documentation that the planned future development of the site is consistent with the current and reasonably foreseeable future land uses of the property.

(5) If the owner of the eligible property that is the subject of the loan application is not the loan applicant, one of the following:

(A) Documentation that demonstrates that the owner agrees to use the property as a security interest for the loan to finance necessary response action at the property.

(B) A copy of an agreement between the property owner and the loan applicant that gives the loan applicant an option to purchase the property.

(C) If the loan applicant is a local government entity, or a developer or prospective purchaser acting in concert with a local government entity pursuant to an enforceable agreement, a demonstration to the department that the local government entity, or developer or prospective purchaser acting in concert with a local government entity pursuant to an enforceable agreement, has legal access to perform any action necessary to respond to the release or threatened release of hazardous material at an eligible property, or will have legal access, prior to receiving loan funds.

(6) Any other information the department deems necessary.

(Amended by Stats. 2001, Ch. 548, Sec. 4. Effective October 7, 2001.)

25395.23. (a) The department, after consultation with the secretary, the Secretary of Business, Transportation and Housing, and the Director of the Office of Planning and Research, may approve loan applications submitted pursuant to Section 25395.22. The department may approve a loan only for those response actions necessary to address a release or threatened release of a hazardous material at an eligible property.

(b) If the department determines, based on estimates of the number of loan requests that will be submitted in any fiscal year and the amount of loan funds that will be available during that fiscal year, that sufficient funding to meet the demand for loans will not be available, the department shall establish a system for ranking loan applications based on priority scores. Priority scores shall be calculated for each loan application by scoring the project that is the subject of the loan application using scales that measure the factors listed in subdivision (c). The department shall approve loans for a project based on its priority scores.

(c) The system for ranking loan applications pursuant to subdivision (b) shall establish priority scores for projects that are the subjects of the loan applications using scales that measure all of the following factors:

(1) The degree of community support expressed for the project, including, but not limited to, letters of support from local governmental entities, state or local elected officials, community leaders, and the general public.

(2) Financial support for the project provided at the local level, including grants or other subsidies, and funding provided by the issuance of bonds pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Division 2 of Part 1 of Title 5 of the Government Code) or financing under the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24).

(3) The potential for the project to provide additional protection of the public health and safety.

(4) The potential for the project to enhance strategic community development, including, but not limited to, all of the following:

(A) The creation of new jobs.

(B) Generation of additional tax revenue.

(C) The likelihood that the project will stimulate additional redevelopment in adjacent areas.

(D) The degree to which implementation of the project will improve local property values.

(E) The degree to which implementation of the project will result in the development of new parks.

(F) The extent to which the project may have a beneficial effect on the construction of new schools.

(G) The extent to which the project will result in the construction of affordable inner-city housing.

(H) The potential for the project to have a beneficial impact on existing local and regional infrastructure or projected infrastructure needs, or otherwise promote infill development.

(5) The economic viability of the project, including, but not limited to, an analysis of the current value of the property as compared to its projected value after all necessary response actions have been completed.

(6) The ability of the loan applicant to successfully perform the response action at the site and repay the loan if funding is provided.

(7) The geographic location of the project, taking into consideration the number and amounts of loans approved for projects located in that area, as compared to those approved for other needy areas throughout the state.

(8) The degree of likelihood that the response action would not be completed if a loan pursuant to Section 25395.22 is not made, including whether any necessary response action is already being paid for by a responsible party pursuant to an administrative order, an agreement issued or entered into with a federal, state, or local agency, a judicial order, or a consent decree.

(9) The ability to obtain conventional financing absent a loan under this program.

(Amended by Stats. 2004, Ch. 225, Sec. 42. Effective August 16, 2004.)

25395.24. (a) The department may approve all, or part of, a loan request pursuant to Section 25395.23, except the maximum amount of a loan approved pursuant to Section 25395.23 shall not exceed two million five hundred thousand dollars ($2,500,000).

(b) The department shall not approve a loan pursuant to Section 25395.23 if the total debt against the eligible property subject to the release or threatened release of a hazardous material on which the response action will be taken exceeds 80 percent of the estimated value of the property after all necessary response actions are complete.

(Added by Stats. 2000, Ch. 912, Sec. 23. Effective September 29, 2000.)

25395.25. Upon the approval of a loan pursuant to Section 25395.23, the loan recipient shall do all of the following:

(a) Enter into an agreement with the department to repay the loan over a period of not more than seven years. If the loan is to a local government entity, or to a developer or prospective purchaser acting together with a local government entity pursuant to an enforceable agreement, the

department may delay the beginning of the loan repayment period.

(1) The agreement shall include those terms and conditions that the department deems appropriate.

(2) (A) The agreement shall require that if the loan recipient recovers from a responsible party any costs incurred in taking a response action at the site that is the subject of the response action pursuant to the agreement, the loan recipient shall use the recovered money, except for reasonable costs and the fees incurred to recover that money, first to satisfy the loan.

(B) Notwithstanding subparagraph (A), a loan recipient is not required to first use the money recovered to repay the loan or grant if the recipient can demonstrate, to the satisfaction of the department, that the recovered money is necessary to, and is being applied to, the total environmental remediation of the property, and that the total of the recovered money and the loan amount does not exceed the cost of remediation.

(b) (1) Enter into an agreement with the department or with the regional board or state board pursuant to Section 25395.28 for the oversight and approval of the response action at the site. This agreement shall include any necessary conditions and assurances to ensure that post-completion, ongoing operation and maintenance activities, and any necessary institutional controls on future uses of the property, are complied with. This agreement shall be provided to the department before the department may release any loan funds to the loan recipient.

(2) Notwithstanding any requirement of this division regarding cost recovery or reimbursement for oversight costs, a loan recipient is not liable for paying the department's costs pursuant to this article or the regional board's or state board's costs pursuant to Section 25395.28 associated with the oversight of the response action at the site subject to the agreement, if the department determines there are sufficient funds in the account to reimburse the department's costs pursuant to this article or the regional board's or state board's costs pursuant to Section 25395.28 for that oversight. If the department determines that the account has insufficient funds to pay for the oversight costs associated with the oversight of the response action at the site subject to the agreement, the loan recipient shall pay the department's costs pursuant to this article or the regional board's or state board's costs pursuant to Section 25395.28 for the amount of those costs.

(c) (1) Except as provided in paragraph (2), obtain secured creditor insurance, as defined in subdivision (k) of Section 25395.40, from the insurance company selected by the secretary pursuant to subdivision (b) of Section 25395.41, or comparable insurance from any insurance company with an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger that is authorized to offer environmental insurance in California. This insurance shall be obtained before the department may release any loan funds to the loan recipient.

(2) The secretary may waive the requirement of paragraph (1) to obtain insurance or any specific insurance coverage if either of the following apply:

(A) No money is available for the environmental insurance subsidies authorized pursuant to Section 25395.42.

(B) The secretary determines that the scope of the response action is limited and the cost of the premiums of the prenegotiated package of environmental insurance products equals or exceeds the estimated response action costs, or is otherwise not commercially feasible.

(Amended by Stats. 2001, Ch. 549, Sec. 3. Effective January 1, 2002.)

25395.26. (a) A loan approved pursuant to Section 25395.23 shall be secured by the property subject to the release or threatened release of the hazardous material on which the response action will be taken or by another form of security that the department determines will adequately protect the state's interest. The department shall obtain an appropriate security interest in the property or other alternative form of security approved by the department. The department may foreclose on property, or the alternative form of security approved by the department, that is subject to a security interest pursuant to this section. Any funds received through a foreclosure or through the enforcement of any other security interest pursuant to this article shall be deposited in the account.

(b) The state, the secretary, the department, and the account are not liable under any state or local statute, regulation, or ordinance because the department holds the security interest identified in subdivision (a) or because the department acquired property through foreclosure or its equivalent in satisfaction of a loan issued pursuant to this article.

(c) Chapter 6.96 (commencing with Section 25548) does not apply to the state, the secretary, the department, the agency, or the account with regard to a loan secured pursuant to subdivision (a).

(d) (1) Notwithstanding any other provision of law, no approval or review shall be required from the Department of General Services to obtain any security interest or exercise any rights, including, but not limited to, foreclosure, under any security interest or other agreement made pursuant to this article.

(2) The acquisition of a property pursuant to this article through foreclosure or its equivalent is not subject to Article 2 (commencing with Section 14660) of Chapter 2 of Part 5.5 of Division 3 of Title 2 of the Government Code.

(3) The department shall promptly dispose of any property acquired through the exercise of any security interest pursuant to this article at the property's current market value and the disposal of this property is exempt from Section 11011.1 of the Government Code and Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) This article shall not be construed to limit, extend, or affect local land use and zoning authority.

(Amended by Stats. 2001, Ch. 548, Sec. 6. Effective October 7, 2001.)

25395.27. (a) (1) Except as provided in subdivisions (a) and (b) of Section 25395.28, any response action carried out under this article shall be conducted in accordance with the requirements of this chapter and Chapter 6.65 (commencing with Section 25260). However, for purposes of Section 25262,
the administering agency for any site that is the subject of a loan under this article shall either be the department pursuant to this article, or a regional board, the state board, or a local oversight program agency under contract with the state board pursuant to Section 25395.28, and a person shall not request that a different agency be designated as an administering agency for the site under Chapter 6.65 (commencing with Section 25260).

(2) For purposes of this section, the Site Designation Committee created by Section 25261 is not required to meet and formally designate the department, a regional board, the state board, or a local oversight program agency under contract with the state board, as specified in Section 25395.28, as the administering agency pursuant to Section 25262 for a site that is the subject of a loan under this article. Upon the approval of a loan under Section 25395.23, the department shall notify the Site Designation Committee of the administering agency for the site.

(b) For sites that are the subject of a loan under this article, all references in this chapter to a hazardous substance shall be deemed to be a reference to a hazardous material.

(c) Except as provided in subdivisions (a) and (b) of Section 25395.28, this chapter shall apply to a site that is the subject of a loan under this article, regardless of whether the site is on the list created pursuant to Section 25356.

(d) Except as provided in Section 25264, this article shall not be construed to limit the authority of the department, the regional board, or the state board to take any action otherwise authorized under any other provision of law.

(e) The department shall post, and update at least monthly, a list of loan applications received pursuant to this article on the department's Internet website. The list shall include the name of the applicant, the location of the property that is the subject of the loan application, the administering agency, and a contact at the department for further information. The department shall also annually post on that website a summary of the response action status for each site with a loan approved under Section 25395.23.

(Repealed and added by Stats. 2001, Ch. 548, Sec. 8. Effective October 7, 2001.)

25395.28. (a) (1) Except as provided in paragraph (2) and subdivision (b), upon the request of a regional board or the state board, the administering agency for any site that is the subject of a loan approved under Section 25395.23 shall be a regional board, the state board, or a local oversight program agency under contract with the state board in accordance with Chapter 6.7 (commencing with Section 25280) and Chapter 6.75 (commencing

with Section 25299.10), if the property is subject to a release from a leaking underground fuel tank and the release from the leaking underground fuel tank is the principal threat at that property, as determined by the regional board, the state board, and the department.

(2) If the site specified in paragraph (1) was not subject to oversight by a local oversight program agency prior to the date the loan application was submitted to the department pursuant to Section 25395.22, the regional board shall serve as the administering agency.

(3) Any response action for a property subject to this subdivision for a leaking underground fuel tank shall be carried out under Chapter 6.65 (commencing with Section 25260), Chapter 6.7 (commencing with Section 25280), and Chapter 6.75 (commencing with Section 25299.10).

(b) (1) Upon the request of a regional board, the regional board shall be the administering agency for a property specified in subdivision (a), if the site is subject to one or more of the following orders or agreements under Division 7 (commencing with Section 13000) of the Water Code prior to the date the loan application was submitted to the department pursuant to Section 25395.22:

(A) A cleanup and abatement order.

(B) Other cleanup order issued by a regional board.

(C) A written voluntary agreement with a regional board.

(2) Any response action for a site subject to this subdivision shall be carried out pursuant to Chapter 6.65 (commencing with Section 25260).

(c) Notwithstanding subdivisions (a) and (b), the regional board and the state board, in consultation with the department, may request the department to be the administering agency for a property subject to this section.

(d) Notwithstanding subdivision (b), if a regional board has issued a cleanup order or entered into a written voluntary agreement under Division 7 (commencing with Section 13000) of the Water Code for a site and the department has issued an order or entered into an enforceable agreement under Chapter 6.5 (commencing with Section 25100) or Chapter 6.8 (commencing with Section 25300), the regional board and the department shall consult and determine which agency shall be the administering agency for the site under this article.

(e) The department shall provide a written notice of the receipt of a loan application under Section 25395.22, including the name and address of the loan applicant and the location of the property, to both of the following:

(1) A regional board for any property within that regional board's jurisdiction.

(2) The state board for any property that contains a leaking underground fuel tank.

(f) The regional board or state board shall respond with a written notice to the department within 20 working days after receipt of the notice or information provided pursuant to subdivision (e) indicating whether the regional board or a local oversight program agency under contract with the state board will oversee the response action pursuant to this section. If the regional board or state board does not provide this notice within that time period, the regional board or state board shall be deemed to have elected not to oversee the response action.

(g) (1) If a regional board or a local oversight program agency under contract with the state board oversees a response action pursuant to this section, the department shall reimburse the regional board or state board from the account for oversight costs, if all of the following occur:

(A) The department determines, pursuant to paragraph (2) of subdivision (b) of Section 25395.25, that there are sufficient funds in the account.

(B) The department receives the report required upon completion of the response action under subdivision (i).

(C) The regional board or a local oversight program agency under contract with the state board, as appropriate, certifies that it is not eligible to be reimbursed for oversight costs from any other fund or account, including, but not limited to, the Underground Storage Tank Cleanup Fund pursuant to Chapter 6.75 (commencing with Section 25299.10).

(2) If the department determines pursuant to paragraph (2) of subdivision (b) of Section 25395.25 that the account has insufficient funds, the regional board or state board shall recover its oversight costs from the loan recipient, and the department shall not be liable for these oversight costs.

(h) If a regional board or a local oversight program agency under contract with the state board oversees a response action pursuant to this section, the recipient of a loan approved pursuant to Section 25395.23 shall enter into an agreement with the regional board or the state board under paragraph (1) of subdivision (b) of Section 25395.25 for the oversight and approval of the response action at the site, prior to the release of loan funds by the department. The agreement shall meet the requirements specified in the regulations adopted pursuant to Section 25395.29.

(i) If the regional board or a local oversight program agency under contract with the state board serves as the administering agency pursuant to this section, the regional board or the state board shall do both of the following:

(1) Annually provide information to the department about the status of the response action, including any response action decision document that includes limitations on land use or other institutional controls.

(2) Notify the department upon completion of the response action.

(j) This section does not apply to any site subject to Chapter 1 (commencing with Section 17210) of Part 10.5 of Division 1 of Title 1 of the Education Code.

(Added by Stats. 2001, Ch. 548, Sec. 9. Effective October 7, 2001.)

25395.29. (a) The department may adopt regulations to implement this article as emergency regulations. The Office of Administrative Law shall consider those regulations to be necessary for the immediate preservation of the public peace, health and safety, and general welfare for purposes of Section 11349.6 of the Government Code. Notwithstanding the 120-day limitation in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this subdivision shall be repealed 180 days after the effective date of the regulations, unless the secretary or the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The department may adopt emergency regulations to implement the changes made by the act of the 2001-02 Regular Session of the Legislature that amends this section. Notwithstanding the 120-day limitation specified in subdivision (e) of Section 11346.1 of the Government Code, the emergency regulations adopted or amended pursuant to this subdivision shall be repealed 180 days after the effective date of the regulations, unless the secretary or the department readopts those regulations, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Office of Administrative Law shall consider the regulations adopted pursuant to this subdivision, to be necessary for the immediate preservation of the public peace, health and safety, and general welfare for purposes of Section 11349.6 of the Government Code.

(Amended by Stats. 2001, Ch. 548, Sec. 10. Effective October 7, 2001.)

25395.30. The following persons are not eligible to apply for a loan under this article:

(a) A person who has been convicted of a felony or misdemeanor involving the regulation of hazardous materials, including, but not limited to, a conviction of a felony or misdemeanor under Section 25395.13.

(b) A person who has been convicted of a felony or misdemeanor involving moral turpitude, including, but not limited to, the crimes of fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering, or money laundering.

(c) A person who is in violation of an administrative order or agreement issued by or entered into with any federal, state, or local agency that requires response action at a site or a judicial order or consent decree that requires response action at a site.

(d) A person who knowingly made a false statement regarding a material fact or knowingly failed to disclose a material fact in connection with an application submitted to the secretary under this article.

(Added by Stats. 2000, Ch. 912, Sec. 23. Effective September 29, 2000.)

25395.31. The rate of interest to be applied to loans made pursuant to this article shall be the same rate earned on investments in the Surplus Money Investment Fund during the loan repayment period. If a loan recipient defaults on a loan, the rate of interest to be applied to the loan shall be 10 percent from the date of default, or whatever greater rate is reflected in the agreement entered into pursuant to subdivision (a) of Section 25395.25.

(Added by Stats. 2000, Ch. 912, Sec. 23. Effective September 29,

2000.)

25395.32. On or before January 10 of each year when a loan under this article is made or repaid during the previous fiscal year, the secretary shall report to the Joint Legislative Budget Committee and to the chairs of the appropriate policy committees of the Senate and the Assembly, and shall post on the Internet web site of the agency, all of the following:

(a) The number and dollar amount of loans approved pursuant to Section 25395.21, the number and dollar amount of those loans that have been repaid, and, the number and dollar amount of those loans that are in default.

(b) The number and dollar amount of loans waived pursuant to subdivision (f) of Section 25395.21.

(c) The number and dollar amount of loans approved pursuant to Section 25395.23, the number and dollar amount of those loans that have been repaid, and the number and dollar amount of those loans that are in default.

(d) The number of preliminary endangerment assessments completed pursuant to agreements entered into under this article.

(e) The number of sites where necessary response actions have been completed pursuant to agreements entered into under this article.

(Amended by Stats. 2004, Ch. 644, Sec. 12. Effective January 1, 2005.)

Article 8.6. Revolving Loans Fund

(Article 8.6 added by Stats. 2008, Ch. 760, Sec. 9. Effective September 30, 2008.)

25395.35. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Brownfield site" has the same meaning as defined in Section 9601 of Title 42 of the United States Code.

(b) "Brownfield law" means the Small Business Liability Relief and Brownfields Revitalization Act of 2002 (Public Law 107-117) as amending the federal act.

(c) "Federal Trust Fund" means the Federal Trust Fund established pursuant to Section 16360 of the Government Code.

(d) "Fund" means the Revolving Loans Fund established pursuant to this article.

(Added by Stats. 2008, Ch. 760, Sec. 9. Effective September 30, 2008.)

25395.36. (a) The Revolving Loans Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all moneys in the fund shall be continuously appropriated, without regard to fiscal year, to the department for expenditure in accordance with this chapter. The department is the state agency responsible for administering the fund.

(b) All of the following moneys shall be deposited in the fund:

(1) Notwithstanding Section 25173.6, moneys received pursuant to the brownfield law and transferred to the fund from the Federal Trust Fund.

(2) The amounts collected for loan services.

(3) Interest payments.

(4) Principal repayments.

(5) Notwithstanding Section 16475 of the Government Code, any interest earned upon the moneys deposited in the fund.

(c) The department may expend the moneys in the fund only for the purposes authorized by the brownfield law, as specified in subsection (k) of Section 9604 of Title 42 of the United States Code, including providing financial assistance for both of the following:

(1) Issuing loans for response actions to eligible brownfield sites.

(2) Making subgrants for response actions to eligible brownfield sites.

(d) Any repayment of fund moneys, including interest payments, and all interest earned on, or accruing to, any moneys in the fund, that are deposited in the fund, as provided in subdivision (b), shall be available, in perpetuity, for expenditure for the purposes and uses authorized by the brownfield law.

(Added by Stats. 2008, Ch. 760, Sec. 9. Effective September 30, 2008.)

Article 8.7. California Financial Assurance and Insurance for Redevelopment Program

(Article 8.7 added by Stats. 2001, Ch. 549, Sec. 4. Effective January 1, 2002.)

25395.40. For the purposes of this article, the following definitions shall apply:

(a) "CLEAN Program" means the Cleanup Loans and Environmental Assistance to Neighborhoods Program established pursuant to Section 25395.22.

(b) "Cost overrun insurance" means insurance that covers some, or all of the response costs caused by a known pollution condition at a site, that exceed the estimated response action costs that have been accepted and approved by the insurer, based on information from the department and other relevant sources at the time the insurance is first obtained.

(1) Cost overrun insurance shall, at a minimum, provide for all of the following:

(A) The response costs in excess of the estimated response action costs that have been accepted and approved by the insurer.

(B) A policy period of sufficient length to cover the duration of the response activities, not including post-completion operation and maintenance.

(C) A self-insured retention amount not to exceed 25 percent of the estimated response action costs that have been accepted and approved by the insurer.

(c) "Eligible property" has the same meaning as defined in paragraph (6) of subdivision (a) of Section 25395.20.

(d) "Environmental insurance" means insurance intended to limit the liability associated with the discovery and cleanup of a hazardous materials release, including secured creditor insurance, pollution liability insurance, and cost overrun insurance, and any other insurance product that the secretary selects to be provided pursuant to Section 25395.41.

(e) "Estimated response action costs" means the projected costs of taking a response action in implementing an approved removal action work plan or remedial action plan prepared to address a pollution condition at a site.

(f) "FAIR" means the Financial Assurance and Insurance for Redevelopment Program created pursuant to this article.

(g) "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 25316, including the substances specified in Section 25317.

(2) A hazardous waste, as defined in Section 25117.

(3) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

(h) "Insurance company" means an insurance company authorized in California to offer environmental insurance and that has an A.M. Best Financial Strength Rating of A+ or better and an A.M. Best Financial Size Category of FSC X or larger.

(i) "Pollution condition" means a release or threatened release of a hazardous material and any resulting impact upon the environment.

(j) (1) "Pollution liability insurance" means insurance that covers damages caused by a pollution condition from, or at, a site that is preexisting and unknown, or was otherwise unknown at the time the insurance is first obtained, and, at a minimum, provides for all of the following:

(A) A minimum policy period of five years after the completion of remediation activities, not including post-completion operation and maintenance.

(B) A duty to defend and pay for defense costs in an amount at least up to the amount of coverage available under the policy, irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the damages, so long as there already exists a reasonably quantifiable legal obligation to pay those damages.

(2) For purposes of this subdivision, "damages" means either of the following:

(A) Property damage incurred at a site as an unforeseen and unexpected result of a pollution condition.

(B) Bodily injury, property damage, and response action costs sustained or incurred by a third party as a result of a pollution condition at a site.

(3) For purposes of this subdivision, "damages" includes the property damage, bodily injury, and response costs specified in paragraph (2), irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the property damage, bodily injury,

or response costs, so long as there exists a reasonably quantifiable legal obligation to pay for those damages.

(k) "Secured creditor insurance" means insurance made available to an insured that covers all of the following:

(1) Response costs at a site incurred by the lender after a default by the borrower or foreclosure by the lender that occurs as a result of a pollution condition at the site, and the costs are reasonably necessary to remediate the site for its intended use so that it can be sold.

(2) Damages or other liability for a pollution condition at a site incurred by a lender as a result of that lender exercising a foreclosure option.

(3) Loss or damages incurred by a lender as a result of a borrower's inability to satisfy a loan obligation or due to the existence of an unforeseen and unexpected pollution condition.

(4) A duty to defend and pay for defense costs in an amount at least up to the amount of coverage available under the policy, irrespective of whether an administrative or judicial order requires the insured to compensate any party or pay for the loss, damages, or liability, so long as there exists a reasonably quantifiable legal obligation to pay damages.

(l) "Self-insured retention amount" means response action costs in excess of the estimated response action costs that have been accepted and approved by the insurer that the insured is obligated to pay before being eligible to make a claim of an insurer under a cost overrun insurance policy.

(m) "Unforeseen and unexpected response action costs" means those costs that exceed the estimated response action costs.

(Added by Stats. 2001, Ch. 549, Sec. 4. Effective January 1, 2002.)

25395.41. (a) The secretary shall solicit proposals for a package of environmental insurance products from insurance companies through a competitive bidding process. The request for proposal prepared by the secretary shall identify the objectives of this article and the specific types and coverage limits of the insurance products desired, including endorsements and exclusions. The request for proposal shall require that the proposal allow a purchaser the opportunity to pay for additional coverage without losing the lower transaction costs structure of the prenegotiated policy. The secretary shall hold at least one public workshop in both the northern and the southern part of the state to present and solicit comments on the request for proposal prior to receiving any proposals.

(b) (1) The secretary shall evaluate the extent to which each proposal submitted pursuant to subdivision (a) meets the objectives of the request for proposal and shall also evaluate each proposal and interested party using all of the following factors:

(A) Product pricing.

(B) Claims history.

(C) Underwriting history.

(D) Company financial strength and size.

(E) Scope of policy coverages, including endorsements and exclusions.

(F) Marketing and distribution of the insurance products.

(G) Any other factor that the secretary determines will affect the ability of the selected insurance company to meet the requirements of this article and provide the environmental insurance products in the most effective and efficient manner and at the least cost to the state and to persons seeking that insurance.

(2) The secretary shall select one or more insurance companies that have submitted a proposal pursuant to subdivision (a) to be the exclusive state-designated provider of environmental insurance under this article for a period of three years from the date of selection. The secretary shall select a company that, in his or her determination, has submitted a proposal that best meets the requirements of this article and the objectives stated in the request for proposal at the best possible price. Every three years, the secretary shall repeat the competitive bidding process specified in this section.

(c) An insurance company selected to provide prenegotiated environmental insurance products pursuant to subdivision (b) shall offer this prenegotiated package of insurance products to any interested recipient of a loan under the CLEAN Program. The insurance company shall also offer the environmental insurance products made available under this article to any other person who conducts a response action in the state.

(d) The secretary shall implement this section in consultation with representatives of other appropriate state agencies, including the Business, Transportation and Housing Agency, the Office of Planning and Research, the Pollution Control Financing Authority, the Department of Insurance, the state board, the department, and with other interested parties, including developers, lenders, insurers, and representatives from environmental organizations. The secretary shall implement this section in a manner that is consistent with the requirements for state procurement of services set forth in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

(Amended by Stats. 2004, Ch. 225, Sec. 43. Effective August 16, 2004.)

25395.42. (a) The secretary shall expend the funds from the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 25395.20 that are made available in the annual Budget Act for expenditure to subsidize the cost of the environmental insurance products offered by the insurance company selected pursuant to subdivision (b) of Section 25395.41, in accordance with subdivision (b).

(b) The secretary shall provide the following subsidies, in accordance with the application process specified in Section 25395.43, from the funds made available pursuant to subdivision (a):

(1) Up to 50 percent of the cost of the premiums for the environmental insurance products provided pursuant to subdivision (c) of Section 25395.41.

(2) (A) Up to 80 percent of the self-insured retention amount of the cost overrun insurance provided pursuant to subdivision (c) of Section 25395.41, up to a maximum of five hundred thousand dollars ($500,000).

(B) The secretary may expend the funds available to pay a portion of the self-insured retention amount of the cost overrun insurance provided pursuant to subdivision (b) of Section 25395.41 only under all of the following conditions:

(i) The insured demonstrates that it exercised reasonably prudent business judgment in insuring the cost overrun, consistent with an attempt to minimize the incurred costs, and incurred the costs through no fault of its own.

(ii) The insured pays, at a minimum, the first 20 percent of the self-insured retention amount.

(iii) The secretary determines that the amount of the payment is in the best interests of the state, taking into account the environmental and economic benefits of the specified project, as compared to the benefit of conserving funds for assistance at other sites.

(Added by Stats. 2001, Ch. 549, Sec. 4. Effective January 1, 2002.)

25395.43. (a) Any person who is conducting a response action at an eligible property under the oversight of the department or a regional board and who purchases the prenegotiated environmental insurance products from the insurance company selected pursuant to subdivision (b) of Section 25395.41 may apply to the secretary for the subsidies that are made available pursuant to Section 25395.42. To the extent that the funds that are made available in the annual Budget Act for expenditure to subsidize the cost of the environmental insurance products provided pursuant to this article are available, an applicant is eligible for a subsidy in the order in which the applicant's application is received.

(b) An applicant for a subsidy made available pursuant to Section 25395.42 shall provide the secretary with all information necessary to demonstrate to the secretary that the applicant is eligible to receive a subsidy.

(c) The state and the Cleanup Loans and Environmental Assistance to Neighborhoods Account do not have any obligation to provide funds to any person that applies for a subsidy pursuant to this article. The secretary shall provide an applicant with a subsidy only to the extent that money in the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to Section 25395.20 has been reserved in the annual Budget Act for the purpose of providing environmental insurance and the money that has been reserved for this purpose is available.

(Added by Stats. 2001, Ch. 549, Sec. 4. Effective January 1, 2002.)

25395.44. (a) Notwithstanding any other provision of law, the agency, the secretary, the state, their respective employees and agents, and any of the state's other political subdivisions or employees thereof, shall not be liable to any person for any of the following:

(1) Any acts or omissions by the agency, the secretary, the state,

their respective employees and agents, and any of the state's other political subdivisions or employees thereof, in implementing this article.

(2) Any acts or omissions by an insurance company selected to provide prenegotiated environmental insurance products pursuant to subdivision (b) of Section 25395.41.

(3) Any acts or omissions by any person that purchases a prenegotiated environmental insurance product made available pursuant to this article.

(b) The immunity from liability set forth in subdivision (a) specifically includes, but is not limited to, immunity if an insurance company selected to provide prenegotiated environmental insurance products pursuant to subdivision (b) of Section 25395.41 does any of the following:

(1) Cancels, rescinds, or otherwise terminates its contract with the secretary.

(2) Fails, for any reason, to compensate an insured for a loss covered by a policy.

(3) Delays payment to an insured, or otherwise breaches a duty or covenant imposed by law or required by a policy or contract with an insured that purchased an environmental insurance product pursuant to this article.

(c) The immunity set forth in this section is in addition to other immunities and defenses otherwise available to the agency, the secretary, the state, their respective employees and agents, and any of the state's political subdivisions and employees thereof.

(d) In implementing this article, the agency, the secretary, the state, their respective employees and agents, and any of the state's other political subdivisions and employees thereof, may not:

(1) Be construed to be an insurer, as defined in Section 23 of the Insurance Code, an insurance agent, as defined in Sections 31 and 1621 of the Insurance Code, an insurance solicitor, as defined in Sections 34 and 1624 of the Insurance Code, or an insurance broker, as defined in Sections 33 and 1623 of the Insurance Code.

(2) Be construed to be transacting insurance, as defined in Section 35 of the Insurance Code.

(3) Be required to obtain a license or other authorization pursuant to any provision of the Insurance Code.

(Repealed and added by Stats. 2002, Ch. 999, Sec. 52. Effective January 1, 2003.)

25395.45. The agency may adopt regulations to implement this article pursuant to this section. The regulations adopted to implement this article shall be deemed to be emergency regulations for purposes of Section 11346.1 of the Government Code. Notwithstanding the 120-day limit specified in subdivision (e) of Section 11346.1 of the Government Code, those emergency regulations may remain in effect for up to 180 days.

(Added by Stats. 2001, Ch. 549, Sec. 4. Effective January 1, 2002.)

HEALTH AND SAFETY CODE

CHAPTER 6.82. CALIFORNIA LAND REUSE AND REVITALIZATION ACT OF 2004

(Chapter 6.82 added by Stats. 2004, Ch. 705, Sec. 1.
Effective January 1, 2005.
Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

Article 1. Legislative Findings and Intent

(Article 1 added by Stats. 2004, Ch. 705, Sec. 1.
Effective January 1, 2005.
Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.60. The Legislature finds and declares all of the following:

(a) There are thousands of properties in the state where redevelopment has been hindered due to real or perceived hazardous materials contamination. Cleaning up these sites and returning them to productive use will benefit the communities in which they are located and the state as a whole.

(b) Contamination of property in the state has hampered redevelopment, which in turn has limited job creation, economic revitalization, and the full and productive use of the land.

(c) Private developers, local governments, and schools are reluctant to acquire or redevelop these properties due, at least in part, to concerns regarding liability associated with historic contamination. Instead, they focus new development on clean areas that present fewer complications and lower risk of liability.

(d) This has resulted in a multitude of problems, including urban sprawl, decaying inner-city neighborhoods and schools, public health and environmental risks stemming from contaminated properties, lack of development
at former manufacturing sites and rural areas in need of economic investment, and reduced tax bases.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.61. It is the intent of the Legislature, in enacting this chapter, to do all of the following:

(a) Establish the cleanup and reuse of these sites in a manner protective of public health and safety and the environment as a priority of the state.

(b) Relieve innocent owners, bona fide prospective purchasers, and owners of property adjacent to contaminated sites of liabilities and responsibilities that should be borne by those who caused or contributed to the contamination.

(c) Encourage process efficiencies that continue to ensure that cleanups are protective of public health and safety and the environment.

(d) Encourage the development and redevelopment of unused or underused properties in urban areas.

(e) Establish a voluntary process for bona fide purchasers, innocent landowners, and contiguous property owners to make certain the extent of their liability, if any, under state law for hazardous materials contamination caused by other persons, without otherwise altering existing state law regarding liability for hazardous materials releases.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.62. This chapter shall be known, and may be cited, as the "California Land Reuse and Revitalization Act of 2004."

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

Article 2. Definitions

(Article 2 added by Stats. 2004, Ch. 705, Sec. 1.
Effective January 1, 2005.
Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.63. The definitions set forth in this article and in Article 6 (commencing with Section 25395.90) shall govern the interpretation of this chapter. If a term is not otherwise defined in this chapter, the definition contained in Chapter 6.8 (commencing with Section 25300) shall apply to that term.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.64. "Agency" means the department, the board, or a regional board.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.65. "All appropriate inquiries" has the following meanings:

(a) Except as provided in subdivision (c), until the date when the standards and practices established by the Administrator of the United States Environmental Protection Agency pursuant to Section 101(35)(B)(ii) of the federal act (42 U.S.C. Sec. 9601(35)(B)(ii)) are adopted and take effect, "all appropriate inquiries" means:

(1) For property acquired on or before December 1, 2000, compliance with American Society for Testing and Materials Standard El527-97 entitled "Standard Practice for Environmental Site Assessment" : Phase 1 Environmental Site Assessment Process.

(2) For property acquired after December 1, 2000, compliance with American Society for Testing and Materials Standard El527-00.

(b) Except as provided in subdivision (c), on and after the date when the standards and practices established by the Administrator of the United States Environmental Protection Agency pursuant to Section 101(35)(B)(ii) of the federal act (42 U.S.C. Sec. 9601(35)(B)(ii)) are adopted and take effect, "all appropriate inquiries" means compliance with those standards, except that any portion of the inquiry that includes the practice of engineering or the practice of geology shall be carried out in conformance with applicable state statutes.

(c) If the property is used solely for residential use and has four or fewer units at the time of acquisition by a nongovernmental or noncommercial entity, "all appropriate inquiries" means that a site inspection and title search does not reveal a basis for further investigation.

(Amended by Stats. 2005, Ch. 22, Sec. 121. Effective January 1, 2006. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.66. "Applicable law" means all of the provisions of the following state statutory and common laws that impose liability on an owner or occupant of property for pollution conditions caused by a release or threatened release of hazardous material on, under, or adjacent to the property:

(a) Title 1 (commencing with Section 3479) of, Title 2 (commencing with Section 3490) of, and Title 3 (commencing with Section 3501) of, Part 3 of Division 4 of the Civil Code.

(b) Chapter 2 (commencing with Section 731) of Title 10 of Part 2 of the Code of Civil Procedure, but not including Section 736 of the Code of Civil Procedure.

(c) Section 5650 of the Fish and Game Code.

(d) Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), and Chapter 6.8 (commencing with Section 25300), of this division.

(e) Chapter 1 (commencing with Section 13000) to Chapter 5 (commencing with Section 13300), inclusive, of Division 7 of the Water Code.

(f) State common law regarding contribution, nuisance, trespass, and equitable indemnity.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.67. "Appropriate care" means either of the following:

(a) The performance of a response action, with respect to hazardous materials found at a site, for which the agency makes the determination specified in paragraph (1) of subdivision (c) of Section 25395.96 and that meets all of the following conditions:

(1) The response action is determined by an agency to be necessary to prevent an unreasonable risk to human health and safety or the environment, as defined in Section 25395.90.

(2) The response action is performed in accordance with a response plan approved by the agency pursuant to Article 6 (commencing with Section 25395.90).

(3) The approved response plan includes a provision for oversight and approval of the completed response action by the agency pursuant to Article 6 (commencing with Section 25395.90).

(b) A determination that no further action is required pursuant to Section 25395.95.

(Amended by Stats. 2005, Ch. 22, Sec. 122. Effective January 1, 2006. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.68. "Board" means the State Water Resources Control Board.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.69. (a) "Bona fide purchaser" means a person, or a tenant of a person, who acquires ownership of a site on or after January 1, 2005, and who establishes all of the following by a preponderance of the evidence:

(1) All releases of the hazardous materials at issue at the site occurred before the person acquired the site, except as described in paragraph (2).

(2) All of the conditions of Section 25395.80 to qualify as a bona fide purchaser have been met.

(3) The person is not potentially liable, or affiliated with any other person who is potentially liable, for the release or threatened release at the site through any of the following circumstances:

(A) Any direct or indirect familial relationship.

(B) Any contractual, corporate, or financial relationship, unless the contractual, corporate, or financial relationship is created by the instrument by which title or possession to the site is conveyed or financed or a contract for the sale of goods or services.

(C) The result of a reorganization of a business entity that was potentially liable for the release or threatened release of hazardous materials at the site.

(b) For purposes of this section, "release" does not include passive migration.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.70. (a) "Contiguous property owner" means a person who owns a site that is adjacent to or otherwise similarly situated with respect to another site that is, or may be, contaminated by a release or threatened release of a hazardous material and that is not owned by that person, and who demonstrates, by a preponderance of the evidence, all of the following:

(1) The person did not cause, contribute, or consent to the release or threatened release.

(2) At the time the person acquired the property, the person made all appropriate inquiries and did not know and had no reason to know of the release or threatened release at the site.

(3) All of the conditions of Section 25395.80 to qualify as a contiguous property owner have been met.

(4) The person is not potentially liable, or affiliated with any other person who is potentially liable, for the release at issue through any of the following circumstances:

(A) Any direct or indirect familial relationship.

(B) Any contractual, corporate, or financial relationship, unless the contractual, corporate, or financial relationship is created by the instruments by which title or possession to the site is conveyed or financed or a contract for the sale of goods or services.

(C) The result of a reorganization of a business entity that was potentially liable for the hazardous materials.

(b) For purposes of this section, "release" does not include passive migration.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.71. "Department" means the Department of Toxic Substances Control.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.72. "Endangerment" means a condition that poses an actual and unreasonable risk to human health and safety arising from actual or threatened exposure to hazardous materials.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.73. "Fair market value" means the price a seller is willing to accept and a buyer willing to pay on the open market and in an arm's length transaction.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.74. "Hazardous material" has the same meaning as defined in subdivision (d) of Section 25260.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.75. (a) "Innocent landowner" means a person who owns a site, did not cause or contribute to a release or threatened release at the site, meets the conditions to qualify as an "innocent landowner" specified in Section 25395.80, and is any one of the following:

(1) A person who, at the time the person acquired the property, made all appropriate inquiries and did not know and had no reason to know of the release or threatened release at the site.

(2) A government entity that acquired property by escheat, or through any another involuntary transfer acquisition, or through the exercise of eminent domain authority by purchase or condemnation, or by means of a lien arising from delinquent taxes, assessments, or charges.

(3) A person who acquired the property by inheritance or bequest.

(4) A person who qualifies for the defense from liability under Section 107(b) of the federal act (42 U.S.C. Sec. 9607(b)).

(b) For purposes of this section, "release" does not include passive migration.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.76. "Land use control" means a recorded instrument executed pursuant to Section 1471 of the Civil Code that restricts or imposes obligations on the present or future uses or activities on a site, including, but not limited to, recorded easements, covenants, restrictions or servitudes, or any combination thereof.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.77. "Passive migration" means the leaking, leaching or movement of a hazardous material into or through the environment, for which no human activity by the bona fide purchaser, innocent landowner, or contiguous property owner preceded the initial entry of that substance into the environment.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.78. "Regional board" means a California regional water quality control board.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.79. "Release" has the same meaning as defined in Section 25320.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.79.1. "Response plan" means a written plan submitted to an agency pursuant to Section 25395.96.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.79.2. (a) "Site" means real property located in an urban infill area for which the expansion, redevelopment, or reuse may be complicated by the presence or perceived presence of hazardous materials.

(b) "Site" does not include any of the following:

(1) A facility that is listed or proposed for listing on the National Priorities List established under Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sec. 9605).

(2) A site on the list maintained by the department pursuant to Section 25356.

(3) A site that is solely impacted by a petroleum release from an underground storage tank eligible for reimbursement from the California Underground Storage Tank Cleanup Fund.

(c) For purposes of this section, the following definitions shall apply:

(1) "Infill area" means a vacant or underutilized lot of land within an urban area that has been previously developed or that is surrounded by parcels that are or have been previously developed.

(2) "Urban area" means either of the following:

(A) An incorporated city.

(B) An unincorporated area that is completely surrounded by one or more incorporated cities that meets both of the following criteria:

(i) The population of the unincorporated area and the population of the surrounding incorporated cities is equal to a population of 100,000 or more.

(ii) The population density of the unincorporated area is equal to, or greater than, the population density of the surrounding cities.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

Article 3. Liability

(Article 3 added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.80. For purposes of this chapter, to qualify as a bona fide purchaser, innocent landowner, or contiguous property owner a person shall establish, by a preponderance of the evidence, all of the following conditions:

(a) On or before the date on which the person acquired the site, the person made all appropriate inquiries into the previous ownership and uses of the site.

(b) The person exercises appropriate care with respect to the release or threatened release of hazardous materials at the site.

(c) The person provides full cooperation, assistance, and access to a person who is authorized to conduct response actions or natural resource restoration at the site, including the cooperation and any access necessary for the installation, integrity, operation, and maintenance of complete or partial response actions or natural resource restoration at the site.

(d) The person complies with land use controls established or relied on, in connection with an approved response action at the site, and does not impede the effectiveness or integrity of any aspect of any remedy employed at the site in connection with a response action.

(e) The person complies with all requests for information or an administrative subpoena concerning the release or threatened release of hazardous substances by any agency with jurisdiction under an applicable statute.

(f) The person provides all notices and satisfies reporting requirements required by state or federal law with respect to the discovery or release of hazardous substances at the site.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.81. (a) Except as provided in Section 25395.85, and except as otherwise provided under this section, a bona fide purchaser, innocent landowner, or contiguous property owner who did not cause or contribute to the release at the site, qualifies for the following immunities:

(1) The bona fide purchaser, innocent landowner, or contiguous property owner is not liable under any applicable statute for a claim made by any person, other than an agency, for response costs or other damages associated with a release or threatened release of a hazardous material at the site characterized in the site assessment conducted pursuant to, or a response plan approved pursuant to, Article 6 (commencing with Section 25395.90).

(2) An agency shall not take an action under an applicable statute to require a bona fide purchaser, innocent landowner, or contiguous property owner to take a response action, other than a response action required in an approved response plan, with respect to the hazardous material release at a site that is characterized in the site assessment conducted pursuant to, or a response plan approved pursuant to Article 6 (commencing with Section 25395.90), unless both of the following conditions apply:

(A) The conditions on the property pose an endangerment.

(B) The agency does one of the following:

(i) Makes all reasonable efforts, including taking appropriate administrative enforcement actions, to compel any necessary response action from other potentially responsible parties, and those efforts have been unsuccessful.

(ii) Reasonably determines, after the exercise of reasonable inquiry, that no potentially responsible party exists with sufficient financial resources to perform the required response action at the site.

(b) This section does not modify or limit the existing authority of a state or local agency to impose a condition on the issuance of a discretionary permit relating to the development, use, or occupancy of any site.

(c) The immunities described in this section shall attach when the bona fide purchaser, innocent landowner, or contiguous property owner enters into an agreement with an agency pursuant to Section 25395.92 and shall remain in effect unless one of the following occurs:

(1) The bona fide purchaser, innocent landowner, or contiguous property owner receives a written notice of an unapproved, material deviation from the agreement from the agency.

(2) The bona fide purchaser, innocent landowner, or contiguous property owner or an agency terminates the agreement before a finding of no further action is made pursuant to subdivision (b) of Section 25395.95 or a certificate of completion is issued pursuant to Section 25395.97.

(d) A person who otherwise qualifies for immunity under this chapter and who commits fraud, intentional nondisclosure, or misrepresentation to an agency with respect to any requirement of this chapter, does not qualify as a bona fide purchaser, innocent landowner, or contiguous property owner.

(e) This section does not relieve a bona fide purchaser, innocent landowner or contiguous property owner from reporting, disclosure and notification requirements under any applicable statute.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.82. (a) Notwithstanding Sections 25395.69, 25395.70, and 25395.75, on and after the date when the immunity specified in subdivision (c) of Section 25395.81 attaches, the person shall remain eligible for immunity if a release of hazardous materials at the site during a response action is de minimis and the agency determines that all necessary response actions to address the release have been taken.

(b) Notwithstanding Sections 25395.69, 25395.70, and 25395.75, on

and after the date when the immunity specified in subdivision (c) of Section 25395.81 attaches, the person shall remain eligible for immunity if either of the following occur:

(1) Both of the following conditions are met:

(A) A release of hazardous materials that poses an unreasonable risk is discovered before the agency makes a finding of no further action pursuant to Section 25395.95 or issues a certificate of completion pursuant to Section 25395.97.

(B) The release specified in subparagraph (A) is appropriately resolved to the satisfaction of the agency pursuant to paragraph (8) of subdivision (a) of Section 25395.96.

(2) All of the following conditions are met:

(A) A release of hazardous materials that poses an unreasonable risk is discovered after the agency makes a finding of no further action pursuant to Section 25395.95, or issues a certificate of completion pursuant to Section 25395.97.

(B) The innocent landowner, bona fide purchaser, or contiguous property owner did not cause or contribute to the release.

(C) The release specified in subparagraph (A) is appropriately resolved to the satisfaction of the agency pursuant to paragraph (8) of subdivision (a) of Section 25395.96.

(c) Notwithstanding Sections 25395.69, 25395.70, and 25395.75, on and after the date when the immunity specified in subdivision (c) of Section 25395.81 attaches, the person shall remain eligible for immunity obtained pursuant to this chapter with regard to a release that is the subject of a finding of no further action made pursuant to Section 25395.95 or a certificate of completion issued pursuant to Section 25395.97. If the person causes or contributes to a release of a hazardous material, that person shall be responsible for responding to that release in accordance with all applicable statutes.

(d) Notwithstanding Sections 25395.69, 25395.70, and 25395.75, on and after the date when the immunity specified in subdivision (c) of Section 25395.81 attaches to a site and a release of hazardous materials is discovered on or under the site, a response action shall be conducted at the site in accordance with the following:

(1) If the response action is for petroleum related contamination caused predominately by a release from an underground storage tank, the funds in the Underground Storage Tank Cleanup Fund shall, to the extent permissible by law, be used in accordance with Section 25299.51.

(2) If the response action is for a hazardous materials release not otherwise subject to paragraph (1), and the agency determines the hazardous material release endangers public health or safety, the person who entered into the agreement with the agency shall pay for, or undertake, the response action. If the agency determines the hazardous materials release does not endanger public health or safety, the person who entered into the agreement shall not be required to pay for, or undertake, the response action.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.83. (a) If there are unrecovered costs incurred by an agency at a site for which an owner of the site is not liable as an innocent landowner, bona fide purchaser, or contiguous property owner, an agency shall have a lien on the site, or may, by agreement with the owner, obtain from the owner a lien on other property or other assurance of payment for the unrecovered response costs, subject to all of the following requirements:

(1) A response action for which there are unrecovered costs of the agency is carried out at the site.

(2) The response action increased the fair market value of the site above the fair market value of the site that existed before the response action was initiated.

(b) The lien may include costs that are first incurred by the agency with respect to a response action at the site.

(c) The lien amount shall not exceed the increase in fair market value of the property attributable to the response action at the time of a sale or other disposition of the property, and shall not exceed the unrecovered response costs actually incurred by the agency.

(d) The lien shall continue until the earlier of satisfaction of the lien by sale or other means, or recovery of all response costs incurred by the agency at the site. Once the amount of the lien is satisfied in full, the agency shall record satisfaction on lien on the real property.

(e) The notice of the lien shall be recorded in the official records of the county recorder's office for the county in which the real property is located.

(f) A lien imposed under this section shall have the force and effect of, and the priority of, a judgment lien upon its recordation in the county in which the property subject to the lien is located.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.84. (a) A court of competent jurisdiction may award reasonable attorneys' fees and experts' fees to a person who initiates a claim under an applicable law for contribution for, or recovery of, response costs incurred for a response action, or for any other response costs incurred at a site, if the person meets all of the following criteria:

(1) The person is a bona fide purchaser, an innocent landowner, a contiguous property owner, or a bona fide ground tenant, as defined in subdivision (b) of Section 25395.102, and qualifies for immunity pursuant to this chapter.

(2) The person is a prevailing party.

(3) On or before 20 calendar days prior to the date of the trial on issues relating to the response costs at issue, the person serves on the defendant both of the following:

(A) If a response plan has been approved for that site pursuant to Article 6 (commencing with Section 25395.90) or Article 7 (commencing with Section 25395.102), as applicable, a copy of the approved response plan.

(B) A written demand for compensation setting forth the specific sum demanded from the defendant, including a statement of the reasoning supporting the demand. The amount of written demand shall include all response costs sought from the defendant at issue, including all interest, but shall not include litigation expenses, attorneys' fees, and experts' fees. The amount of the demand may include any alleged consequential damages.

(b) ln determining whether to award reasonable attorneys' fees and experts' fees pursuant to this section, a court shall consider the relationship of the amount of the written demand described in subparagraph (B) of paragraph (3) of subdivision (a) to the total sum of the response costs and, if appropriate and included in the demand, the consequential damages in the written demand, to the final determination of the costs and damages by the trier of fact.

(c) A court may award reasonable attorneys' fees and experts' fees to an agency that is the prevailing party in an action arising out of this chapter.

(Amended by Stats. 2006, Ch. 510, Sec. 1. Effective January 1, 2007. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.85. An innocent landowner, bona fide purchaser, contiguous landowner, or bona fide ground tenant, as defined in subdivision (b) of Section 25395.102, may seek contribution from any person who is responsible for a discharge or release of hazardous materials for which the innocent landowner, bona fide purchaser, contiguous landowner, or bona fide ground tenant incurs agency oversight costs for the review of a response plan or oversight of the implementation of a response plan subject to this chapter.

(Amended by Stats. 2006, Ch. 510, Sec. 2. Effective January 1, 2007. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.86. (a) This chapter does not provide immunity from any of the following:

(1) Liability for bodily injury or wrongful death.

(2) Any requirement imposed under Chapter 6.5 (commencing with Section 25100), including, but not limited to, corrective action and closure and postclosure requirements.

(3) Criminal acts.

(4) Permit violations.

(5) Contractual indemnity agreements between purchasers and sellers of real property.

(6) New releases of hazardous materials that are caused or contributed to by an innocent landowner, bona fide purchaser, or contiguous property owner.

(b) This chapter shall not apply as a defense or immunity to any action taken by a redevelopment agency pursuant to Article 12.5 (commencing with Section 33459) of Chapter 4 of Part 1 of Division 24.

(c) This chapter does not limit the authority of an agency to

conduct a response action it determines is necessary to protect public health and safety or the environment pursuant to an applicable statute.

(d) This chapter does not preclude a state or local agency that is taking property by eminent domain, negotiating to acquire property in lieu of taking it by eminent domain, or considering the taking of property through the exercise of eminent domain authority, from evaluating the impact on the value of the property resulting from a release or threatened release of any hazardous material, from incorporating that evaluation into any offer of compensation for that property, or from presenting that evaluation at a trial or other proceeding to establish the value of the property.

(e) This chapter does not do either of the following:

(1) Limit a defense to liability that may be available to a person under any other provision of law.

(2) Impose any new obligation on an owner of real property other than those specifically assumed by the owner under an agreement entered into pursuant to Article 6 (commencing with Section 25395.90).

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

Article 5. Information and Reports

(Article 5 added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.87. (a) On or before March 31, 2005, the California Environmental Protection Agency shall develop a form that, upon approval of a response plan, shall be completed and submitted to the agency by a bona fide purchaser or innocent landowner who qualifies for immunity pursuant to this chapter. The form shall include, but is not required to be limited to, all of the following information:

(1) A description of the site, including its address and location.

(2) A description of the type and extent of hazardous materials releases and threatened releases identified for response at the site pursuant to a response plan.

(3) An estimate of the cost of the response action to be undertaken pursuant to a response plan.

(4) A description of the present and proposed use of the site, including current and potential future zoning and land use designations.

(5) A description of any land use restrictions, covenants, deed restrictions or other conditions imposed on the site owned by a party who qualifies for immunity pursuant to this chapter.

(6) A description and the concentrations of the release and threatened releases specified in paragraph (2) that will not be remediated pursuant to the response plan.

(b) On or before January 1, 2006, and annually thereafter, the California Environmental Protection Agency shall, to the extent that resources are available, compile the information submitted pursuant to this section and post a report of its findings on its Web site. The posted report shall compare the data collected pursuant to this section with information collected prior to January 1, 2005, to the extent that this information is available.

(c) The report posted pursuant to subdivision (b) shall, to the extent practicable, compare the number and quality of response actions completed pursuant to this chapter with similar response actions completed prior to its enactment, and shall evaluate the impact of the benefit of this chapter's immunities on the acquisition and development of properties.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

Article 6. Streamlined Site Investigation And Response Plan Agreements

(Article 6 added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.90. (a) Except as otherwise expressly provided in this article, the definitions in Article 2 (commencing with Section 25395.63) apply to the terms used in this article.

(b) "Action level" has the same meaning as defined in paragraph (1) of subdivision (c) of Section 116455.

(c) "Host jurisdiction" means the city or county in which the site is located and which has the authority to take action regarding the site pursuant to Title 7 (commencing with Section 65000) of the Government Code.

(d) "Unreasonable risk" at a site means that a condition at a site requires a response action pursuant to Chapter 6.8 (commencing with Section 25300) of this code or Division 7 (commencing with Section 13000) of the Water Code.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.91. (a) Only a bona fide purchaser, innocent landowner, or contiguous property owner who meets the requirements specified in Section 25395.80 is eligible to enter into an agreement pursuant to this article.

(b) An agreement entered under this article is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, including, but not limited to, Section 10295 of the Public Contract Code.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.92. (a) A bona fide purchaser, innocent landowner, or contiguous property owner who seeks to qualify for the immunity provided by this chapter shall enter into an agreement with an agency pursuant to this article that includes the performance of a site assessment, and, if the agency determines that a response plan is necessary pursuant to Section 25395.96, the preparation and implementation of a response plan.

(b) Before finalizing the agreement, the requested agency shall notify other appropriate agencies, including the host jurisdiction.

(c) A person who enters into an agreement with an agency pursuant to this section shall submit sufficient information to the agency for the agency to determine whether the site is an eligible site, whether the person meets the conditions to qualify as a bona fide purchaser, innocent landowner, or contiguous property owner pursuant to this chapter, and to prepare an agreement pursuant to this section.

(d) (1) A person who enters into an agreement pursuant to this section shall agree to take all actions required for a response action pursuant to Chapter 6.8 (commencing with Section 25300) and Division 7 (commencing with Section 13000) of the Water Code. These actions may include actions necessary to prevent an unreasonable risk before the approval of a response plan.

(2) In determining whether there is unreasonable risk at a site for purposes of this subdivision, the agency shall take into account the intended use of the property, in accordance with any changed use of the property, as specified in subdivision (d) of Section 25395.96.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.93. (a) A person may withdraw from an agreement entered into pursuant to this article by providing a 30-day written notice to the agency and doing both of the following:

(1) Reimbursing the agency for all costs incurred by the agency pursuant to the agreement.

(2) Demonstrating to the satisfaction of the agency that conditions at the site to which the agreement applies do not pose an endangerment to public health and safety or the environment. If the agency determines that conditions at the site pose an endangerment to public health, safety, or the environment, this article does not prevent the agency from exercising its authority to take appropriate response actions or to cause the person or persons responsible for the endangerment to take appropriate response actions.

(b) A person who enters into an agreement with an agency pursuant to this article shall reimburse the agency for all agency costs, including, but not limited to, costs incurred while reviewing a site assessment plan or a response plan or overseeing the implementation of a site assessment or response plan by the person pursuant to this article, except that the department's costs shall be reimbursed pursuant to Chapter 6.66 (commencing with Section 25269) and shall be recoverable pursuant to Section 25360.

(c) The entry into an agreement pursuant to this article shall not constitute an admission of fact or liability or conclusion of law for any purpose or proceeding and a person who enters into an agreement under this article shall not be deemed liable under any other provision of law solely by reason of entering into that agreement.

(d) If the conditions described in paragraph (1) of subdivision (c) of Section 25395.81 or in subdivision (d) of Section 25395.81 occur, an agency may withdraw from an agreement entered into pursuant to this chapter by providing a 30-day written notice to the other party.

(Amended by Stats. 2005, Ch. 22, Sec. 123. Effective January 1, 2006. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.94. (a) (1) A person who enters into an agreement pursuant to this article with an agency for the oversight of a site assessment shall submit a site assessment plan to the agency to conduct a site assessment of the site in accordance with the requirements of this section.

(2) If the agency requires a health risk assessment as part of that agreement, the health assessment shall be prepared in accordance with subdivisions (b), (c), and (d) of Section 25356.1.5.

(b) The site assessment plan shall provide for the evaluation of all of the following:

(1) Whether a release of hazardous materials has occurred at the site, a threat of a release of hazardous materials exists at the site, or there is a threat of a release of hazardous materials from the site.

(2) If a release or threatened release of hazardous materials exists at the site or there is a release or a threatened release from the site, whether the release or threatened release poses an unreasonable risk to public health and safety or the environment.

(c) The site assessment plan shall also include all of the following:

(1) Adequate characterization of the hazardous materials released or threatened to be released at, or from, the site and documentation of the findings.

(2) Reasonably available information about the site, including, where appropriate, a risk assessment that evaluates the risk posed by any hazardous materials released or threatened to be released at, or from, the site, and information regarding reasonably anticipated foreseeable uses of the site based on current and projected land use and zoning designations.

(3) If the release has impacted groundwater, reasonable characterization of underlying groundwater, including present and anticipated beneficial uses of that water.

(d) A person shall submit the site assessment plan to the agency for review and approval.

(e) The agency shall evaluate the adequacy of the site assessment plan to ensure that it contains all necessary information.

(f) After evaluating the site assessment plan, if the agency finds that the site assessment plan is adequate, the agency shall approve the site assessment plan and provide notification to appropriate persons, including notification of any public water system that relies on impacted groundwater for public drinking water purposes.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.95. (a) After implementation of the site assessment plan, the person shall submit to the agency a report of the findings made pursuant to the plan. Based upon a review of this information, the agency shall determine whether a response action is necessary to address any unreasonable risk from hazardous materials at the site.

(b) If the agency determines that there is no unreasonable risk at the site and that there are no hazardous materials at the site at levels that are not suitable for unrestricted use of the site, the agency shall make a finding that no further action is necessary at the site.

(c) If the agency determines that there are hazardous materials at the site at levels that are not suitable for unrestricted use, but that are suitable for the reasonably anticipated foreseeable use of the site based on current and projected land use and zoning designations, the agency shall find that no further action is necessary at the site except that a land use control that imposes appropriate restrictions pursuant to Section 25395.99 shall be executed and recorded and the public comment and participation requirements of Section 25395.96 shall be met before the execution and recording of any land use control. On or before 15 days after the date when the land use control is recorded pursuant to Section 25395.99, the agency shall state in writing that this act constitutes "appropriate care" for the purposes of Section 25395.67.

(Amended by Stats. 2005, Ch. 22, Sec. 124. Effective January 1, 2006. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.96. (a) If, upon review of the site assessment prepared pursuant to this article, the agency determines that a response action is necessary to prevent or eliminate an unreasonable risk, the bona fide purchaser, innocent landowner, or contiguous property owner shall submit a response plan to the agency to conduct a response action at the site, in conformance with the agreement entered into pursuant to Section 25395.92. The response plan shall include all of the following:

(1) The response plan shall provide for an opportunity for the public, other agencies, and the host jurisdiction to participate in decisions regarding the response action, taking into consideration the nature of the community interest, and shall include all of the following:

(A) Thirty days before taking action pursuant to the response plan, the agency shall take all of the following actions:

(i) Notify all other appropriate governmental entities and local agencies, including, but not limited to, the department, the regional board, or a redevelopment agency, that is not a party to the response plan regarding the proposed response plan.

(ii) Place a notice in a newspaper of general circulation, in the area of the site, including, but not limited to, a community-based newspaper, as appropriate.

(iii) Post notice of the proposed response plan on the site.

(B) All of the following methods for public participation shall be included in the response plan:

(i) Thirty days' prior public notice in a factsheet format of the proposed response plan, in English and in any other language commonly spoken in the area of the site.

(ii) Access, at both the agency and at local repositories, to the proposed response plan, site assessment, addenda, and any other supporting documentation, including materials listed as references in the response plan and site assessment.

(iii) Procedures for providing a reasonable opportunity to comment on the plan and related documents specified in clause (ii).

(iv) If a public meeting is requested, the holding of a public meeting by the agency in the area to receive comments.

(v) The agency's consideration of any comments received before taking any action regarding the response plan.

(C) The response plan may also provide for, but is not limited to, proposing the use of other methods for public participation, including the use of public notices, direct notification of interested parties, electronic copies of the response plan, site assessment addenda, and other supporting documentation, including materials listed as references in the response plan and site assessment, electronic comment forms, forming advisory groups, as appropriate, to disseminate information and assist the agency in gathering public input, additional public meetings or public hearings, and an opportunity to comment on the proposed response plan prior to approval.

(D) The agency, as part of its communications with affected communities, shall provide information regarding the process by which decisions about the site are made and the recourse that is available for those who may disagree with an agency decision.

(E) The agency shall consider the issue of environmental justice, as defined in subdivision (e) of Section 65040.12 of the Government Code, for communities most impacted, including low-income and racial minority populations before taking action on the response plan.

(F) To the extent possible, the agency shall coordinate its public participation activities with those undertaken by the host jurisdiction and other agencies associated with the development of the property, to avoid duplication to the extent feasible.

(G) It is the intent of the Legislature that the public participation process established pursuant to this paragraph ensures full and robust participation of a community affected by this chapter.

(2) Identification of the release or threatened release that is the subject of the response plan and documentation that the plan is based on an adequate characterization of the site.

(3) An identification of the response plan objectives and the

proposed remedy, and an identification of the reasonably anticipated future land uses of the site and of the current and projected land use and zoning designations. This identification shall include confirmation by the host jurisdiction that the anticipated future land uses and current and projected land uses and zoning designations are accurate.

(4) A description of activities that will be implemented to control any endangerment that may occur during the response action at the site.

(5) A description of any land use control that is part of the response action.

(6) A description of wastes other than hazardous materials at the site and how they will be managed in conjunction with the response action.

(7) Provisions for the removal of containment or storage vessels and other sources of contamination, including soils and free product, that cause an unreasonable risk.

(8) Provisions for the agency to require further response actions based on the discovery of hazardous materials that pose an unreasonable risk to human health and safety or the environment that are discovered during the course of the response action or subsequent development of the site.

(9) Any other information that the agency determines is necessary.

(b) The agency shall evaluate the adequacy of the plan submitted pursuant to subdivision (a) and shall approve the plan if the agency makes all of the following findings:

(1) The plan contains the information required by subdivision (a).

(2) When implemented, the plan will place the site in a condition that allows it to be used for its reasonably anticipated future land use without unreasonable risk to human health and safety and the environment.

(3) The plan addresses any public comments.

(4) If applicable, the plan provides for long-term operation and maintenance, including land use and engineering controls, that are part of the remedy contained in the response plan.

(c) (1) On or before 60 days after the date an agency receives a response plan, the agency shall make a written determination that proper completion of the response plan constitutes "appropriate care" for purposes of subdivision (a) of Section 25395.67.

(2) Upon approval of the response plan by the agency, the agency shall notify all appropriate persons, including the host jurisdiction.

(d) If the use of the property changes, after a response plan is approved, to a use that requires a higher level of protection, the agency may require the preparation and implementation of a new response plan pursuant to this article.

(e) The owner of a site shall not make any change in use of a site inconsistent with any land use control recorded for the site, unless the change is approved by the agency in accordance with subdivision (f) of Section 25395.99.

(Amended by Stats. 2006, Ch. 562, Sec. 1. Effective January 1, 2007. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.97. (a) Except as provided in Section 25395.99, the agency shall issue a certificate of completion upon determining that all response actions have been satisfactorily completed in accordance with an approved response plan.

(b) Notwithstanding subdivision (a), the agency shall issue a certificate of completion when a response action plan includes long-term obligations that have not been completed, including operation and maintenance requirements or monitoring, only if the agency makes all of the following determinations:

(1) All response actions, other than long-term operation and maintenance at the site, have been completed.

(2) The person has submitted an adequate long-term operation and maintenance plan and has demonstrated initial compliance.

(c) If the agency determines that long-term operation and maintenance is required at a site, the agency may, as a condition of issuing a certificate of completion, enter into an operation and maintenance agreement with the person that governs the long-term operation and maintenance activities and that provides for adequate financial assurance.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.98. A person who acquires a property from an innocent landowner, bona fide purchaser, or contiguous property owner, and the property was previously issued a certificate of completion or no further action determination, may qualify as a bona fide prospective purchaser or contiguous property owner by demonstrating to the agency that the person meets all of the qualifying conditions of Section 25395.80 and either Section 25395.69 or 25395.70, as applicable.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.99. (a) A response plan may require the use of a land use control that imposes appropriate conditions, restrictions, and obligations on land use or activities, if, after completion of the removal and remedial actions specified in the response plan, hazardous materials remain at the site at a level that is not suitable for the unrestricted use of the site.

(b) Except as provided in subdivision (c), if the agency approves a response plan that requires the use of a land use control, the land use control shall be executed by the landowner and recorded by the landowner in the office of the county recorder in each county in which all, or a portion of, the land is located within 10 days of the date of execution.

(c) An agency shall not issue a certificate of completion to a person who submits a response plan that is approved by the agency and that requires the use of a land use control, until the agency receives a certified copy of the recorded land use control. If the site that requires the land use control does not have an owner, or the agency determines the owner is incapable of executing a land use control in accordance with this section, the agency may record in the county records a "Notice of Land Use Restriction" that has the same effect as any other land use control executed pursuant to this section, and that is subject to the variance and termination procedures specified in subdivision (f).

(d) Notwithstanding any other provision of law, a land use control that is executed pursuant to this section and that is recorded so as to provide constructive notice shall run with the land from the date of recordation, is binding upon all of the owners of the land, and their heirs, successors and assignees, and the agents, employees, or lessees of the owners, heirs, successors and assignees, and is enforceable pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5.

(e) Notwithstanding any other provision of law, a land use control executed pursuant to this section is subject to Section 57012.

(f) A land use control imposed pursuant to this section is subject to the variance and removal procedures specified in Sections 25233 and 25234.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.100. To the extent consistent with the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the department may exclude any portion of a response action conducted entirely onsite from the hazardous waste facilities permit requirements of Sections 25200.3, 25201, and 25201.6, if both of the following apply:

(a) The response action is carried out pursuant to an approved response plan.

(b) The response plan specifies that the response action will be conducted in compliance with the standards, requirements, criteria, or limitations applicable to the construction, operation, and closure of the type of facility at the site, as necessary to prevent an unreasonable risk to public health and safety or the environment and any other condition imposed by the agency.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.101. (a) Except as expressly provided in this article, this article does not affect the authority of an agency to issue an order or take any other action under any provision of law to protect public health and safety or the environment.

(b) Except as otherwise expressly provided in this article, this article does not affect the authority of the agency or any other public agency to pursue any existing legal, equitable, or administrative remedies pursuant to state or federal law.

(c) Except as otherwise expressly provided in this article, Chapter 6.8 (commencing with Section 25300) does not apply to this article.

(d) If a local agency determines that, due to an emergency, it is

necessary to gain access to a site that is the subject of a finding of no further action or a certificate of completion, the person who has obtained immunity pursuant to this chapter with regard to that site shall allow the local agency access to the site to take any action necessary to mitigate that emergency, or take any other necessary response action. However, that person shall not be required to pay for, or undertake, any of those actions taken by or required by the local agency, unless the person caused or contributed to the release at the site that constituted the emergency.

(Added by Stats. 2004, Ch. 705, Sec. 1. Effective January 1, 2005. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

Article 7. Bona Fide Ground Tenant Immunity

(Article 7 repealed and added by Stats. 2006, Ch. 510, Sec. 4. Effective January 1, 2007. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.102. (a) Except as otherwise provided in this article, the definitions in Article 2 (commencing with Section 25395.63) and Article 6 (commencing with Section 25395.90) shall govern the interpretation of this article.

(b) "Bona fide ground tenant" means a person who establishes by a preponderance of evidence and maintains all of the following:

(1) The person acquires a nonfee interest in, and control of, the real property at a site on or after January 1, 2007, pursuant to one of the following:

(A) A ground lease with a term of 25 years or more.

(B) An easement with a term of 25 years or more.

(C) Any other legal means for site access and use that provides for a term of 25 years or more, and is acceptable to the agency entering into an agreement pursuant to this article.

(2) The person is in compliance with subdivisions (c), (d), (e), and (f) of Section 25395.80.

(3) All releases of hazardous materials at the site occurred before the person obtained legal access to and control over the site, except for a release that is of a type, nature or amount that does not require reporting to a regulatory authority pursuant to applicable law or other applicable statutory or regulatory reporting requirements and for which the agency determines all appropriate actions have been taken.

(4) The person did not cause or contribute to a release of hazardous materials at the site, other than a release that is of a type, nature or amount that does not require reporting to a regulatory authority pursuant to applicable law or other applicable statutory or regulatory reporting requirements.

(5) (A) The person has contractually agreed with one or more persons or entities set forth in subdivision (a) of Section 25395.103 that either of the following revenue sources be dedicated to, or pledged to secure a loan the proceeds of which are dedicated to, implementation of the response plan approved pursuant to this article:

(i) All payments by that person to the site owner, at least until such time as a response plan has been approved by the agency and the agency has determined that something less than all of the payments are sufficient to implement the response plan.

(ii) Any alternate assets or revenue streams that are acceptable to the agency.

(B) To ensure that the revenue stream required by subparagraph (A) remains available to implement the response plan approved pursuant to this article, the person may utilize an Internal Revenue Code Section 468B settlement trust or other acceptable security mechanism that allows the agency to utilize the earmarked funds to complete the cleanup if there is a default by a party that is contractually obligated to implement the response plan pursuant to an agreement under this article. Agreements pursuant to this article shall permit subordination of the security mechanism to permit financing for site cleanup.

(6) The person is not potentially liable, or affiliated with a person who is potentially liable, for the release at issue through any of the following circumstances:

(A) A direct or indirect familial relationship.

(B) A contractual, corporate, or financial relationship, unless the contractual, corporate, or financial relationship is created by the instruments by which the person obtains control and implements the development of the site, or is created by a contract for the sale of goods or services.

(C) The result of a reorganization of a business entity that was potentially liable for the hazardous substances at issue.

(c) For the purpose of this article, "release" does not include passive migration.

(d) "Site" shall have the definition set forth in Section 25395.79.2, except that the exclusion for petroleum sites set forth in paragraph (3) of subdivision (b) of that section shall not apply.

(Added by Stats. 2006, Ch. 510, Sec. 4. Effective January 1, 2007. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.103. (a) A bona fide ground tenant who seeks to qualify for the immunity pursuant to Section 25395.104 shall make all appropriate inquiries, and shall enter into an agreement pursuant to this article with an agency, and one or more entities that agree to take responsibility for implementing a site assessment and response plan pursuant to subdivision (b). The entity shall be one of the following:

(1) The site owner.

(2) A redevelopment agency.

(3) A city or county.

(b) Except as otherwise provided in subdivision (c), an agreement entered into pursuant to this article shall provide that the entity that accepts responsibility for the site assessment and response plan shall conduct a site assessment that substantially complies with the requirements of Section 25395.94 and implement a response plan that substantially complies with the requirements of Section 25395.96. For purposes of any health risk assessment, as specified in paragraph (2) of subdivision (a) of Section 25395.94, that is conducted for a site subject to this article, the intended site occupants shall include any person who is expected to reside at, work at, or otherwise physically cross onto, the boundaries of the site. Both the site assessment and the response plan shall be approved by the agency. Except as necessary to comply with provisions of this article that differ from Article 6 (commencing with Section 25395.90), agreements pursuant to this article shall substantially conform to agreements developed to implement Article 6 (commencing with Section 25395.90), and shall specifically include the agency cost reimbursement provisions required by subdivision (b) of Section 25395.93.

(c) An agreement entered into pursuant to this article shall provide that the bona fide ground tenant is responsible to the agency for only the portions of the site assessment and the portions of the response plan that the agency determines to be necessary to allow the site to be used for its intended purposes without unreasonable risk to the human health and safety of the intended site occupants. The bona fide ground tenant shall not be responsible to the agency for any other assessment or remediation of soil, soil gas, groundwater, or other media at the site; nor for any assessment or remediation adjacent to, or in the vicinity of, the site. The agreement shall also specify the portion of the site assessment and the response plan to be implemented by the party other than the bona fide ground tenant.

(d) Before finalizing the agreement, the agency shall notify other appropriate agencies, including the host jurisdiction. The agency shall keep, in a permanent archive, copies of all finalized agreements entered into pursuant to this article.

(e) Agreements entered under this article shall not be subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(f) A person who enters into an agreement under this article shall submit sufficient information to the agency for the agency to determine whether the site is eligible, whether the person meets the conditions to qualify as a bona fide ground tenant, and to prepare an agreement pursuant to this section.

(Added by Stats. 2006, Ch. 510, Sec. 4. Effective January 1, 2007. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.104. (a) Except as otherwise provided in this section, a bona fide ground tenant shall qualify for the following immunities:

(1) The bona fide ground tenant shall not be liable under any applicable statute for a claim made by a person, other than an agency, for response costs or other relief associated with a release or threatened release of a hazardous material at the site once the bona fide ground tenant obtains a

certification pursuant to subdivision (b) or (c) that the immunity provided by this section has attached.

(2) (A) Except as provided in subparagraph (B), an agency shall not, subsequent to the date of the agreement, take any action under any applicable statute to require a bona fide ground tenant to take a response action on account of a release or threatened release of a hazardous material at a site.

(B) The agency that entered into the agreement pursuant to this article may take action under any applicable statute to enforce the conditions imposed on the bona fide ground tenant pursuant to the agreement.

(b) Except as provided in subparagraph (B) of paragraph (2) of subdivision (a), the immunity provided in this section shall attach to a bona fide ground tenant once the agency certifies in writing that all of the following have occurred:

(1) A site assessment has been completed sufficient for the agency to determine the remedial measures necessary to allow the site to be used for its intended purposes without unreasonable risk to the human health and safety of the intended site occupants.

(2) Except for site monitoring, reporting, institutional controls, operation and maintenance activities, and other ongoing obligations of the bona fide ground tenant, if any, the portion of the site investigation and the response plan necessary to allow the site to be used for its intended purposes without unreasonable risk to the human health and safety of the intended site occupants, including any confirmation sampling required by the agency to confirm that this standard has been met, has been implemented to the agency's satisfaction.

(3) To the extent required in the agreement entered into pursuant to this article, all wells, piping, extraction systems, or similar materials or equipment required for the conduct of remediation efforts to be performed by a person other than the bona fide ground tenant have either been installed to the agency's satisfaction or have been accounted for to the agency's satisfaction in site development plans and specifications.

(4) If applicable, an instrument that restricts or imposes obligations on the present of future uses or activities on the site has been executed and recorded pursuant to Section 1471 of the Civil Code.

(c) A party to an agreement pursuant to this article may request the agency to issue a written certification confirming that the conditions stated in subdivision (b) have been met and that the immunity provided for in this section is in effect. The agency shall provide this certification within 60 days of the date it finds that the conditions stated in subdivision (b) have been met.

(d) The agency that issued a certification pursuant to subdivision (c) may withdraw that certification if it first provides reasonable notice and opportunity for the bona fide ground tenant to take action to prevent the withdrawal, and subsequent to the notice and cure opportunity makes any of the following findings:

(1) A material deviation from those requirements applicable to the bona fide ground tenant under the agreement entered into pursuant to this article that has not been approved by the agency exists and continues to exist subsequent to the notice and cure period.

(2) The bona fide ground tenant induced the agency to issue the certification by fraud, or intentional nondisclosure or misrepresentation.

(e) Upon the agency's certification pursuant to subdivision (c), the immunity provided in this section extends to all of the following:

(1) The bona fide ground tenant and any successor who demonstrates to the agency that the person meets the qualifying conditions of subdivision (b) of Section 25395.102 and subdivisions (c), (d), (e), and (f) of Section 25395.80 and who assumes the bona fide ground tenant's obligations of any agreement entered into pursuant to this article.

(2) A person who provides financing to a person specified in paragraph (1).

(f) The immunity provided in this section does not extend to, and may not be transferred to, a person who was a responsible party, as that term is defined in Section 25323.5 for the release at the site prior to acquiring an interest in the site from the bona fide ground tenant or providing financing as specified in paragraph (3) of subdivision (e).

(g) The immunity provided in this section shall be in addition to any other immunity provided by law.

(h) This section shall not modify or limit the existing authority of a state or local agency to impose a condition on the issuance of a discretionary permit relating to the development, use, or occupancy of a site.

(i) This section shall not relieve a bona fide ground tenant from reporting, disclosure, and notification requirements under any applicable statute.

(j) The entry into an agreement pursuant to this article shall not constitute an admission of any fact or liability or conclusion of law for any purpose or proceeding and a person who enters into an agreement under this article shall not be deemed liable under any other provision of law solely by reason of entering into the agreement.

(k) If the use of the property changes, after a response plan is approved, to a use that requires a higher level of protection, the agency may require the preparation and implementation of a new response plan pursuant to this article.

(l) A bona fide ground tenant that purchases a site subsequent to leasing, or taking an easement in the site, may convert its status to that of a bona fide purchaser pursuant to Article 6 (commencing with Section 25395.90) if the bona fide ground tenant otherwise meets the requirements of Section 25395.69 and Article 6 (commencing with Section 25395.90). Upon the conversion, the bona fide ground tenant shall qualify for any and all immunities available to a bona fide purchaser under this chapter.

(m) If the response plan relies on the use of institutional or engineering controls to make the site suitable for its intended purposes without unreasonable risk to the human health and safety of the intended occupants of the site, the bona fide ground tenant seeking immunity shall provide any applicable financial assurances, using financial assurance guidelines and mechanisms approved by a board, department, or organization of the California Environmental Protection Agency; periodic reports as required by the agency to demonstrate that there remains no unreasonable risk to the human health and safety of the intended occupants. The bona fide ground tenant shall not make any change in use of the site that is inconsistent with any land use control recorded for the site unless the change is approved by the agency pursuant to Sections 25233 and 25234 or, in the case of the board or a regional board, substantially similar procedures.

(Added by Stats. 2006, Ch. 510, Sec. 4. Effective January 1, 2007. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.105. (a) Notwithstanding subdivision (b) of Section 25395.102, on and after the date when the immunity specified in Section 25395.104 attaches, a person shall remain eligible for immunity if a release of hazardous materials at the site during a response action is de minimis and the agency determines that all necessary response actions to address the release have been taken.

(b) Notwithstanding subdivision (b) of Section 25395.102 with respect to a release of hazardous materials at the site that is not characterized in or through the site investigation or the response plan, a person shall remain eligible for the immunity provided in Section 25395.104, if the person takes response actions with respect to the release of hazardous materials that the agency determines to be necessary to prevent unreasonable risk to the human health and safety of the intended site occupants specified in the agreement entered into pursuant to this article.

(c) Notwithstanding subdivision (b) of Section 25395.102, on and after the date when the immunity specified in Section 25395.104 attaches, a person shall remain eligible for immunity obtained pursuant to this article with regard to a release that is the subject of a certificate of completion and immunities issued pursuant to Section 25395.104. If the person causes or contributes to a release of a hazardous material, other than a de minimis release, the person shall be responsible for responding to that release in accordance with all applicable law.

(Repealed and added by Stats. 2006, Ch. 510, Sec. 4. Effective January 1, 2007. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.106. (a) This article does not provide immunity from any of the following:

(1) Liability for bodily injury or wrongful death.

(2) A requirement imposed under Chapter 6.5 (commencing with Section 25100), including, but not limited to, corrective action and closure and postclosure requirements.

(3) A criminal act.

(4) A permit violation.

(5) A contractual indemnity agreement between a purchaser and seller of real property.

(6) New releases, other than de minimis releases, of hazardous

materials that are caused or contributed to by a bona fide ground tenant.

(b) This article does not limit the authority of an agency to conduct a response action that is necessary to protect public health and safety or the environment pursuant to an applicable statute.

(c) This article does not do either of the following:

(1) Limit a defense to liability that may be available to a person under any other provision of law.

(2) Impose a new obligation on a bona fide ground tenant other than those specifically assumed by the bona fide ground tenant under an agreement entered into pursuant to this article.

(Added by Stats. 2006, Ch. 510, Sec. 4. Effective January 1, 2007. Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

Article 8. Repeal

(Article 8 added by Stats. 2006, Ch. 510, Sec. 5.
Effective January 1, 2007.
Repealed as of January 1, 2010, pursuant to Section 25395.109, with continuing effect as provided in Section 25395.110.)

25395.109. This chapter shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

(Added by Stats. 2006, Ch. 510, Sec. 5. Effective January 1, 2007. Repealed as of January 1, 2010, by its own provisions, with continuing effect as provided in Section 25395.110. Note: Repeal affects Chapter 6.82, commencing with Section 25395.60. Prior to 2007, this repeal clause resided in Section 25395.105 in the former Article 7.)

HEALTH AND SAFETY CODE

CHAPTER 6.83. LAND USE AND REVITALIZATION

(Chapter 6.83 added by Stats. 2004, Ch. 705, Sec. 2. Effective January 1, 2005.)

Article 1. Immunity Continuation

(Article 1 added by Stats. 2004, Ch. 705, Sec. 2. Effective January 1, 2005. New article operative January 1, 2010, by Section 25395.110.)

25395.110. (a) A person who, before January 1, 2010, qualifies for immunity pursuant to Chapter 6.82 (commencing with Section 25395.60), as that chapter read on December 31, 2009, shall continue to have that immunity on and after January 1, 2010, if the person continues to be in compliance with the requirements of former Chapter 6.82 (commencing with Section 25395.60), including, but not limited to, compliance with all response plans approved pursuant to Article 6 (commencing with Section 25395.90) of Chapter 6.82, and compliance with all other applicable laws.

(b) This article shall become operative January 1, 2010.

(Amended by Stats. 2005, Ch. 22, Sec. 120. Effective January 1, 2006. Operative January 1, 2010, pursuant to subd. (b). Note: Subd. (b) delays the initial operation of Article 1, consisting of this section.)

Article 2. Public Information

(Article 2 added by Stats. 2004, Ch. 705, Sec. 2. Effective January 1, 2005.)

25395.115. The definitions set forth in this section govern the interpretation of this article.

(a) "Agency" means the department, the board, or a regional board.

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

(c) (1) "Bona fide purchaser" means a person, or a tenant of a person, who acquires ownership of a site on or after January 1, 2005, and who establishes all of the following by a preponderance of the evidence:

(A) All releases of the hazardous materials at issue at the site occurred before the person acquired the site, except as described in subparagraph (B).

(B) All of the conditions of Section 25395.80 to qualify as a bona fide purchaser have been met.

(C) The person is not potentially liable, or affiliated with any other person who is potentially liable, for the release or threatened release at the site through any of the following circumstances:

(i) Any direct or indirect familial relationship.

(ii) Any contractual, corporate, or financial relationship, unless the contractual, corporate, or financial relationship is created by the instrument by which title or possession to the site is conveyed or financed or a contract for the sale of goods or services.

(iii) The result of a reorganization of a business entity that was potentially liable for the release or threatened release of hazardous materials at the site.

(2) For purposes of this section, "release" does not include passive migration.

(d) "Department" means the Department of Toxic Substances Control.

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

(Added by Stats. 2004, Ch. 705, Sec. 2. Effective January 1, 2005.)

25395.116. (a) To facilitate the decision of a bona fide purchaser to apply for a bona fide purchaser agreement, the bona fide purchaser may first enter into a consultative services agreement with the department pursuant to Section 25201.9 or with an agency.

(b) Under the terms of a consultative services agreement entered into in accordance with this section, an agency may review any environmental data and development plans that may be submitted by a bona fide purchaser.

(c) The consultative services agreement shall include all of the following:

(1) Require the bona fide purchaser to pay for the agency's services.

(2) Not commit the bona fide purchaser to purchase, remediate, or otherwise act with regard to the site.

(3) Provide for a review and meeting to discuss the environmental data and development plans within 30 days of submission.

(d) Upon review of the data and plans specified in paragraph (3) of subdivision (c), the agency shall provide comments to the bona fide purchaser of what further information might be needed to ascertain what response action, if any, will be necessary. The agency shall also provide comments to the bona fide purchaser on any proposed response actions that may be necessary and an estimate of the time it may take to negotiate and approve a bona fide purchaser agreement.

(e) An agency shall enter into a consultative services agreement, in accordance with this section, subject to available staff and resources, as determined by the agency. If the agency declines to enter into a consultative services agreement, the agency shall provide specific reasons for its decision to the bona fide purchaser requesting the agreement.

(Added by Stats. 2004, Ch. 705, Sec. 2. Effective January 1, 2005.)

25395.117. (a) On or before January 1, 2006, the agency and the California Environmental Protection Agency shall implement the requirements imposed by this section.

(b) The department shall revise and upgrade the department's database systems, including the list of hazardous substances release sites adopted pursuant to Section 25356 and the information sent to the agency pursuant to Section 65962.5 of the Government Code, to enable compatibility with existing databases of the board, including the GIS mapping system established pursuant to Section 25299.97. The department shall also install improvements to the database systems to maintain and display information that includes the number of brownfield sites, each brownfield site's location, acreage, response action, site assessments, and the number of orphan sites where the department is overseeing the response action.

(c) The California Environmental Protection Agency, the department, the regional boards, and the board shall expand their respective Web sites to allow access to information about brownfield sites and other response action sites through a single Web site portal.

(Added by Stats. 2004, Ch. 705, Sec. 2. Effective January 1, 2005.)

25395.118. The department may expend any grant received pursuant to Section 128 of the Small Business Liability Relief and Brownfield Revitalization Act (42 U.S.C. Sec. 9628), for state response programs, to implement Section 25395.117 to the extent the activities are in accordance with the terms and conditions of the grant.

(Added by Stats. 2004, Ch. 705, Sec. 2. Effective January 1, 2005.)

25395.119. (a) Using existing resources or when funds become available, the Secretary for Environmental Protection shall designate a brownfields ombudsperson whose responsibilities shall include, but are not limited to, all of the following:

(1) Assisting in the coordination of the brownfields activities of each office, board, and department within the California Environmental Protection Agency.

(2) Advocating and expanding the relationship between the California Environmental Protection Agency and local, state, and federal governmental entities' efforts pertaining to brownfields.

(3) Serving as the California Environmental Protection Agency's representative on committees, working groups, and other organizations pertaining to brownfields.

(4) Providing assistance in investigating complaints from the public, and helping to resolve and coordinate the resolution of those complaints relating to the brownfields activities of each office, board, and department within the California Environmental Protection Agency.

(5) Facilitating and advocating that the issue of environmental justice for communities most impacted, including low-income and racial minority populations, is considered in brownfields activities of each office, board, and department within the California Environmental Protection Agency.

(6) Assisting the California Environmental Protection Agency in implementing the guidelines established under Section 25401.2.

(b) The brownfield ombudsperson is not authorized to make or reverse a decision of an office, board, or department within the California Environmental Protection Agency.

(Added by Stats. 2004, Ch. 705, Sec. 2. Effective January 1, 2005.)

HEALTH AND SAFETY CODE

CHAPTER 6.85. CALIFORNIA EXPEDITED REMEDIAL ACTION REFORM ACT OF 1994

(Chapter 6.85 added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

Article 1. Definitions

(Article 1 added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25396. Unless the context indicates otherwise, the following definitions govern the construction of this chapter.

(a) "Affected community" means the local residents or workers living or working, and owners of businesses operating, in proximity to the site, who are, or may be, directly impacted by the conditions at the site, or by any response action. "Affected community" also includes the legislative body of the jurisdiction in which a site is located.

(b) "Agency" means the California Environmental Protection Agency.

(c) "Arbitration panel" means the arbitration panel convened pursuant to Section 25398.10.

(d) "Beneficial uses of water" means uses of the waters of the state that are identified in the current State Water Resources Control Board and California regional water quality control boards' water quality control plans for the area in which the site is located.

(e) "Department" means the Department of Toxic Substances Control.

(f) "Engineering controls" means measures to control or contain migration of hazardous substances or to prevent, minimize or mitigate environmental damage which may otherwise result from a release or threatened release, including, but not limited to, caps, covers, dikes, trenches, leachate collection systems, treatment systems, and groundwater containment systems or procedures.

(g) "Federal act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (42 U.S.C. Sec. 9601 et seq.).

(h) "Fund administrator" means the state officer assigned the responsibility of protecting the viability of the trust fund as the representative of the state for the orphan share in all actions concerning apportionment of liability if there is a potential apportionment of liability to the orphan share for payment from the trust fund.

(i) "Hazardous substance" shall have the same meaning as set forth in Sections 25316 and 25317.

(j) (1) "Insolvent" means a person or entity who has received a discharge of liability under Section 727, 944, or 1141 of Title 11 of the United States Code, for pre-petition response costs relating to a site selected for response actions pursuant to this chapter.

(2) Notwithstanding paragraph (1), a person or entity is not insolvent with respect to any payment that the department receives or will receive for any pre-petition response costs as a result of the bankruptcy, or with respect to any post-petition response costs.

(k) "Interim endangerment" means conditions at a site which pose a significant risk either of harm to human health or of serious environmental damage unless immediate response action is initiated before remedial action measures set forth in a remedial action plan prepared for the site are implemented.

(l) "Land use controls" means recorded instruments restricting the present and future uses of the site, including, but not limited to, recorded easements, covenants, restrictions or servitudes, or any combination thereof, as appropriate. Land use controls shall run with the land from the date of recordation, shall bind all of the owners of the land, and their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees, and shall be enforceable by the department pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5.

(m) "Orphan share" means that share of liability for the costs of response actions apportioned to responsible persons who are insolvent or cannot be identified or located. The department may adopt regulations to further define a process to determine when a responsible person cannot be identified or located.

(n) "Person" shall have the same meaning as set forth in Section 25319.

(o) "Planned use" means the reasonably expected future land uses based on all of the following factors:

(1) The land use history of the site and surrounding properties, the current land uses of the site and surrounding properties and recent development patterns in the area where the site is located.

(2) Land use designations at the site and surrounding properties, including current and likely future zoning and local land use plans and the presence, if any, of groundwater and surface water recharge areas.

(3) The potential for economic redevelopment.

(4) Current plans for the site by the property owner or owners.

(5) Affected community comments on the proposals for use of the site.

(p) "Release" has the same meaning as set forth in Sections 25320 and 25321.

(q) "Remedy" or "remedial action" means actions that are necessary to prevent, minimize, or mitigate damage that may result from a release or threatened release of a hazardous substance and that, when carried through to completion, allow a site to be permanently used for its planned use without any significant risk to human health or any significant potential for future environmental damage. "Remedy" or "remedial action" includes, but is not limited to, all of the following:

(1) Actions at the location of the release, such as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling, reuse, diversion, destruction, or segregation of reactive wastes, dredging, excavation, repair, or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to ensure that these actions protect human health and safety, or the environment.

(2) The costs of permanent relocation of residents and businesses and community facilities where the Governor determines that, alone or in combination with other measures, that relocation is more cost-effective than, and environmentally preferable to, the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect human health and safety, or the environment.

(3) Offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

(r) "Remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, those actions which may be necessarily taken in the event of the threat or release of hazardous substances into the environment, those actions which may be necessary to monitor, assess, and evaluate the release, or threat of release, of hazardous substances, the disposal of removed material, and the taking of other actions which may be necessary to prevent, minimize, or mitigate damage to human health and safety, or the environment, which may otherwise result from a release or threat of release. "Remove" or "removal" also includes, but is not limited to, security fencing or other measures to limit access, provision of alternative water supplies, and temporary evacuation and housing of threatened individuals not otherwise provided.

(s) "Respond," "response," or "response action" means removal actions, and remedial actions, including, but not limited to, operation and maintenance measures.

(t) "Response costs" means all costs incurred by the state or any responsible person in taking response actions under this chapter at a specific site, including costs incurred by any state agency in implementing and administering this chapter pursuant to the limitations established in subdivision (f) of Section 25399, and in overseeing response actions under this chapter. Those costs shall include all costs incurred by the state in relation to any judicial review of a decision of an arbitration panel pursuant to subdivision (e) of Section 25398.10 or any arbitration conducted pursuant to this chapter.

(u) "Responsible person" has the same meaning as set forth in Section 25323.5 for "responsible party" or "liable person."

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

(w) "Site" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill,

storage container, motor vehicle, rolling stock, or aircraft, or any area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

(x) "Site Designation Committee" or "committee" means the Site Designation Committee created pursuant to Section 25261.

(y) "State board" means the State Water Resources Control Board.

(z) "Trust fund" means the Expedited Site Remediation Trust Fund created pursuant to subdivision (a) of Section 25399.1.

(Amended by Stats. 1996, Ch. 632, Sec. 5. Effective January 1, 1997.)

25396.1. This chapter shall be known and may be cited as the California Expedited Remedial Action Reform Act of 1994.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25396.2. Chapter 3 (commencing with Section 856) of Title 3 of Part 2 of Division 2 of the Civil Code does not apply to a site which is subject to a response action pursuant to this chapter.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

Article 2. Site Selection

(Article 2 added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25396.5. (a) The intent of this chapter is to establish a pilot program to determine if expedited procedures for carrying out response actions at response action sites are appropriate and protective of human health and the environment.

(b) This chapter is applicable to not more than 30 response action sites, of which not more than 10 may have an orphan share. The department, upon a request from a responsible person for consideration of a site for remediation pursuant to this program, shall forward the request to the Site Designation Committee, along with the department's recommendation as to whether the site should be selected. The department shall also forward the request to the local jurisdiction in which the site is located, to allow that local jurisdiction to submit comments to the committee concerning the request.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25396.6. The committee may select a site for remediation pursuant to this chapter only if the site meets all of the following conditions:

(a) The department is the appropriate administering agency for the site pursuant to Section 25236 and the committee designates the department as the administering agency.

(b) The responsible person or persons requesting selection of the site have submitted a completed preliminary endangerment assessment, as defined in Section 25319.5, which concludes that significant response actions are necessary at the site and includes an analysis of the scope and identity of the affected community.

(c) The committee finds all of the following:

(1) The site is not on, or eligible to be placed on, the National Priority List prepared pursuant to the federal act, or is not a site which is owned or operated by a department, agency, or instrumentality of the United States.

(2) There are funds available in the trust fund to cover all of the response action costs that will or may be assigned to the orphan share at the site, unless one or more of the responsible persons who have submitted a notice of intent under paragraph (3) agree in writing to pay for the orphan share at the site that cannot be paid by the state because of insufficient funding in the trust fund. Any agreement to pay orphan share costs, which the fund cannot pay, shall be backed by adequate forms of financial security, as determined by the department.

(3) One or more responsible persons submit a notice of intent to the department to do all of the following:

(A) Be bound by the requirements of this chapter.

(B) Enter into an enforceable agreement with the department, as set forth in paragraph (1) of subdivision (b) of Section 25398.2.

(C) Pay all response costs not otherwise paid by the trust fund or another responsible person.

(4) There is no known condition of interim endangerment existing at the site at the time it is selected for response actions pursuant to this chapter.

(5) (A) Except as provided in subparagraph (B), the department has not already issued an order or entered into an enforceable agreement with responsible parties at the site under Chapter 6.8 (commencing with Section 25300), the department has not commenced a judicial action against responsible persons at the site, and no orders have been issued by a court requiring responsible persons at the site to take response actions or to pay the department's response costs at the site.

(B) The committee may waive the requirements of subparagraph (A) for not more than five sites if the committee determines that the selection of the site, for response action pursuant to this chapter, will not delay response action at the site and is otherwise in the public interest.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25397. (a) Except to the extent otherwise specified in this chapter, response actions for a site selected pursuant to Section 25396.6 shall be taken pursuant to this chapter, and the requirements of Chapter 6.8 (commencing with Section 25300) shall not apply. In addition, the provisions of Chapter 6.65 (commencing with Section 25260) shall apply to all response actions taken at sites selected pursuant to this chapter, including the requirement that the response action be implemented in compliance with all state and local laws, ordinances, regulations, and standards that are applicable to the response action.

(b) The committee may, as part of the findings required by Section 25396.6, direct that an advisory committee be convened pursuant to Section 25263 to ensure that the department receives adequate guidance in overseeing response action at a site that is selected for remedial action under this chapter.

(c) An advisory committee convened pursuant to subdivision (b) shall have the same powers and duties as an advisory committee that is convened pursuant to Section 25263. The advisory committee shall be bound by the decisions of an arbitration panel and any court decisions rendered upon judicial review.

(d) The department shall maintain a list of sites selected for response action pursuant to this chapter and shall make this list available to interested parties.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

Article 3. Prerequisites of the Program

(Article 3 added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25397.1. Any action taken by the department pursuant to this chapter shall be consistent with all applicable regulations adopted by the State Water Resources Control Board, all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code, and all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, to the extent the department determines that those regulations, plans, and policies are not less stringent than this chapter and the regulations adopted pursuant to this chapter.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25397.2. The department shall ensure that the public is given the opportunity to participate in response actions taken pursuant to this chapter in accordance with the department's public policy and procedures manual, No. OPP-94-002.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25397.3. Nothing in this chapter shall be construed to restrict the rights of responsible persons and the department to agree upon other voluntary methods of remediation.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

Article 4. Expedited Site Remediation
(Article 4 added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25398. (a) The department shall serve as the lead agency for implementing this chapter and shall act as the oversight agency for purposes of all response actions taken pursuant to this chapter.

(b) After a site has been selected for response action under this chapter, and prior to holding the conference specified in Section 25398.2, the department shall, after necessary investigation, including a title search of the site, if appropriate, notify appropriate state and local agencies and all known potentially responsible persons for that site of all of the following:

(1) The names and addresses of all potentially responsible persons who the department has identified at the site, and the factual and statutory basis for that identification.

(2) That the site has been selected for response action under this chapter, that the potentially responsible person's rights and liabilities with respect to the site will be determined under this chapter, and that the potentially responsible person will be bound by that determination.

(3) A description of the known extent and type of hazardous substance that has been released or is threatened to be released on, at, or from the site.

(4) The date, time, and place for the conference specified in Section 25398.2.

(c) After the notice provided for in subdivision (b) has been issued, the department shall notify any additional persons who have been subsequently identified by the department as potentially responsible persons, of the selection of the site under this chapter. This notification shall include all the information specified in subdivision (b) except that the date, time, and place of the conference specified in Section 25398.2 need not be included if that conference has already taken place. The department shall also send such notifications to the other potentially responsible parties who have already been identified.

(d) (1) The department shall notify the city or county in which any site is located that a response action has been initiated pursuant to this chapter. The department shall provide the city or county with notice of the time, date, and place of all public hearings and meetings regarding the response action, shall provide the city or county with regular response action progress reports, and shall involve the city or county in any deliberation concerning land use controls or actions proposed pursuant to subdivision (c) of Section 25398.7. The department shall request the city or county to provide the department with the city's or county's assessment of the planned use of the site, including the current and future zoning and general plan designations for the site and the city's or county's determination as to the appropriate planned use designation in the remedial action plan prepared for the site. The city's or county's determination as to the appropriate planned use designation shall be presumed by the department to be the appropriate planned use for the site. In any action or proceeding to attack, set aside, void, or annul a determination of the appropriate planned use by the city or county pursuant to this section, there shall be a rebuttable presumption of the validity of the determination by the city or county. The department may rebut that presumption by showing, based upon substantial evidence in the record, that the requirements of this chapter are more fully satisfied by a determination that there should be a different planned use for the site.

(2) Before making a determination regarding the planned use for the site, the department shall hold a public hearing on that issue and shall consider all comments received at the hearing. The department shall thereafter determine the planned use and provide a written explanation supporting its determination to the city or county and to any person requesting an explanation.

(e) Nothing in this chapter shall be construed to affect the authority of a city or county pursuant to Title 7 (commencing with Section 65000) of the Government Code.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25398.2. (a) Within 90 days from the date of the selection of a site pursuant to Section 25396.6, the department shall hold a conference with the identified potentially responsible persons for purposes of explaining all of the following:

(1) The department's requirements for the performance of a site investigation and the preparation of a site investigation report to determine the nature and extent of possible releases of hazardous substances at the site.

(2) The department's requirements for a community assessment.

(3) The department's procedures for carrying out response activities, including requirements for public participation.

(b) (1) Except as provided in paragraph (2), within 90 days from the date of the close of the conference, the department may enter into an enforceable agreement with one or more responsible persons for a site selected pursuant to Section 25396.6. The enforceable agreement shall require all of the following:

(A) The responsible person shall take necessary response actions at the site pursuant to this chapter.

(B) The responsible person or persons shall pay all of the state's response costs that are related to the site on an ongoing basis, within 60 days from the date of receipt of each invoice from the department, except response costs incurred by the state in relation to an arbitration conducted pursuant to this chapter, or judicial review of the arbitration decision, if the arbitration or judicial review is initiated by a responsible person who is not a party to the enforceable agreement. After liability is finally apportioned pursuant to this chapter, each participating responsible person's share of response costs may be adjusted in relation to the shares of other participating responsible persons. Any agreement to pay orphan share costs, which the fund cannot pay, shall be backed by adequate forms of financial security, as determined by the department.

(C) The department and the responsible person enter into a covenant not to sue each other or any responsible person who has entered into an enforceable agreement under this section pursuant to the federal act. However, any site selected for remediation pursuant to this chapter shall not be immune from, and, if appropriate, may be subject to, natural resource damage claims pursuant to subdivision (f) of Section 9607 of the federal act.

(D) If a responsible person subject to the agreement fails to comply with this chapter or any regulation, requirement, or order issued or adopted pursuant to this chapter, the department shall remove the site from eligibility for response action pursuant to Chapter 6.65 (commencing with Section 25260) and this chapter, and may direct that any further response actions at that site be taken pursuant to Chapter 6.8 (commencing with Section 25300), unless one or more of the remaining responsible persons, if any, agree to assume the noncomplying responsible person's responsibilities under the agreement.

(2) The 90-day period to enter into an agreement may be extended by agreement of the department and the responsible person or responsible persons.

(c) The covenants not to sue executed by responsible persons and the department shall be expressly conditioned upon performance of all obligations under this chapter and the enforceable agreement.

(d) If no responsible person enters into an enforceable agreement pursuant to subdivision (b), the response actions at the site shall no longer be governed by this chapter.

(e) A draft remedial action plan shall be prepared pursuant to Section 25398.6 by the responsible person. The draft remedial action plan shall be approved by the department pursuant to Section 25398.6 for each site selected. Preliminary and intermediate actions may be taken prior to the approval of a remedial action plan to ensure protection of public health and the environment.

(f) To the extent consistent with the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C.A. Sec. 6901 et seq.), the department may exclude from the hazardous waste facilities permit requirements of Section 25201, those portions of any response action selected and carried out pursuant to this chapter, that complies with all laws, rules, regulations, standards, requirements, criteria, or limitations applicable to the construction, operation, and closure of the type of facility at the site, and with any other condition imposed by the department as necessary to protect human health and safety or the environment. The department may enforce any federal or state law, rule, regulation, standard, requirement, criteria, or limitation with which the response action is required to comply pursuant to this subdivision.

(Amended by Stats. 1996, Ch. 632, Sec. 6. Effective January 1, 1997.)

25398.3. (a) If the department determines that an interim endangerment exists at any site after it has been selected for response action pursuant to Article 2 (commencing with Section 25396.5), the department may take those actions necessary to contain or eliminate the interim endangerment.

(b) When actions are required to be taken to immediately contain or eliminate an interim endangerment, the department shall, whenever practicable, given the risk of harm to human health and the environment, provide the potentially responsible person or persons, who have entered into an agreement pursuant to subdivision (b) of Section 25398.2, a reasonable opportunity to initiate or take over the interim endangerment response actions as soon as possible.

(c) To contain or eliminate an interim endangerment at any site undergoing remediation pursuant to this chapter, the department may take either of the following actions:

(1) Order the responsible persons to take or pay for all appropriate remedial actions necessary to contain or eliminate the interim endangerment.

(2) Take or contract for any appropriate response actions necessary to contain or eliminate the interim endangerment and if so, the provisions of Section 25358.5 shall apply with respect to response actions taken or contracted for by the department.

(d) Any person subject to an order issued pursuant to paragraph (1) of subdivision (c) who does not comply with the order without a showing of good cause shall be subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day of noncompliance. Liability under this subdivision may be imposed in a civil action or liability may be imposed administratively pursuant to Section 25359.3.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25398.4. Any remedial action plan prepared pursuant to this chapter shall require response actions that, when fully implemented, place the site for which the plan is prepared in a condition that allows it to be permanently used for its planned use without any significant risk to human health or any significant potential for future environmental damage. To ensure that those objectives are met and permanently maintained, response actions shall be based on a site specific assessment that evaluates the potential human health risks, if any, that are posed by the hazardous substance release or threatened release at the site, the potential human health risks, if any, that may result if the site is permanently used for its planned use after response actions have been completed, and the adverse effects on the environment, if any, of the hazardous substance release. The site-specific assessment required by this section shall be carried out using standard criteria, principles, and protocols for risk assessments adopted by the department. Those criteria, principles, and protocols shall be based on sound scientific methods, knowledge, and practice, and shall reflect criteria, principles, and protocols developed for risk assessment pursuant to Section 57003, to the extent relevant to risk assessments conducted pursuant to this chapter.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25398.5. (a) (1) To expedite the conversion of property into productive use and to provide funds for response activities, the department may approve a site owner's request to modify the boundaries of a site selected for response action under this chapter. The department may approve a site owner's request for that modification only if all of the following apply to the site:

(A) A remedial action plan has been approved by the department for the site.

(B) The holder of the first deed of trust, if any, has concurred in the modification of the boundaries of the site.

(C) The portions of the site proposed to be removed from the site by the boundary modification do not require any response action.

(D) The planned use for the portions of the site proposed to be removed from the site by the boundary modification will not result in an unacceptable risk of human exposure to hazardous substances from the site.

(E) Hazardous substances have not migrated, and are not expected to migrate, onto the portions of the site proposed to be removed from the site by the boundary modification.

(F) The modification of the boundaries of the site will not significantly interfere with response actions at the site.

(2) As a condition to approving a site owner's request to modify the boundaries of a site pursuant to paragraph (1), the department shall require that the owner, after complying with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), deposit the net proceeds of the sale, after payment of expenses necessary and appropriate to the subdivision and sale, of the portions of the site proposed to be removed from the site by the boundary modification, into a special trust account to be applied towards the cost of response actions at the site if the department determines that adequate funds may not otherwise be available to pay for all costs of response actions at the site. The department shall also require that the site owner provide the department with access to any of the portions of the site proposed to be removed from the site by a boundary modification for the purpose of taking a response action.

(b) Purchasers and their lessees of the portions of the site proposed to be removed from the site by a boundary modification approved pursuant to this section which do not require any response action under this chapter shall not acquire liability under this chapter solely based on that purchase or lease if both of the following apply:

(1) The purchaser or lessee is not affiliated with any other person liable for response costs at the site including any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the parcel is conveyed or financed or the instruments by which a lease is created.

(2) Hazardous substances have not been released from the portions of the site proposed to be removed from the site by a boundary modification subsequent to the date of the purchase or lease.

(c) The department's approval of a site owner's request to modify the boundaries of a site pursuant to this section shall not constitute a subdivision of any parcel within the boundaries of the site. Any subdivision of any parcels within the boundaries of the site shall comply with the requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25398.6. (a) All remedies selected at a site subject to this chapter shall meet all of the following criteria:

(1) Be protective of human health and the environment.

(2) Provide long-term reliability at reasonable cost.

(3) Provide reasonable protection to the waters of the state, as required by the Water Code.

(4) Leave the site in a condition that allows it to be permanently used for its planned use and free of any significant risk to human health or any potential for any future significant environmental damage.

(b) A response action may achieve protection of human health and the environment by any of the following methods:

(1) Proven and effective engineering controls and appropriate land use controls to eliminate or mitigate risk at a site when utilized for its planned use.

(2) Treatment that reduces the toxicity, mobility, or volume of hazardous substances.

(3) Removal of hazardous substances.

(4) A combination of engineering and land use controls, treatment, and removal.

(5) Other methods of protection.

(c) Except as provided in subdivision (d), the department shall give no special preference to one or more available types of response action, including engineering and land use controls, treatment, removal, or other methods of protection, but shall evaluate available response action options on the individual merits of each option, or combination of options, reasonably available in light of site-specific conditions. In selecting the appropriate remedy, the department shall balance all of the following factors:

(1) The effectiveness of the remedy.

(2) The long-term reliability of the remedy.

(3) Any short-term risk to the affected community, to those engaged in the remediation effort, or to the environment.

(4) The reasonableness of the cost of the remedy.

(d) For discrete areas within a site that contain hazardous substances which are: (1) present in high concentrations or (2) are highly mobile, and for which containment cannot prevent significant risk of harm to human health or the environment from exposure to the hazardous substances, the department shall select treatment or removal, or both, as the remedial alternative or alternatives. The department may, however, select engineering and land use controls, or other methods of protection, to be implemented in combination with treatment or removal, or both, if such a combination will prevent a significant risk of harm from exposure.

(e) A remedial action plan prepared pursuant to this chapter shall include all of the following:

(1) The selection of a response action alternative or combination of alternatives described in subdivision (b) that are appropriate for the site and that satisfy the response action criteria set forth in this section.

(2) A site-specific assessment prepared for the site pursuant to Section 25398.4.

(3) A description of the characteristics of the site, including the potential for offsite migration of hazardous substances, the condition of surface or subsurface soil, and the hydrogeologic conditions.

(4) An analysis of the cost-effectiveness of the remedial action measures.

(5) An analysis of the ability to implement the remedial action measures.

(6) Consideration of the historical use of the site, background levels of hazardous substances present there due to natural conditions, and the existing and planned use of the site, in determining the extent, type, and scope of the remedy appropriate for the site.

(f) A remedial action plan prepared pursuant to this chapter shall include all of the following:

(1) A summary of the site investigation report setting forth the full extent of contamination at the site, including an assessment of potential human health risks from exposure to the hazardous substances and an assessment of environmental impacts which shall include the impact of the contamination on the planned uses of the site and the beneficial uses of water.

(2) An analysis of the long-term and short-term protection afforded by the remedial action with regard to human health and the environment.

(3) An analysis of the compliance of the remedial action with federal, state, and local statutes, regulations, and ordinances.

(g) In addition to the requirements of subdivision (a), a remedial action plan prepared pursuant to this chapter shall do all of the following:

(1) Describe all proposed remedial action measures in detail.

(2) Set forth a schedule for implementation of the plan.

(3) Set forth a plan for long-term operation and maintenance of the remedial action measures, if any are required.

(h) Any remedial action plan approved pursuant to this section shall include a statement of reasons setting forth the basis for the remedial action selected. The statement shall include a description of each alternative evaluated and the reasons for the rejection of alternatives that were evaluated and not selected.

(i) Before approving a remedial action plan, the department shall do all of the following:

(1) Notify the public, including those persons reasonably believed to be members of the affected community, of the response action proposed in the plan in a manner that provides reasonable assurance of reaching those persons on a timely basis. The notice shall include posting notices in the area where the proposed remedial action would be taken and notification, by direct mail, of the recorded owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll and all potentially responsible persons identified in the plan.

(2) Provide at least 30 days for comment by the potentially responsible persons, appropriate federal, state, and local agencies, the affected community, and other members of the Public.

(3) Hold one or more public meetings with the potentially responsible persons, the affected community, and other members of the public, if any, seeking information or desiring to comment, concerning the response action. The information provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the response action and a description of the proposed response action, the planned use, and the remedial objectives. The department shall give all of the parties entitled by this section to a public meeting a fair opportunity to comment on the merits of the plan.

(4) Comply with Section 25397.2.

(j) After complying with subdivision (i), the department shall review and consider any comments received at the public meeting or by other means within the specified time period, shall consider the affected community's acceptance of the proposed remedial alternative or alternatives, and shall propose revisions to the draft plan, if appropriate.

(k) When reviewing a remedial action plan, the department shall give no special preferences to one or more available types of response action, including engineering and land use controls, treatment, removal, or other types of corrective action, but shall evaluate available response action options on the individual merits of each option reasonably available in light of specific site conditions.

(l) Within 60 days after the close of the comment period set forth in paragraph (2) of subdivision (i), the department shall approve the final remedial action plan, or issue a notice of deficiency to the person who submitted the plan that describes, in detail, any deficiencies in the plan. A remedial action plan found to be deficient shall be modified in a reasonable time. However, any notice of rejection of the notice of deficiency shall be filed with the department within 30 days from the date of receipt of the notice of deficiency. Within 60 days of receiving a modified plan, the department shall approve the plan or advise the person who prepared the plan, in detail, of the new or continuing deficiencies. Any failure to act by the department as provided in this subdivision may be appealed to the secretary. If the secretary fails to act on behalf of the department within 30 days after the appeal is filed, the department's failure to act may be challenged by any responsible person for the site pursuant to the provisions of Section 1085 of the Code of Civil Procedure.

(m) Once approved by the department, a draft plan shall become final 60 days from the date that notice of its approval is provided in writing by appropriate means, as provided in subdivision (b) of Section 25398.10, unless a petition for review is filed prior to that time pursuant to Section 25398.10.

(n) A remedial action plan is not required for the abatement of an interim endangerment pursuant to Section 25398.2.

(o) Nothing in this chapter shall be construed to change the standards for response actions taken at voluntary action sites that are overseen by the department pursuant to Section 25201.9 or any other authority.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25398.7. (a) A remedial action plan may utilize land use controls to limit or restrict land use where appropriate. All land use controls shall be recorded by the site owner in the county in which the site is located. The site owner shall provide the department with a copy of the land use controls which have been appropriately recorded.

(b) Any person who violates the terms of a land use control which that person knew, or reasonably should have known, applied to the property, shall be subject to a civil penalty not to exceed twenty-five thousand dollars ($25,000) per day for each day of violation.

(c) The terms and conditions of a land use control may be modified only with the express written consent of the department, based on a determination that the response actions implemented at the site provide sufficient protection of human health and the environment required by subdivision (a) of Section 25398.6, and are sufficient to permit the planned use of the site. If additional response action is required to provide that protection, the department shall not approve the request for modification of the restriction or control until completion of the additional response action. Implementation of a modification to a land use control shall be in accordance with the following procedure:

(1) The person requesting the modification to the permitted use of the site shall provide the request in writing to the department for the site to approve a modification to an existing land use control. The request shall be accompanied by supporting documentation demonstrating that the response action implemented at the site provides the required protection. The request shall be accompanied by any applicable costs.

(2) Within 120 days of receiving the request, and after a public notice is placed in a newspaper of general circulation in the affected area, and after a 30-day public comment period, a duly noticed public meeting shall be held on the merits of the request, the department shall do one of the following:

(A) Approve the proposed modification.

(B) Approve the proposed modification with conditions for implementation of additional response action.

(C) Disapprove the proposed modification and provide the owner with the reasons for that disapproval.

(3) (A) The approval or denial of a request for modification shall become final within 30 days from the date that the department acts to approve or deny the modification and provides notice to all persons required to receive notice pursuant to, and in the manner required by, paragraph (2). Within 30 days from the date that any decision to approve a request for modification becomes final, the site owner shall record the modified land use control in the county in which the site is located and provide the department

with a copy of the land use control which has been endorsed by the county recorder. The approved modification shall take effect upon recordation and after notice of the final decision is given in writing, by appropriate means, to immediately adjacent property owners, commenters, and persons who attended
the public meeting and requested this notice.

(B) If the approval is accompanied with conditions which require compliance prior to modification of the land use control, the site owner shall provide the department with a copy of the land use control which has been appropriately recorded within 30 days after the department has notified the site owner that compliance with those conditions has been demonstrated. The approved modification shall take effect upon recordation.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25398.8. (a) At the same time that the department gives notice of the approval of the remedial action plan for a site, or prior to the time that the department issues its first notice of deficiency regarding the remedial action plan, the department shall, based on all available information before the department at that time, do both of the following:

(1) Notify, in writing, and by appropriate means, all of the responsible persons, the affected community, and the public, of the department's proposed apportionment of liability for the costs of response for the site which is the subject of the remedial action plan.

(2) Indicate in the notice whether there are orphan shares that will, or may be, paid from the trust fund.

(b) The department shall apportion liability for the response actions taken pursuant to this chapter to each responsible person for that person's share of response costs, based upon equitable factors and fairness principles so that total shares, including orphan shares, if any, total 100 percent. The fund administrator shall represent any orphan share with respect to actions concerning apportionment of liability if there is a proposed apportionment of liability to the orphan share for payment from the trust fund. The department shall provide any person who has requested notification of the department's proposed apportionment of liability with a copy of the proposed apportionment within 10 days after the department completes its proposal for apportionment of liability.

(c) The department shall weigh each factor considered appropriate under the circumstances of the release for which the remedial action was initiated. The department shall emphasize timely apportionment of approximate shares of liability and is not required to precisely determine all relevant factors, as long as substantial justice among the parties is achieved. Equitable factors that shall guide the apportionment decision include, but are not limited to, all of the following:

(1) The amount of hazardous substance for which each person is responsible.

(2) The degree of toxicity of the hazardous substance, its contribution to the contamination at the site, and the total expense involved in the remediation effort attributable to the hazardous substances for which each person is responsible.

(3) The degree of involvement of the person in the generation, transportation, treatment, or disposal of the hazardous substance for which each person is responsible.

(4) The degree of care exercised by the responsible person with respect to the hazardous substances for which each person is responsible, taking into account the characteristics of the substance.

(5) The degree of cooperation by the responsible person with federal, state, and local officials to prevent harm to human health and the environment.

(d) The site owner shall pay for all additional costs of response actions performed pursuant to this chapter at the request of the site owner that exceed the costs that would be incurred if the response action were limited to those required by this chapter.

(e) The apportionment of liability pursuant to this section shall not be subject to judicial review, except as provided in Section 25398.10.

(f) Notwithstanding the requirements of subdivisions (a) to (d), inclusive, the potentially responsible persons may agree upon an allocation of liability among themselves at a particular site, that, in the absence of an allocation of liability to an orphan share for payment from the trust fund, shall be adopted by the department as the apportionment of liability for the site.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25398.9. (a) Prior to the date that the department apportions liability pursuant to Section 25398.8, the department shall, when it determines that it is in the best interests of the public, propose a final administrative or judicial expedited settlement with responsible persons who, in the judgment of the department, meet either of the following conditions for eligibility for such an expedited settlement:

(1) The responsible person's individual contribution of hazardous substances at the site is de minimis. The contribution of hazardous substance to a site by a responsible person is de minimis if both of the following apply:

(A) The responsible person's volumetric contribution of materials containing hazardous substances is minimal in comparison to the total volumetric contributions of materials containing hazardous substances at the site, and that individual contribution is presumed to be minimal if it is 1 percent or less of the total volumetric contribution at the site, unless the department identifies a lower threshold based on site-specific factors.

(B) The responsible person's contribution of materials containing hazardous substances does not present toxic or other hazardous effects that are significantly greater than those of other hazardous substances at the site.

(2) (A) The responsible person is the site owner, did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the site, and did not contribute to the release or threat of release of a hazardous substance at the site through any action or omission.

(B) Paragraph (A) does not apply if the responsible person purchased the site with actual or constructive knowledge that the site was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(b) The department may reach an expedited settlement with responsible persons only when the aggregate shares of liability determined pursuant to subdivision (a) do not exceed 10 percent of the projected cost of the response action at the site.

(c) Any person who enters into a settlement pursuant to this section shall provide any information relevant to the administration of this chapter which is requested by the department. The determination of whether a person is eligible for an expedited settlement shall be made on the basis of all information available to the department at the time the determination is made. If the department determines not to apply the provisions of this section at a site, the basis for that determination shall be explained in writing to any person who requests such a settlement.

(d) A responsible person who has reached a final settlement under this section and paid any response costs which are part of the settlement, is not liable for claims for contribution from any other party for the costs of the response action at the site.

(e) At the same time that notice is provided pursuant to subdivision (a) of Section 25398.8, the department shall provide written notice of the proposed settlement to all other responsible persons, the affected community, and the public by appropriate means. The notice shall identify the site and the parties to the proposed settlement.

(f) The department shall consider any written comments submitted regarding the proposed expedited settlement in determining whether or not to consent to the proposed settlement. The department may withhold consent to the proposed settlement if the comments disclose factors or considerations that indicate the proposed settlement is inappropriate, improper, or inadequate. The department shall withhold consent to the proposed settlement if any responsible person for the site petitions the department to invoke an arbitration panel to evaluate the merits of the settlement before the settlement agreement becomes final.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25398.10. (a) The Director of Environmental Health Hazard Assessment shall convene an arbitration panel, if a timely petition is filed with the director, for purposes of resolving all disputes with any responsible person concerning any of the following:

(1) The remedial action plan developed pursuant to Section 25398.6, including disputes regarding remedy selection, other technical issues, conditions of approval, or any other element of the plan.

(2) The department's proposed apportionment of liability pursuant

to Section 25398.8.

(3) Any proposed de minimis settlements pursuant to Section 25398.9.

(4) The department's approval or denial of a change in land use pursuant to Section 25398.7.

(5) The department's approval or denial of a certificate of completion pursuant to Section 25398.15, as provided in subdivision (b) of Section 25398.15.

(b) (1) Petitions for disputes concerning the matters specified in paragraphs (1) to (3), inclusive, of subdivision (a) shall be filed within 60 days from the date that the notice of approval of the remedial action plan is issued, or from the date that the responsible person or persons preparing the remedial action plan notify the department in writing, by appropriate means, of the responsible person or person's rejection of a notice of deficiency. Within 10 days of the department's approval of the remedial action plan or receipt of a notice of a rejection of a notice of deficiency for the remedial action plan, the department shall provide notice in writing, by appropriate means, of its approval, or receipt of the notice of rejection, to all responsible persons for the site and to the public. The notice shall indicate the rights of the parties to file petitions for arbitration of the disputes concerning the matters specified in paragraphs (1) to (3), inclusive, of subdivision (a) and the deadline for the filing of a petition. Petitions for arbitration of disputes concerning the matters specified in paragraphs (1) to (3), inclusive, of subdivision (a) may be made by any responsible person. Petitions for arbitration of disputes concerning the matter specified in paragraph (1) of subdivision (a) may also be filed by the affected community, and petitions for arbitration of disputes concerning the matters specified in paragraphs (2) and (3) of subdivision (a) may be filed by any member of the public if orphan shares that are to be paid from the trust fund are at issue.

(2) Petitions for the arbitration of all disputes concerning the matters specified in paragraphs (4) and (5) of subdivision (a) may be made by any responsible person for the site, the affected community, or the public, and shall be made prior to the time that the action in dispute becomes final.

(3) Prior to submitting a petition for arbitration, the responsible persons shall make all reasonable efforts to resolve the dispute.

(4) If one or more petitions for arbitration have been filed for any combination of review of the remedial action plan, apportionment of liability, or de minimis settlements, the arbitration panel shall review all of these petitions in a consolidated hearing. The arbitration panel shall minimize the need for hearings on all other issues by consolidating hearings in all cases where reasonably possible.

(5) The arbitrators shall be selected as provided in subdivision (d) of Section 25356.2.

(c) All the provisions of Sections 25356.2, 25356.3, 25356.4 and 25356.6 apply to arbitration proceedings conducted pursuant to this section, except for all of the following:

(1) The arbitration panel shall apply the factors and standards for liability apportionment set forth in subdivision (c) of Section 25398.8, instead of those set forth in subdivision (c) of Section 25356.2.

(2) The provisions of subdivision (a) of Section 25356.3 and the provisions of subdivisions (c) and (e) of Section 25356.4 shall not apply.

(3) The arbitrators shall be bound by, and shall apply, the requirements and standards set forth in this chapter and Chapter 6.65 (commencing with Section 25260) that are applicable to the dispute that is the subject of the arbitration.

(4) The arbitrators shall have the expertise and experience appropriate to understand and critically evaluate the issues to be arbitrated.

(d) The arbitration panel shall hold a public hearing on any matter presented to the panel for evaluation, shall take all evidence presented, shall keep a record of the proceedings, including all testimony and evidence presented, and shall have discretion in the determination of facts. All findings and decisions of the panel shall be supported by substantial evidence in light of the whole record. The response action for which the arbitration panel has been requested to act pursuant to this section shall not be stayed during the pendency of the arbitration proceedings. Notice of the arbitration panel's decision shall be provided in writing, by appropriate means, within five days from the date that the arbitration panel has reached a decision, to the responsible persons, the affected community, the public, and any other person or entity who participated in the arbitration proceeding and requested notice of the decision.

(e) The department, any member of the advisory committee described in Section 25263, or, for purposes of appealing the approval of a remedial action plan by the arbitration panel, any member of the affected community, may seek judicial review of a decision of the arbitration panel by filing a petition for a writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure not more than 30 days from the date that notice of the decision is provided in writing by appropriate means to those entities or persons. Any person authorized to petition for arbitration may also seek judicial review of a decision of the arbitration panel concerning any matter for which the person is authorized pursuant to subdivision (b) to submit a petition for arbitration, by filing a petition for writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure not more than 30 days from the date that notice of the decision is provided in writing by appropriate means to that person. No person may seek judicial review of a matter that is subject to arbitration, if requested, that has not been first presented to an arbitration panel.

(f) Except for acts of recklessness, gross negligence, fraud, deceit, or other criminal activity, the arbitrators are immune from liability for any actions taken in their role as arbitrators.

(g) Response costs incurred by the state because of an arbitration proceeding shall be paid as follows:

(1) By the responsible person or responsible persons who are parties to the enforceable agreement described in subdivision (b) of Section 25398.2 if either of the following occurs:

(A) The arbitration proceeding or judicial review is initiated by one of those participating responsible persons, the affected community, or a member of the public.

(B) Judicial review is sought by the department or a member of the advisory committee described in Section 25263.

(2) By the responsible person or responsible persons who initiated the arbitration proceeding if the responsible person or responsible persons are not parties to the enforceable agreement described in subdivision (b) of Section 25398.2.

(Amended by Stats. 1996, Ch. 632, Sec. 7. Effective January 1, 1997.)

25398.11. (a) (1) The secretary shall ensure that all arbitration panels are provided with the necessary technical support services by a team of state employees with experience and expertise appropriate to the issue or issues in dispute, including, but not limited to, where necessary, expertise in hydrogeology, geology, chemical engineering, toxicology, hazardous substance response action law, soil science, environmental health and engineering, industrial hygiene, and other related disciplines. The team of state employees shall provide a written report to the panel setting forth the team recommendations on all technical issues before the arbitrators, and the arbitrators shall give substantial weight to the team's recommendations. The team's report shall be a public record.

(2) The Director of Environmental Health Hazard Assessment shall adopt procedures for the removal of arbitrators from panels for inadequate performance of their assigned responsibilities.

(b) (1) The department shall notify all responsible persons who have been identified and located, the affected community, the team of state employees, and the public, of the arbitration hearing request and the location and scheduling of the arbitration hearing, in writing, by appropriate means, as soon as reasonably practicable after an arbitration hearing is requested.

(2) All responsible persons for the site notified by the department of the arbitration shall be subject to arbitration by the arbitration panel, and all response costs shall be apportioned among all responsible persons notified of the arbitration proceedings regardless of whether those persons appear before the arbitration panel.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25398.12. (a) No person may serve as an arbitrator for a site for which that person has a conflict of interest. A conflict of interest, for purposes of this section, includes the following:

(1) Employment at any time in the past by one or more of the responsible persons for the site.

(2) Existence of a potentially material financial impact from one or more of the decisions the arbitrator may be asked to make involving the site.

(b) Any person may challenge the selection of any arbitrator on grounds of (1) conflict of interest, or (2) lack of one or more of the qualifications required by Section 25398.10. Any challenge shall be filed

with the Director of Environmental Health Hazard Assessment within 10 days of the provision of public notice of the arbitration hearing pursuant to paragraph (1) of subdivision (b) of Section 25398.11. The Director of Environmental Health Hazard Assessment shall, within 20 days thereafter, determine the arbitrator's fitness to serve. Any arbitrator that is disqualified from serving on a particular panel shall be replaced in a timely manner in the same manner as the disqualified arbitrator was chosen.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25398.13. All decisions of the arbitration panel shall be made by majority vote.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25398.14. Upon completion of an engineering design to implement an approved remedial action plan, the responsible persons for the site shall submit the design to the department for approval. The department shall approve, modify, or deny the design within 60 days from the date of receipt.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25398.15. (a) Upon completion of a response action pursuant to a remedial action plan, the responsible person shall file a request with the department for a certificate of completion. A request for certificate of completion may be filed even though long-term operation and maintenance requirements and other long-term remedial activities remain an ongoing obligation, if all other final response actions have been completed.

(b) The department shall review each request for a certificate of completion and shall approve the request if the department determines that the response action plan and any other directive of the department have been satisfactorily completed and that the site has been placed into a condition that allows it to be permanently used for its planned use without any significant risk to human health or potential for any future significant environmental damage. The department shall approve or deny the request for a certificate of completion within 90 days after it is filed with the department. Any failure of the department to act on the submittal of a request for a certificate of completion within the time periods provided in this section may be appealed to the secretary. If the secretary fails to act on behalf of the department within 30 days after the appeal is filed, the department's failure to act may be challenged by any responsible person for the site pursuant to the provisions of Section 1085 of the Code of Civil Procedure. Any person who disputes the approval or denial of a request for a certificate of completion may, before the approval or denial becomes final pursuant to subdivision (c), file a petition for review of that denial pursuant to Section 25398.10 except that the petition may request review only concerning those issues in dispute that were heard before an arbitration panel in a prior hearing concerning the remedial action plan. All other disputes concerning the approval or denial of a request for a certificate of completion may be resolved by the secretary, at the discretion of the secretary.

(c) Notice of any approval or denial of a request for a certificate of completion shall be provided to the responsible persons for the site and to the public, by appropriate means, within five days from the date that the decision is made by the department. The approval or denial shall become final within 30 days from the date that notice is provided pursuant to this subdivision, unless a review of that approval or denial is requested, pursuant to subdivision (b), before the expiration of that 30-day period.

(d) A certificate of completion that becomes final pursuant to this section shall be deemed to have been issued pursuant to Section 25264, and Sections 25264 and 25265 shall apply to the site.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

Article 5. Inspection, Security, and Damages

(Article 5 added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25398.16. The department shall have the same authority with regard to a remedial action site selected for response pursuant to this chapter as the authority provided in Sections 25358.1 and 25359.5 and all potentially responsible persons are entitled to the trade secret protection set forth in Section 25358.2 with regard to any action taken by the department pursuant to this chapter.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25398.17. (a) A responsible person who has entered into an agreement with the department, and is in compliance with the terms of that agreement and who is in compliance with all orders issued by the department, may seek, in addition to contribution, treble damages from any responsible person who has failed or refused to comply with any order or agreement relating to a site selected for response action under this chapter, was named in the order or agreement, and is subject to contribution. A responsible person from whom treble damages is sought in a contribution action shall not be assessed treble damages by any court where the responsible person, for sufficient cause, as determined by the court, failed to comply with an agreement or with an order issued by the department, or where the principles of fundamental fairness will be violated, as determined by the court. A responsible person seeking treble damages pursuant to this section shall show that notice of the order or agreement was provided to the responsible person against whom treble damages are being sought.

(b) One-half of any treble damages awarded pursuant to this section shall be paid to the department for deposit in the trust fund. Nothing in this subdivision affects the rights of any party to seek contribution pursuant to any other statute or under common law.

(c) If treble damages are assessed against any person pursuant to this section, that person shall be deemed to have acted willfully with respect to the conduct that gave rise to this liability for purposes of Section 533 of the Insurance Code.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

Article 6. Recovery Actions

(Article 6 added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25399. (a) A responsible person is liable to the department and the trust fund for the response costs as provided in the agreement entered into pursuant to Section 25398.2, and for any other response costs incurred by the state, which are allocated to the responsible person in a final liability apportionment decision by the department pursuant to Section 25398.8 or the final decision of an arbitration panel pursuant to Section 25398.10 and which have been paid, or assigned for payment, from the trust fund.

(b) Actions to recover any response costs incurred by the state shall be commenced by the Attorney General, upon the request of the department or the fund administrator, against the responsible person or persons.

(c) The department and the fund administrator shall only seek response costs in an action pursuant to paragraph (b) from those responsible persons who have not paid their apportioned share of response costs to the department, or who have otherwise failed to comply with this chapter or any regulation, agreement, or order adopted pursuant to this chapter.

(d) Any person who has incurred response costs in accordance with this chapter may seek contribution or indemnity from any person who is liable pursuant to this chapter, except that no claim may be asserted against a person whose liability has been determined and which has been or is being fully discharged pursuant to this chapter, or against a person who has executed an agreement with the department pursuant to Section 25398.2, and is in compliance with this chapter and any regulation, agreement, or order adopted pursuant to this chapter. An action to enforce a claim may be brought as a cross-complaint by a defendant in an action brought pursuant to this section, or in a separate action for contribution or indemnity after the plaintiff has paid the department for response costs in accordance with this chapter. Any plaintiff or cross-complainant seeking contribution or indemnity shall give written notice to the department upon filing an action or cross-complaint under this section. In resolving claims for contribution or indemnity, the court shall allocate costs among liable parties, including the orphan shares, as set forth in the department's final liability apportionment decision or an arbitration panel decision pursuant to this chapter, except in instances where responsible parties have agreed to pay for orphan shares pursuant to the agreement provided for in Section 25398.2.

(e) (1) An action under this section for the recovery of response costs shall be commenced within three years after a certificate of completion is issued pursuant to Section 25398.15 or, in cases where responsible persons

are identified by the department after that three-year period, within three years after the responsible persons are identified.

(2) A subsequent action or actions under this section for further response costs may be maintained at any time during the response action, but shall be commenced no later than three years after the date of completion of all response action.

(f) In addition to any other response costs recovered from the responsible parties for each site, the department and the fund administrator, on behalf of the trust fund, may recover up to one-thirtieth of those costs incurred by the state in implementing and administering this chapter. The department shall specify in the Governor's Budget the amount of costs for which it will seek recovery pursuant to this subdivision, and shall specify either in that document, or in a separate document submitted to the Joint Legislative Budget Committee, the methodology used in calculating those costs.

(Amended by Stats. 1996, Ch. 632, Sec. 8. Effective January 1, 1997.)

Article 7. Office of Trust Fund Administrator

(Article 7 added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25399.1. (a) The Expedited Site Remediation Trust Fund is hereby created in the State Treasury and the money in the trust fund may be expended by the department, upon appropriation by the Legislature, to carry out this chapter.

(b) All expenses that are incurred by the state pursuant to this chapter shall be paid solely by the responsible parties or the trust fund. No liability or obligation is imposed upon the state pursuant to this chapter, and the state shall not incur a liability or obligation beyond the extent to which money is provided by the responsible parties or the trust fund for the purposes of this chapter.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

25399.2. (a) A fund administrator shall be designated by the Governor.

(b) The fund administrator shall prudently administer the trust fund and shall protect the trust fund against unreasonable assessments of liability to the orphan share in all liability apportionment actions under this chapter where funding for all or a part of an orphan share is sought from the trust fund. The fund administrator shall have the same authority as a responsible person specified in this chapter with regard to a site where the orphan share is to be funded in whole, or in part, from the trust fund.

(Added by Stats. 1994, Ch. 435, Sec. 2. Effective January 1, 1995.)

HEALTH AND SAFETY CODE

CHAPTER 6.9. LIABILITY FOR ABATEMENT OF HAZARDS

(Chapter 6.9 added by Stats. 1983, Ch. 1087, Sec. 1.)

25400. (a) The Legislature finds and declares that a threat to the public health and safety exists wherever there is a discharge, spill, or presence of hazardous substances on public or private property; and that public entities, county public health directors, public safety employees, members of radiation emergency screening teams formed pursuant to Section 25574, persons authorized by a public entity, or registered sanitarian employees should be encouraged to abate those hazards, and to that end a qualified immunity from liability should be provided for public entities, county public health directors, public safety employees, members of radiation emergency screening teams formed pursuant to Section 25574, persons authorized by a public entity, or registered sanitarian employees.

(b) Except as provided in Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code, a public entity, county public health director, a public safety employee, a member of a radiation emergency screening team formed pursuant to Section 25574, a person authorized by a public entity, or a registered sanitarian employee shall not be liable for any injury or property damage caused by an act or omission taken by a county public health director, a public safety employee, a member of a radiation emergency screening team formed pursuant to Section 25574, a person authorized by a public entity, or a registered sanitarian employee acting within the scope of employment to abate or attempt to abate hazards reasonably believed to be an imminent peril to public health and safety caused by the discharge, spill, or presence of a hazardous substance, unless the act taken or omission was performed in bad faith or in a grossly negligent manner.

(c) For the purposes of this section, it shall be presumed that the act or omission was performed in good faith and without gross negligence. This presumption shall be one affecting the burden of proof.

(d) For the purposes of this section, the following definitions apply:

(1) "Hazardous substance" means a substance that presents a threat to the public because of its toxicity, radioactivity, flammability, or other characteristic dangerous to the public health or the environment.

(2) "Imminent peril" includes a peril which, if not mitigated, threatens the public health or welfare, or the environment.

(3) "Person authorized by a public agency" includes a person from whom services are contracted by a public agency.

(4) "Public agency" includes, but is not limited to, the federal government or any department or agency thereof to the extent permitted by law.

(5) "Public safety employee" means any person who is a public entity employee and whose principal duties include law enforcement, fire protection, fire prevention, or the enforcement of regulations relating to facilities or sites where hazardous substances are stored or handled.

(6) "Registered sanitarian employee" means a person who is registered pursuant to Section 520 and who is a paid employee of a state or local public entity.

(e) It is not the intent of this section to impair any cause of action against the person, firm, or entity creating the spill, discharge, or presence of the hazardous material giving rise to the response of the public entity, county public health director, public safety employee, member of a radiation screening team formed pursuant to Section 25574, person authorized by a public entity, or registered sanitarian employee.

(f) The immunity for county public health directors or registered sanitarian employees provided by this section shall apply only where the person, at the request of a public entity or public safety employee in charge of scene management, provides emergency assistance or advice at the scene of the peril in mitigating or attempting to mitigate the effects of an actual or threatened discharge, spill, or presence of a hazardous substance on private or public property. The request issued by the scene manager shall be confirmed by that person in a written report of the incident.

(Amended by Stats. 1991, Ch. 1123, Sec. 13. Effective October 14, 1991.)

HEALTH AND SAFETY CODE

CHAPTER 6.9.1. METHAMPHETAMINE CONTAMINATED PROPERTY CLEANUP ACT OF 2005

(Chapter 6.9.1 added by Stats. 2005, Ch. 570, Sec. 1. Effective January 1, 2006.)

Article 1. Findings and Definitions

(Article 1 added by Stats. 2005, Ch. 570, Sec. 1. Effective January 1, 2006.)

25400.10. (a) The Legislature finds and declares all of the following:

(1) Methamphetamine use and production are growing throughout the state. Properties may be contaminated by hazardous chemicals used or produced in the manufacture of methamphetamine where those chemicals remain and where the contamination has not been remediated.

(2) Initial cleanup actions may be limited to the removal of bulk hazardous materials and associated glassware that pose an immediate threat to public health and the environment. Where methamphetamine production has occurred, significant levels of contamination may be found throughout residential properties if the contamination is not remediated.

(3) Once methamphetamine laboratories have been closed, the public may be harmed by the materials and residues that remain.

(4) There is no statewide standardization of standards for determining when a site of a closed methamphetamine laboratory has been successfully remediated.

(b) This chapter shall be known, and may be cited as, the "Methamphetamine Contaminated Property Cleanup Act of 2005."

(Added by Stats. 2005, Ch. 570, Sec. 1. Effective January 1, 2006.)

25400.11. For purposes of this chapter, the following definitions shall apply:

(a) "Authorized contractor" means a person who has been trained or received other qualifications pursuant to Section 25400.40.

(b) "Contaminated" or "contamination" means property polluted by a hazardous chemical related to methamphetamine laboratory activities.

(c) "Controlled substance" has the same meaning as defined in Section 11007.

(d) "Decontamination" means the process of reducing the level of a known contaminant to a level that is deemed safe for human reoccupancy, as established pursuant to Section 25400.16 using currently available methods and processes.

(e) "Department" means the Department of Toxic Substances Control.

(f) "Designated local agency" means either of the following:

(1) A city or county agency designated by the local health officer to carry out all, or any portion of, responsibilities assigned to the local health office as specified by this chapter. The local health officer may authorize any of the following to serve as a designated local agency:

(A) The Certified Unified Program or CUPA as certified pursuant to Chapter 6.11 (commencing with Section 25404), except in a jurisdiction where the state is acting as the CUPA pursuant to subdivision (f) of Section 25404.3.

(B) The fire department or environmental health department.

(C) The local agency responsible for enforcement of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13).

(2) For property specified in paragraph (2) of subdivision (t), notwithstanding Section 18300, the city or county agency specified in paragraph (1) authorized by the local health officer in that jurisdiction.

(g) "Disposal of contaminated property" means the disposal of property that is a hazardous waste in accordance with Chapter 6.5 (commencing with Section 25100).

(h) "Hazardous chemical" means a chemical that is determined by the local health officer to be toxic, carcinogenic, explosive, corrosive, or flammable that was used in the manufacture or storage of methamphetamine that is prohibited by Section 11383.

(i) "Illegal methamphetamine manufacturing or storage site" or "site" means property where a person manufactures methamphetamine or stores a hazardous chemical used in connection with the manufacture of methamphetamine in violation of Section 11383.

(j) "Local health officer" means either of the following:

(1) Except as provided in paragraph (2), a county health officer, a city health officer, or an authorized representative of that local health officer.

(2) In the case of property specified in paragraph (2) of subdivision (t), an authorized representative of the designated agency specified in paragraph (2) of subdivision (f).

(k) "Manufactured home" means both of the following:

(1) "Manufactured home," as defined in Section 18007.

(2) "Multi-unit manufactured housing," as defined in Section 18008.7.

(l) "Methamphetamine laboratory activity" means the illegal manufacturing or storage of methamphetamine.

(m) "Mobilehome" has the same meaning as defined in Section 18008.

(n) "Mobilehome park" means both of the following:

(1) "Mobilehome park," as defined in Section 18214 or 18214.1.

(2) "Manufactured housing community," as defined in Section 18801.

(o) "Office" means the Office of Environmental Health Hazard Assessment.

(p) "Posting" means attaching a written or printed announcement conspicuously on property that is determined to be contaminated by a methamphetamine laboratory activity or the storage of methamphetamine or a hazardous chemical.

(q) "Preliminary site assessment work plan" or "PSA work plan" means a plan to conduct activities to determine the extent and level of contamination of an illegal methamphetamine manufacturing or storage site and that is prepared in accordance with the requirements of Section 25400.36.

(r) "Preliminary site assessment" or "PSA" means the activities taken to determine the extent and level of contamination of an illegal methamphetamine manufacturing or storage site that are conducted in accordance with an approved PSA work plan.

(s) "Preliminary site assessment report" or "PSA report" means a determination that the levels of contamination at an illegal methamphetamine manufacturing or storage site require remediation, including a recommendation for the remedial actions required for the site to meet human occupancy standards, and that is prepared in accordance with Section 25400.37.

(t) (1) "Property" means a parcel of land, structure, or part of a structure where the manufacture of methamphetamine or storage of methamphetamine or a hazardous chemical that is prohibited by Section 11383, occurred.

(2) "Property" also includes any of the following where the manufacture of methamphetamine or storage of methamphetamine or a hazardous chemical that is prohibited by Section 11383, occurred:

(A) A mobilehome park.

(B) A mobilehome or manufactured home located in a mobilehome park or special occupancy park, or a recreational vehicle sited in a mobilehome park or special occupancy park, including any accessory building or structure under the ownership or control of the owner of the manufactured home, mobilehome, or recreational vehicle sited in the mobilehome park or special occupancy park.

(C) A special occupancy park.

(3) If a mobilehome or manufactured home is not located in a mobilehome park or special occupancy park, then paragraph (1) is applicable to that mobilehome or manufactured home.

(u) (1) "Property owner" means a person owning property by reason of obtaining it by purchase, exchange, gift, lease, inheritance, or legal action, and who is responsible for the remediation of the property pursuant to this chapter.

(2) "Owner," for purposes of a mobilehome park, means the owner of the real property on which the mobilehome park is located.

(3) "Owner" for purposes of a special occupancy park, means the owner of the real property on which the special occupancy park is located.

(v) "Recreational vehicle" has the same meaning as defined in Section 18010, but only if that vehicle is sited in a mobilehome park or special occupancy park.

(w) "Special occupancy park" has the same meaning as defined in Section 18862.43.

(x) "Storage site" means any property used for the storage of a hazardous chemical or methamphetamine that is prohibited by Section 11383.

(y) "Vehicle license stop" means the Department of Motor Vehicles is prohibited from renewing the registration of a vehicle, or from allowing the transfer of any title to, or interest in, that vehicle.

(z) "Warning" means a sign posted by the local health officer conspicuously on property where methamphetamine was manufactured or stored, informing occupants that hazardous chemicals exist on the premises and that entry is unsafe.

(Amended by Stats. 2006, Ch. 789, Sec. 1. Effective January 1, 2007.)

25400.12. Any term not defined expressly by this article shall have the same meaning as defined in Chapter 6.8 (commencing with Section 25300).

(Added by Stats. 2005, Ch. 570, Sec. 1. Effective January 1, 2006.)

Article 2. Establishment of Remediation and Reoccupancy Standards

(Article 2 added by Stats. 2005, Ch. 570, Sec. 1. Effective January 1, 2006.)

25400.16. (a) Except as provided in subdivision (c), property contaminated by methamphetamine laboratory activity is safe for human occupancy for purposes of this chapter only if the level of methamphetamine on any indoor surface is less than, or equal to, 0.1 micrograms per 100 square centimeters.

(b) Except as provided in subdivision (c), if property is contaminated by methamphetamine laboratory activity that included the use of lead or mercury compounds, in addition to the requirements of subdivision (a), property is safe for human occupancy for purposes of this chapter only if both of the following standards are met with regard to that property:

(1) The total level of lead is less than, or equal to, 20 micrograms per square foot.

(2) The level of mercury is less than, or equal to, 50 nanograms per cubic meter in air.

(c) Subdivisions (a) and (b) shall become inoperative on the effective date that the department, in consultation with the office, adopts a health-based target remediation standard for methamphetamine to determine when a property contaminated by methamphetamine laboratory activity only is safe for human occupancy, in which case any reference in this chapter to a human-occupancy standard specified in this section shall mean only the health-based target remediation standard for methamphetamine adopted by the department.

(d) The department shall conduct two public workshops, one in northern California and one in southern California, for the purpose of discussing with affected stakeholders the actions needed to further implement the goals of this chapter. The department may include, as topics for discussion, possible funding sources for local governments for the purposes of implementing this chapter, whether this chapter should be revised to address the contamination of properties by the illegal manufacturing of other controlled substances, and the results of the Illegal Drug Lab Risk Reduction Project conducted by the California Environmental Protection Agency pursuant to its adopted environmental justice action plan.

(Added by Stats. 2005, Ch. 570, Sec. 1. Effective January 1, 2006.)

Article 3. Local Health Officer Responsibilities

(Article 3 added by Stats. 2005, Ch. 570, Sec. 1. Effective January 1, 2006.)

25400.17. (a) Notwithstanding any other provision of law, a city, county, or city and county shall comply with the uniform regulations and standards established pursuant to this chapter.

(b) A local health officer may delegate all or part of the duties specified in this chapter to a designated local agency.

(c) If a methamphetamine laboratory activity has taken place at a property, the local health officer shall assume that the methamphetamine manufacturing process has led to some degree of chemical contamination and shall take action pursuant to this chapter.

(Added by Stats. 2005, Ch. 570, Sec. 1. Effective January 1, 2006.)

25400.18. Within 48 hours after receiving notification from a law enforcement agency of potential contamination of property by a methamphetamine
laboratory activity, the local health officer shall post a written notice in a prominent location on the premises of the property. At a minimum, the notice shall include all of the following information:

(a) The word "WARNING" in large bold type at the top and bottom of the notice.

(b) A statement that a methamphetamine laboratory was seized on or inside the property or, or in the case of a mobilehome, manufactured home, or recreational vehicle, a statement that a methamphetamine lab was seized on the property, inside the property, or both of those statements.

(c) The date of the seizure.

(d) The address or location of the property including the identification of any dwelling unit, room number, apartment number, or mobilehome, manufactured home, or recreational vehicle space number or address, or recreational vehicle identification number.

(e) The name and contact telephone number of the agency posting the notice on the property.

(f) A statement specifying that hazardous substances, toxic chemicals, or other hazardous waste products may have been present and may remain on or inside the property.

(g) A statement that it is unlawful for an unauthorized person to enter the contaminated portion of the property until advised that it is safe to do so by the local health officer or designated local agency.

(h) A statement that a person disturbing or destroying the posted notice is subject to a civil penalty in an amount of up to five thousand dollars ($5,000).

(i) A statement that a person violating the posted notice is subject to a civil penalty in an amount of up to five thousand dollars ($5,000).

(Amended by Stats. 2006, Ch. 789, Sec. 2. Effective January 1, 2007.)

25400.19. Within five working days after receiving a notification from a law enforcement agency of known or suspected contamination of a property by a methamphetamine laboratory activity, or upon notification from the property owner, the local health officer shall inspect the property, including the mobilehome, manufactured home, or recreational vehicle and the land on which it is located, pursuant to this section. In the case of a mobilehome, manufactured home, or recreational vehicle, that is property pursuant to paragraph (2) of subdivision (t) of Section 25400.11, the local health officer shall make the determination specified in subdivision (e) of Section 25400.20 regarding the cause of the contamination and responsibility for the remediation required pursuant to this chapter.

(a) The property inspection shall include, but not be limited to, obtaining evidence of hazardous chemical use or storage and documentation of evidence of any chemical stains, cooking activity and release or spillage of hazardous chemicals used to manufacture methamphetamine.

(b) In conducting an inspection pursuant to this section, the local health officer may request copies of any law enforcement reports, forensic chemist reports, and any hazardous waste manifests, to evaluate all of the following:

(1) The length of time the property was used as an illegal methamphetamine manufacturing or storage site.

(2) The extent of the property actually used and contaminated in the manufacture of methamphetamine or the storage of methamphetamine or a hazardous chemical.

(3) The chemical process that was involved in the illegal methamphetamine manufacturing.

(4) The chemicals that were removed from the scene.

(5) The location of the illegal methamphetamine manufacturing or storage site in relation to the habitable areas of the property.

(Amended by Stats. 2006, Ch. 789, Sec. 3. Effective January 1, 2007.)

25400.20. (a) Upon completing an inspection pursuant to Section 25400.19, the local health officer shall immediately determine whether the property is contaminated.

(b) If the local health officer determines the property is

contaminated, the local health officer shall take the actions specified in Section 25400.22.

(c) If the local health officer determines that the property is not contaminated, within three working days after making that determination, the local health officer shall remove all notices posted pursuant to Section 25400.18 and prepare a written documentation of this determination, which shall include all of the following:

(1) Findings and conclusions.

(2) Name of the property owner, and, if applicable, mailing and street address or space number of the property or vehicle identification number of the recreational vehicle.

(3) Parcel identification number, if applicable.

(d) Within 10 working days after preparing a written documentation of the determination made pursuant to subdivision (c) that the property is not contaminated, the local health officer shall send a copy of the documentation to the property owner, and to the local agency responsible for enforcement of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13).

(e) In the case of a property specified in paragraph (2) of subdivision (t) of Section 25400.11, the local health officer shall, upon completing the inspection pursuant to Section 25400.19, determine the responsibility for the remediation required pursuant to this chapter in accordance with the following:

(1) Except as provided in paragraph (3), if the land on which the mobilehome, manufactured home, or recreational vehicle is located is contaminated, the owner of the mobilehome park or special occupancy park shall be held responsible for compliance with this chapter.

(2) Except as provided in paragraph (3), if the mobilehome, manufactured home, or recreational vehicle is contaminated, the registered owner of the mobilehome, manufactured home, or recreational vehicle shall be held responsible for compliance with this chapter.

(3) If both the land on which the mobilehome, manufactured home, or recreation vehicle is located is contaminated and the mobilehome, manufactured home, or recreational vehicle itself is contaminated, the local health officer shall determine, based on the local health officer's findings and determinations, whether the owner of the mobilehome park or special occupancy park or the registered owner of the mobilehome, manufactured home, or recreational vehicle, or both, shall be held responsible for compliance with this chapter. The local health officer shall submit a notice to each owner determined to be responsible for remediation, as to the owner's individual responsibility pursuant to this chapter.

(4) If the local health officer makes the determination specified in paragraph (2) or (3), the mobilehome park or special occupancy park manager and the owner of the land on which the mobilehome, manufactured home, or recreational vehicle is located shall also receive a copy of any notice served on the registered owner, lessee, renter, or occupant of the mobilehome, manufactured home, or recreational vehicle.

(Amended by Stats. 2006, Ch. 789, Sec. 4. Effective January 1, 2007.)

25400.22. (a) No later than 10 working days after the date when a local health officer determines that property is contaminated pursuant to subdivision (b) of Section 25400.20, the local health officer shall do all of the following:

(1) Except as provided in paragraph (2), if the property is real property, record with the county recorder a lien on the property. The lien shall specify all of the following:

(A) The name of the agency on whose behalf the lien is imposed.

(B) The date on which the property is determined to be contaminated.

(C) The legal description of the real property and the assessor's parcel number.

(D) The record owner of the property.

(E) The amount of the lien, which shall be the greater of two hundred dollars ($200) or the costs incurred by the local health officer in compliance with this chapter, including, but not limited to, the cost of inspection performed pursuant to Section 25400.19 and the county recorder's fee.

(2) (A) If the property is a mobilehome or manufactured home specified in paragraph (2) of subdivision (t) of Section 25400.11, amend the permanent record with a restraint on the mobilehome, or manufactured home with the Department of Housing and Community Development, in the form prescribed by that department, providing notice of the determination that the property is contaminated.

(B) If the property is a recreational vehicle specified in paragraph (2) of subdivision (t) of Section 25400.11, perfect by filing with the Department of Motor Vehicles a vehicle license stop on the recreational vehicle in the form prescribed by that department, providing notice of the determination that the property is contaminated.

(C) If the property is a mobilehome or manufactured home, not subject to paragraph (2) of subdivision (t) of Section 25400.11, is located on real property, and is not attached to that real property, the local health officer shall record a lien for the real property with the county recorder, and the Department of Housing and Community Development shall amend the permanent record with a restraint for the mobilehome or manufactured home, in the form and with the contents prescribed by that department.

(3) A lien, restraint, or vehicle license stop issued pursuant to paragraph (2) shall specify all of the following:

(A) The name of the agency on whose behalf the lien, restraint, or vehicle license stop is imposed.

(B) The date on which the property is determined to be contaminated.

(C) The legal description of the real property and the assessor's parcel number, and the mailing and street address or space number of the manufactured home, mobilehome, or recreational vehicle or the vehicle identification number of the recreational vehicle, if applicable.

(D) The registered owner of the mobilehome, manufactured home, or recreational vehicle, if applicable, or the name of the owner of the real property as indicated in the official county records.

(E) The amount of the lien, if applicable, which shall be the greater of two hundred dollars ($200) or the costs incurred by the local health officer in compliance with this chapter, including, but not limited to, the cost of inspection performed pursuant to Section 25400.19 and the fee charged by the Department of Housing and Community Development and the Department of Motor Vehicles pursuant to paragraph (2) of subdivision (b).

(F) Other information required by the county recorder for the lien, the Department of Housing and Community Development for the restraint, or the Department of Motor Vehicles for the vehicle license stop.

(4) Issue to persons specified in subdivisions (d), (e), and (f) an order prohibiting the use or occupancy of the contaminated portions of the property.

(b) (1) The county recorder's fees for recording and indexing documents provided for in this section shall be in the amount specified in Article 5 (commencing with Section 27360) of Chapter 6 of Part 3 of Title 3 of the Government Code.

(2) The Department of Housing and Community Development and the Department of Motor Vehicles may charge a fee to cover its administrative costs for recording and indexing documents provided for in paragraph (2) of subdivision (a).

(c) (1) A lien recorded pursuant to subdivision (a) shall have the force, effect, and priority of a judgment lien. The restraint amending the permanent record pursuant to subdivision (a) shall be displayed on any manufactured home or mobilehome title search until the restraint is released. The vehicle license stop shall remain in effect until it is released.

(2) The local health officer shall not authorize the release of a lien, restraint, or vehicle license stop made pursuant to subdivision (a), until one of the following occurs:

(A) The property owner satisfies the real property lien, or the contamination in the mobilehome, manufactured home, or recreational vehicle is abated to the satisfaction of the local health officer consistent with the notice in the restraint, or vehicle license stop and the local health officer issues a release pursuant to Section 25400.27.

(B) For a manufactured home or mobilehome, the local health officer determines that the unit will be destroyed or permanently salvaged. For the purposes of this paragraph, the unit shall not be reregistered after this determination is made unless the local health officer issues a release pursuant to Section 25400.27.

(C) The lien, restraint, or vehicle license stop is extinguished by a senior lien in a foreclosure sale.

(d) Except as otherwise specified in this section, an order issued pursuant to this section shall be served, either personally or by certified mail, return receipt requested in the following manner:

(1) For real property, to all known occupants of the property and to all persons who have an interest in the property, as contained in the

records of the recorder's office of the county in which the property is located.

(2) In the case of a mobilehome or manufactured home, the order shall be served to the legal owner, as defined in Section 18005.8, each junior lienholder, as defined in Section 18005.3, and the registered owner, as defined in Section 18009.5.

(3) In the case of a recreational vehicle, the order shall be served on the legal owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as defined in Section 505 of the Vehicle Code.

(e) If the whereabouts of the person described in subdivision (d) are unknown and cannot be ascertained by the local health officer, in the exercise of reasonable diligence, and the local health officer makes an affidavit to that effect, the local health officer shall serve the order by personal service or by mailing a copy of the order by certified mail, postage prepaid, return receipt requested, as follows:

(1) The order related to real property shall be served to each person at the address appearing on the last equalized tax assessment roll of the county where the property is located, and to all occupants of the affected unit.

(2) In the case of a mobilehome or manufactured home, the order shall be served to the legal owner, as defined in Section 18005.8, each junior lienholder, as defined in Section 18005.3, and the registered owner, as defined in Section 18009.5, at the address appearing on the permanent record and all occupants of the affected unit at the mobilehome park space.

(3) In the case of a recreational vehicle, the order shall be served on the legal owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as defined in Section 505 of the Vehicle Code, at the address appearing on the permanent record and all occupants of the affected vehicle at the mobilehome park or special occupancy park space.

(f) (1) The local health officer shall also mail a copy of the order required by this section to the address of each person or party having a recorded right, title, estate, lien, or interest in the property and to the association of a common interest development, as defined in Section 1351 of the Civil Code.

(2) In addition to the requirements of paragraph (1), if the affected property is a mobilehome, manufactured home, or recreational vehicle, specified in paragraph (2) of subdivision (t) of Section 25400.11, the order issued by the local health officer shall also be served, either personally or by certified mail, return receipt requested, to the owner of the mobilehome park or special occupancy park.

(g) The order issued pursuant to this section shall include all of the following information:

(1) A description of the property.

(2) The parcel identification number, address, or space number, if applicable.

(3) The vehicle identification number, if applicable.

(4) A description of the local health officer's intended course of action.

(5) A specification of the penalties for noncompliance with the order.

(6) A prohibition on the use of all or portions of the property that are contaminated.

(7) A description of the measures the property owner is required to take to decontaminate the property.

(8) An indication of the potential health hazards involved.

(9) A statement that a property owner who fails to provide a notice or disclosure that is required by this chapter is subject to a civil penalty of up to five thousand dollars ($5,000).

(h) The local health officer shall provide a copy of the order to the local building or code enforcement agency or other appropriate agency responsible for the enforcement of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13).

(i) The local health officer shall post the order in a conspicuous place on the property within one working day of the date that the order is issued.

(Amended by Stats. 2006, Ch. 789, Sec. 5. Effective January 1, 2007.)

Article 4. Site Assessment and Remediation

(Article 4 added by Stats. 2005, Ch. 570, Sec. 1. Effective January 1, 2006.)

25400.25. (a) A property owner who receives an order issued pursuant to Section 25400.22 that property owned by that person is contaminated by a methamphetamine laboratory activity, a property owner who owns property that is the subject of an order posted pursuant to subdivision (i) of Section 25400.22, and a person occupying property that is the subject of the order, shall immediately vacate the affected unit, including the mobilehome, manufactured home, or recreational vehicle, as applicable, and any accessory building or structure related thereto, that is determined to be in a hazardous zone by the local health officer.

(b) In addition to authority granted by Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of the Civil Code) and the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of the Civil Code), the owner of a mobilehome park or special occupancy park in which a manufactured home, mobilehome, or recreational vehicle subject to the order is located may terminate tenancy in order to obtain possession of the space by service of a three-day notice to quit in accordance with paragraph (4) of Section 1161 of the Code of Civil Procedure.

(c) No later than 30 days after receipt of an order issued pursuant to Section 25400.22, the property owner shall demonstrate to the local health officer that the property owner has retained a methamphetamine laboratory site remediation firm that is an authorized contractor to remediate the contamination caused by the methamphetamine laboratory activity.

(Amended by Stats. 2006, Ch. 789, Sec. 6. Effective January 1, 2007.)

25400.26. (a) A property owner who receives an order issued pursuant to Section 25400.22 that property owned by that person is contaminated by a methamphetamine laboratory activity, or a property owner who owns property that is the subject of an order posted pursuant to subdivision (i) of Section 25400.22, shall utilize the services of an authorized contractor to remediate the contamination caused by the methamphetamine laboratory activity, in accordance with the procedures specified in this section.

(b) The property owner and the local health officer shall keep all required records documenting decontamination procedures for three years following certification that the property is habitable.

(c) The property owner or the property owner's authorized contractor shall submit a preliminary site assessment work plan to the local health officer for review no later than 30 days after demonstrating to the local health officer that an authorized contractor has been retained to remediate the contamination caused by the methamphetamine laboratory activity.

(d) (1) No later than 10 working days after the date the PSA work plan is submitted by the property owner, or the property owner's authorized contractor, the local health officer shall review the PSA work plan to determine whether the PSA work plan complies with this chapter, including the procedures established pursuant to Section 25400.35.

(2) If there are any deficiencies in a submitted PSA work plan, the local health officer shall inform the property owner and authorized contractor, in writing, of those deficiencies no later than 15 days of the date that the PSA work plan was submitted to the local health officer.

(3) If the local health officer approves the plan, the local health officer shall inform in writing, the property owner and authorized contractor no later than 15 days of the date that the PSA work plan was submitted to the local health officer.

(e) (1) After a PSA is completed in accordance with the PSA work plan, the property owner and authorized contractor shall prepare a PSA report in accordance with Section 25400.37 and submit the PSA report to the local health officer.

(2) If after a PSA is completed in accordance with a PSA work plan, and the local health officer, upon review of the PSA report, determines there is no level of contamination at a site that requires remediation, the local health officer shall take the actions specified in Section 25400.27.

(f) The property owner shall complete remediation of all applicable portions of the contaminated property in accordance with this chapter no later than 90 days after the date that the PSA work plan has been approved by the

local health officer. The local health officer may extend the date for completion of the remediation, in writing.

(g) If the owner of a mobilehome park performs the remediation on a manufactured home, mobilehome, or recreational vehicle that is property pursuant to paragraph (2) of subdivision (t) of Section 25400.11, the owner of the mobilehome park shall comply with the property owner requirements in subdivisions (a), (b), (c), (e), and (f), and the local health officer shall provide information to that owner as required by subdivision (d).

(Amended by Stats. 2006, Ch. 789, Sec. 7. Effective January 1, 2007.)

25400.27. (a) If a local health officer determines that property that has been the subject of a PSA report has been remediated in accordance with this chapter, or if the local health officer makes the determination specified in paragraph (2) of subdivision (e) of Section 25400.26, the local health officer shall issue a no further action determination.

(b) Within 10 working days of the date of making the determination or of receiving payment for the amount of the lien recorded on real property pursuant to paragraph (1) of subdivision (a) of Section 25400.22, whichever is later, the local officer shall do all of the following:

(1) If the real property was the source of the contamination, release the real property lien recorded with the county recorder. The release shall specify all of the following:

(A) The name of the agency on whose behalf the lien is imposed.

(B) The recording date of the lien being released.

(C) The legal description of the real property and the assessor's parcel number.

(D) The record owner of the property.

(E) The recording instrument, or book and page, of the lien being released.

(2) If a mobilehome or manufactured home that is property pursuant to paragraph (2) of subdivision (t) of Section 25400.11, was the source of the contamination, release the restraint amended into the permanent record of the Department of Housing and Community Development, if the permanent record was amended previously with a restraint. The release shall specify all of the following:

(A) The name of the agency on whose behalf the restraint was filed.

(B) The date on which the property was determined to be contaminated.

(C) The legal identification number of the unit for which the restraint is being released.

(D) The legal owner, registered owner, and any junior lienholders of the manufactured home or mobilehome.

(3) If a recreational vehicle that is property pursuant to paragraph (2) of subdivision (t) of Section 25400.11, was the source of the contamination, release the vehicle license stop filed with the Department of Motor Vehicles. The release shall specify all of the following:

(A) The name of the agency on whose behalf the vehicle license stop is imposed.

(B) The recording date of the vehicle license stop being released.

(C) The vehicle identification number.

(D) The legal and registered owner of the property.

(4) Send a copy of the release stating that the property was remediated in accordance with this chapter, does not violate the standard for human occupancy established pursuant to this chapter, and is habitable, or was salvaged or destroyed pursuant to subparagraph (B) of paragraph (2) of subdivision (c) of Section 25400.22, to the property owner, owner of the mobilehome park or special occupancy park in which the property is located, to the property owner, local agency responsible for the enforcement of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13), and all recipients pursuant to this section and Section 25400.22.

(Amended by Stats. 2006, Ch. 789, Sec. 8. Effective January 1, 2007.)

25400.28. Until a property owner subject to Section 25400.25 receives a notice from a local health officer pursuant to Section 25400.27 that the property identified in an order requires no further action, all of the following shall apply to that property:

(a) Except as otherwise required in Section 1102.3 or 1102.3a of the Civil Code, the property owner shall notify the prospective buyer in writing of the pending order, and provide the prospective buyer with a copy of the pending order. The prospective buyer shall acknowledge, in writing, the receipt of a copy of the pending order.

(b) The property owner shall provide written notice to all prospective tenants that have completed an application to rent an affected dwelling unit or other property of the remediation order, and shall provide the prospective tenant with a copy of the order. The prospective tenant shall acknowledge, in writing, the receipt of the notice and pending order before signing a rental agreement. The notice shall be attached to the rental agreement. If the property owner does not comply with this subdivision, the prospective tenant may void the rental agreement.

(c) (1) If a mobilehome, manufactured home, or recreational vehicle, as specified in paragraph (2) of subdivision (t) of Section 25400.11, is the subject of the order issued by the local health officer pursuant to paragraph (3) of subdivision (a) of Section 25400.22 or the subject of a notice posted pursuant to subdivision (i) of Section 25400.22, the mobilehome, manufactured home, or recreational vehicle shall not be sold, rented, or occupied until the seller or lessor of the mobilehome, manufactured home, or recreational vehicle or the seller's or lessor's agent notifies the prospective buyer or tenant, and the owner of the mobilehome park or special occupancy park in which the mobilehome, manufactured home, or recreational vehicle is located, in writing, of all methamphetamine laboratory activities that have taken place in the mobilehome, manufactured home, or recreational vehicle and any remediation of the home or vehicle, the prospective buyer, tenant, or lessee is provided with a copy of the order.

(2) If a mobilehome, manufactured home, or recreational vehicle specified in paragraph (1) is subject to a sale, the prospective buyer shall acknowledge in writing receipt of the notice and a copy of the order specified in this subdivision before taking possession of the mobilehome, manufactured home, or recreational vehicle.

(3) If the mobilehome, manufactured home, or recreational vehicle specified in paragraph (1) is subject to a rental agreement or lease, the notice and order specified in this subdivision shall be attached to the rental agreement.

(4) If the owner of a mobilehome, manufactured home, or recreational vehicle specified in paragraph (1) does not comply with the requirements of this subdivision, a prospective tenant may void the rental agreement and a prospective buyer may void the purchase agreement, as applicable.

(5) If the remediation of a mobilehome, manufactured home, or recreational vehicle specified in paragraph (1) is not completed by the registered owner of the mobilehome, manufactured home, or recreational vehicle in compliance with an order issued by a local health officer pursuant to this chapter, in addition to authority granted by Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of the Civil Code) and the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of the Civil Code), the owner of the mobilehome park or special occupancy park may remove, dismantle, demolish, or otherwise abate the nuisance.

(6) An activity specified in paragraph (5) to remove and dispose of the mobilehome, manufactured home, or recreational vehicle shall only be taken by an authorized contractor. In addition to any other requirements of this chapter, the registered owner of the recreational vehicle or registered owner of the mobilehome or manufactured home, as applicable, is severally and collectively liable for the cost of any remediation ordered by the local health officer.

(Amended by Stats. 2006, Ch. 789, Sec. 9. Effective January 1, 2007.)

Article 5. Remediation of Contaminated Property by a City or County

(Article 5 added by Stats. 2005, Ch. 570, Sec. 1. Effective January 1, 2006.)

25400.30. (a) (1) If a property owner does not initiate or complete the remediation of property in compliance with an order issued by a local health officer pursuant to this chapter, the city or county in which the property is located may, at its discretion, take action to remediate the contaminated or residually contaminated portion of the property pursuant to this chapter or may seek a court order to require the property owner to remediate the property in compliance with this chapter.

(2) Before a city or county takes an action pursuant to subdivision

(a) regarding property specified in paragraph (2) of subdivision (t) of Section 25400.11, the city or county shall give a written notice of not less than 10 days in advance to the mobilehome park or special occupancy park owner
to allow for remediation by the mobilehome park or special occupancy park owner in the manner prescribed by this chapter in addition to any other notice required by this section. If the mobilehome park or special occupancy park owner agrees, in writing, to undertake that remediation in compliance with the order, the city or county shall not take action pursuant to this section unless the owner is not in compliance with the agreement.

(b) If a local health officer is unable to locate a property owner within 10 days after the date the local health officer issues an order pursuant to Section 25400.22, the city or county in which the property is located may remediate the property in accordance with this article. The city or county or its contractors may remove contaminated property as part of this remediation activity.

(c) If a city or county elects to remediate contaminated property pursuant to this article, the property owner is liable for, and shall pay the city or county for, all actual costs related to the remediation, including, but not limited to, all of the following:

(1) Posting and physical security of the contaminated site.

(2) Notification of affected people, businesses or any other entity.

(3) Actual expenses related to the recovery of cost, laboratory fees, cleanup services, removal costs, and administrative and filing fees.

(d) If a real property owner does not pay the city or county for the costs of remediation specified in subdivision (c), the city or county may record a nuisance abatement lien pursuant to Section 38773.1 of the Government Code against the real property for the actual costs related to the remediation or bring an action against the real property owner for the remediation costs. The nuisance abatement lien shall have the effect, priority, and enforceability of a judgment lien from the date of its recordation.

(Amended by Stats. 2006, Ch. 789, Sec. 10. Effective January 1, 2007.)

Article 6. Requirements for Property Assessment and Cleanup

(Article 6 added by Stats. 2005, Ch. 570, Sec. 1. Effective January 1, 2006.)

25400.35. A local health officer shall establish a written plan consistent with this chapter outlining the procedures to be followed for conducting the remediation to property for purposes of this chapter. The procedures shall comply with this article and any regulations adopted pursuant to this chapter, and shall include, but not be limited to, procedures for the preparation of a preliminary site assessment work plan, the conduct of a preliminary site assessment to determine the extent and level of contamination, in accordance with that PSA work plan, and the preparation of a PSA report containing the results of the preliminary site assessment and recommendations for remediation to meet the occupancy standards specified in Section 25400.16.

(Added by Stats. 2005, Ch. 570, Sec. 1. Effective January 1, 2006.)

25400.36. The PSA work plan shall include, but is not limited to, all of the following:

(a) The physical location of the property.

(b) A summary of the information obtained from law enforcement, the local health officer, and other involved local agencies. The summary shall include a discussion of the information's relevance to the contamination, including areas suspected of being contaminated, and may include all of the following information:

(1) Duration of laboratory operation and number of batches cooked or processed.

(2) Hazardous chemicals known to have been manufactured.

(3) Recipes and methods used.

(4) Chemicals and equipment found, by location, used in connection with the manufacture or storage of the hazardous chemicals.

(5) Location of contaminated cooking and storage areas.

(6) Visual assessment of the severity of contamination inside and outside of the structure where the laboratory was located.

(7) Assessment of contamination of adjacent rooms, units, apartments, or structures.

(8) Disposal methods observed at or near the site, including dumping, burning, burial, venting, or drain disposal.

(9) A comparison of the chemicals on the manifest with known methods of manufacture in order to identify other potential contaminants.

(10) A determination as to whether the methamphetamine manufacturing method included the use of chemicals containing mercury or lead, including lead acetate, mercuric chloride, or mercuric nitrate.

(c) A description of the areas to be sampled and the basis for the selection of the areas. This element of the PSA work plan shall also document the decision process used in determining not to sample particular areas. The PSA work plan shall consider both primary and secondary areas of concern.

(1) The primary areas of concern included in the work plan shall include all the following areas:

(A) Any area that has obvious staining caused by the use or manufacture of hazardous chemicals.

(B) Any processing or cooking area, with contamination caused by spills, boilovers, or explosions, or by chemical fumes and gases created during cooking. The area may include floors, walls, ceilings, glassware, and containers, working surfaces, furniture, carpeting, draperies and other textile products, plumbing fixtures and drains, and heating and air-conditioning vents.

(C) Any disposal area, including such indoor areas as sinks, toilets, bathtubs, plumbing traps and floor drains, vents, vent fans, and chimney flues and such outdoor areas that may be contaminated by dumping or burning on or near soil, surface water, groundwater, sewer or storm systems, septic systems, and cesspools.

(D) Chemical storage areas that may be contaminated by spills, leaks, or open containers.

(2) The secondary areas of concern shall include all of the following:

(A) Any location where contamination may have migrated, including hallways or other high traffic areas.

(B) Common areas in multiple dwellings, apartments, and adjacent apartments or rooms, or mobilehome parks and special occupancy parks, including adjacent permanent buildings, manufactured homes, mobilehomes, or recreational vehicles, and the floors, walls, ceilings, furniture, carpeting, light fixtures, blinds, draperies and other textile products in all of those areas.

(C) Common ventilation or plumbing systems in hotels, mobilehome parks, special occupancy parks, and multiple dwellings.

(d) Sampling protocols, analytical methods and laboratories to use and their relevant certifications or accreditations.

(e) A description of areas and items that will be remediated in lieu of sampling, if any.

(Amended by Stats. 2006, Ch. 789, Sec. 11. Effective January 1, 2007.)

25400.37. After a preliminary site assessment is completed in accordance with the PSA work plan, a PSA report shall be prepared and submitted to the local health officer. The PSA report shall be thorough and specific in reporting findings and recommendations and shall include all of the following:

(a) The location of the site, including all of the following, as applicable:

(1) Street address and mailing address of the contaminated property, the owner of record and mailing address, legal description, and clear directions for locating the property.

(2) (A) If the property is a manufactured home or mobilehome, the legal owner, as defined in Section 18005.8, each junior lienholder, as defined in Section 18005.3, and the registered owner, as defined in Section 18009.5.

(B) If the property is a recreational vehicle, the legal owner, as defined in Section 370 of the Vehicle Code, and the registered owner, as defined in Section 505 of the Vehicle Code.

(b) A site map, including a diagram of the contaminated property. The diagram shall include floor plans of affected buildings and local drinking water wells and nearby streams or other surface waters, if potentially impacted, and shall show the location of damage and contamination and the location of sampling points used in the preliminary site assessment. All sampling point locations shall be keyed to the sampling results and remediation recommendations.

(c) A description of the sampling methods and analytical protocols used in the preliminary site assessment.

(d) A description of the sampling results.

(e) Information regarding the background samples and results obtained.

(f) Specific recommendations, including methods, for remedial actions required to meet the human occupancy standards specified in Section 25400.16, including, but not limited to, any required decontamination, demolition, or disposal.

(g) A plan for postremediation site assessment, including specific sampling requirements and methodologies, and locations at which samples are to be obtained.

(Amended by Stats. 2006, Ch. 789, Sec. 12. Effective January 1, 2007.)

25400.38. The PSA work plan and PSA report shall be signed and notarized by the contractor responsible for the completion of the preliminary site assessment and by a certified industrial hygienist for sufficiency and completeness.

(Added by Stats. 2005, Ch. 570, Sec. 1. Effective January 1, 2006.)

25400.40. (a) A person shall not perform a preliminary site assessment or any remediation work pursuant to this chapter, including a decontamination, demolition, or disposal, unless the person has completed all of the following:

(1) Initial training pursuant to subparagraph (A) of paragraph (3) of, or paragraph (4) of, subdivision (e) of Section 5192 of Title 8 of the California Code of Regulations, as applicable. That training shall include elements listed pursuant to subparagraphs (A) to (G), inclusive, of paragraph (2) of subdivision (e) of Section 5192 of Title 8 of the California Code of Regulations.

(2) Annual refresher training pursuant to paragraph (8) of subdivision (e) of Section 5192 of Title 8 of the California Code of Regulations.

(3) Additional requirements as determined by the local health officer, or other applicable law.

(b) Training specified in paragraphs (1) and (2) of subdivision (a) shall be certified pursuant to paragraph (6) of subdivision (e) of Section 5192 of Title 8 of the California Code of Regulations.

(Added by Stats. 2005, Ch. 570, Sec. 1. Effective January 1, 2006.)

Article 7. Enforcement and Liability

(Article 7 added by Stats. 2005, Ch. 570, Sec. 1. Effective January 1, 2006.)

25400.45. (a) A property owner who does not provide a notice or disclosure required by this chapter is subject to a civil penalty in an amount of up to five thousand dollars ($5,000). A property owner shall also be assessed the full cost of all harm to public health or to the environment resulting from the property owner's failure to comply with this chapter.

(b) A person who violates an order issued by a local health officer pursuant to this chapter prohibiting the use or occupancy of a property or a portion thereof contaminated by a methamphetamine laboratory activity is subject to a civil penalty in an amount of up to five thousand dollars ($5,000).

(Amended by Stats. 2006, Ch. 789, Sec. 13. Effective January 1, 2007.)

25400.46. (a) A property owner who receives an order issued by a local health officer pursuant to Section 25400.22, or a property owner who owns property that is the subject of a notice posted pursuant to subdivision (i) of Section 25400.22, is liable for, and shall pay all of the following costs if it is determined that the property is contaminated:

(1) The cost of any testing.

(2) Any cost related to maintaining records with regard to the property.

(3) The cost of remediating the property, including any decontamination or disposal expenses.

(4) Any actual cost incurred by the local health officer or any other local or state agency resulting from the enforcement of this chapter and oversight of the implementation of the PSA work plan and the PSA report, with regard to that property.

(b) A person who conducts methamphetamine laboratory activity on or at property subject to subdivision (a), and who is not the owner of that property, is liable for, and shall reimburse the owner of the property for, any cost that property owner may incur pursuant to subdivision (a).

(c) The owner of a mobilehome, manufactured home, or recreational vehicle, in or about which a methamphetamine laboratory activity occurred, is liable for, and shall reimburse the owner of the real property on which the mobilehome, manufactured home, or recreational vehicle is located for, any cost the owner of the real property incurs pursuant to subdivision (a).

(Amended by Stats. 2006, Ch. 789, Sec. 14. Effective January 1, 2007.)

25400.47. (a) If the registered owner of a mobilehome, manufactured home, or recreational vehicle, in or about which methamphetamine laboratory activity occurred, does not take the action required by subdivision (b) of Section 25400.25, within 30 days, as required by the order issued by a local health officer, or does not pay the city or county for the costs of remediation specified in subdivision (c) of Section 25400.30, the mobilehome park or special occupancy park owner may immediately initiate the actions authorized by paragraph (5) of subdivision (c) of Section 25400.28, including, but not limited to, terminating the tenancy of the owner of the mobilehome, manufactured home, or recreational vehicle, if any, by a written noncurable three-day notice to quit, and not later than 30 days after restitution of possession of the real property, or vacation or abandonment of the tenancy, the mobilehome park or special occupancy park owner or operator may abate any nuisance and take any of the following actions:

(1) Remediate the mobilehome, manufactured home, or recreational vehicle in accordance with the requirements of this chapter, in compliance with the PSA workplan.

(2) Immediately cause an authorized contractor, to remove and dispose of the mobilehome, manufactured home, or recreational vehicle.

(3) Remove and dispose of the mobilehome, manufactured home, or recreational vehicle.

(4) In a special occupancy park, notwithstanding Section 3072 of the Civil Code or Sections 22851.3 or 22851.8 of the Vehicle Code, or in a mobilehome park, enforce a warehouseman's lien in accordance with Sections 7209 and 7210 of the Commercial Code against the recreational vehicle.

(b) If the owner of a mobilehome, manufactured home, or recreational vehicle, in or about which methamphetamine laboratory activity occurred, does not pay the city or county for the costs of remediation specified in subdivision (c) of Section 25400.30, or does not reimburse the mobilehome park or special occupancy park owner where the mobilehome, manufactured home, or recreational vehicle is located, for any cost that the mobilehome park owner incurs pursuant to this chapter to remediate the property, a mobilehome park owner may, in addition to any other remedy allowed
by law, treat the amount due as rent and serve a notice and initiate an action for nonpayment of rent as allowed by Section 798.56 of the Civil Code and a special occupancy park owner may treat the amount due as rent and serve a notice and initiate any action permitted for nonpayment of rent pursuant to the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of the Civil Code).

(c) (1) A warehouseman's lien may be enforced pursuant to paragraph (4) of subdivision (a) only if the notification specified in paragraph (c) of subdivision (2) of Section 7210 of the Commercial Code, in addition to including the itemized statement of the claim of the mobilehome park or special occupancy park owner, also includes an itemized statement of the city or county, if the city or county submits to the mobilehome park or special occupancy park owner a claim for the costs of remediation specified in subdivision (c) of Section 25400.30 at least 10 days before service of the notification.

(2) A mobilehome park or special occupancy park owner may satisfy a warehouseman's lien first from the proceeds of the sale of the mobilehome, manufactured home, or recreational vehicle.

(3) A warehouseman's lien enforced pursuant to this section that does not include a claim submitted by the city or county pursuant to paragraph (1) shall be deemed to meet the notification requirements of paragraph (1), but any balance of the proceeds of any sale shall be held pursuant to subdivision (6) of Section 7210 of the Commercial Code, for delivery on demand to the city or county, and thereafter to any person to whom the mobilehome park or special occupancy park owner would have been bound to deliver the mobilehome, manufactured home, or recreational vehicle.

(Added by Stats. 2006, Ch. 789, Sec. 15. Effective January 1, 2007.)

HEALTH AND SAFETY CODE

CHAPTER 6.10. CALIFORNIA LAND ENVIRONMENTAL RESTORATION AND REUSE ACT

(Chapter 6.10 added by Stats. 2001, Ch. 764, Sec. 1. Effective January 1, 2002.
Note: Chapters 6.91 (commencing with Section 25410) to 6.98 are located after Chapter 6.11, which follows this chapter.)

25401. This chapter shall be known, and may be cited as, the California Land Environmental Restoration and Reuse Act.

(Added by Stats. 2001, Ch. 764, Sec. 1. Effective January 1, 2002.)

25401.1. For purposes of this chapter, the following terms have the following meanings:

(a) "Department" means the Department of Toxic Substances Control.

(b) "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 25316.

(2) A hazardous waste, as defined in Section 25117.

(3) A waste, as defined in Section 13050 of the Water Code or as defined in paragraph (2) of subdivision (b) of Section 101075.

(c) "Local agency" means the local department, office, or other agency of a city or county designated pursuant to subdivision (a) of Section 25401.2.

(d) "Oversight agency" means the department or the regional board, as appropriate, that oversees a site investigation and remedial action pursuant to this chapter.

(e) "Person" means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, or corporation, including, but not limited to, a government corporation. "Person" also includes a city, county, city and county, district, commission, or the state, or a department, agency, or political subdivision thereof, an interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(f) "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been, or may have been, a release of hazardous material on or near the property, based on reasonably available information about the property and the area in its vicinity. A phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, historical aerial photographs of the property and the area in its vicinity, relevant files of federal, state, and local agencies, regulatory correspondence, records of prior releases of hazardous materials and environmental reports, database searches, visual and other surveys of the property, and interviews with available current and previous owners and operators of the property. A phase I environmental assessment does not require sampling or testing on or around a property.

(g) "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials that pose a threat to public health or the environment. A preliminary endangerment assessment shall be conducted in a manner that complies with the guidelines published by the department entitled "Preliminary Endangerment Assessment: Guidance Manual,"
and that evaluates whether a hazardous material has been discharged, threatens to discharge, or is discharging, to waters of the state. A preliminary endangerment assessment requires sampling and analysis of a property, a preliminary determination of the type and extent of hazardous materials release or threatened release on contamination of the property, and a preliminary evaluation of the risks that hazardous materials contamination of the property may pose to public health or the environment, including waters of the state.

(h) (1) "Property" means real property, as defined in Section 658 of the Civil Code.

(2) "Property" does not include any of the following:

(A) A site listed on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) or proposed for, and ranked as, qualifying for this list.

(B) A site on the list maintained by the department pursuant to Section 25356.

(C) An active or former federal military base or property that is or was owned by a department, agency, or instrumentality of the United States.

(D) A site that is, or becomes, subject to a corrective action order issued pursuant to Section 25187, or a site that is, or becomes, authorized or permitted pursuant to Chapter 6.5 (commencing with Section 25100) for the treatment, storage, or disposal of hazardous waste.

(E) A property for which a no-further-action determination has been issued by the department or a regional board, under applicable statutes or regulations.

(F) A site that is, or becomes, subject to a response or cleanup operation under Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code.

(G) A site that is, or becomes, subject to an order for corrective action issued pursuant to Part 5 (commencing with Section 45000) of Division 30 of the Public Resources Code.

(H) A site located within a redevelopment area established pursuant to Division 24 (commencing with Section 33000).

(I) A site that is larger than five acres of contiguous property under the same ownership, unless the site is an infill site, as defined in Section 21061.3 of the Public Resources Code.

(i) For purposes of this subparagraph, a "qualified urban use," as defined in Section 21072 of the Public Resources Code, includes an industrial use.

(ii) For purposes of this subparagraph, a parcel is adjoining or immediately adjacent to the site, as required by subdivision (a) of Section 21061.3 of the Public Resources Code, if the parcel is separated from the site only by an improved public right-of-way.

(J) A site that is owned by a state or local public agency.

(K) A site that is being used for productive agriculture.

(L) A site for which the owner or operator, within 60 days following receipt of a notice from a local agency issued pursuant to Section 25401.3 or 25401.4, enters into a voluntary agreement with an oversight agency to commence and complete a site investigation and remediation of the property under that oversight agency's oversight and jurisdiction.

(M) A site for which the owner or operator, within 60 days following receipt of a notice from a local agency issued pursuant to Section 25401.3 or 25401.4, requests the designation of an administering agency to oversee a site investigation and remedial action at the site pursuant to Chapter 6.65 (commencing with Section 25260).

(N) Property that is the subject of continuous expansion or improvement, and is owned or operated by an operating industrial or commercial activity.

(O) Residential property with an owner-occupied dwelling.

(P) Property occupied by a family-owned business that has no employees other than members of the family or a business that has no employees other than the owners.

(Q) Property that is dedicated to a public use by a public utility, as provided in Section 1007 of the Civil Code.

(R) Property acquired, to be acquired or proposed for use as a schoolsite, prior to its occupancy for a school, if a school district has entered into an enforceable environmental oversight agreement with the department to conduct a preliminary endangerment assessment or other response action at the property pursuant to Section 17213.1 of the Education Code. The exclusion provided in this subparagraph shall not apply if the school district determines, after entering into that agreement, not to pursue the use of the site as a school, or if the agreement between the department and the school district is terminated or expires.

(i) (1) "Qualified person" means one of the following:

(A) For activities conducted under Section 25401.6, an environmental assessor, as defined in paragraph (2).

(B) For activities conducted under Section 25401.7, an environmental assessor, as defined in paragraph (2), who also has demonstrated expertise in hazardous materials site investigation and cleanup.

(2) "Environmental assessor" means a class II environmental

assessor registered by the department pursuant to Chapter 6.98 (commencing with Section 25570), a professional engineer registered in this state, a geologist registered in this state, a certified engineering geologist registered in this state, or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science, engineering geology, or environmental or public health, or a directly related science field. In addition, a person who conducts a phase I environmental assessment shall have at least two years of experience in the preparation of those assessments and a person who conducts a preliminary endangerment assessment shall have at least three years of experience in conducting those assessments.

(j) "Reasonably foreseeable uses" means land uses that are authorized under the applicable general plan and zoning code, and any additional uses that are identified by the local land use agency as reasonably foreseeable uses for a property at the time the preliminary endangerment assessment for that property is being prepared pursuant to Section 25401.4 or 25401.6.

(k) "Remedial action" means a remedial action, as defined in subdivision (g) of Section 25260.

(l) "Remediation plan" means a proposal to complete a site investigation and a remedial action on a property, a schedule for the conduct of that site investigation and remedial action, the method for the oversight of those actions, and the state and local laws, ordinances, regulations, and standards that are applicable to those actions, for approval by the oversight agency pursuant to Section 25401.5 or 25401.7.

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

(n) "Release" has the same meaning as defined in Section 25320, but with respect to a hazardous material.

(o) "Responsible party" means a "responsible party" or "liable person" as defined in subdivision (a) of Section 25323.5, or a person subject to an order pursuant to subdivision (a) of Section 13304 of the Water Code.

(p) "Site investigation" has the same meaning as defined in Section 25260.

(q) "Written determination of completion" means a document issued by the oversight agency that certifies that a remedial action carried out pursuant to this chapter has been satisfactorily completed, in accordance with an approved remediation plan, that applicable remedial action standards and objectives have been achieved, that financial assurance for all operation and maintenance activities, if applicable, has been obtained, and that the property for which the written determination of completion is issued does not pose a significant risk to human health or the environment, does not impact the beneficial uses of waters of the state, and is in a condition that allows it permanently to be used for its reasonably foreseeable uses without any significant risk to human health or any significant potential for future environmental damage. The written determination of completion shall also specifically describe any conditions, restrictions, or limitations imposed on the site, including financial assurance, if applicable, and any land use controls placed on the property. The written determination of completion shall specifically identify the locations where the remediation plan that formed the basis of the determination is kept on file by the oversight agency and the local agency. These files shall be made available to the public upon request.

(Amended by Stats. 2006, Ch. 523, Sec. 1. Effective January 1, 2007.)

25401.2. (a) A city or county may elect to implement this chapter. If a city or county elects to implement this chapter, the governing body of the city or county shall adopt an implementing ordinance, which shall be consistent with this chapter and, in addition to including any other matter in the ordinance that the governing body of the city or county deems necessary, shall do all of the following:

(1) Designate a department, office, or other agency of the city or county as the local agency responsible for implementing and enforcing this chapter.

(2) Delineate the geographical areas of the city or county to which this chapter shall apply.

(3) Specify the administrative or civil penalties that apply to a person who does not submit to the local agency a phase I environmental assessment, preliminary endangerment assessment, or site investigation and remediation plan on or before the date that the document is required to be submitted pursuant to this chapter.

(4) Require the local agency to obtain the approval of the governing body of that local agency before it initiates a remedial action pursuant to Section 25401.7.

(5) Authorize the local agency to enter into an agreement with an oversight agency for a property, selected in accordance with this chapter, regarding the oversight agency's activities to review documents, assure implementation, perform other related site investigation and remediation activities, and provide for cost reimbursement.

(b) On or before April 1, 2002, the California Environmental Protection Agency shall establish guidelines for selecting the oversight agency to supervise the site investigation and remedial action of a property subject to this chapter. The guidelines shall do all of the following:

(1) Specify an address at the California Environmental Protection Agency to which the local agency shall send any phase I environmental assessments prepared pursuant to this chapter.

(2) Require that the oversight agency selected pursuant to this chapter to be either the department, the appropriate regional board, or a local agency, pursuant to paragraph (5).

(3) Specify the factors that shall be taken into account, and the criteria that shall be used to, select the oversight agency. The factors and criteria shall conform as closely as is feasible to the factors and criteria set forth in paragraph (1) of, and subparagraphs (A) and (B) of paragraph (2) of, subdivision (c) of Section 25262.

(4) Establish guidelines for transferring oversight responsibility for a property from the selected oversight agency to the agency that was not selected, as information on a property becomes available. The guidelines shall not authorize any transfer that unreasonably delays site investigations of properties and shall not authorize the transfer of a property subject to Section 25401.5 or 25401.7, if the transfer itself will delay the implementation of the schedule established in the remediation plan for the property, unless the local agency agrees to the transfer.

(5) Establish the conditions under which the oversight of a site investigation and remedial action at a property subject to this chapter may be delegated to a local agency and the conditions under which the delegation shall be withdrawn. The guidelines may authorize this delegation only if the local agency to provide the oversight is qualified, as specified in subparagraph (C) of paragraph (3) of subdivision (a) of Section 25404.1, or the local agency enters into an agreement with the State Water Resources Control Board to implement a local oversight program pursuant to subdivision (b) of Section 25297.1, and the local agency has jurisdiction over the property pursuant to that qualification or agreement. A local agency qualified to be delegated oversight authority pursuant to this paragraph shall only serve as an oversight agency under this chapter for remediation activities solely involving underground storage tanks or a remediation project that is exempt from Division 13 (commencing with Section 21000) of the Public Resources Code, pursuant to Section 21084 of the Public Resources Code. The guidelines shall also include a process for oversight and periodic compliance monitoring of a local agency that is qualified to be delegated oversight authority by an oversight agency.

(c) The establishment of guidelines pursuant to subdivision (b) is not the adoption of regulations for purposes of, and is not subject to, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The California Environmental Protection Agency shall make the guidelines available to any interested person upon request and shall post the guidelines on the agency's Internet Web site maintained by the California Environmental Protection Agency.

(d) On or before the 10th day of each month, representatives from the department and the State Water Resources Control Board shall review all phase I environmental assessments received by the California Environmental Protection Agency and, using the factors and criteria established pursuant to paragraph (3) of subdivision (b), shall jointly select the oversight agency for each property for which a phase I environmental assessment is received. Upon the selection of the oversight agency, the agency shall immediately transmit the phase I environmental assessment for that property to the selected oversight agency, which shall review and make the determination required by subdivision (d) of Section 25401.4 within 30 calendar days of the later of either of the following dates:

(1) When the agency receives the phase I environmental assessment.

(2) When the local agency enters into a written agreement with the oversight agency regarding reimbursement of the oversight agency's costs pursuant to paragraph (4) of subdivision (k) of Section 25401.4.

(e) The oversight agency shall ensure this chapter is implemented in compliance with all state and local laws, ordinances, regulations, and standards that are applicable to the site investigation and remedial activities at the property.

(Added by Stats. 2001, Ch. 764, Sec. 1. Effective January 1, 2002.)

25401.3. (a) A local agency that makes one of the findings specified in subdivision (b) may issue a notice to the owner or operator of a property requiring the owner or operator to provide the local agency with information in the possession or control of the owner or operator that, in the judgment of the local agency, may be relevant to determining if a hazardous materials release may be present on the property. This information may include, but is not limited to, any environmental assessment that has been prepared for the property, or any type of information that may be relevant to the preparation of a phase I environmental assessment, a preliminary endangerment assessment, or any other evaluation of environmental condition of the property.

(b) A local agency may issue a notice pursuant to subdivision (a), if the local agency makes one or more of the following findings:

(1) Hazardous materials are, or were, used, handled, stored, treated, transported, or disposed on the property.

(2) Current or former owners or operators of the property are, or were, engaged in activities that are, or were, commonly associated with the use, handling, storage, treatment, transport or disposal of hazardous materials.

(3) Information obtained from current or former owners or operators of the property, from their employees, or from persons in the surrounding community, provides a reasonable basis for believing that hazardous materials are, or were, used, handled, stored, treated, transported, or disposed on the property or that a hazardous materials release may have occurred on the property.

(4) Visual or other physical evidence provides a reasonable basis for believing that a hazardous materials release may have occurred on the property.

(5) There is other reasonable evidence that a hazardous materials release has occurred on the property.

(c) An owner or operator of a property that receives a notice pursuant to subdivision (a) shall provide the local agency with all information required by the notice that is in the possession or control of the owner or operator within 30 calendar days of the date of receipt of the notice.

(Added by Stats. 2001, Ch. 764, Sec. 1. Effective January 1, 2002.)

25401.4. (a) If a local agency determines, based on the information provided pursuant to Section 25401.3, that a property is, or may be affected by, a hazardous materials release, or threat of a release, the local agency shall make a finding that the property is, or may be affected by, the release. In response to the known or suspected release and in order to assure the protection of human health and the environment for the future uses of, and benefit to, the property, the local agency may then issue a notice requiring the owner or operator of a property to conduct a phase I environmental assessment of the property to determine if a hazardous materials release, or threat of a release, may be present and, if so, whether a preliminary endangerment assessment should be prepared for the site.

(b) An owner or operator that is required to conduct a phase I environmental assessment of a property pursuant to this section shall, within 60 calendar days of the date of receipt of a notice from the local agency requiring a phase I environmental assessment, prepare and deliver this assessment to the local agency. The local agency shall submit the phase I environmental assessment to the California Environmental Protection Agency which shall ensure an oversight agency is selected in a timely manner and shall ensure that the oversight agency reviews the phase I environmental assessment as required by subdivision (d).

(c) A phase I environmental assessment prepared pursuant to this section shall contain one of the following recommendations regarding the need for further environmental investigation of the property:

(1) Further environmental investigation of the property is not required.

(2) A preliminary endangerment assessment should be prepared to determine if one or more hazardous materials releases have occurred on the property and, if so, the type and extent of the releases.

(d) The oversight agency shall review a phase I environmental assessment submitted pursuant to subdivision (b), and shall determine if the phase I environmental assessment is adequate and the recommendation made in the phase I environmental assessment regarding the need for further environmental investigation and remedial action of the property is appropriate and supported by the information provided in the phase I environmental assessment. The oversight agency shall notify the local agency of its determination within 45 calendar days of the date it receives the phase I environmental assessment. If the oversight agency determines that a recommendation under paragraph (1) of subdivision (c) is made because there is no release or threat of a release of a hazardous material, the oversight agency shall issue a determination that no further action is required under this chapter.

(e) If the phase I environmental assessment that is prepared by the owner or operator of a property pursuant to this section recommends that further environmental investigation of the property is not required pursuant to subdivision (c), and if the property owner or operator has not submitted an application to the county or city to develop the property, the local agency shall reimburse the owner or operator for the reasonable costs of preparing the phase I environmental assessment within 90 calendar days of receipt of the phase I environmental assessment by the local agency.

(f) (1) If the owner or operator of a property has been reimbursed for the reasonable costs of preparing a phase I environmental assessment pursuant to subdivision (e) and subsequently submits an application to the county or city to develop the property that relies on that phase I environmental assessment, the owner or operator, or subsequent owner or operator, to the extent that the property has been sold, shall return that reimbursement to the local agency within 90 calendar days from the date of the sale or the effective date of discretionary local approval of the new development, whichever comes first.

(2) For purposes of this subdivision, a discretionary local agency approval means a local agency approval of a project, as defined in Section 21065 of the Public Resources Code.

(g) If the oversight agency determines that the phase I environmental assessment is not adequate or that a recommendation in the assessment is not appropriate, the local agency may require the owner or operator of the property to provide additional information or to prepare a preliminary endangerment assessment for the property.

(h) (1) If the oversight agency does not provide the local agency with the determination required by subdivision (d) within the required period of time, the local agency may find that the phase I environmental assessment is not adequate or that the recommendations made by the assessment are not appropriate. If the local agency makes such a finding, the local agency shall state the reasons for that finding and may require the owner or operator of the property to provide additional information in support of the recommendation.

(2) Paragraph (1) does not authorize a local agency to make a determination that the phase I environmental assessment shows that there is no further action required at the site, or to determine what, if any, further site investigation and remediation may be required, other than to require the owner or operator to provide information or prepare a preliminary endangerment assessment.

(i) The local agency may send the owner or operator of the property a notice requiring that the owner or operator prepare a preliminary endangerment assessment for review by the oversight agency and that the owner or operator deliver the preliminary endangerment assessment to the oversight agency, with a copy to the local agency within 120 calendar days of the date the owner or operator receives the notice, if the local agency determines that either of the following apply:

(1) The phase I environmental assessment recommends that a preliminary endangerment assessment be prepared for the property.

(2) The oversight agency reviewing the phase I environmental assessment determines that a preliminary endangerment assessment should be prepared.

(j) A preliminary endangerment assessment prepared pursuant to this section shall make one of the following findings:

(1) A hazardous materials release or threat of a release is not present on the property and no further action is required.

(2) Although a hazardous materials release is present on the property, the property is in a condition that allows it to be used permanently for its reasonably foreseeable uses without any significant risk to human health or any significant risk to public health, safety, and the environment, including potential for future environmental damage, and is protective of the waters of the state, in accordance with criteria set forth in Section 25356.1.5, in compliance with applicable law, and no further action is otherwise required.

(3) A hazardous materials release is present on the property and a site investigation and remedial action should be carried out by the owner or operator of the property to restore the property to a condition that allows it to be used for its reasonably foreseeable uses without any significant risk to public health, safety, and the environment, including any potential for future environmental damage, and is protective of the waters of the state, in accordance with the criteria set forth in Section 25356.1.5, in compliance with applicable law.

(k) If the oversight agency determines that the preliminary endangerment assessment is not adequate, or that the recommendations made by the assessment are not appropriate, the oversight agency shall state the reasons for that finding and may require the owner or operator of the property to provide additional information in support of the recommendation. If the oversight agency determines that the preliminary endangerment assessment is adequate and that the finding made by the preliminary endangerment assessment is appropriate, all of the following shall apply to the property:

(1) If the assessment makes the finding described in paragraph (1) of subdivision (j), the oversight agency shall issue the owner or operator a written determination that no further action is required, the owner or operator of the property shall be deemed to be in compliance with this chapter, and the local agency shall not require the owner or operator to take any further action pursuant to this chapter.

(2) If the assessment makes the finding described in paragraph (2) of subdivision (j), the oversight agency shall issue one of the following written determinations:

(A) After an owner or operator of the property remediates the property so that no restrictions apply to that property's future uses and the waters of the state are protected in compliance with applicable law, the oversight agency may issue a written determination that no further action is required.

(B) No further action is required on condition that specified future uses of the property are prohibited and the waters of the state are protected in compliance with applicable law. If the oversight agency proposes to make a determination that no further action is required and that determination is conditioned on a prohibition of future uses, the oversight agency shall notify the interested public of the proposed determination by publishing a notice in a newspaper of general circulation in the community and providing a public comment period of at least 30 days. Before making a final determination pursuant to this subparagraph, the oversight agency shall consider the public comments received by the oversight agency. The oversight agency may not issue a conditional determination that no further action is required pursuant to this subparagraph until the owner or operator records an easement, covenant, restriction, or servitude, or combination thereof, describing the future uses of the property that are permitted and those that are prohibited, in the same manner that a land use control is recorded pursuant to subdivision (a) of Section 25398.7. A conditional determination that no further action is required shall be valid only during the time that the uses of the property fully conform to that recorded land use control, easement, covenant, restriction, or servitude, or any combination thereof.

If the oversight agency makes a determination under this subparagraph that requires operation and maintenance activities, as defined in Section 25318.5, the owner shall demonstrate and maintain financial assurance in accordance with Section 25355.2 throughout the period of time necessary to complete all required operation and maintenance activities. The oversight agency shall not issue a determination under this subparagraph until the required financial assurance, if applicable, is obtained.

(3) If the finding is the finding described in paragraph (3) of subdivision (j), the local agency may take action pursuant to Section 25401.5.

(4) Prior to, or concurrent with, the oversight agency's review of the phase I environmental assessment, the local agency shall enter into an agreement with the oversight agency regarding the oversight agency's activities to review the phase I environmental assessment or preliminary endangerment assessment, assure implementation, perform other related site investigation activities, and provide for cost reimbursement pursuant to this chapter. The funds received for cost reimbursement provided by a local agency pursuant to the agreement are continuously appropriated to the oversight agency for expenditure for the purposes specified in the agreement.

(Added by Stats. 2001, Ch. 764, Sec. 1. Effective January 1, 2002.)

25401.5. (a) If the preliminary endangerment assessment prepared for the property pursuant to Section 25401.4 makes the finding described in paragraph (3) of subdivision (j) of Section 25401.4, the local agency or oversight agency may find, and issue a notice to the owner or operator of a property, that a site investigation and remedial action may be necessary.

(b) (1) The owner or operator of a site that receives a notice pursuant to subdivision (a) shall, within 90 calendar days of the date of receipt of the notice, provide the local agency and oversight agency with a remediation plan, which shall include a proposal, in compliance with the applicable law, regulations, and standards, for conducting a site investigation and remedial action, a schedule for completing the site investigation and remedial action, and a proposal for any other remedial action that the owner or operator proposes to take in response to the release or threatened release of hazardous materials at the property. The oversight agency may approve the remediation plan under any of the following procedures:

(A) A voluntary agreement with the oversight agency under Chapter 6.8 (commencing with Section 25300) or under Division 7 (commencing with Section 13000) of the Water Code.

(B) An enforceable agreement with the department to carry out the site investigation and remedial action pursuant to Chapter 6.8 (commencing with Section 25300).

(C) The procedure set forth in Chapter 6.85 (commencing with Section 25396).

(D) The procedure set forth in Chapter 6.65 (commencing with Section 25260).

(E) The procedure set forth in Chapter 5 (commencing with Section 13300) of Division 7 of the Water Code.

(2) The remediation plan proposed by an owner or operator shall be reviewed and, if satisfactory, approved by the oversight agency in compliance with all applicable state and local laws, regulations, ordinances, and standards. Any schedule extending beyond two years for the completion of a site investigation and remediation in the remediation plan shall not be approved unless the local agency and the oversight agency approve the schedule. The schedule or the remediation plan may not be modified by the owner or operator unless the oversight agency, following consultation with the local agency, approves the modification. An oversight agency shall comply with all applicable state and local laws, regulations, ordinances, and standards in reviewing, approving, and assuring implementation of a remediation plan.

(c) The owner or operator shall meet the schedule for carrying out the site investigation and remedial action approved pursuant to paragraph (2) of subdivision (b). If the owner or operator notifies the local agency pursuant to subdivision (d) that the owner or operator does not intend to carry out the required site investigation and remedial action pursuant to the remediation plan, or if the owner or operator does not comply with the schedule in the remediation plan, the local agency may take a remedial action pursuant to Section 25401.7.

(d) An owner or operator of property that satisfactorily completes a site investigation and remedial action at the site pursuant to an approved remediation plan, and that receives written notice from the oversight agency that no further action with respect to the property is required, shall be deemed in compliance with the requirements of this chapter and the local agency may not require the owner or operator to conduct any further action at the property for the hazardous materials release that is the subject of the remediation plan pursuant to this chapter.

(Added by Stats. 2001, Ch. 764, Sec. 1. Effective January 1, 2002.)

25401.6. (a) If a local agency determines that the owner or operator of a property did not submit a phase I environmental assessment or prepare a preliminary endangerment assessment in accordance with the schedule required by this chapter and the notice issued pursuant to Section 25401.4, the local agency shall provide a notice of noncompliance to the owner or operator.

(b) If the owner or operator does not, as determined by the local agency, comply with the notice of noncompliance within 14 calendar days of the

date of receipt of notice, and the local agency determines that a phase I environmental assessment or preliminary endangerment assessment is needed to protect human health and the environment based on the reasonably foreseeable uses of the property, or to protect waters of the state, the local agency may prepare a phase I environmental assessment or the preliminary endangerment assessment required by Section 25401.4, and bill the owner or operator of the property for all reasonable costs involved in preparing the phase I environmental assessment or preliminary endangerment assessment.

(c) If a phase I environmental assessment that is prepared by a local agency pursuant to this section recommends that a preliminary endangerment assessment be prepared pursuant to paragraph (2) of subdivision (c) of Section 25401.4, the owner or operator shall reimburse the local agency for the reasonable costs of preparing the phase I environmental assessment within 90 calendar days of the receipt of that phase I environmental assessment by the owner or operator.

(d) A local agency that prepares a phase I environmental assessment or a preliminary endangerment assessment for a property pursuant to Section 25401.4 may carry out the work itself or may contract with a qualified person to carry out the work. A phase I environmental assessment or a preliminary endangerment assessment prepared by a local agency or qualified person pursuant to this section shall meet the requirements of Section 25401.4 and shall be submitted to the oversight agency for review and approval. The oversight agency shall determine, in its review, whether the assessment is adequate and whether any recommendations made by the assessment regarding the
need for further environmental investigation or a site investigation and remedial action at the property are appropriate and supported by the assessment.

(Added by Stats. 2001, Ch. 764, Sec. 1. Effective January 1, 2002.)

25401.7. (a) (1) A local agency may initiate a remedial action pursuant to this chapter, if the governing body of the local agency, by resolution adopted by a majority vote of the membership of the governing body, approves the action, affirms the finding set forth in paragraph (3) of subdivision (j) of Section 25401.4, and makes one, or both, of the following findings:

(A) The owner or the operator of the property refuses to submit a remediation plan for review and approval by the oversight agency, or refuses to complete a site investigation and remedial action at the property, pursuant to the remediation plan for that property approved by the oversight agency pursuant to this chapter.

(B) The owner or operator of the property does not comply with the schedule for carrying out the site investigation and remedial action approved by the local agency and oversight agency pursuant to paragraph (2) of subdivision (b) of Section 25401.5, and the governing body determines there is no good cause for that noncompliance.

(2) A local agency may initiate a site investigation pursuant to this chapter if the owner or operator notifies the local agency that the owner or operator does not intend to carry out a required site investigation or if the owner or operator does not comply with the schedule in the remediation plan for making a site investigation, as specified in subdivision (c) of Section 25401.5.

(b) (1) Before initiating a remedial action, the local agency shall notify the property owner or operator that the governing body of the local agency has adopted the resolution required by subdivision (a), that the local agency will initiate the remedial action on the site 30 calendar days after the date the owner or operator receives the notice, that the governing body of the local agency has approved the action, and that the owner or operator is strictly liable for the reasonable costs of carrying out the remedial action and shall be billed by the local agency for those costs.

(2) Before initiating a site investigation, the local agency shall notify the property owner or operator that the local agency will initiate the site investigation on the site 30 calendar days after the date the owner or operator receives the notice, and that the owner or operator is strictly liable for the reasonable costs of carrying out the site investigation and shall be billed by the local agency for those costs.

(c) A local agency shall carry out a site investigation and remedial action under this section in compliance with all applicable state and local laws, regulations, ordinances, and standards, and pursuant to a remediation plan approved by the oversight agency. The oversight agency shall review the remediation plan, and if the oversight agency determines that the remediation plan is satisfactory, the oversight agency shall approve the remediation plan and oversee the site investigation and remedial action. The local agency shall enter into a contract with a qualified person to carry out the site investigation and approved remediation activities.

(d) (1) Upon determining that a local agency has satisfactorily completed a site investigation and remedial action under this section, in accordance with all applicable state and local laws, regulations, ordinances, and standards the oversight agency shall issue a written determination of completion to the local agency.

(2) If the remedial action requires operation and maintenance activities, as defined in Section 25318.5, financial assurance shall be demonstrated and maintained in accordance with Section 25355.2 throughout the period of time necessary to complete all required operation and maintenance activities. The oversight agency may not issue a written determination of completion until the required financial assurance, if applicable, is obtained.

(3) If the written determination of completion issued by the oversight agency pursuant to paragraph (1) is conditioned on a remediation plan that causes the property to be suitable for some, but not all, future uses, and that prohibits specified future uses of the property unless and until further remediation or the review and approval of the oversight agency is completed, the local agency shall require the current owner of the property to record a land use control for the benefit of the property that describes those prohibited future uses of the property in the same manner as a land use control is recorded pursuant to subdivision (a) of Section 25398.7. The conditional determination of completion shall not be effective until the owner causes the recordation of the land use control. The oversight agency may not issue a conditional written determination of completion, as provided in this paragraph, until the required land use is recorded and the required financial assurance is obtained.

(4) Any conditional written determination of completion shall be valid only during the time period in which the use of the property conforms to the recorded land use control, and is in compliance with all other conditions. If the use of the property does not conform to the recorded land use control, or fails to comply with any applicable condition, the immunities provided by Section 25402.1 shall no longer apply.

(e) The local agency shall enter into an agreement with the oversight agency regarding the oversight agency's activities to review and provide oversight of a site investigation, a remedial action, and any other action taken in response to a release or a threatened release of a hazardous material, and to provide for reimbursement for administrative and oversight costs incurred by the oversight agency, in conformance with the oversight agency's authority under applicable state laws and regulations, to be reimbursed for these administrative and oversight costs. The agreement shall be executed prior to the oversight agency's review of the site investigation.

(f) Any site investigation, remedial action, engineering, and geological work performed under this section shall be conducted in conformance with any applicable state law, including, but not limited to, Sections 6735 and 7835 of the Business and Professions Code.

(Added by Stats. 2001, Ch. 764, Sec. 1. Effective January 1, 2002.)

25401.8. (a) A local agency proposing to carry out remedial action pursuant to Section 25401.7, shall inform the community of its actions by doing all of the following:

(1) Mailing a fact sheet to the last known name and address of all organizations and individuals who have requested copies of all notices and actions by the local agency, contiguous property owners, all agencies that are members of the site designation committee under Section 25261, property owners or occupants within 500 feet of the affected property's boundary, and all other interested parties.

(2) Publishing a notice at least one time in a newspaper of general circulation in the area of the property, in English and in any other language that is spoken by a significant number of the residents in the area of the property identified pursuant to paragraph (1).

(3) Posting of a notice at the property.

(4) Direct mailing of a notice to the agencies comprising the site designation committee, as set forth in Section 25261.

(b) For a period of no less than 45 days following the date a notice is issued pursuant to subdivision (a), the local agency and the oversight agency shall provide access to any interested person during the regular business hours of the local agency and the oversight agency for the review of all of the following documents, and shall make copies available for

the actual and reasonable cost, that have been completed as of the time of the notice:

(1) The phase I environmental assessment.

(2) The preliminary endangerment assessment.

(3) Any site investigation or remedial action documents prepared pursuant to this chapter.

(c) Any interested person may provide written comments to the local agency and oversight agency regarding the adequacy of an assessment or a site investigation and remedial action for a period of no less than 30 days following the 45-day period specified in subdivision (b). The local agency shall respond, in writing, to the person providing a written comment, shall include any response provided by the oversight agency, and shall incorporate any response into the administrative record of the local agency's determinations with respect to the property. The oversight agency shall consider the public comments and the local agency's response prior to taking further action.

(d) The local agency shall hold a community meeting to gather public comments during the public comment period required by subdivision (c). The local agency shall include a summary of significant public comments made at the meeting and the response of the local agency to those comments in the administrative record of the local agency's determination with respect to the property.

(e) The community participation requirements set forth in this section are in addition to any other applicable public notice and community participation requirement that may apply to a site investigation and remedial action taken pursuant to this chapter, including, but not limited to, those requirements under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), and to any other law applicable to that oversight agency.

(f) Nothing in this chapter limits or otherwise affects the applicability of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or the public comment and hearing requirements otherwise applicable to that oversight agency in approving a site investigation and remedial plan under applicable law.

(Added by Stats. 2001, Ch. 764, Sec. 1. Effective January 1, 2002.)

25402. (a) (1) If a local agency requires the investigation or remediation of a property pursuant to this chapter, the owner or operator of the property shall be liable for any reasonable and necessary costs incurred by a local agency in taking any action pursuant to Section 25401.6 or 25401.7.

(2) A local agency may recover costs incurred to develop and implement a remediation plan, including the costs of reimbursing the oversight agency, approved pursuant to this chapter to the same extent the oversight agency is authorized to recover those costs.

(3) The scope and standard of liability for cost recovery by a local agency pursuant to this subdivision shall be the scope and standard of liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) as that act would apply to the oversight agency, except that any reference to a hazardous substance in that act shall be deemed to refer to a hazardous material, as defined in this chapter.

(4) The only defenses available to an owner and operator in any action to recover costs pursuant to this section are the defenses specified in subdivision (b) of Section 25323.5.

(b) An action for recovery of investigation and response costs incurred by a local agency shall commence within three years after completion of the remedial action at the property.

(c) The authority to recover costs provided by this section is in addition to, and is not to be construed as restricting, any other cause of action available to a local agency.

(d) This section applies only to local agencies, and does not affect the authority of the department or a regional board to recover costs under any state or federal statute.

(e) Except for the reimbursement of the oversight agency for its costs in accordance with paragraph (4) of subdivision (k) of Section 25401.4 and subdivision (e) of Section 25401.7, and notwithstanding any other provision of state law or policy, a local agency that undertakes and completes a site investigation and remedial action pursuant to a remediation plan approved by the oversight agency, that requests and receives data regarding environmental conditions on a property, or that otherwise causes an approved remediation plan to be undertaken and completed pursuant to this chapter, is not liable for any costs incurred by a responsible party for that release to investigate or remediate the release or to compensate others for the effects of that release.

(f) A local agency is not liable for the costs of investigating or remediating a release, or for compensating others for the effects of a release or other environmental conditions on the property, solely as a result of requiring an owner or operator to prepare a phase I environmental assessment, a preliminary endangerment assessment, or a site investigation or remediation plan, or requiring an owner or operator to complete a site investigation or remediation plan that has been approved by an oversight agency pursuant to this chapter.

(Added by Stats. 2001, Ch. 764, Sec. 1. Effective January 1, 2002.)

25402.1. (a) (1) Notwithstanding any other provision of law, and except as provided in paragraph (2), a local agency that undertakes and completes a site investigation and remedial action pursuant to this chapter, in accordance with a remediation plan that is reviewed and approved by an oversight agency and that receives a written determination of completion issued by the oversight agency, is not liable, with respect to any hazardous materials release that is identified and addressed in accordance with the remediation plan, under any of the following:

(A) Division 7 (commencing with Section 13000) of the Water Code.

(B) Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), or Chapter 6.8 (commencing with Section 25300).

(C) Any other state or local law providing liability for a remedial action for a release of a hazardous material.

(2) The written determination of completion shall be invalid, and the immunities provided by this section cease to apply if an oversight agency determines that any of the following applies:

(A) Monitoring, testing, or analysis of the property subsequent to the issuance of the written determination of completion indicates that the remedial action standards and objectives were not achieved or are not being maintained.

(B) One or more of the conditions, restrictions, or limitations imposed on the property as part of the remediation or written determination of completion are violated.

(C) Site monitoring or operation and maintenance activities that are required as part of the remedial action or written determination of completion for the property are not adequately funded or are not properly carried out.

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

(E) A material change in the facts known to the oversight agency at the time the written determination of completion was issued, or new facts, cause the oversight agency to find that further investigation and remedial action are required in order to prevent a significant risk to human health and safety or to the environment.

(F) A local agency or responsible party induced the oversight agency to issue the written determination of completion by fraudulent, negligent or intentional nondisclosure of information or misrepresentation.

(b) Upon an oversight agency's approval of a remediation plan pursuant to the oversight agency's authority under any applicable state law and this chapter, the director of the department, or the executive director of the regional board, as appropriate, shall acknowledge in writing that, upon proper completion of the site investigation and remedial action in accordance with the approved remediation plan and upon issuance of a written determination of completion by the oversight agency, the immunity provided by subdivision (a) shall apply to the local agency.

(c) Upon satisfactory completion of the site investigation and remedial action in accordance with the approved remediation plan, and upon issuance of a written determination of completion by the oversight agency to the local agency, the immunity provided by subdivision (a) extends to all of the following, but only for the hazardous materials release specifically identified in the approved remediation plan and not for any subsequent release or any release not specifically identified in the approved remediation plan:

(1) Any employee or agent of the local agency, including an instrumentality of the local agency authorized to exercise some, or all, of the powers of the local agency and any employee or agent of the

instrumentality.

(2) Any person who enters into an agreement with a local agency for the development of a property, if the agreement requires the person acquiring the property to remediate a hazardous materials release with respect to that property.

(3) Any person who acquires the property after a person has entered into an agreement with the local agency for development of other uses of the property as described in paragraph (2).

(4) Any person who provided financing to a person specified in paragraph (2) or (3).

(d) (1) Notwithstanding any other provision of law, the immunity provided by this section does not extend to any of the following:

(A) Any person who is a responsible party for the release before entering into an agreement, acquiring property, or providing financing, as specified in subdivision (c).

(B) Any person for any subsequent release of a hazardous material or any release of a hazardous material not specifically identified in the approved remediation plan.

(C) Any contractor who prepares the remediation plan, or conducts the remedial action.

(D) Any person who obtains a remediation plan approval or a written determination of completion under this chapter by fraud, negligent or intentional nondisclosure, or misrepresentation, and any person who knows before the approval or determination is obtained, or before the person enters into an agreement, acquires the property, or provides financing, that the approval or determination was obtained by these means.

(E) Any person, including, but not limited to, the local agency, that engages in gross negligence with respect to the site investigation or remediation of the property.

(2) Notwithstanding any other provision of law, the immunity provided in this section does not apply to, limit, alter, or restrict any of the following:

(A) Any cause of action by a local agency or any other party against the person, firm, or entity responsible for the hazardous materials release that is the subject of the site investigation and remedial action taken by the local agency or other person immune from liability pursuant to this section.

(B) Any action for personal injury, property damage, or wrongful death.

(e) The immunity provided by this section shall be provided in addition to any other immunity provided by existing law.

(Added by Stats. 2001, Ch. 764, Sec. 1. Effective January 1, 2002.)

25402.3. (a) Nothing in this chapter shall be construed to authorize a local agency to require a property owner or operator to develop or redevelop a property, or to require a property owner or operator to undertake a site investigation or remedial action that differs from what has been required or approved by the oversight agency.

(b) Nothing in this chapter shall be construed as a limitation on a local agency's land use authority.

(c) Notwithstanding Section 25402.1, nothing in this chapter affects the obligation of a school district to obtain the approval of the department regarding a schoolsite subject to Section 17210, 17210.1, 17213, or 17213.1 of the Education Code.

(d) Except as provided in Section 25402.1, this chapter does not affect the authority of the department, the State Water Resources Control Board, the regional boards, the Department of Fish and Game, or the Attorney General to pursue any existing legal, equitable, or administrative remedies pursuant to state or federal law.

(Added by Stats. 2001, Ch. 764, Sec. 1. Effective January 1, 2002.)

HEALTH AND SAFETY CODE

CHAPTER 6.11. UNIFIED HAZARDOUS WASTE AND HAZARDOUS MATERIALS MANAGEMENT REGULATORY PROGRAM

(Chapter 6.11 added by Stats. 1993, Ch. 418, Sec. 3.
Effective January 1, 1994.)

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) "Certified Unified Program Agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) "Participating Agency" or "PA" means a state or local 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 or enforce one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500),
and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) "Department" means the Department of Toxic Substances Control.

(3) "Minor violation" means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing, willful, or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation as provided in Section 25117.6.

(G) A class II violation committed by a chronic or a recalcitrant violator, as provided in Section 25117.6.

(H) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

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

(5) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(6) "Unified program facility permit" means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, are applicable to all of the following:

(i) Hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(ii) Persons managing perchlorate materials.

(iii) Persons subject to Article 10.1 (commencing with Section 25211) of Chapter 6.5.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirements of Chapter 6.67 (commencing with Section 25270) concerning aboveground storage tanks.

(3) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(4) The requirements of Article 1 (commencing with Section 25500) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) (A) No later than January 1, 2010, the secretary shall establish a statewide information management system capable of receiving all data collected by the unified program agencies and reported by regulated businesses pursuant to this subdivision and Section 25504.1, in a manner that is most cost efficient and effective for both the regulated businesses and state and local agencies. The secretary shall prescribe an XML or other compatible Web-based format for the transfer of data from CUPAs and regulated businesses and make all nonconfidential data available on the Internet.

(B) The secretary shall establish milestones to measure the implementation of the statewide information management system and shall provide periodic status updates to interested parties.

(3) (A) (i) Except as provided in subparagraph (B), in addition to any other funding that becomes available, the secretary shall increase the oversight surcharge provided for in subdivision (b) of Section 25404.5 by an amount necessary to meet the requirements of this subdivision for a period of three years, to establish the statewide information management system, consistent with paragraph (2). The increase in the oversight surcharge shall not exceed twenty-five dollars ($25) in any one year of the three-year period. The secretary shall thereafter maintain the statewide information management system, funded by the assessment the secretary is authorized to impose pursuant to Section 25404.5.

(ii) No less than 75 percent of the additional funding raised pursuant to clause (i) shall be provided to CUPAs and PAs through grant funds in the amounts determined by the secretary to assist these local agencies in meeting these information management system requirements.

(B) A facility that is owned or operated by the federal government and that is subject to the unified program shall pay the surcharge required by this paragraph to the extent authorized by federal law.

(C) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) No later than three years after the statewide information management system is established, each CUPA, PA, and regulated business shall report program data electronically. The secretary shall work with the CUPAs to develop a phased in schedule for the electronic collection and submittal of information to be included in the statewide information management system, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary, in making this determination shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide information management system shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials.

(5) The secretary, in collaboration with the CUPAs, shall provide technical assistance to regulated businesses to comply with the electronic reporting requirements and may expend funds identified in clause (i) of subparagraph (A) of paragraph (3) for that purpose.

(Amended by Stats. 2008, Ch. 571, Sec. 1. Effective January 1, 2009.)

25404.1. (a) (1) All aspects of the unified program related to the adoption and interpretation of statewide standards and requirements shall be the responsibility of the state agency which is charged with that responsibility under existing law. For underground storage tanks, that agency shall be the State Water Resources Control Board. The California regional water quality control boards shall have responsibility for the issuance of variances pursuant to subdivision (b) of Section 25299.4. The Department of Toxic Substances Control shall have the sole responsibility for the issuances of variances from the requirements of Chapter 6.5 (commencing with Section 25100) and the regulations adopted pursuant thereto, for the determination of whether or not a waste is hazardous or nonhazardous, for the determination of whether or not a person is eligible to be deemed to be operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department, and for the suspension and revocation of permits-by-rule, conditional authorizations, and conditional exemptions.

(2) Except as provided in paragraphs (1) and (3), those aspects of the unified program related to the application of statewide standards to particular facilities, including the issuance of unified program facility permits, the review of reports and plans, environmental assessment, compliance and correction, and the enforcement of those standards and requirements against particular facilities, shall be the responsibility of the unified program agencies.

(3) (A) Except in those jurisdictions for which the UPA has been determined by the department, in accordance with regulations adopted pursuant to subparagraph (C), to be qualified to implement the environmental assessment and removal and remediation corrective action aspects of the unified program, the department shall have sole responsibility and authority under the unified program for all of the following:

(i) Implementing and enforcing the requirements of paragraph (3) of subdivision (c) of Section 25200.3 and Sections 25200.10 and 25200.14, and the regulations adopted by the department to implement those sections. As a pilot program in up to 10 counties, pending the adoption and implementation of regulations pursuant to subparagraph (C), the department may delegate to the CUPA, through a delegation agreement, responsibility and authority for implementing and enforcing the requirements of Section 25200.14.

(ii) The issuance of orders under Section 25187 requiring removal or remedial action.

(iii) The issuance of orders under Section 25187.1.

(B) Notwithstanding subparagraph (A), a UPA may issue an order under Section 25187 specifying a schedule for compliance or correction and imposing an administrative penalty for any violation of the requirements of Chapter 6.5 (commencing with Section 25100) listed in paragraph (1) of subdivision (c) of Section 25404, or the requirements of any permit, rule, regulation, standard or requirement issued or adopted pursuant to the requirements of Chapter 6.5 (commencing with Section 25100) listed in paragraph (1) of subdivision (c) of Section 25404, if one of the following applies:

(i) The order does not require removal or remedial action.

(ii) The only removal or remedial actions required by the order are those actions determined to be necessary to address an imminent and substantial endangerment based upon a finding by the UPA pursuant to subdivision (f) of Section 25187.

(C) The department shall adopt emergency regulations specifying the criteria and procedures for implementing paragraph (3) of subdivision (c) of Section 25200.3 and Sections 25200.10 and 25200.14, including criteria and procedures for determining whether or not a unified program agency is qualified to implement the environmental assessment and removal and remediation corrective action portions of the unified program under paragraph (3) of subdivision (c) of Section 25200.3 and Sections 25187, 25187.1, 25200.10, and 25200.14. The criteria for determining whether a unified program agency is qualified shall, at a minimum, include consideration of the following factors:

(i) Adequacy of the technical expertise possessed by the unified program agency.

(ii) Adequacy of staff resources.

(iii) Adequacy of budget resources and funding mechanisms.

(iv) Training requirements.

(v) Past performance in implementing and enforcing requirements related to environmental assessments, and removal and remediation corrective actions.

(vi) Recordkeeping and accounting systems.

(D) The regulations adopted by the department pursuant to subparagraph (C) shall include provisions to ensure coordinated and consistent application of paragraph (3) of subdivision (c) of Section 25200.3 and Sections 25187, 25187.1, 25200.10, and 25200.14, when both the department and the unified program agency are, or will be, implementing and enforcing the requirements of one or more of these sections at the same facility.

(E) For purposes of subparagraph (D), "facility" means the entire site that is under the control of the owner or operator.

(F) If the department is designated as a unified program agency, the department is deemed qualified to implement all of the following:

(i) The environmental assessment, removal and remedial action, and corrective action aspects of the unified program.

(ii) Paragraph (3) of subdivision (c) of Section 25300.3, Sections 25200.10, 25200.14, 25187, and 25287.1, and the regulations adopted by the department to implement those provisions.

(b) (1) On or before January 1, 1996, each county shall apply to the secretary to be certified as a unified program agency to implement the unified program within the unincorporated area of the county and within each city in the county, in which area or city, as of January 1, 1996, the city or other local agency has not applied to be the certified unified program agency.

(2) (A) Any city or other local agency which, as of December 31, 1995, has been designated as an administering agency pursuant to Section 25502, or which has assumed responsibility for the implementation of Chapter 6.7 (commencing with Section 25280) pursuant to Section 25283, may apply to the secretary to become the certified unified program agency to implement the unified program within the jurisdictional boundaries of the city or local agency.

(B) A city or other local agency which, as of December 31, 1995, has not been designated as an administering agency pursuant to Section 25502, or which has not assumed responsibility for the implementation of Chapter 6.7 (commencing with Section 25280) pursuant to Section 25283, may apply to the secretary to become the certified unified program agency within the jurisdictional boundaries of the city or local agency if it enters into an agreement with the county to become the certified unified program agency within those boundaries. A county shall not refuse to enter into an agreement unless it specifies in writing its reasons for failing to enter into the agreement. However, if the city does not enter into the agreement with the county, within 30 days of receiving a county's reasons for failing to enter into agreement, a city may request that the secretary allow it to apply to be a certified unified program agency and the secretary may, in his or her discretion, approve the request.

(3) A city, county, or other local agency may propose, in its application for certification to the secretary, to allow other public agencies to implement certain elements of the unified program, but the secretary shall accept that proposal only if the secretary makes the findings specified in subdivision (d) of Section 25404.3.

(4) If a city or other local agency which, as of December 31, 1995, has been designated as an administering agency pursuant to Section 25502, or has assumed responsibility for the implementation of Chapter 6.7 (commencing with Section 25280) pursuant to Section 25283, requests that the county propose in its application for certification to the secretary that the city or local agency implement, within the jurisdictional boundaries of the city or local agency, those elements of the unified program which, as of December 31, 1995, the city or local agency has authority to administer, the county shall grant that request. If such an agency is subsequently removed or withdraws from the unified program, the agency shall not act as an administering agency under Section 25502 or act as a local agency pursuant to Chapter 6.7 (commencing with Section 25280), except as provided in subdivision (c) of Section 25283.

(Amended by Stats. 2000, Ch. 144, Sec. 6. Effective July 19, 2000.)

25404.1.1. (a) If the unified program agency determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that the UPA is authorized to enforce or implement pursuant to this chapter, the UPA may issue an administrative enforcement order requiring that the violation be corrected and imposing an administrative penalty, in accordance with the following:

(1) Except as provided in paragraph (5), if the order is for a violation of Chapter 6.5 (commencing with Section 25100), the violator shall be subject to the applicable administrative penalties provided by that chapter.

(2) If the order is for a violation of Chapter 6.7 (commencing with Section 25280), the violator shall be subject to the applicable civil penalties provided in subdivisions (a), (b), (c), and (e) of Section 25299.

(3) If the order is for a violation of Article 1 (commencing with Section 25500) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25514.5.

(4) If the order is for a violation of Article 2 (commencing with Section 25531) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25540 or 25540.5.

(5) If the order is for a violation of Section 25270.4.5, the violator shall be liable for a penalty of not more than five thousand dollars ($5,000) for each day on which the violation continues. If the violator commits a second or subsequent violation, a penalty of not more than ten thousand dollars ($10,000) for each day on which the violation continues may be imposed.

(b) In establishing a penalty amount and ordering that the violation be corrected pursuant to this section, the UPA shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the penalty, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

(c) Any order issued pursuant to this section shall be served by personal service or certified mail and shall inform the person served of the right to a hearing. If the UPA issues an order pursuant to this section, the order shall state whether the hearing procedure specified in paragraph (2) of subdivision (e) may be requested by the person receiving the order.

(d) Any person served with an order pursuant to this section who has been unable to resolve any violation with the UPA, may within 15 days after service of the order, request a hearing pursuant to subdivision (e) by filing with the UPA a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(e) Except as provided in subparagraph (B) of paragraph (2), a person requesting a hearing on an order issued by the UPA under this section may select the hearing officer specified in either paragraph (1) or (2) in the notice of defense filed with the UPA pursuant to subdivision (d). If a notice of defense is filed but no hearing officer is selected, the UPA may select the hearing officer. Within 90 days of receipt of the notice of defense by the UPA, the hearing shall be scheduled using one of the following:

(1) An administrative law judge of the Office of Administrative Hearings of the Department of General Services, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions.

(2) (A) A hearing officer designated by the UPA, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions. When a hearing is conducted by a UPA hearing officer pursuant to this paragraph, the UPA shall issue a decision within 60 days after the hearing is conducted. Each hearing officer designated by a UPA shall meet the requirements of Section 11425.30 of the Government Code and any other applicable restriction.

(B) A UPA, or a person requesting a hearing on an order issued by a UPA may select the hearing process specified in this paragraph in a notice of defense filed pursuant to subdivision (d) only if the UPA has, as of the date the order is issued pursuant to subdivision (c), selected a designated hearing officer and established a program for conducting a hearing in accordance with this paragraph.

(f) The hearing decision issued pursuant to paragraph (2) of subdivision (e) shall be effective and final upon issuance by the UPA. A copy of the decision shall be served by personal service or by certified mail upon the party served with the order, or their representative, if any.

(g) Any provision of an order issued under this section, except the imposition of an administrative penalty, shall take effect upon issuance by the UPA if the UPA finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment. A request for a hearing shall not stay the effect of that provision of the order pending a hearing decision. However, if the UPA determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, the order as a whole,

except the imposition of an administrative penalty, shall take effect upon issuance by the UPA. A request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.

(h) A decision issued pursuant to paragraph (2) of subdivision (e) may be reviewed by a court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this section, the court shall uphold the decision of the UPA if the decision is based upon substantial evidence in the record as a whole. The filing of a petition for writ of mandate shall not stay any action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(i) All administrative penalties collected from actions brought by a UPA pursuant to this section shall be paid to the UPA that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the activities of the UPA in enforcing this chapter.

(j) The UPA shall consult with the district attorney, county counsel, or city attorney on the development of policies to be followed in exercising the authority delegated pursuant to this section as it relates to the authority of the UPA to issue orders.

(k) (1) A unified program agency may suspend or revoke any unified program facility permit, or an element of a unified program facility permit, for not paying the permit fee or a fine or penalty associated with the permit in accordance with the procedures specified in this subdivision.

(2) If a permittee does not comply with a written notice from the unified program agency to the permittee to make the payments specified in paragraph (1) by the required date provided in the notice, the unified program agency may suspend or revoke the permit or permit element. If the permit or permit element is suspended or revoked, the permittee shall immediately discontinue operating that facility or function of the facility to which the permit element applies until the permit is reinstated or reissued.

(3) A permittee may request a hearing to appeal the suspension or revocation of a permit or element of a permit pursuant to this subdivision by requesting a hearing using the procedures provided in subdivision (d).

(l) This section does not do any of the following:

(1) Otherwise affect the authority of a UPA to take any other action authorized by any other provision of law, except the UPA shall not require a person to pay a penalty pursuant to this section and pursuant to a local ordinance for the same violation.

(2) Restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

(3) Prevent the UPA from cooperating with, or participating in, a proceeding specified in paragraph (2).

(Amended by Stats. 2007, Ch. 626, Sec. 22. Effective January 1, 2008.)

25404.1.2. (a) (1) An authorized representative of the UPA, who in the course of conducting an inspection, detects a minor violation, shall take an enforcement action as to the minor violation only in accordance with this section.

(2) In any proceeding concerning an enforcement action taken pursuant to this section, there shall be a rebuttable presumption upholding the determination made by the UPA regarding whether the violation is a minor violation.

(b) A notice to comply shall be the only means by which a UPA may cite a minor violation, unless the person cited fails to correct the violation or fails to submit the certification of correction within the time period prescribed in the notice, in which case the UPA may take any enforcement action, including imposing a penalty, as authorized by this chapter.

(c) (1) A person who receives a notice to comply detailing a minor violation shall have not more than 30 days from the date of the notice to comply in which to correct any violation cited in the notice to comply. Within five working days of correcting the violation, the person cited or an authorized representative shall sign the notice to comply, certifying that any violation has been corrected, and return the notice to the UPA.

(2) A false certification that a violation has been corrected is punishable as a misdemeanor.

(3) The effective date of the certification that any violation has been corrected shall be the date that it is postmarked.

(d) If a notice to comply is issued, a single notice to comply shall be issued for all minor violations noted during the inspection, and the notice to comply shall list all of the minor violations and the manner in which each of the minor violations may be brought into compliance.

(e) If a person who receives a notice to comply pursuant to subdivision (a) disagrees with one or more of the alleged violations listed on the notice to comply, the person shall provide the UPA a written notice of disagreement along with the returned signed notice to comply. If the person disagrees with all of the alleged violations, the written notice of disagreement shall be returned in lieu of the signed certification of correction within 30 days of the date of issuance of the notice to comply. If the issuing agency takes administrative enforcement action on the basis of the disputed violation, that action may be appealed in the same manner as any other alleged violation under Section 25404.1.1.

(f) This section may not be construed as doing any of the following:

(1) Preventing the reinspection of a facility to ensure compliance with this chapter or to ensure that minor violations cited in a notice to comply have been corrected and that the facility is in compliance with those laws and regulations within the jurisdiction of the UPA.

(2) Preventing the UPA from requiring a person to submit necessary documentation needed to support the person's claim of compliance pursuant to subdivision (c).

(3) Restricting the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

(4) Preventing the UPA from cooperating with, or participating in, a proceeding specified in paragraph (3).

(Amended by Stats. 2005, Ch. 388, Sec. 3. Effective January 1, 2006.)

25404.1.3. (a) A unified program agency may apply to the clerk of the appropriate court for a judgment to collect an administrative penalty for an administrative order or decision that has become final pursuant to subdivision (d) or (f) of Section 25404.1.1 and imposes a penalty pursuant to Section 25401.1.1, if a petition for judicial review of the final order or decision has not been filed within the time limits prescribed in Section 11523 of the Government Code.

(b) The UPA's application to the court clerk shall include a certified copy of the final administrative order or decision that copy of the order or decision constitutes a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

(Added by Stats. 2003, Ch. 696, Sec. 4. Effective January 1, 2004.)

25404.2. (a) The unified program agencies in each jurisdiction shall do all of the following:

(1) (A) The certified unified program agency shall develop and implement a procedure for issuing, to a unified program facility, a unified program facility permit which would replace any permit required by Section 25284 and any permit or authorization required under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but which would not replace a permit issued pursuant to a local ordinance which incorporates provisions of the Uniform Fire Code and Uniform Building Code.

(B) The unified program facility permit, and, if applicable, an authorization to operate pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department, are the only grants of authorization required under the unified program elements specified in subdivision (c) of Section 25404.

(C) The unified program agencies shall enforce the elements of a unified program facility permit in the same manner as the permits replaced by the unified program facility permit would be enforced.

(D) If a unified program facility is operating pursuant to the applicable grants of authorization which would otherwise be included in a unified program facility permit for the activities in which the facility is engaged, the unified program agencies shall not require that unified program facility to obtain a unified program facility permit as a condition of operating pursuant to the unified program elements specified in subdivision (c) of Section 25404 and any permit or authorization required under any local

ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials.

(E) This subparagraph applies to unified program facilities which have existing, not yet expired, grants of authorization for some, but not all, of the authorization requirements encompassed in the unified program facility permit. When issuing a unified program facility permit to such a unified program facility, the unified program agency shall incorporate, by reference, into the unified program facility permit any of the facility's existing, not yet expired, grants of authorization.

(2) To the maximum extent feasible within statutory constraints, the certified unified program agency, in conjunction with participating agencies, shall consolidate, coordinate, and make consistent any local or regional regulations, ordinances, requirements, or guidance documents related to the implementation of the provisions specified in subdivision (c) of Section 25404 or pursuant to any regional or local ordinance or regulation pertaining to hazardous waste or hazardous materials. This paragraph does not affect the authority of a unified program agency with regard to the preemption of the unified program agency's authority under state law.

(3) The certified unified program agency, in conjunction with participating agencies, shall develop and implement a single, unified inspection and enforcement program to ensure coordinated, efficient, and effective enforcement of the provisions specified in subdivision (c) of Section 25404, and any local ordinance or regulation pertaining to the handling of hazardous waste or hazardous materials.

(4) The certified unified program agency, in conjunction with participating agencies, shall coordinate, to the maximum extent feasible, the single, unified inspection and enforcement program with the inspection and enforcement program of other federal, state, regional, and local agencies which affect facilities regulated by the unified program. This paragraph does not prohibit the unified program agencies, or any other agency, from conducting inspections, or from undertaking any other enforcement-related activity, without giving prior notice to the regulated entity, except where the prior notice is otherwise required by law.

(b) An employee or authorized representative of a unified program agency or a state agency acting pursuant to this chapter has the authority specified in Section 25185, with respect to the premises of a handler, and in Section 25185.5, with respect to real property which is within 2,000 feet of the premises of a handler, except that this authority shall include inspections concerning hazardous material, in addition to hazardous waste.

(c) Each air quality management district or air pollution control district, each publicly owned treatment works, and each office, board, and department within the California Environmental Protection Agency, shall coordinate, to the maximum extent feasible, those aspects of its inspection and enforcement program which affect facilities regulated by the unified program with the inspection and enforcement programs of each certified unified program agency.

(d) The certified unified program agency, in conjunction with participating agencies, may incorporate, as part of the unified program within its jurisdiction, the implementation and enforcement of laws which the unified program agencies are authorized to implement and enforce, other than those specified in subdivision (c) of Section 25404, if that incorporation will not impair the ability of the unified program agencies to fully implement the requirements of subdivision (a).

(e) (1) The withdrawal of an application for a unified program facility permit after it has been filed with the unified program agency shall not, unless the unified program agency consents in writing to the withdrawal, deprive the unified program agencies of their authority to institute or continue a proceeding against the applicant for the denial of the unified program facility permit upon any ground provided by law, and such a withdrawal shall not affect the authority of the unified program agencies to institute or continue a proceeding against the applicant pertaining to any violation of the requirements specified in subdivision (c) of Section 25404 or of any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials.

(2) The suspension, expiration, or forfeiture by operation of law of a unified program facility permit, or its suspension, forfeiture, or cancellation by the unified program agency or by order of a court, or its surrender or attempted or actual transfer without the written consent of the unified program agency shall not affect the authority of the unified program agencies to institute or continue a disciplinary proceeding against the holder of a unified program facility permit upon any ground, or otherwise taking an action against the holder of a unified program facility permit on these grounds.

(Amended by Stats. 1995, Ch. 639, Sec. 65. Effective January 1, 1996.)

25404.3. (a) The secretary shall, within a reasonable time after submission of a complete application for certification pursuant to Section 25404.2, and regulations adopted pursuant to that section, but not to exceed 180 days, review the application, and, after holding a public hearing, determine if the application should be approved. Before disapproving an application for certification, the secretary shall submit to the applicant agency a notification of the secretary's intent to disapprove the application, in which the secretary shall specify the reasons why the applicant agency does not have the capability or the resources to fully implement and enforce the unified program in a manner that is consistent with the regulations implementing the unified program adopted by the secretary pursuant to this chapter. The secretary shall provide the applicant agency with a reasonable time to respond to the reasons specified in the notification and to correct deficiencies in its application. The applicant agency may request a second public hearing, at which the secretary shall hear the applicant agency's response to the reasons specified in the notification.

(b) In determining whether an applicant agency should be certified, or designated as certified, the secretary, after receiving comments from the director, the Director of the Office of Emergency Services, the State Fire Marshal, and the Executive Officers and Chairpersons of the State Water Resources Control Board and the California regional water quality control boards, shall consider at least all of the following factors:

(1) Adequacy of the technical expertise possessed by each unified program agency that will be implementing each element of the unified program, including, but not limited to, whether the agency responsible for implementing and enforcing the requirements of Chapter 6.5 (commencing with Section 25100) satisfies the requirements of Section 15260 of Title 27 of the California Code of Regulations.

(2) Adequacy of staff resources.

(3) Adequacy of budget resources and funding mechanisms.

(4) Training requirements.

(5) Past performance in implementing and enforcing requirements related to the handling of hazardous materials and hazardous waste.

(6) Recordkeeping and cost accounting systems.

(7) Compliance with the criteria in Section 15170 of Title 27 of the California Code of Regulations.

(c) (1) In making the determination of whether or not to certify a particular applicant agency as a certified unified program agency, the secretary shall consider the applications of every other applicant agency applying to be a certified unified program agency within the same county, in order to determine the impact of each certification decision on the county. If the secretary identifies that there may be adverse impacts on the county if any particular agency in a county is certified, the secretary shall work cooperatively with each affected agency to address the secretary's concerns.

(2) The secretary shall not certify an agency to be a certified unified program agency unless the secretary finds both of the following:

(A) The unified program will be implemented in a coordinated and consistent manner throughout the entire county in which the applicant agency is located.

(B) The administration of the unified program throughout the entire county in which the applicant agency is located will be less fragmented between jurisdictions, as compared to before January 1, 1994, with regard to the administration of the provisions specified in subdivision (c) of Section 25404.

(d) (1) The secretary shall not certify an applicant agency that proposes to allow participating agencies to implement certain elements of the unified program unless the secretary makes all of the following findings:

(A) The applicant agency has adequate authority, and has in place adequate systems, protocols, and agreements, to ensure that the actions of the other agencies proposed to implement certain elements of the unified program are fully coordinated and consistent with each other and with those of the applicant agency, and to ensure full compliance with the regulations implementing the unified program adopted by the secretary pursuant to this chapter.

(B) An agreement between the applicant and other agencies proposed to implement any elements of the unified program contains procedures for removing any agencies proposed and engaged to implement any element of the unified program. The procedures in the agreement shall include, at a minimum,

provisions for providing notice, stating causes, taking public comment, making appeals, and resolving disputes.

(C) The other agencies proposed to implement certain elements of the unified program have the capability and resources to implement those elements, taking into account the factors designated in subdivision (b).

(D) All other agencies proposed to implement certain elements of the unified program shall maintain an agreement with the applicant agency that ensures that the requirements of Section 25404.2 will be fully implemented.

(E) If the applicant agency proposes that any agency other than itself will be responsible for implementing aspects of the single fee system imposed pursuant to Section 25404.5, the applicant agency maintains an agreement with that agency that ensures that the fee system is implemented in a fully consistent and coordinated manner, and that ensures that each participating agency receives the amount that it determines to constitute its necessary and reasonable costs of implementing the element or elements of the unified program that it is responsible for implementing.

(2) After the secretary has certified an applicant agency pursuant to this subdivision, that agency shall obtain the approval of the secretary before removing and replacing a participating agency that is implementing an element of the unified program.

(3) Any state agency, including, but not limited to, the State Department of Health Services, acting as a participating agency, may contract with a unified program agency to implement or enforce the unified program.

(e) Until a city's or county's application for certification to implement the unified program is acted upon by the secretary, the roles, responsibilities, and authority for implementing the programs identified in subdivision (c) of Section 25404 that existed in that city or county pursuant to statutory authorization as of December 31, 1993, shall remain in effect.

(f) (1) Except as provided in subparagraph (C) of paragraph (2) or in Section 25404.8, if no local agency has been certified by January 1, 1997, to implement the unified program within a city, the secretary shall designate either the county in which the city is located or another agency pursuant to subparagraph (A) of paragraph (2) as the unified program agency.

(2) (A) Except as provided in subparagraph (C), if no local agency has been certified by January 1, 2001, to implement the unified program within the unincorporated or an incorporated area of a county, the secretary shall determine how the unified program shall be implemented in the unincorporated area of the county, and in any city in which there is no agency certified to implement the unified program. In such an instance, the secretary shall work in consultation with the county and cities to determine which state or local agency or combination of state and local agencies should implement the unified program, and shall determine which state or local agency shall be designated as the certified unified program agency.

(B) The secretary shall determine the method by which the unified program shall be implemented throughout the county and may select any combination of the following implementation methods:

(i) The certification of a state or local agency as a certified unified program agency.

(ii) The certification of an agency from another county as the certified unified program agency.

(iii) The certification of a joint powers agency as the certified unified program agency.

(C) Notwithstanding paragraph (1) and subparagraphs (A) and (B), if the Cities of Sunnyvale, Anaheim, and Santa Ana prevail in litigation filed in 1997 against the secretary, and, to the extent the secretary determines that these three cities meet the requirements for certification, the secretary may certify these cities as certified unified program agencies.

(g) (1) If a certified unified program agency wishes to withdraw from its obligations to implement the unified program and is a city or a joint powers agency implementing the unified program within a city, the agency may withdraw after providing 180 days' notice to the secretary and to the county within which the city is located, or to the joint powers agency with which the county has an agreement to implement the unified program.

(2) Whenever a certified unified program agency withdraws from its obligations to implement the unified program, or the secretary withdraws an agency's certification pursuant to Section 25404.4, the successor certified unified program agency shall be determined in accordance with subdivision (f).

(Amended by Stats. 2005, Ch. 22, Sec. 128. Effective January 1, 2006.)

25404.3.1. A city or other local agency, which, as of December 31, 1999, has been designated as an administering agency pursuant to Section 25502, or has assumed responsibility for the implementation of Chapter 6.7 (commencing with Section 25280) pursuant to Section 25283, and that wishes to administer the unified program or an element of the unified program identified in subdivision (c) of Section 25404, shall request the secretary to include the agency in the implementation structure established by paragraph (2) of subdivision (f) of Section 25404.3. The secretary may grant the request for as long as the agency remains qualified to implement the unified program or an element of the program.

(Added by Stats. 2000, Ch. 730, Sec. 2. Effective January 1, 2001.)

25404.4. (a) (1) The secretary shall periodically review the ability of each certified unified program agency to carry out this chapter. In conducting this review, the secretary shall review both the elements of each CUPA's enforcement program and the efficacy of the program in ensuring compliance with the unified program's requirements. If a certified unified program agency fails to meet its obligations to adequately implement the unified program, the secretary may withdraw the certified unified program agency's certification, or may enter into a program improvement agreement with the certified unified program agency to make the necessary improvements. A certified unified program agency with which the secretary has entered into a program improvement agreement may continue to implement the unified program while the program improvement agreement is in effect and the certified unified program agency is in compliance with the agreement. If the secretary finds that a CUPA has not met the enforcement performance standards adopted pursuant to Section 25404.6 and the secretary enters into a program improvement agreement with the CUPA, the agreement shall make the improvement of enforcement the highest priority.

(2) Before withdrawing a certified unified program agency's certification, the secretary shall submit to the certified unified program agency a notification of the secretary's intent to withdraw certification, in which the secretary shall specify the reasons why the certified unified program agency has failed to meet its obligations to adequately implement the unified program. The secretary shall provide the certified unified program agency with a reasonable time to respond to the reasons specified in the notification and to correct the deficiencies specified in the notification. The certified unified program agency may request a public hearing, at which the secretary shall hear the agency's response to the reasons specified in the notification.

(b) (1) If the secretary finds that a certified unified program agency has failed to adequately enforce the requirements of the unified program with respect to a particular facility, the secretary may direct the appropriate state agency to take any necessary actions and to issue necessary orders to the facility.

(2) If the secretary finds that the failure to adequately enforce the requirements of the unified program may result in an imminent and substantial endangerment to the environment or to the public health and safety, the secretary shall direct the appropriate state agency to take any necessary actions and to issue the necessary orders to the facility.

(3) This chapter does not prevent any appropriate state agency from issuing an order or taking any other action pursuant to state law.

(Amended by Stats. 2000, Ch. 144, Sec. 8. Effective July 19, 2000.)

25404.5. (a) (1) Each certified unified program agency shall institute a single fee system, which shall replace the fees levied pursuant to Sections 25201.14 and 25205.14, except for transportable treatment units permitted under Section 25200.2, and which shall also replace any fees levied by a local agency pursuant to Sections 25143.10, 25287, 25513, and 25535.5, or any other fee levied by a local agency specifically to fund the implementation of the provisions specified in subdivision (c) of Section 25404. The single fee system shall additionally include the fee established pursuant to Section 25270.6. Notwithstanding Sections 25143.10, 25201.14, 25287, 25513, and 25535.5, a person who complies with the certified unified program agency's "single fee system" fee shall not be required to pay any fee levied pursuant to those sections, except for transportable treatment units permitted under Section 25200.2.

(2) (A) The governing body of the local certified unified program agency shall establish the amount to be paid by each person regulated by the unified program under the single fee system at a level sufficient to pay the

necessary and reasonable costs incurred by the certified unified program agency and by any participating agency pursuant to the requirements of subparagraph (E) of paragraph (1) of subdivision (d) of Section 25404.3.

(B) The secretary shall establish the amount to be paid when the unified program agency is a state agency.

(3) The fee system may also be designed to recover the necessary and reasonable costs incurred by the certified unified program agency, or a participating agency pursuant to the requirements of subparagraph (E) of paragraph (1) of subdivision (d) of Section 25404.3, in administering provisions other than those specified in subdivision (c) of Section 25404, if the implementation and enforcement of those provisions has been incorporated as part of the unified program by the certified unified program agency pursuant to subdivision (b) of Section 25404.2, and if the single fee system replaces any fees levied as of January 1, 1994, to fund the implementation of those additional provisions.

(4) The amount to be paid by a person regulated by the unified program may be adjusted to account for the differing costs of administering the unified program with respect to that person's regulated activities.

(b) (1) Except as provided in subdivision (d), the single fee system instituted by each certified unified program agency shall include an assessment on each person regulated by the unified program of a surcharge, the amount of which shall be determined by the secretary annually, to cover the necessary and reasonable costs of the state agencies in carrying out their responsibilities under this chapter. The secretary may adjust the amount of the surcharge to be collected by different certified unified program agencies to reflect the different costs incurred by the state agencies in supervising the implementation of the unified program in different jurisdictions, and in supervising the implementation of the unified program in those jurisdictions for which the secretary has waived the assessment of the surcharge pursuant to subdivision (d). The certified unified program agency may itemize the amount of the surcharge on any bill, invoice, or return that the agency sends to a person regulated by the unified program. Each certified unified program agency shall transmit all surcharge revenues collected to the secretary on a quarterly basis. The surcharge shall be deposited in the Unified Program Account, which is hereby created in the General Fund and which may be expended, upon appropriation by the Legislature, by state agencies for the purposes of implementing this chapter.

(2) On or before January 10, 2001, the secretary shall report to the Legislature on whether the number of persons subject to regulation by the unified program in any county is insufficient to support the reasonable and necessary cost of operating the unified program using only the revenues from the fee. The secretary's report shall consider whether the surcharge required by subdivision (a) should include an assessment to be used to supplement the funding of unified program agencies that have a limited number of entities regulated under the unified program.

(c) Each certified unified program agency and the secretary shall, before the institution of the single fee system and the assessment of the surcharge, implement a fee accountability program designed to encourage more efficient and cost-effective operation of the program for which the single fee and surcharge are assessed. The fee accountability programs shall include those elements of the requirements of the plan adopted pursuant to former Section 25206, as it read on January 1, 1995, that the secretary determines are appropriate.

(d) The secretary may waive the requirement for a county to assess a surcharge pursuant to subdivision (b), if both of the following conditions apply:

(1) The county meets all of the following conditions:

(A) The county submits an application to the secretary for certification on or before January 1, 1996, that incorporates all of the requirements of this chapter, and includes the county's request for a waiver of the surcharge, and contains documentation that demonstrates, to the satisfaction of the secretary, both of the following:

(i) That the assessment of the surcharge will impose a significant economic burden on most businesses within the county.

(ii) That the combined dollar amount of the surcharge and the single fee system to be assessed by the county pursuant to subdivision (a) exceeds the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(B) The application for certification, including the information required by subparagraph (A), is determined by the secretary to be complete, on or before April 30, 1996. The secretary, for good cause, may grant an extension of that deadline of up to 90 days.

(C) The county is certified by the secretary on or before December 31, 1996.

(D) On or before January 1, 1994, the county completed the consolidation of the administration of the hazardous waste generator program, the hazardous materials release response plans and inventories program, and the underground storage tank program, referenced in paragraphs (1), (3), and (4) of subdivision (c) of Section 25404, into a single program within the county's jurisdiction.

(E) The county demonstrates that it will consolidate the administration of all programs specified in subdivision (c) of Section 25404, and that it will also consolidate the administration of at least one additional program that regulates hazardous waste, hazardous substances, or hazardous materials, as specified in subdivision (d) of Section 25404.2, other than the programs specified in subdivision (c) of Section 25404, into a single program to be administered by a single agency in the county's jurisdiction at the time that the county's certification by the secretary becomes effective.

(2) The secretary makes all of the following findings:

(A) The county meets all of the criteria specified in paragraph (1).

(B) The assessment of the surcharge would impose a significant economic burden on most businesses within the county.

(C) The combined dollar amount of the surcharge and the single fee system to be assessed by the county pursuant to subdivision (a) would exceed the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(D) The waiver of the surcharge for those counties applying for and qualifying for a waiver, and the resulting increase in the surcharge for other counties, would not, when considered cumulatively, impose a significant economic burden on businesses in any other county that does not apply for, or does not meet the criteria for, a waiver of the surcharge.

(e) The secretary shall review all of the requests for a waiver of the surcharge made pursuant to subdivision (d) simultaneously, so as to adequately assess the cumulative impact of granting the requested waivers on businesses in those counties that have not applied, or do not qualify, for a waiver, and shall grant or deny all requests for a waiver of the surcharge within 30 days from the date that the secretary certifies all counties applying, and qualifying, for a waiver. If the secretary finds that the grant of a waiver of the surcharge for all counties applying and qualifying for the waiver will impose a significant economic burden on businesses in one or more other counties, the secretary shall take either of the following actions:

(1) Deny all of the applications for a waiver of the surcharge.

(2) Approve only a portion of the waiver requests for counties meeting the criteria set forth in subdivision (d), to the extent that the approved waivers, when taken as a whole, meet the condition specified in subparagraph (D) of paragraph (2) of subdivision (d). In determining which of the counties' waiver requests to grant, the secretary shall consider all of the following factors:

(A) The relative degree to which the assessment of the surcharge will impose a significant economic burden on most businesses within each county applying and qualifying for a waiver.

(B) The relative degree to which the combined dollar amount of the surcharge and the single fee system to be assessed, pursuant to subdivision (a), by each county applying and qualifying for a waiver exceeds the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(C) The relative extent to which each county applying and qualifying for a waiver has incorporated, or will incorporate, upon certification, additional programs pursuant to subdivision (d) of Section 25404.2, into the unified program within the county's jurisdiction.

(f) The secretary may, at any time, terminate a county's waiver of the surcharge granted pursuant to subdivisions (d) and (e) if the secretary determines that the criteria specified in subdivision (d) for the grant of a waiver are no longer met.

(Amended by Stats. 2007, Ch. 626, Sec. 23. Effective January 1, 2008.)

25404.6. (a) The secretary may immediately implement those aspects of the unified program which do not require statutory changes. If the secretary determines that statutory changes are needed to fully implement the program, the secretary shall recommend those changes to the Legislature on or before March 1, 1995, so that the changes, if approved by the Legislature, can be implemented as part of the program by January 1, 1996.

(b) The secretary shall work in close consultation with the Environmental Protection Agency, and shall implement this chapter only to the extent that doing so will not result in this state losing its authorization or delegation to implement the Resource Conservation and Recovery Act of 1976 (42
U.S.C. Sec. 6901 et seq.), the Federal Water Pollution Control Act, (33 U.S.C. Sec. 1251 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Sec. 11001 et seq.), and any other applicable federal laws.

(c) The secretary shall adopt regulations necessary for the orderly administration and implementation of the unified program. The regulations shall include, but are not limited to, performance standards to guide the secretary in evaluating unified program agencies including evaluation of fee accountability and enforcement activities. The secretary shall adopt those regulations as emergency regulations 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 the 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, safety, and general welfare.

(Amended by Stats. 2000, Ch. 144, Sec. 10. Effective July 19, 2000.)

25404.8. (a) In a county for which a CUPA has not been certified on or before January 1, 2000, and where the unified program is implemented pursuant to paragraph (2) of subdivision (f) of Section 25404.3, the CUPA is eligible for an allocation pursuant to subdivision (d). The CUPA shall institute a single fee system that meets the requirements of Section 25404.5, except that the amounts to be paid by each person regulated by the unified program under the single fee system shall be set at a level so that the revenues collected under the single fee system and the amount allocated pursuant to subdivision (d) are sufficient to pay the necessary costs incurred by the CUPA in implementing the unified program. The CUPA shall determine the level to be paid by persons regulated under the unified program by conducting a workload analysis that establishes the direct and indirect costs to the CUPA of implementing the unified program.

(b) A CUPA that implements the unified program pursuant to paragraph (2) of subdivision (f) of Section 25404.3 shall use the funding allocated pursuant to subdivision (d) to implement the unified program within the jurisdiction of the CUPA in accordance with the implementation agreement reached with the secretary pursuant to paragraph (2) of subdivision (f) of Section 25404.3.

(c) The Rural CUPA Reimbursement Account is hereby established in the General Fund and the secretary may expend the money in the account to make the allocations specified in subdivision (d).

(d) (1) Except as provided in paragraph (2), the secretary shall allocate the following amounts from the Rural CUPA Reimbursement Account to an eligible county:

(A) If the county has a population of less than 70,000 persons, the amount of the funds allocated from the account shall not exceed 75 percent of the budgeted costs as approved by the local governing body for implementation of the unified program.

(B) If the county has a population of more than 70,000, but less than 100,000 persons, the amount of the funds allocated from the account shall not exceed 50 percent of the budgeted costs as approved by the local governing body for implementation of the unified program.

(C) If the county has a population of more than 100,000, but less than 150,000 persons, the amount of the funds allocated from the account shall not exceed 35 percent of the budgeted costs as approved by the local governing body for implementation of the unified program.

(2) The secretary shall not allocate more than sixty thousand dollars ($60,000) for all CUPAs in an eligible county.

(e) This section shall become operative July 1, 2001.

(Amended by Stats. 2001, Ch. 663, Sec. 2. Effective January 1, 2002.)

25404.9. (a) The State Certified Unified Program Agency Account (SCUPA Account) is hereby established in the General Fund and shall be administered by the department. In addition to any other money that may be appropriated by the Legislature to the SCUPA Account, all of the following funds shall be deposited in the SCUPA Account:

(1) The fees collected pursuant to subparagraph (B) of paragraph (2) of subdivision (a) of Section 25404.5.

(2) All reimbursements received for costs of enforcement actions taken by the department acting as a CUPA pursuant to this chapter.

(3) Funds received for the counties in which the department acts as a CUPA from the Rural CUPA Reimbursement Account established pursuant to subdivision (c) of Section 25404.8.

(4) Civil and criminal penalties collected pursuant to paragraph (3) of subdivision (a) of Section 25192, as appropriate.

(5) Administrative penalties collected pursuant to subdivision (i) of Section 25404.1.1, as appropriate.

(6) All interest earned upon money deposited in the SCUPA Account.

(b) The funds deposited in the SCUPA Account may be expended by the department, upon appropriation by the Legislature, for the department's costs of implementing the unified program in those counties for which the secretary has designated the department as a CUPA pursuant to paragraph (2) of subdivision (f) of Section 25404.3.

(Added by Stats. 2005, Ch. 81, Sec. 3. Effective July 19, 2005.)

HEALTH AND SAFETY CODE

CHAPTER 6.91. HAZARDOUS MATERIALS DATA

(Chapter 6.91 added by Stats. 1985, Ch. 1559, Sec. 1. Effective October 2, 1985.)

25410. The Legislature finds and declares the following:

(a) Hazardous materials, including hazardous substances and hazardous wastes, are present in the state and pose acute and chronic health risks to individuals who live and work in this state, and who are exposed to these substances as a result of fires, spills, industrial accidents, or other types of releases or emissions.

(b) The people who live and work in this state have a right and a need to know of the use and dangers of hazardous materials in their communities in order to plan for, and respond to, potential exposure to these materials.

(c) Basic information on the location, type, characteristics, and health risks of hazardous materials used, stored, or disposed of in the state is not currently available to firefighters, health officials, planners, elected officials, and residents. There are gaps in the information collected and the data is stored in various formats, thereby limiting its effective use to protect the public health and safety.

(d) Existing state data base computer systems are not capable of effectively exchanging hazardous material information nor are they accessible to state and local agencies which have a need for the information.

(Added by Stats. 1985, Ch. 1559, Sec. 1. Effective October 2, 1985.)

25411. As used in this chapter:

(a) "Agency" means the Environmental Affairs Agency.

(b) "Handle" means to use, generate, process, produce, package, treat, store, or dispose of a hazardous material in any fashion.

(c) "Hazardous material" means any of the following materials:

(1) A material listed in subdivision (b) of Section 6382 of the Labor Code.

(2) A material defined in Section 25115, 25117, or 25316.

(3) Any other material which the director determines, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the community.

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

(e) "Secretary" means the Secretary of the Environmental Affairs Agency.

(Added by Stats. 1985, Ch. 1559, Sec. 1. Effective October 2, 1985. Note: See changes set forth in Governor's Reorg. Plan 1 of 1991.)

25416. (a) All studies and community information programs conducted pursuant to this section shall be done only if either subdivision (b) applies or if funds are available without restructuring the department's funding priorities. The department shall conduct these studies and information programs in the following manner:

(1) The department shall, except as provided in subdivision (b), and in conjunction with the local health officer, the State Department of Health Services, and the Office of Environmental Health Hazard Assessment, conduct or contract for epidemiological studies to identify and monitor health effects related to exposure to hazardous materials, as defined in Section 66084 of Title 22 of the California Code of Regulations. A study may be conducted in any area of the state identified by the department or the local health officer as a site of potential exposure to hazardous materials, including, but not limited to, any of the following areas:

(A) All communities located near hazardous waste disposal facilities.

(B) In all communities containing hazardous substance release sites listed pursuant to Section 25356 or listed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(C) In all areas around the location of major generators of hazardous waste.

(D) In all other areas identified by local health officers or the State Department of Health Services as possible locations of public exposure to hazardous materials.

(2) The department, in consultation with the State Department of Health Services and the Office of Environmental Health Hazard Assessment, shall determine which epidemiological studies are to be conducted pursuant to this section based on the potential for public exposure to hazardous materials. Studies in areas near Class I hazardous waste disposal facilities, as defined in Section 2531 of Title 23 of the California Code of Regulations, shall be given the highest priority for funding. If a hearing is conducted pursuant to Section 25149 and the hearing officer determines that there is a significant potential for endangerment to the public as a result of the suspected or actual release of a hazardous material, the department shall give priority to conducting an epidemiological study for that facility.

(3) If a local health officer determines that a study should be conducted pursuant to this section because of a potential public exposure to hazardous materials, the local health officer may request that the department initiate or contract for a study pursuant to this section by demonstrating to the department that there is sufficient evidence that justifies the need for a study. The department shall respond to the local health officer's request within 90 days.

(4) A local health officer may contract with qualified persons or firms to produce the epidemiological studies specified in paragraph (1).

(5) The design and methodology of any study conducted pursuant to this section shall be reviewed and approved by the department, the State Department of Health Services, and the Office of Environmental Health Hazard Assessment prior to the initiation of the study.

(6) In any county in which hazardous waste disposal facilities are located and in all other counties in which the State Department of Health Services identifies significant actual or potential public exposure to hazardous materials, the department shall, in conjunction with the local health officer, conduct or contract for a community information program with respect to sites of potential exposure to hazardous materials identified under paragraph (1) to do all of the following:

(A) Organize and conduct educational programs for local physicians and other health professionals on the effects of exposure to hazardous materials and reporting requirements.

(B) Disseminate information to high risk populations on the health effects of exposure to hazardous materials.

(C) Conduct public forums on the health effects of exposure to hazardous substances and methods of limiting exposure.

(7) Paragraph (6) does not apply to hazardous substance release sites listed on the National Priorities List for which the Environmental Protection Agency has assumed lead responsibility for community relations.

(b) If a county is authorized to impose a license tax pursuant to Section 25149.5 for revenue purposes, the department may require the county to provide funding for carrying out epidemiological studies or the community information program concerning the hazardous waste facility subject to the license tax. The department shall provide the county with technical assistance to conduct an epidemiological study pursuant to this subdivision. The department may exempt a county from the requirements of this subdivision if the county demonstrates to the department that the revenue potential from the facility would not be adequate to conduct an epidemiological study or community information program. When considering a county request for an exemption, the department shall consider the regulatory costs and responsibilities of the county related to that facility.

(c) The department shall expend funds from the Toxic Substances Control Account, upon appropriation by the Legislature, to conduct studies and community information programs in counties containing a hazardous substance release site listed pursuant to Section 25356. The department shall expend funds from the Hazardous Waste Control Account, upon appropriation by the Legislature, to conduct all other studies and community information programs conducted pursuant to this section, except as provided in subdivision (b).

(Amended by Stats. 1997, Ch. 870, Sec. 48. Effective January 1, 1998. Operative July 1, 1998, by Sec. 54 of Ch. 870.)

25417. The department shall publish the consumer information booklet described in Section 10084.1 of the Business and Professions Code and distribute the booklet to the public, upon request. The department may charge a fee for the booklet to defray the publication, mailing, distribution, and administrative costs necessary to implement this section and its ongoing administrative costs resulting from inquiries by the public about the contents of the booklet.

(Added by Stats. 1989, Ch. 969, Sec. 3.)

25417.1. The department shall publish a new edition of the consumer information booklet described in Section 10084.1 of the Business and Professions Code. The booklet shall, among other things, be in substantial compliance with the federal disclosure requirements regarding the safe management of lead and radon gas in housing, and shall be made available to the public on or before the date on which the Secretary of Housing and Urban Development submits to Congress the report required pursuant to subpart (B) of subdivision (d) of Section 4822 of Title 42 of the United States Code.

(Added by Stats. 1994, Ch. 264, Sec. 1. Effective January 1, 1995.)

HEALTH AND SAFETY CODE

CHAPTER 6.92. LANDFILL GAS

(Chapter 6.92 added by Stats. 1988, Ch. 932, Sec. 2.)

25420. For purposes of this chapter, the following definitions apply:

(a) "Department" means the Department of Toxic Substances Control.

(b) "Gas corporation" has the same meaning as defined in Section 222 of the Public Utilities Code and is subject to rate regulation by the Public Utilities Commission.

(c) "Person" means an individual, trust, firm, joint stock company, partnership, association, business concern, limited liability company, or corporation. "Person" also includes any city, county, district, and the state or any department or agency thereof, or the federal government or any department or agency thereof to the extent permitted by law.

(Amended by Stats. 2000, Ch. 343, Sec. 17. Effective January 1, 2001.)

25421. (a) Until the rule or order specified in subdivision (b) is adopted, no gas producer shall knowingly sell, supply, or transport landfill gas to a gas corporation, and no gas corporation shall knowingly purchase landfill gas, if that gas contains vinyl chloride in a concentration that exceeds the operative no significant risk level set forth in Article 7 (commencing with Section 12701) of Chapter 3 of Division 2 of Title 22 of the California Code of Regulations.

(b) On or before January 1, 1990, the Public Utilities Commission shall, by rule or order, specify the maximum amount of vinyl chloride that may be found in landfill gas pursuant to the requirements of subdivision (a).

(c) No gas corporation shall knowingly and intentionally expose any customer, employee, or other person to gas from a landfill if that gas contains any chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to that individual, except as provided by Section 25249.10.

(d) Every person who produces, sells, supplies, or releases landfill gas for sale offsite to a gas corporation shall, twice each month, sample and test the gas at the point of distribution for the presence of chemicals known to the state to cause cancer or reproductive toxicity in accordance with the test guidelines prepared under Section 41805.5. The air pollution control district or air quality management district within which the landfill is situated shall review the testing procedures for compliance with the guidelines and require the correction of any deficiencies. The district shall require, among other things, that the gas be analyzed by a laboratory certified by the department and shall transmit the results of the analysis to the department for its determination of compliance or noncompliance with subdivisions (a) and (b). The department shall fix and impose upon the gas producer a fee to cover its costs under this subdivision. The results of each sample and test shall be reported promptly to the gas corporation to which the landfill gas is sold, and any person or public agency requesting a copy of the report.

(e) Nothing in this section prohibits the direct delivery of landfill gas for the generation of electricity, the production of steam, or other industrial application.

(f) The gas corporation shall obtain the results of the test conducted pursuant to subdivision (d) and shall purchase no gas which the test shows to contain vinyl chloride that exceeds the amount permitted in subdivision (a), or if the rule or order has been adopted, as specified in subdivision (b).

(g) This section applies only to landfill gas delivered to the pipeline of a gas corporation.

(Added by Stats. 1988, Ch. 932, Sec. 2.)

25422. (a) Any person violating, or threatening to violate, Section 25421 may be enjoined in any court of competent jurisdiction.

(b) Any person who has violated Section 25421 shall be liable for a penalty not to exceed two thousand five hundred dollars ($2,500) per day for each violation. The civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction. The actions may be brought by the Attorney General in the name of the people of the State of California or by any district attorney or by any city attorney of a city having a population in excess of 750,000 or with the consent of the district attorney by a city prosecutor. The penalties may also be assessed administratively pursuant to Section 25187.

(Amended by Stats. 1992, Ch. 1344, Sec. 18. Effective January 1, 1993.)

HEALTH AND SAFETY CODE

CHAPTER 6.95. HAZARDOUS MATERIALS RELEASE RESPONSE PLANS AND INVENTORY

(Chapter 6.95 added by Stats. 1985, Ch. 1167, Sec. 1.)

Article 1. Business and Area Plans

(Article 1 heading added by Stats. 1987, Ch. 1415, Sec. 1. Effective September 30, 1987.)

25500. The Legislature declares that, in order to protect the public health and safety and the environment, it is necessary to establish business and area plans relating to the handling and release or threatened release of hazardous materials. The establishment of minimum statewide standards for these plans is a statewide concern. Basic information on the location, type, quantity, and the health risks of hazardous materials handled, used, stored, or disposed of in the state, which could be accidently released into the environment, is not now available to firefighters, health officials, planners, public safety officers, health care providers, regulatory agencies, and other interested persons. The information provided by business and area plans is necessary in order to prevent or mitigate the damage to the health and safety of persons and the environment from the release or threatened release of hazardous materials into the workplace and environment.

The Legislature further finds and declares that this chapter does not occupy the whole area of regulating the inventorying of hazardous materials and the preparation of hazardous materials response plans by businesses and the Legislature does not intend to preempt any local actions, ordinances, or regulations which impose additional or more stringent requirements on businesses which handle hazardous materials. Thus, in enacting this chapter, it is not the intent of the Legislature to preempt or otherwise nullify any other statute or local ordinances containing the same or greater standards and protections.

(Added by Stats. 1985, Ch. 1167, Sec. 1.)

25501. Unless the context indicates otherwise, the following definitions govern the construction of this chapter:

(a) "Administering agency" means the local agency authorized, pursuant to Section 25502, to implement and enforce this chapter.

(b) "Agricultural handler" means an entity identified in paragraph (5) of subdivision (c) of Section 25503.5.

(c) "Area plan" means a plan established pursuant to Section 25503 by an administering agency for emergency response to a release or threatened release of a hazardous material within a city or county.

(d) "Business" means an employer, self-employed individual, trust, firm, joint stock company, corporation, partnership, or association. For purposes of this chapter, "business" includes a business organized for profit and a nonprofit business.

(e) "Business plan" means a separate plan for each facility, site, or branch of a business that meets the requirements of Section 25504.

(f) "Certification statement" means a statement signed by the business owner, operator, or officially designated representative that attests to all of the following:

(1) The information contained in the annual inventory form most recently submitted to the administering agency is complete, accurate, and up to date.

(2) There has been no change in the quantity of any hazardous material as reported in the most recently submitted annual inventory form.

(3) No hazardous materials subject to the inventory requirements of this chapter are being handled that are not listed on the most recently submitted annual inventory form.

(4) The most recently submitted annual inventory form contains the information required by Section 11022 of Title 42 of the United States Code.

(g) (1) "Certified Unified Program Agency" or "CUPA" means the agency certified by the secretary 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 or enforce one or more of the unified program elements specified in paragraphs (4) and (5) of subdivision (c) of Section 25404, in accordance with the provisions of Sections 25404.1 and 25404.2.

(3) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in paragraphs (4) and (5) of subdivision (c) of Section 25404. For purposes of this chapter, the UPAs have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraphs (4) and (5) of subdivision (c) of Section 25404. The UPAs also have the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce the regulations adopted to implement the requirements of this chapter listed in paragraphs (4) and (5) of subdivision (c) of Section 25404. After a CUPA has been certified by the secretary, the unified program agencies shall be the only local agencies authorized to enforce the requirements of this chapter listed in paragraphs (4) and (5) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA.

(h) "City" includes any city and county.

(i) "Chemical name" means the scientific designation of a substance in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the system developed by the Chemical Abstracts Service.

(j) "Common name" means any designation or identification, such as a code name, code number, trade name, or brand name, used to identify a substance by other than its chemical name.

(k) "Department" means the Department of Toxic Substances Control and "director" means the Director of Toxic Substances Control.

(l) "Emergency rescue personnel" means any public employee, including, but not limited to, any fireman, firefighter, or emergency rescue personnel, as defined in Section 245.1 of the Penal Code, or personnel of a local EMS agency, as designated pursuant to Section 1797.200, or a poison control center, as defined by Section 1797.97, who responds to any condition caused, in whole or in part, by a hazardous material that jeopardizes, or could jeopardize, public health or safety or the environment.

(m) "Handle" means to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material in any fashion.

(n) "Handler" means any business that handles a hazardous material.

(o) "Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment.

(p) "Hazardous substance" means any substance or chemical product for which one of the following applies:

(1) The manufacturer or producer is required to prepare a MSDS for the substance or product pursuant to the Hazardous Substances Information and Training Act (Chapter 2.5 (commencing with Section 6360) of Part 1 of Division 5 of the Labor Code) or pursuant to any applicable federal law or regulation.

(2) The substance is listed as a radioactive material in Appendix B of Chapter 1 of Title 10 of the Code of Federal Regulations, maintained and updated by the Nuclear Regulatory Commission.

(3) The substances listed pursuant to Title 49 of the Code of Federal Regulations.

(4) The materials listed in subdivision (b) of Section 6382 of the Labor Code.

(q) "Hazardous waste" means hazardous waste, as defined by Sections 25115, 25117, and 25316.

(r) "Office" means the Office of Emergency Services.

(s) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, unless permitted or authorized by a regulatory agency.

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

(u) "SIC Code" means the identification number assigned by the Standard Industrial Classification Code to specific types of businesses.

(v) "Threatened release" means a condition creating a substantial

probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or the environment.

(w) "Trade secret" means trade secrets as defined in subdivision (d) of Section 6254.7 of the Government Code and Section 1060 of the Evidence Code.

(x) "Unified Program Facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements of paragraphs (4) and (5) of subdivision (c) of Section 25404.

(Amended by Stats. 2004, Ch. 183, Sec. 206. Effective January 1, 2005.)

25501.1. Notwithstanding Section 25501, for purposes of this chapter, a hazardous substance specified in paragraph (3) of subdivision (k) of Section 25501 means those hazardous materials or substances listed in Parts 172 and 173 of Title 49 of the Code of Federal Regulations.

(Added by Stats. 1986, Ch. 463, Sec. 1. Effective July 23, 1986.)

25501.2. For purposes of the inventory requirements of this chapter, "store," as used in subdivision (i) of Section 25501, does not include the storage of hazardous materials which are in transit or which are temporarily maintained in a fixed facility for a period of less than 30 days during the course of transportation.

(Amended by Stats. 1995, Ch. 91, Sec. 67. Effective January 1, 1996.)

25501.3. "Handle" also means the use or potential for use of a quantity of hazardous material by the connection of any marine vessel, tank vehicle, tank car, or container to a system or process for any purpose other than the immediate transfer to or from an approved atmospheric tank or approved portable tank.

(Added by Stats. 1991, Ch. 1183, Sec. 7.)

25501.4. Notwithstanding subdivision (d) of Section 25501, "business" also includes all of the following:

(a) The federal government, to the extent authorized by federal law.

(b) Any agency, department, office, board, commission, or bureau of state government, including, but not limited to, the campuses of the California Community Colleges, the California State University, and the University of California.

(c) Any agency, department, office, board, commission, or bureau of a city, county or district.

(Amended by Stats. 2003, Ch. 696, Sec. 6. Effective January 1, 2004.)

25502. (a) (1) This chapter, as it pertains to the handling of hazardous material, shall be implemented by one of the following:

(A) If there is a CUPA, the Unified Program Agency.

(B) If there is no CUPA, the agency authorized pursuant to subdivision (f) of Section 25404.3.

(2) The agency responsible for implementing this chapter shall ensure full access to, and the availability of, information submitted under this chapter to emergency rescue personnel and other appropriate governmental entities within its jurisdiction.

(b) (1) If there is no CUPA, a city may, by ordinance or resolution, assume responsibility for the implementation of this chapter and, if so, shall have exclusive jurisdiction within the boundary of the city for the purposes of carrying out this chapter. The ordinance shall require that a person who violates Section 25507 shall be subject to the penalties specified in Section 25515. A city that assumes responsibility for implementation of this chapter shall provide notice of its ordinance or resolution to the office and to the administering agency of its county. It shall also consult with, and coordinate its activities with, the county in which the city is located to avoid duplicating efforts or any misunderstandings regarding the areas, duties, and responsibilities of each administering agency.

(2) A city may not assume responsibility for the implementation of this chapter unless it has enacted an implementing ordinance or adopted an implementing resolution not later than 60 days after the office adopts regulations pursuant to Section 25503, except that a city may enact an implementing ordinance or adopt an implementing resolution after this 60-day period, if it has an agreement with the county to do so. A new city has one year from the date of incorporation to enact an ordinance or adopt a resolution implementing this chapter.

(3) The agency responsible for administering and enforcing this chapter shall be the agency so authorized pursuant to subdivision (f) of Section 25404.3.

(c) If there is no CUPA, the county and any city that assume responsibility pursuant to subdivision (b) shall designate a department, office, or other agency of the county or city, as the case may be, or the city or county may designate a fire district, as the administering agency responsible for administering and enforcing this chapter. The county and any city that assume responsibility pursuant to subdivision (b) shall notify the office immediately upon making a designation. The agency responsible for administering and enforcing this chapter shall be the agency so authorized pursuant to subdivision (f) of Section 25404.3.

(Amended by Stats. 2004, Ch. 686, Sec. 3. Effective September 22, 2004.)

25503. (a) Not later than September 1, 1986, the office shall adopt, after public hearing and consultation with the office of the State Fire Marshal and other appropriate public entities, regulations for minimum standards for business plans and area plans. All business plans and area plans shall meet the standards adopted by the office.

(b) The standards for business plans in the regulations adopted pursuant to subdivision (a) shall do all of the following:

(1) Set forth minimum requirements of adequacy, and not preclude the imposition of additional or more stringent requirements by local government.

(2) Take into consideration and adjust for the size and nature of the business, the proximity of the business to residential areas and other populations, and the nature of the damage potential of its hazardous materials in establishing standards for subdivisions (b) and (c) of Section 25504.

(3) Take into account the existence of local area and business plans which meet the requirements of this chapter so as to minimize the duplication of local efforts, consistent with the objectives of this chapter.

(4) Define what releases and threatened releases are required to be reported pursuant to Section 25507. The office shall consider the existing federal reporting requirements in determining a definition of reporting releases pursuant to Section 25507.

(c) An administering agency shall establish an area plan for emergency response to a release or threatened release of a hazardous material within its jurisdiction. An area plan is not a statute, ordinance, or regulation for purposes of Section 669 of the Evidence Code. The standards for area plans in the regulations adopted pursuant to subdivision (a) shall provide for all of the following:

(1) Procedures and protocols for emergency rescue personnel, including the safety and health of those personnel.

(2) Preemergency planning.

(3) Notification and coordination of onsite activities with state, local, and federal agencies, responsible parties, and special districts.

(4) Training of appropriate employees.

(5) Onsite public safety and information.

(6) Required supplies and equipment.

(7) Access to emergency response contractors and hazardous waste disposal sites.

(8) Incident critique and followup.

(9) Requirements for notification to the office of reports made pursuant to Section 25507.

(d) The administering agency shall submit a copy of its proposed area plan, within 180 days after adoption of regulations by the office establishing area plan standards, to the office for review. The office shall notify the administering agency as to whether the area plan is adequate and meets the area plan standards. The administering agency shall within 45 days of this notice submit a corrected area plan.

The administering agency shall certify to the office every three years that it has conducted a complete review of its area plan and has made any necessary revisions. Any time an administering agency makes any substantial changes to its area plan, it shall forward the changes to the office within 14 days after the changes have been made.

(e) An administering agency shall submit to the office, along with its area plan, both of the following:

(1) The basic provisions of a plan to conduct onsite inspections of businesses subject to this chapter by either the administering agency or other

designated entity. These inspections shall ensure compliance with this chapter and shall identify existing safety hazards that could cause or contribute to a release and, where appropriate, enforce any applicable laws and suggest preventative measures designed to minimize the risk of the release of hazardous material into the workplace or environment. The requirements of this paragraph do not alter or affect the immunity provided a public entity pursuant to Section 818.6 of the Government Code.

(2) A plan to institute a data management system which will assist in the efficient access to and utilization of information collected under this chapter. This data management system shall be in operation within two years after the business plans are required to be submitted to the administering agency pursuant to Section 25505.

(f) The regulations adopted by the office pursuant to subdivision (a) shall include an optional model reporting form for business and area plans.

(Amended by Stats. 1988, Ch. 1585, Sec. 3.)

25503.1. The office and each administering agency shall adopt reporting requirements, in cooperation with the Chemical Emergency Planning and Response Commission, established by the Governor as the state emergency response commission pursuant to subsection (a) of Section 11001 of Title 42 of the United States Code, which are consistent with the intent and provisions of this chapter and with Chapter 116 (commencing with Section 11001) of Title 42 of the United States Code, for the purpose of eliminating duplicative reporting requirements, to the extent achievable and practicable.

(Added by Stats. 1988, Ch. 1585, Sec. 4.)

25503.2. (a) The Environmental Affairs Agency, with the guidance of the Chemical Emergency Planning and Response Commission, as specified in Section 25503.1, shall develop a hazardous materials compliance assistance manual, which shall include all of the following:

(1) A copy of each form required by federal and state agencies for the reporting of activities concerning hazardous materials and criteria as to who is required to file the form.

(2) The due date for each form specified in paragraph (1).

(3) The address, telephone number, and contact person of each federal and state agency which requires the reporting forms specified in paragraph (1).

(4) An insert that contains a copy of each form used for the reporting of activities concerning hazardous materials required by each local agency under whose jurisdiction the person requesting the manual conducts business, including the due date for each form, and the address, telephone number, and contact person of each local agency.

(5) Any other information that the Environmental Affairs Agency determines to be necessary.

(b) On or before July 1, 1991, the Environmental Affairs Agency, with the guidance of the Chemical Emergency Planning and Response Commission,
shall make known to businesses and other interested parties, and distribute, upon request, the hazardous materials compliance assistance manual developed pursuant to subdivision (a). The Secretary of the Environmental Affairs Agency may impose a fee for the manual to pay for all costs related to the development, maintenance, reproduction, and distribution of the manual.

(Amended by Stats. 2004, Ch. 193, Sec. 99. Effective January 1, 2005. Note: Governor's Reorg. Plan 1 of 1991 indirectly affected this section.)

25503.3. (a) The office shall, in consultation with the administering agencies, in accordance with Section 25503.1, adopt by regulation a single comprehensive hazardous material reporting form for businesses to submit to administering agencies for purposes of Section 25509. The form shall include a section for additional information that may be requested by the administering agency. The regulations shall also specify criteria for sharing data electronically. Except as provided in subdivisions (b) and (c), after January 1, 1997, each administering agency shall require businesses to use this form annually when complying with Section 25509.

(b) (1) Except as provided in paragraph (2), an administering agency may allow a business to submit a form designated by the administering agency for purposes of the inventory required by Section 25509 instead of the single comprehensive hazardous material reporting form adopted pursuant to subdivision (a). Any form designated by an administering agency pursuant to this paragraph shall ensure that all of the information required by Section 25509 is reported. The form shall be developed in consultation with the other agencies within the jurisdiction that are responsible for fire protection, emergency response, and environmental health. If the administering agency permits inventory information to be submitted by electronic means, the format and mode of submittal shall be developed in consultation with those other agencies and, following the adoption of standards for the sharing of electronic data pursuant to subdivision (e) of Section 25404, shall be consistent with those standards.

(2) If a business chooses to submit the single comprehensive hazardous material reporting form adopted pursuant to subdivision (a), the administering agency shall accept that form.

(c) Notwithstanding Section 25509, a business may comply with the annual inventory reporting requirements of this article by submitting a certification statement to the administering agency if both of the following apply:

(1) The business has previously filed the single comprehensive hazardous material reporting form required by subdivision (a) or the alternative form designated by the administering agency pursuant to subdivision (b).

(2) The business can attest to the statements set forth in paragraphs (1) to (4), inclusive, of subdivision (f) of Section 25501.

(Amended by Stats. 1997, Ch. 664, Sec. 3. Effective January 1, 1998.)

25503.4. (a) The office shall adopt a format that allows persons subject to two or more of the following requirements to meet those requirements in one document:

(1) The business plan required by this chapter.

(2) The risk management plan required by Section 25534.

(3) The contingency plan required by Division 4.5 (commencing with Section 66001) of Title 22 of the California Code of Regulations and by Part 262 (commencing with Section 262.10), Part 264 (commencing with Section 264.1), or Part 265 (commencing with Section 265.1) of Title 40 of the Code of Federal Regulations.

(4) The spill prevention control and countermeasure plan required by Section 25270.4.5 and by Part 112 (commencing with Section 112.1) or by Part 300 (commencing with Section 300.1) of Title 40 of the Code of Federal Regulations.

(5) Any accident or spill prevention plan or response plan required by Chapter 6.7 (commencing with Section 25280) or by regulations adopted pursuant to that chapter or required by an underground storage tank ordinance adopted by a city or county.

(6) The interim marine facility oil spill contingency plan required by Section 8670.29 of the Government Code and the marine facility oil spill contingency plan required by Section 8670.31 of the Government Code.

(b) The format required by subdivision (a) shall be organized as follows:

(1) A central element that will enable persons using the format to report information and data common to all of the requirements described in subdivision (a).

(2) Appendices that will contain the additional information unique to each individual requirement described in subdivision (a).

(c) The office shall adopt the format required by subdivision (a) in consultation with administering agencies and the Information Management Subcommittee of the Chemical Emergency Planning and Response Commission and in
cooperation with the State Water Resources Control Board, the Department of Fish and Game, and the department. The adoption of the format is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall be completed by January 1, 1995. To the extent feasible, and within the limits of budgetary constraints, the office, the State Water Resources Control Board, the Department of Fish and Game, and the department shall convene workshops and other public meetings to obtain public assistance on the development of the format.

(Amended by Stats. 2007, Ch. 626, Sec. 24. Effective January 1, 2008.)

25503.5. (a) (1) A business, except as provided in subdivisions (b), (c), and (d), shall establish and implement a business plan for emergency response to a release or threatened release of a hazardous material in accordance with the standards prescribed in the regulations adopted pursuant to Section 25503, if the business handles a hazardous material or a mixture

containing a hazardous material that has a quantity at any one time during the reporting year that is any of the following:

(A) Equal to, or greater than, a total weight of 500 pounds or a total volume of 55 gallons.

(B) Equal to, or greater than, 200 cubic feet at standard temperature and pressure, if the substance is compressed gas.

(C) If the substance is a radioactive material, it is handled in quantities for which an emergency plan is required to be adopted pursuant to Part 30 (commencing with Section 30.1), Part 40 (commencing with Section 40.1), or Part 70 (commencing with Section 70.1), of Chapter 1 of Title 10 of the Code of Federal Regulations, or pursuant to any regulations adopted by the state in accordance with those regulations.

(2) In meeting the requirements of this subdivision, a business may, if it elects to do so, use the format adopted pursuant to Section 25503.4.

(b) (1) Oxygen, nitrogen, and nitrous oxide, ordinarily maintained by a physician, dentist, podiatrist, veterinarian, or pharmacist, at his or her office or place of business, stored at each office or place of business in quantities of not more than 1,000 cubic feet of each material at any one time, are exempt from this section and from Section 25505. The administering agency may require a one-time inventory of these materials for a fee not to exceed fifty dollars ($50) to pay for the costs incurred by the agency in processing the inventory forms.

(2) (A) Lubricating oil is exempt from this section and Sections 25505 and 25509, for a single business facility, if the total volume of each type of lubricating oil handled at that facility does not exceed 55 gallons and the total volume of all types of lubricating oil handled at that facility does not exceed 275 gallons, at any one time.

(B) For purposes of this paragraph, "lubricating oil" means any oil intended for use in an internal combustion crankcase, or the transmission, gearbox, differential, or hydraulic system of an automobile, bus, truck, vessel, plane, heavy equipment, or other machinery powered by an internal combustion or electric powered engine. "Lubricating oil" does not include used oil, as defined in subdivision (a) of Section 25250.1.

(c) (1) Hazardous material contained solely in a consumer product for direct distribution to, and use by, the general public is exempt from the business plan requirements of this chapter unless the administering agency has found, and has provided notice to the business handling the product, that the handling of certain quantities of the product requires the submission of a business plan, or any portion thereof, in response to public health, safety, or environmental concerns.

(2) In addition to the authority specified in paragraph (4), the administering agency may, in exceptional circumstances, following notice and public hearing, exempt from the inventory provisions of this chapter any hazardous substance specified in subdivision (p) of Section 25501 if the administering agency finds that the hazardous substance would not pose a present or potential danger to the environment or to human health and safety if the hazardous substance was released into the environment. The administering agency shall specify in writing the basis for granting any exemption under this paragraph. The administering agency shall send a notice to the office within five days from the effective date of any exemption granted pursuant to this paragraph.

(3) The administering agency, upon application by a handler, may exempt the handler, under conditions that the administering agency determines to be proper, from any portion of the business plan, upon a written finding that the exemption would not pose a significant present or potential hazard to human health or safety or to the environment or affect the ability of the administering agency and emergency rescue personnel to effectively respond to the release of a hazardous material, and that there are unusual circumstances justifying the exemption. The administering agency shall specify in writing the basis for any exemption under this paragraph.

(4) The administering agency, upon application by a handler, may exempt a hazardous material from the inventory provisions of this chapter upon proof that the material does not pose a significant present or potential hazard to human health and safety or to the environment if released into the workplace or environment. The administering agency shall specify in writing the basis for any exemption under this paragraph.

(5) An administering agency shall exempt a business operating a farm for purposes of cultivating the soil or raising or harvesting any agricultural or horticultural commodity from filing the information in the business plan required by subdivisions (b) and (c) of Section 25504 if all of the following requirements are met:

(A) The handler annually provides the inventory of information required by Section 25509 to the county agricultural commissioner before January 1 of each year.

(B) Each building in which hazardous materials subject to this chapter are stored is posted with signs, in accordance with regulations that the office shall adopt, that provide notice of the storage of any of the following:

(i) Pesticides.

(ii) Petroleum fuels and oil.

(iii) Types of fertilizers.

(C) Each county agricultural commissioner forwards the inventory to the administering agency within 30 days from the date of receipt of the inventory.

(6) The administering agency shall exempt a business operating an unstaffed remote facility located in an isolated sparsely populated area from the hazardous materials business plan and inventory requirements of this article if the facility is not otherwise subject to the requirements of applicable federal law, and all of the following requirements are met:

(A) The types and quantities of materials onsite are limited to one or more of the following:

(i) Five hundred standard cubic feet of compressed inert gases (asphyxiation and pressure hazards only).

(ii) Five hundred gallons of combustible liquid used as a fuel source.

(iii) Two hundred gallons of corrosive liquids used as electrolytes in closed containers.

(iv) Five hundred gallons of lubricating and hydraulic fluids.

(v) Twelve hundred gallons of flammable gas used as a fuel source.

(B) The facility is secured and not accessible to the public.

(C) Warning signs are posted and maintained for hazardous materials pursuant to the California Fire Code.

(D) A one-time notification and inventory is provided to the administering agency along with a processing fee in lieu of the existing fee. The fee shall not exceed the actual cost of processing the notification and inventory, including a verification inspection if necessary.

(E) If the information contained in the initial notification or inventory changes and the time period of the change is longer than 30 days, the notification or inventory shall be resubmitted within 30 days to the administering agency to reflect the change, along with a processing fee, in lieu of the existing fee, that does not exceed the actual cost of processing the amended notification or inventory, including a verification inspection, if necessary.

(F) The administering agency shall forward a copy of the notification and inventory to those agencies that share responsibility for emergency response.

(G) The administering agency may require an unstaffed remote facility to submit a hazardous materials business plan and inventory in accordance with this article if the agency finds that special circumstances exist such that development and maintenance of the business plan and inventory is necessary to protect public health and safety and the environment.

(d) Onpremise use, storage, or both, of propane in an amount not to exceed 300 gallons that is for the sole purpose of heating the employee working areas with that business is exempt from this section, unless the administering agency finds, and provides notice to the business handling the propane, that the handling of the onpremise propane requires the submission of a business plan, or any portion thereof, in response to public health, safety, or environmental concerns.

(e) The administering agency shall provide all information obtained from completed inventory forms, upon request, to emergency rescue personnel on a 24-hour basis.

(f) The administering agency shall adopt procedures to provide for public input when approving any applications submitted pursuant to paragraph (3) or (4) of subdivision (c).

(Amended by Stats. 2005, Ch. 388, Sec. 4. Effective January 1, 2006.)

25503.6. Any business which is required to establish and implement a business plan pursuant to Section 25503.5 and is located on leased or rented real property shall notify, in writing, the owner of the property that the business is subject to Section 25503.5 and has complied with its provisions, and shall provide a copy of the business plan to the owner or the owner's agent within five working days after receiving a request for a copy from the

owner or the owner's agent.

(Added by Stats. 1988, Ch. 12, Sec. 3. Effective February 19, 1988.)

25503.7. (a) When any hazardous material contained in any rail car, rail tank car, rail freight container, marine vessel, or marine freight container remains within the same railroad facility, marine facility, or business facility for more than 30 days, or a business knows or has reason to know that any rail car, rail tank car, rail freight container, marine vessel, or marine freight container containing any hazardous material will remain at the same railroad facility, marine facility, or business facility for more than 30 days, the hazardous material is deemed stored at that location for purposes of this chapter and subject to the requirements of this chapter.

(b) Subdivision (a) does not apply to a marine vessel while under construction, repair, modernization, or retrofitting while located in a ship repair facility.

(c) Notwithstanding Section 25510, a business handling hazardous materials which are stored in a manner subject to subdivision (a) shall immediately notify the administering agency whenever a hazardous material is stored in a rail car, rail tank car, rail freight container, marine vessel, or marine freight container.

(Amended by Stats. 1991, Ch. 1128, Sec. 7.)

25503.8. (a) Any business not subject to subdivision (a) of Section 25503.5 which is required to submit chemical inventory information pursuant to Section 11022 of Title 42 of the United States Code, as that section reads on January 1, 1989, or as it may be subsequently amended, shall establish and implement a business plan in accordance with Section 25503.5 and Section 25505.

(b) Any business required to establish and implement a business plan pursuant to subdivision (a) shall not be deemed to be in violation of this chapter until the date of the next reporting period, specified in subdivision (d) of Section 25505, which occurs after the business becomes subject to subdivision (a), unless the administering agency requests the business to establish and implement the business plan at an earlier date.

(Added by Stats. 1988, Ch. 1585, Sec. 5.)

25503.9. On or before January 1, 1995, the office shall, in consultation with the administering agencies and the State Fire Marshal, adopt by regulation, a single comprehensive addendum to the hazardous materials reporting form for businesses to submit to administering agencies for purposes of complying with subdivisions (b) and (c) of Section 13143.9 and subdivision (b) of Section 25509. The regulations shall also specify criteria for sharing data electronically. Not later than two years after the effective date of those regulations, and annually thereafter, each administering agency shall require businesses to use that addendum when complying with subdivisions (b) and (c) of Section 13143.9 and subdivision (b) of Section 25509. The addendum shall be filed with the administering agency, when required by the local fire chief.

(Added by Stats. 1993, Ch. 1126, Sec. 2. Effective January 1, 1994.)

25504. Business plans shall include all of the following:

(a) The inventory of information required by Section 25509 and whatever additional information that the administering agency finds is necessary to protect the health and safety of persons, property, or the environment. Any such information is, however, subject to trade secret protection pursuant to Section 25511.

(b) Emergency response plans and procedures in the event of a reportable release or threatened release of a hazardous material, including, but not limited to, all of the following:

(1) Immediate notification to the administering agency and to the appropriate local emergency rescue personnel.

(2) Procedures for the mitigation of a release or threatened release to minimize any potential harm or damage to persons, property, or the environment.

(3) Evacuation plans and procedures, including immediate notice, for the business site.

(c) Training for all new employees and annual training, including refresher courses, for all employees in safety procedures in the event of a release or threatened release of a hazardous material, including, but not limited to, familiarity with the plans and procedures specified in subdivision (b). These training programs may take into consideration the position of each employee.

(d) Any business required to file a pipeline operations contingency plan in accordance with the California Pipeline Safety Act of 1981 (Chapter 5.5 (commencing with Section 51010) of Part 3 of Division 1 of Title 5 of the Government Code) and the regulations of the Department of Transportation, found in Part 195 of Title 49 of the Code of Federal Regulations, may file a copy of those plans with the administering agency instead of filing an emergency response plan specified in subdivision (b).

(e) Any business operating a farm exempted by paragraph (5) of subdivision (b) of Section 25503.5 from filing the information specified in subdivisions (b) and (c), shall, notwithstanding this exemption, provide the training programs specified in subdivision (c).

(Amended by Stats. 1986, Ch. 463, Sec. 6. Effective July 23, 1986.)

25504.1. In accordance with Section 25503.5, a business that handles perchlorate material, as defined in subdivision (c) of Section 25210.5, shall prepare and submit to the administering agency a business plan pursuant to Section 25503.5 and an inventory form pursuant to Section 25509, both of which shall address perchlorate materials handled by that business.

(Amended by Stats. 2004, Ch. 686, Sec. 4. Effective September 22, 2004.)

25505. (a) (1) Except as provided in subdivision (e), each handler shall submit its business plan to the administering agency in accordance with the requirements of this article and certify that the business plan meets the requirements of this article.

(2) If, after review, the administering agency determines that the handler's business plan is deficient in any way, the administrative agency shall notify the handler of those deficiencies. The handler shall submit a corrected business plan within 30 days from the date of the notice.

(3) If a handler fails, after reasonable notice, to submit a business plan in compliance with this article, the administering agency shall immediately take appropriate action to enforce this article, including the imposition of civil and criminal penalties as specified in this article.

(b) In addition to the requirements of Section 25510, whenever a substantial change in the handler's operations occurs that requires a modification of its business plan, the handler shall submit a copy of the business plan revisions to the administering agency within 30 days from the date of the operational change.

(c) Each handler shall, in any case, review the business plan, submitted pursuant to subdivision (a) or (b) at least once every three years thereafter after the initial submission of the business plan, to determine if a revision is needed and shall certify to the administering agency that the review was made and that any necessary changes were made to the plan. A copy of those changes shall be submitted to the administering agency as a part of that certification.

(d) Unless exempted from the business plan requirements under this chapter, each handler shall annually report its hazardous materials inventory on the form required by subdivision (a) of Section 25503.3 or in the alternative form designated by the administering agency pursuant to subdivision (b) of Section 25503.3, or submit a certification statement to the administering agency of the county or city in which the handler is located.

(e) (1) Notwithstanding any other provision of this article, an administering agency may, with the written concurrence of the local fire chief, require a handler to submit only the inventory required by subdivision (a) of Section 25504, a list of emergency contacts, a site plan, and a certification that the handler has prepared a complete business plan that meets the requirements of this article, in lieu of the submission of a business plan, and require the handler to maintain the complete business plan at the site where the inventory is stored.

(2) If an administering agency requires a handler to submit only the inventory, the list of emergency contacts, the site plan, and the certification pursuant to paragraph (1), the administering agency shall review the remaining components of the business plan during its periodic inspections of the handler, and the handler shall annually submit a form, provided by the administering agency, that certifies that the handler has included, and maintains as current, in the business plan, all other information required pursuant to Section 25504. Whenever there is a substantial change in a handler's operations that requires modification of its business plan, the handler shall submit a copy of those changes in accordance with subdivision (b).

(3) If an administering agency requires a handler to submit only the inventory, the list of emergency contacts, the site plan, and the certification pursuant to paragraph (1), the administering agency shall obtain from the handler the other components of the business plan that are not filed with the administering agency upon receipt of a request for public inspection of the business plan. The handler shall submit a complete copy of the business plan to the administering agency within five working days after the administering agency receives a request for public inspection and the administering agency shall make the business plan available to the member of the public requesting the inspection in accordance with the procedures specified in Section 25506. The administering agency shall not charge for a request to obtain this information or for an examination of the business plan during the administering agency's normal working hours.

(4) If, for any reason, a business plan maintained by a handler that is required to only submit the inventory, the list of emergency contacts, the site plan, and the certification pursuant to paragraph (1), is damaged or destroyed, the handler shall replace the business plan within 15 days of its damage or destruction, and shall notify the administering agency of the replacement.

(Amended by Stats. 2000, Ch. 296, Sec. 1. Effective January 1, 2001.)

25505.1. An administering agency may use the offices of the county agricultural commissioners to distribute business plan forms to farmers who are subject to Section 25505.

(Added by Stats. 1986, Ch. 463, Sec. 8. Effective July 23, 1986.)

25505.2. (a) Notwithstanding any other provision of this chapter, any city or county which, on September 1, 1985, had in effect a local ordinance containing business inventory reporting requirements substantially similar to this chapter, as amended by the act enacting this section, is exempt from having to implement any regulations adopted by the office concerning business plans upon meeting both of the following requirements:

(1) Not later than 90 days after the effective date of the act enacting this section, the city or county enacts an ordinance, or amends its existing ordinance, so that its requirements for business plans are the same as, or more restrictive than, this chapter, including subdivision (a) of Section 25503.5 and Sections 25504 and 25509.

(2) The office certifies that the ordinance's requirements are in compliance with paragraph (1) and that the city or county is implementing the ordinance, based upon evidence submitted by the city or county. Applications for exemption shall be filed with the office not later than 120 days from the effective date of the act enacting this section and the office shall certify or reject the applications within 60 days after receipt. The city or county may file an appeal of the decision of the office with the Director of the Office of Emergency Services, under procedures established by the office.

(b) This section does not exempt any administering agency from compliance with any other provision of this chapter.

(c) Any business located in a city or county which is exempt from the regulations adopted pursuant to this chapter concerning business plans, shall comply with the ordinance adopted by the city or county.

(Added by Stats. 1986, Ch. 463, Sec. 9. Effective July 23, 1986.)

25505.5. Notwithstanding any other provision of law, no public entity shall be held liable for any injury or damages resulting from an inadequate or negligent review of a business plan conducted pursuant to Section 25505.

(Added by Stats. 1988, Ch. 1585, Sec. 6.)

25506. (a) The administering agency shall maintain records of all business plans received and shall index them by street address and company name. The business plan and revisions shall be available for public inspection during the regular working hours of the administering agency, except that those portions of the business plan specifying the precise location where hazardous materials are stored and handled onsite, including any maps of the site, as required by paragraph (5) of subdivision (a) of Section 25509, shall not be available for inspection. The administering agency shall transmit copies of the entire business plan or any information contained in the business plan to any requesting state or local agency.

(b) Any person who files an inventory form required under Section 25509 with the administering agency shall be deemed to have filed the inventory form required by subsection (a) of Section 11022 of Title 42 of the United States Code with the state emergency response commission and emergency planning committee established pursuant to Section 11001 of Title 42 of the United States Code.

(c) The administering agency shall, upon request, transmit the information collected pursuant to this chapter to the Chemical Emergency Planning and Response Commission, established by the Governor as the state emergency response commission pursuant to subsection (a) of Section 11001 of Title 42 of the United States Code, and to the local emergency planning committee established pursuant to subsection (c) of Section 11001 of Title 42 of the United States Code.

(Amended by Stats. 1988, Ch. 1585, Sec. 7.)

25507. (a) Except as provided in subdivision (b), the handler or any employee, authorized representative, agent, or designee of a handler shall, upon discovery, immediately report any release or threatened release of a hazardous material to the administering agency, and to the office, in accordance with the regulations adopted pursuant to Section 25503. Each handler and any employee, authorized representative, agent, or designee of a handler shall provide all state, city, or county fire or public health or safety personnel and emergency rescue personnel with access to the handler's facilities.

(b) Subdivision (a) does not apply to any person engaged in the transportation of a hazardous material on a highway which is subject to, and in compliance with, the requirements of Sections 2453 and 23112.5 of the Vehicle Code.

(Amended by Stats. 1988, Ch. 1585, Sec. 8.)

25507.1. (a) Any business required to submit a followup emergency notice pursuant to subdivision (c) of Section 11004 of Title 42 of the United States Code, as that section reads on January 1, 1989, or as it may be subsequently amended, shall submit the notice on a form approved by the office.

(b) The office may adopt guidelines for the use of the forms required by subdivision (a).

(Added by Stats. 1988, Ch. 1585, Sec. 9.)

25507.2. In order to carry out the purposes of this chapter, an administering agency may train for, and respond to, the release, or threatened release, of a hazardous material.

(Added by Stats. 1990, Ch. 824, Sec. 2.)

25507.3. The California Environmental Protection Agency may request any business to submit the information required to be submitted in the toxic chemical release form specified in subsection (g) of Section 11023 of Title 42 of the United States Code, or a simplified version of that form, except that the form shall not be required of any retail business, any business which has fewer than 10 employees, or any business which manufactures, processes, or otherwise uses a toxic chemical in an amount less than the applicable threshold amount specified in subsection (f) of Section 11023 of Title 42 of the United States Code. The California Environmental Protection Agency shall use this information to collect adequate standardized quantitative data for use in multimedia applications, such as pollution prevention.

(Added by Stats. 1992, Ch. 684, Sec. 3. Effective January 1, 1993.)

25507.10. The emergency rescue personnel, responding to the reported release or threatened release of an acutely hazardous material or to any fire or explosion involving a material that involves a release that would be required to be reported pursuant to Section 25507, shall immediately advise the superintendent of the school district having jurisdiction, where the location of the release or threatened release is within one-half mile of a school.

(Added by Stats. 1991, Ch. 1183, Sec. 8.)

25508. (a) In order to carry out the purposes of this chapter, any employee or authorized representative of an administering agency has the authority specified in Section 25185, with respect to the premises of a handler, and in Section 25185.5, with respect to real property which is within 2,000 feet of the premises of a handler, except that this authority shall include inspections concerning hazardous material, in addition to hazardous waste.

(b) In addition to the requirements of Section 25537, the

administering agency shall conduct inspections of every business subject to this article at least once every three years to determine if the business is in compliance with this article. However, the administering agency may designate the county agricultural commissioner to conduct the inspections of agricultural handlers. The administering agency or its designee for agricultural handlers shall give priority, when conducting these inspections, to inspecting facilities which store an amount of acutely hazardous materials, as defined in Section 25532, equal to, or greater than, the amount specified in subdivision (a) of Section 25536. In establishing a schedule for conducting inspections pursuant to this section, the administering agency may adopt and use an index of the volatility, toxicity, and quantity of acutely hazardous materials and hazardous materials. Administering agencies and designees shall attempt to schedule the inspections conducted pursuant to this section and Section 25537, when applicable, during the same time period.

(Amended by Stats. 1990, Ch. 1662, Sec. 4.)

25509. (a) The annual inventory form shall include, but shall not be limited to, information on all of the following which are handled in quantities equal to or greater than the quantities specified in subdivision (a) of Section 25503.5:

(1) A listing of the chemical name and common names of every hazardous substance or chemical product handled by the business.

(2) The category of waste, including the general chemical and mineral composition of the waste listed by probable maximum and minimum concentrations, of every hazardous waste handled by the business.

(3) A listing of the chemical name and common names of every other hazardous material or mixture containing a hazardous material handled by the business which is not otherwise listed pursuant to paragraph (1) or (2).

(4) The maximum amount of each hazardous material or mixture containing a hazardous material disclosed in paragraphs (1), (2), and (3) which is handled at any one time by the business over the course of the year.

(5) Sufficient information on how and where the hazardous materials disclosed in paragraphs (1), (2), and (3) are handled by the business to allow fire, safety, health, and other appropriate personnel to prepare adequate emergency responses to potential releases of the hazardous materials.

(6) The SIC Code number of the business if applicable.

(7) The name and phone number of the person representing the business and able to assist emergency personnel in the event of an emergency involving the business during nonbusiness hours.

(b) If the local fire chief requires the business to comply with the requirements of subdivision (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9, the business shall also file the addendum required by Section 25503.9 with the administering agency.

(c) The administering agency may permit the reporting of the amount of hazardous material under this section by ranges, rather than a specific amount, as long as those ranges provide the information necessary to meet the needs of emergency rescue personnel, to determine the potential hazard from a release of the materials, and meets the purposes of this chapter.

(d) (1) Except as provided in subdivision (e), the annual inventory form required by this section shall also include all inventory information required by Section 11022 of Title 42 of the United States Code, as that section read on January 1, 1989, or as it may be subsequently amended.

(2) The office may adopt or amend existing regulations specifying the inventory information required by this subdivision.

(e) If, pursuant to federal law or regulation, as it currently exists or as it may be amended, there is a determination that the inventory information required by subdivisions (a) and (c) is substantially equivalent to the inventory information required under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Sec. 11001 et seq.), the requirements of subdivision (d) shall not apply.

(Amended by Stats. 1993, Ch. 1126, Sec. 3. Effective January 1, 1994.)

25509.1. Notwithstanding subdivision (a) of Section 25509, an administering agency may collect any or all of the information required to be reported in an inventory form from another public agency, under all of the following conditions:

(a) The information collected is the same information required under subdivision (a) of Section 25509.

(b) The administering agency receives this information not later than would otherwise be required under this chapter.

(c) The information was originally provided by the handler to the public agency pursuant to a statutory requirement.

(Added by Stats. 1986, Ch. 463, Sec. 15. Effective July 23, 1986.)

25509.2. (a) The Legislature hereby finds and declares all of the following:

(1) Persons attempting to do business in this state are increasingly experiencing excessive and duplicative regulatory requirements at different levels of government.

(2) To streamline and ease the regulatory burdens of doing business in this state, compliance with the hazardous materials release response plans and inventory requirements of this chapter shall also suffice to meet the requirements of the Uniform Fire Code with regard to the requirement for a hazardous materials management plan and hazardous materials inventory statement, as set forth in Article 80 of the Uniform Fire Code and its appendices.

(3) Businesses which are required to comply with this chapter do so on one form, with one fee and one inspection. The administering agency shall forward the data collected, within 15 days of receipt and confirmation, with other local agencies in a format easily interpreted by those agencies with shared responsibilities for protection of the public health and safety and the environment.

(4) Enforcement of this chapter and the Uniform Fire Code shall be coordinated.

(b) Notwithstanding Section 13143.9, and any standards and regulations adopted pursuant to that section, any business which files the annual inventory form in compliance with this article, including the addendum adopted pursuant to Section 25503.9, as required by the local fire chief to comply with subdivision (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9, shall be deemed to have met the requirements of subdivision (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9.

(c) Notwithstanding Section 13143.9, and any standards and regulations adopted pursuant to that section, any business which establishes and maintains a business plan for emergency response to a release or a threatened release of a hazardous material in accordance with Section 25503.5, shall be deemed to have met the requirements of subdivision (b) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9.

(d) Except for the addendum required by the local fire chief, the administering agency shall be the sole enforcement agency for purposes of determining compliance pursuant to subdivisions (b) and (c).

(e) Except as otherwise expressly provided in this section, this section does not affect or otherwise limit the authority of the local fire chief to enforce the Uniform Fire Code.

(Added by Stats. 1993, Ch. 1126, Sec. 4. Effective January 1, 1994.)

25509.3. The annual inventory required by Section 25509 shall also include the total estimated amounts of each hazardous waste handled by the business throughout the course of the year.

(Added by Stats. 1986, Ch. 1260, Sec. 2.)

25510. Within 30 days of any one of the following events, any business subject to Section 25505 shall submit an amendment to the inventory form detailing the handling, and the following appropriate information:

(1) A 100 percent or more increase in the quantity of a previously disclosed material.

(2) Any handling of a previously undisclosed hazardous material subject to the inventory requirements of this chapter.

(3) Change of business address.

(4) Change of business ownership.

(5) Change of business name.

(Amended by Stats. 1986, Ch. 463, Sec. 16. Effective July 23, 1986.)

25511. (a) If a business believes that the inventory required by this chapter involves the release of a trade secret, the business shall nevertheless make the disclosure to the administering agency, and shall notify the administering agency in writing of that belief on the inventory form. As used in this chapter "trade secret" has the meanings given to it by Section 6254.7 of the Government Code and Section 1060 of the Evidence Code.

(b) Subject to this section, the administering agency shall protect

from disclosure any trade secret designated as such by the handler.

(c) Upon receipt of a request for the release of information to the public which includes information which the handler has notified the administering agency is a trade secret pursuant to subdivision (a), the administering agency shall notify the handler in writing of the request by certified mail, return receipt requested. The administering agency shall release the information to the public, but not earlier than 30 days after the date of mailing the notice of the request for information, unless, prior to the expiration of the 30-day period, the handler files an action in an appropriate court for a declaratory judgment that the information is subject to protection under subdivision (b) or for an injunction prohibiting disclosure of the information to the public and promptly notifies the administering agency of that action. This section does not permit a handler to refuse to disclose the information required pursuant to this chapter to the administering agency.

(d) Any information which is confidential pursuant to this section shall not be disclosed to anyone except the following:

(1) An officer or employee of the county or city, the state, or the United States, in connection with the official duties of that officer or employee under any law for the protection of health, or to contractors with the county or city and their employees if, in the opinion of the administering agency, disclosure is necessary and required for the satisfactory performance of a contract, for performance of work, or to protect the health and safety of the employees of the contractor.

(2) Any physician where the physician certifies in writing to the administering agency that the information is necessary to the medical treatment of the physician's patient.

(e) For purposes of this section, fire and emergency rescue personnel and county health personnel operating within the jurisdiction of the county or city shall be considered employees of the county or city, as the case may be.

(f) Any physician who, by virtue of having obtained possession of, or access to, confidential information, and who, knowing that disclosure of the information to the general public is prohibited by this section, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, is guilty of a misdemeanor.

(g) Any officer or employee of the county or city or former officer or employee who, by virtue of that employment or official position, has possession of, or has access to, confidential information, and who, knowing that disclosure of the information to the general public is prohibited by this section, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, is guilty of a misdemeanor. Any contractor with the county or city and any employee of the contractor, who has been furnished information as authorized by this section, shall be considered an employee of the county or city for purposes of this section.

(h) Information certified by appropriate officials of the United States as necessary to be kept secret for national defense purposes shall be accorded the full protections against disclosure as specified by those officials or in accordance with the laws of the United States.

(Added by Stats. 1985, Ch. 1167, Sec. 1.)

25512. (a) The submission of any information required under this chapter does not affect any other liability or responsibility of a business with regard to safeguarding the health and safety of an employee or any other person.

(b) Compliance with this chapter shall not be deemed to be compliance with the duty of care required of any business for purposes of any judicial or administrative proceeding conducted pursuant to any other provision of law.

(Amended by Stats. 1986, Ch. 463, Sec. 17. Effective July 23, 1986.)

25513. Each administering county or city may, upon a majority vote of the governing body, adopt a schedule of fees to be collected from each business required to submit a business plan pursuant to this article which is within its jurisdiction. The governing body may provide for the waiver of fees when a business, as defined in Section 25501.4, submits a business plan. The fee shall be set in an amount sufficient to pay only those costs incurred by the county, city, or fire district, in carrying out this article. In determining the fee schedule, the administering agency shall consider the volume and degree of hazard potential of the hazardous materials handled by the businesses subject to this article.

(Amended by Stats. 1990, Ch. 1662, Sec. 5.)

25513.1. (a) On or before January 1, 1987, the board of supervisors of a county may, by resolution, apply to the Controller for a loan to pay for the costs necessary to initially implement this chapter.

(b) Each county may apply for one loan in an amount not to exceed seventy-five thousand dollars ($75,000).

(c) The Controller shall develop procedures for the submission of resolutions pursuant to this section.

(d) A county shall repay the loan within 15 months from the day the loan is made by the Controller, or on April 1, 1988, whichever comes first. The loan shall be repaid with interest charged at the rate of interest earned by the Pooled Money Investment Account on the date when the loan is made.

(e) There is hereby appropriated from the General Fund to the Controller, the funds necessary to make the loans pursuant to this section.

(f) If a county does not repay the loan and interest thereon within the time required by subdivision (d), the Controller shall withhold the amount which is unpaid from any state payments which are due to the county.

(Added by Stats. 1986, Ch. 463, Sec. 19. Effective July 23, 1986.)

25514. (a) Any business that violates Sections 25503.5 to 25505, inclusive, or Sections 25508 to 25510, inclusive, shall be civilly liable to the administering county or city in an amount of not more than two thousand dollars ($2,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire, the business shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

(b) Any business that knowingly violates Sections 25503.5 to 25505, inclusive, or Sections 25508 to 25510, inclusive, after reasonable notice of the violation shall be civilly liable to the administering county or city in an amount not to exceed five thousand dollars ($5,000) for each day in which the violation occurs.

(Added by Stats. 1985, Ch. 1167, Sec. 1.)

25514.3. Any person that knowingly violates Section 25503.5, 25503.7, 25503.8, 25505, 25508, 25509, 25509.3, 25510, or 25533 after reasonable notice of the violation, is, upon conviction, guilty of a misdemeanor. This section does not preempt any other applicable criminal or civil penalties.

(Added by Stats. 1991, Ch. 1183, Sec. 9.)

25514.5. (a) Notwithstanding Section 25514, any business that violates this article is liable to an administering agency for an administrative penalty not greater than two thousand dollars ($2,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire or health or medical problem requiring toxicological, health, or medical consultation, the business shall also be assessed the full cost of the county, city, fire district, local EMS agency designated pursuant to Section 1797.200, or poison control center as defined by Section 1797.97, emergency response, as well as the cost of cleaning up and disposing of the hazardous materials, or acutely hazardous materials.

(b) Notwithstanding Section 25514, any business that knowingly violates this article after reasonable notice of the violation is liable for an administrative penalty, not greater than five thousand dollars ($5,000) for each day in which the violation occurs.

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

(Amended by Stats. 2007, Ch. 623, Sec. 1. Effective January 1, 2008.)

25515. (a) A person or business who violates Section 25507 shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars ($25,000) for each day of violation, or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment. If the conviction is for a violation committed after a first conviction under this section, the person shall be punished by a fine of not less than two thousand dollars ($2,000) or more than fifty thousand dollars ($50,000) per day of violation, or by imprisonment in the state prison for 16, 20, or 24 months or in the county jail for not more than one year, or by both the fine and

imprisonment. Furthermore, if the violation results in, or significantly contributes to, an emergency, including a fire, to which the county or city is required to respond, the person shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

(b) Notwithstanding subdivision (a), a person who fails to report, pursuant to Section 25507, an oil spill occurring in waters of the state other than marine waters shall, upon conviction, be punished by a fine of not more than fifty thousand dollars ($50,000).

(c) Notwithstanding subdivision (a), a person who knowingly makes a false or misleading report on an oil spill occurring in waters of the state other than marine waters shall, upon conviction, be punished by a fine of not more than fifty thousand dollars ($50,000).

(Amended by Stats. 2008, Ch. 562, Sec. 2. Effective January 1, 2009.)

25515.1. Any person who willfully prevents, interferes with, or attempts to impede the enforcement of this chapter by any authorized representative of an administering agency is, upon conviction, guilty of a misdemeanor.

(Added by Stats. 1986, Ch. 463, Sec. 20. Effective July 23, 1986.)

25515.2. (a) All criminal penalties collected pursuant to this chapter shall be apportioned in the following manner:

(1) Fifty percent shall be paid to the office of the city attorney, district attorney, or Attorney General, whichever office brought the action.

(2) Fifty percent shall be paid to the agency which is responsible for the investigation of the action.

(b) All civil penalties collected pursuant to this chapter shall be apportioned in the following manner:

(1) Fifty percent shall be paid to the office of the city attorney, district attorney, or Attorney General, whichever office brought the action.

(2) Fifty percent shall be paid to the agency responsible for the investigation of the action.

(c) If a reward is paid to a person pursuant to Section 25517, the amount of the reward shall be deducted from the amount of the criminal or civil penalty before the amount is apportioned pursuant to subdivisions (a) and (b).

(Amended by Stats. 2002, Ch. 1000, Sec. 1. Effective January 1, 2003.)

25516. When the administering agency determines that a business has engaged in, is engaged in, or is about to engage in any acts or practices which constitute or will constitute a violation of this chapter or any regulation or order promulgated thereunder, and when requested by the administering agency, the city attorney of the city or the district attorney of the county in which those acts or practices have occurred, are occurring, or will occur shall make application to the superior court for an order enjoining the acts or practices or for an order directing compliance, and, upon a showing that the person or business has engaged in, is engaged in, or is about to engage in the acts or practices, a permanent or temporary injunction, restraining order, or other appropriate order may be granted. This section does not prohibit a city attorney or district attorney from seeking the same relief upon the city attorney's or district attorney's own motion.

(Added by Stats. 1985, Ch. 1167, Sec. 1.)

25516.1. Every civil action brought under this chapter shall be brought by the city attorney, district attorney, or Attorney General in the name of the people of the State of California, and any actions relating to the same violation may be joined or consolidated.

(Added by Stats. 1986, Ch. 463, Sec. 22. Effective July 23, 1986.)

25516.2. (a) In any civil action brought pursuant to this chapter in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any stage of the proceeding any of the following:

(1) Irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued.

(2) The remedy at law is inadequate.

(b) The court shall issue a temporary restraining order, preliminary injunction, or permanent injunction in a civil action brought pursuant to this chapter without the allegations and without the proof specified in subdivision (a).

(Added by Stats. 1986, Ch. 463, Sec. 23. Effective July 23, 1986.)

25517. (a) Any person who provides information which materially contributes to the imposition of a civil penalty, whether by settlement or court order, under Section 25514, as determined by the city attorney, district attorney, or the Attorney General filing the action, shall be paid a reward by the administering agency or the state equal to 10 percent of the amount of the civil penalty collected. The reward shall be paid from the amount of the civil penalty collected. No reward paid pursuant to this subdivision shall exceed five thousand dollars ($5,000).

(b) Any person who provides information which materially contributes to the conviction of a person or business under Section 25515, as determined by the city attorney, district attorney, or the Attorney General filing the action, shall be paid a reward by the administering agency or the state equal to 10 percent of the amount of the fine collected. The reward shall be paid from the amount of the fine collected. No reward paid pursuant to this subdivision shall exceed five thousand dollars ($5,000).

(c) No informant shall be eligible for a reward for a violation known to the administering agency, unless the information materially contributes to the imposition of criminal or civil penalties for a violation specified in this section.

(d) If there is more than one informant for a single violation, the person making the first notification received by the office which brought the action shall be eligible for the reward, except that, if the notifications are postmarked on the same day or telephoned notifications are received on the same day, the reward shall be divided equally among those informants.

(e) Public officers and employees of the United States, the State of California, or counties and cities in this state are not eligible for the reward pursuant to subdivision (a) or (b), unless the providing of the information does not relate in any manner to their responsibilities as public officers or employees.

(f) An informant who is an employee of a business and who provides information that the business has violated this chapter is not eligible for a reward if the employee intentionally or negligently caused the violation or if the employee's primary and regular responsibilities included investigating the violation, unless the business knowingly caused the violation.

(g) The administering agency or the state shall pay rewards under this section pursuant to the following procedures:

(1) An application shall be signed by the informant and presented to the administering agency or the state within 60 days after a final judgment has been entered or the period for an appeal of a judgment has expired.

(2) The determination by the district attorney or city attorney or Attorney General as to whether the information provided by the applicant materially contributed to the imposition of a judgment under Sections 25514 or 25515 shall be final.

(3) The administering agency or the state shall notify the applicant in writing of its decision to grant or deny a reward within a reasonable time period following the filing of an application.

(4) Approved reward claims shall be paid by the administering agency or the state within 30 days of the collection and deposit of the penalties specified in subdivisions (a) and (b).

(h) The names of reward applicants or informants shall not be disclosed by the administering agency or the state unless the names are otherwise publicly disclosed as part of a judicial proceeding.

(i) Notwithstanding any other provision of this section, rewards paid by the state shall only be paid after appropriation by the Legislature.

(Amended by Stats. 1986, Ch. 463, Sec. 24. Effective July 23, 1986.)

25517.5. (a) The office may develop materials, such as guidelines and informational pamphlets, to assist businesses to fulfill their obligations under this chapter.

(b) The office may adopt emergency regulations for the purpose of implementing Sections 25503 and 25509. These emergency regulations shall be adopted by the office 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 purposes of that chapter, 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, or general welfare.

(Added by Stats. 1986, Ch. 463, Sec. 25. Effective July 23, 1986.)

25518. This chapter shall be construed liberally so as to accomplish the intent of the Legislature in protecting the public health and safety and the environment.

(Added by Stats. 1985, Ch. 1167, Sec. 1.)

25519. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

(Added by Stats. 1985, Ch. 1167, Sec. 1.)

25520. The office, not later than January 10, 1986, shall adopt emergency regulations for the immediate report of release or threatened release of a hazardous material as required by Section 25507 until regulations are adopted pursuant to Section 25503. Regulations adopted pursuant to this section are not subject to review by the Office of Administrative Law.

(Added by Stats. 1985, Ch. 1167, Sec. 1.)

Article 2. Hazardous Materials Management

(Article 2 added by Stats. 1986, Ch. 1260, first Sec. 3.)

25531. (a) The Legislature finds and declares that a significant number of chemical manufacturing and processing facilities generate, store, treat, handle, refine, process, and transport hazardous materials. The Legislature further finds and declares that, because of the nature and volume of chemicals handled at these facilities, some of those operations may represent a threat to public health and safety if chemicals are accidentally released.

(b) The Legislature recognizes that the potential for explosions, fires, or releases of toxic chemicals into the environment exists. The protection of the public from uncontrolled releases or explosions of hazardous materials is of statewide concern.

(c) There is an increasing capacity to both minimize and respond to releases of toxic air contaminants and hazardous materials once they occur, and to formulate efficient plans to evacuate citizens if these discharges or releases cannot be contained. However, programs designed to prevent these accidents are the most effective way to protect the community health and safety and the environment. These programs should anticipate the circumstances that could result in their occurrence and require the taking of necessary precautionary and preemptive actions, consistent with the nature of the hazardous materials handled by the facility and the surrounding environment.

(d) As required by Clean Air Act amendments enacted in 1990 (P.L. 101-549), the Environmental Protection Agency has developed a program for the prevention of accidental releases of regulated substances. In developing the program, the Environmental Protection Agency thoroughly reviewed a wide variety of chemical and hazardous substances to identify substances that might pose a risk to public health or safety or to the environment in the event of an accidental release. The Environmental Protection Agency developed a program to prevent accidental releases of those substances determined to potentially pose the greatest risk of immediate harm to the public and the environment. The federal program provides no options for implementing agencies to diminish the requirements or applicability of the federal program.

(e) In light of this new federal program, the Legislature finds and declares that the goals of reducing regulated substances accident risks and eliminating duplication of regulatory programs can best be accomplished by implementing the federal risk management program in the state, with certain amendments that are specific to the state. Therefore, it is the intent of the Legislature that the state seek and receive delegation of the federal program for prevention of accidental releases of regulated substances established pursuant to Section 112(r) of the federal Clean Air Act (42 U.S.C. Section 7412(r)), by implementing the federal program as promulgated by the Environmental Protection Agency, with certain amendments that are specific to the state.

(Amended by Stats. 1996, Ch. 715, Sec. 2. Effective January 1, 1997.)

25531.1. The Legislature finds and declares that the public has a right to know about acutely hazardous materials accident risks that may affect their health and safety, and that this right includes full and timely access to hazard assessment information, including offsite consequence analysis for the most likely hazards, which identifies the offsite area which may be required to take protective action in the event of an acutely hazardous materials release.

The Legislature further finds and declares that the public has a right to participate in decisions about risk reduction options and measures to be taken to reduce the risk or severity of acutely hazardous materials accidents.

(Added by Stats. 1991, Ch. 816, Sec. 1.)

25531.2. (a) The Legislature finds and declares that as the state implements the federal accidental release prevention program pursuant to this article, the Office of Emergency Services will play a vital and increased role in preventing accidental releases of extremely hazardous substances. The Legislature further finds and declares that as an element of the unified program established pursuant to Chapter 6.11 (commencing with Section 25404), a single fee system surcharge mechanism is established by Section 25404.5 to cover the costs incurred by the office pursuant to this article. It is the intent of the Legislature that this existing authority, together with any federal assistance that may become available to implement the accidental release program, be used to fully fund the activities of the office necessary to implement this article.

(b) The office shall use any federal assistance received to implement Chapter 6.11 (commencing with Section 25404) to offset any fees or charges levied to cover the costs incurred by the office pursuant to this article.

(Amended by Stats. 1998, Ch. 251, Sec. 1. Effective January 1, 1999.)

25532. Unless the context indicates otherwise, the following definitions govern the construction of this article:

(a) "Accidental release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(b) "Administering agency" means the local agency authorized, pursuant to Section 25502, to implement and enforce this article.

(c) "Covered process" means a process that has a regulated substance present in more than a threshold quantity.

(d) "Modified stationary source" means an addition or change to a stationary source that qualifies as a "major change," as defined in Subpart A (commencing with Section 68.1) of Part 68 of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations. "Modified stationary source" does not include an increase in production up to the source's existing operational capacity or an increase in production level, up to the production levels authorized in a permit granted pursuant to Section 42300.

(e) "Process" means any activity involving a regulated substance, including any use, storage, manufacturing, handling, or onsite movement of the regulated substance or any combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located so that a regulated substance could be involved in a potential release, shall be considered a single process.

(f) "Qualified person" means a person who is qualified to attest, at a minimum, to the completeness of an RMP.

(g) "Regulated substance" means any substance that is either of the following:

(1) A regulated substance listed in Section 68.130 of Title 40 of the Code of Federal Regulations pursuant to paragraph (3) of subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(r)(3)).

(2) (A) An extremely hazardous substance listed in Appendix A of Part 355 (commencing with Section 355.10) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations that is any of the following:

(i) A gas at standard temperature and pressure.

(ii) A liquid with a vapor pressure at standard temperature and pressure equal to or greater than 10 millimeters mercury.

(iii) A solid that is one of the following:

(I) In solution or in molten form.

(II) In powder form with a particle size less than 100 microns.

(III) Reactive with a National Fire Protection Association rating of 2, 3, or 4.

(iv) A substance that the office determines may pose a regulated substances accident risk pursuant to subclause (II) of clause (i) of subparagraph (B) or pursuant to Section 25543.3.

(B) (i) On or before June 30, 1997, the office shall, in consultation with the Office of Environmental Health Hazard Assessment, determine which of the extremely hazardous substances listed in Appendix A of Part 355 (commencing with Section 355.10) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations do either of the following:

(I) Meet one or more of the criteria specified in clauses (i), (ii), or (iii) of subparagraph (A).

(II) May pose a regulated substances accident risk, in consideration of the factors specified in subdivision (g) of Section 25543.1, and, therefore, should remain on the list of regulated substances until completion of the review conducted pursuant to subdivision (a) of Section 25543.3.

(ii) The office shall adopt, by regulation, a list of the extremely hazardous substances identified pursuant to clause (i). Extremely hazardous substances placed on the list are regulated substances for the purposes of this article. Until the list is adopted, the administering agency shall determine which extremely hazardous substances should remain on the list of regulated substances pursuant to the standards specified in clause (i).

(h) "Regulated substances accident risk" means a potential for the accidental release of a regulated substance into the environment that could produce a significant likelihood that persons exposed may suffer acute health effects resulting in significant injury or death.

(i) "RMP" means the risk management plan required under Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations and by this article.

(j) "State threshold quantity" means the quantity of a regulated substance described in subparagraph (A) of paragraph (2) of subdivision (g), as adopted by the office pursuant to Section 25543.1 or 25543.3. Until the office adopts a state threshold quantity for a regulated substance, the state threshold quantity shall be the threshold planning quantity for the regulated substance specified in Appendix A of Part 355 (commencing with Section 355.10) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations.

(k) "Stationary source" means any stationary source, as defined in Section 68.3 of Title 40 of the Code of Federal Regulations.

(l) "Threshold quantity" means the quantity of a regulated substance that is determined to be present at a stationary source in the manner specified in Section 68.115 of Title 40 of the Code of Federal Regulations and that is the lesser of either of the following:

(1) The threshold quantity for the regulated substance specified in Section 68.130 of Title 40 of the Code of Federal Regulations.

(2) The state threshold quantity.

(m) "Person" means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, or corporation, including, but not limited to, a government corporation. "Person" also includes any city, county, city and county, district, commission, the state or any department, agency or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.

(Amended by Stats. 2003, Ch. 696, Sec. 7. Effective January 1, 2004.)

25533. (a) The program for prevention of accidental releases of regulated substances adopted by the Environmental Protection Agency pursuant to subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Section 7412(r)), with the additional provisions specified in this article, is the accidental release prevention program for the state. The program shall be implemented by the office and the appropriate administering agency in each city or county. The state's implementation of the federal program adopted by the Environmental Protection Agency is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Notwithstanding this article or Division 26 (commencing with Section 39000), the accidental release prevention program submitted by the office to the Environmental Protection Agency to receive delegation of federal authority to implement the federal program shall include only those regulated substances and threshold quantities specified in the regulations adopted by the Environmental Protection Agency.

(b) The office and the administering agency shall, to the maximum extent feasible, coordinate implementation of the accidental release prevention program with the federal Chemical Safety and Hazard Investigation Board, the Emergency Response Commission and local emergency planning committees, the unified program elements specified in subdivision (c) of Section 25404, the permitting programs implemented by the air quality management districts and air pollution control districts pursuant to Title V of the Clean Air Act (42 U.S.C. Section 7661 et seq.), and with other agencies, as specified in Section 25404.2.

(c) Section 39602 does not apply to the accidental release prevention program promulgated and implemented pursuant to subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Section 7412(r)).

(d) The administering agency in each jurisdiction is the agency designated to implement and enforce any requirements specified by the Environmental Protection Agency and pertaining to any of the following:

(1) Verification of stationary source registration and submission of an RMP or revised RMP.

(2) Verification of source submission of stationary certifications or compliance schedules.

(3) Mechanisms for ensuring that stationary sources permitted pursuant to Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.) are in compliance with the requirements of this article.

(e) Notwithstanding subdivision (d) and paragraph (2) of subdivision (a) of Section 25404.1, if, after a public hearing, the office determines that an administering agency is not taking reasonable actions to enforce the statutory provisions and regulations pertaining to accidental releases of regulated substances, the office may exercise any of the powers of that administering agency as necessary to implement this article.

(f) Notwithstanding any other provision of law, at any time there is no local agency certified to implement in a city or unincorporated portion of a county the unified program established pursuant to Chapter 6.11 (commencing with Section 25404), the office shall do one of the following:

(1) Authorize the administering agency which implemented this article in the city or county as of December 31, 1993, to continue to implement this article until such time as a local agency is certified to implement the unified program.

(2) Assume authority and responsibility to implement this article in that city or county until a local agency is certified to implement the unified program, in which case all references in this article to the administering agency shall be deemed to refer to the office.

(Repealed and added by Stats. 1996, Ch. 715, Sec. 7. Effective January 1, 1997.)

25534. (a) For any stationary source with one or more covered processes, the administering agency shall make a preliminary determination as to whether there is a significant likelihood that the use of regulated substances by a stationary source may pose a regulated substances accident risk.

(b) (1) If the administering agency determines that there is a significant likelihood of a regulated substances accident risk pursuant to this subdivision, it shall require the stationary source to prepare and submit an RMP, or may reclassify the covered process from program 2 to program 3, as specified in Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations.

(2) If the administering agency determines that there is not a significant likelihood of a regulated substances accident risk pursuant to this subdivision, it may do either of the following:

(A) Require the preparation and submission of an RMP, but need not do so if it determines that the likelihood of a regulated substances accident risk is remote, unless otherwise required by federal law.

(B) Reclassify a covered process from program 3 to program 2 or from program 2 to program 1, as specified in Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations, unless the classification of the covered process is specified in those regulations.

(3) If the administering agency determines that an economic poison, as defined in Section 12753 of the Food and Agricultural Code, used on a farm or nursery may pose a regulated substances accident risk pursuant to this article, the administering agency shall first consult with the Department of Food and Agriculture or the county agricultural commissioner to evaluate whether the current RMP is adequate in relation to the regulated substances accident risk. This paragraph does not limit the authority of an administering agency to conduct its duties under this article, or prohibit the exercise of that authority.

(c) The requirements of this section apply to a stationary source that is not otherwise required to submit an RMP pursuant to Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the

Code of Federal Regulations.

(Amended by Stats. 1997, Ch. 17, Sec. 74. Effective January 1, 1998.)

25534.05. (a) The office, in consultation with the administering agencies, industry, the public, and other interested parties, shall adopt regulations, initially as emergency regulations, for all of the following activities:

(1) The registration of stationary sources subject to this article.

(2) The receipt, review, revision, and audit of RMPs.

(3) The resolution of disagreements between stationary source operators and administering agencies.

(4) Providing for the public availability of RMPs, consistent with subsection (c) of Section 114 of the federal Clean Air Act (42 U.S.C. Section 7414(c)).

(5) The provision of technical assistance to stationary sources subject to the accidental release prevention program.

(b) The regulations shall also require each stationary source to work closely with the administering agency in deciding which process hazard review technique is best suited for each stationary source's covered processes.

(c) The regulations shall provide that the process hazard analysis shall include the consideration of external events, including seismic events, if applicable.

(d) The regulations shall also require each stationary source to work closely with the administering agency in determining for each RMP an appropriate level of detail for the document elements specified in Section 68.150(a) of Title 40 of the Code of Federal Regulations and for documentation of the external events analysis.

(e) Administering agencies shall implement the regulations adopted pursuant to this section.

(Added by Stats. 1996, Ch. 715, Sec. 9. Effective January 1, 1997.)

25534.06. (a) A city or county that adopts, amends, or repeals an ordinance related to the regulation of regulated substances pursuant to this article shall do so at a public meeting for which notice has been given in a newspaper of general circulation that is published and circulated in the affected city or county, and the city or county shall state in the ordinance the reasons for adopting, amending, or repealing the ordinance.

(b) A city or county required to provide notice pursuant to subdivision (a) may, in addition to publishing the notice in a newspaper of general circulation, submit the notice to the California Environmental Protection Agency, which shall post that notice on the Internet at a location established for notices that may be posted pursuant to this subdivision.

(c) A city or county required to provide notice pursuant to subdivision (a) may also submit the full text of the ordinance and a summary of any violations of the ordinance to the California Environmental Protection Agency, which shall post the full text of the ordinance and the summary of any violations of the ordinance, or a link to the full text of the ordinance and the summary of any violations of the ordinance, on the agency's Internet website.

(d) The California Environmental Protection Agency shall not implement subdivision (b) or (c) until July 1, 2001, unless otherwise authorized to do so on an earlier date, in accordance with a process for considering exemptions established by the Year 2000 Executive Committee, pursuant to Executive Order D-3-99.

(Amended by Stats. 2000, Ch. 294, Sec. 1. Effective January 1, 2001.)

25534.1. Each RMP required to be prepared pursuant to this article shall give consideration to the proximity of the facility or proposed facility to populations located in schools, residential areas, general acute care hospitals, long-term health care facilities, and child day care facilities. For purposes of this section, "general acute care hospital" has the meaning provided by subdivision (a) of Section 1250, "long-term health care facility" has the meaning provided by subdivision (a) of Section 1418, and "child day care facility" has the meaning provided by Section 1596.750. "School" means any school used for the purpose of the education of more than 12 children in kindergarten or any grades 1 to 12, inclusive.

(Amended by Stats. 1996, Ch. 715, Sec. 10. Effective January 1, 1997.)

25534.2. Any new or modified stationary source which is required to prepare an RMP pursuant to this article shall be subject to the requirements of Section 65850.2 of the Government Code.

(Repealed and added by Stats. 1996, Ch. 715, Sec. 12. Effective January 1, 1997.)

25534.5. The administering agency with jurisdiction over a stationary source or facility may have access to inspect the stationary source and review all technical and other information in the stationary source's possession which is reasonably necessary to allow the administering agency to make a determination regarding the stationary source's compliance with this article. Upon request of the administering agency, the stationary source shall provide to the administering agency information regarding the stationary source's compliance with this article.

(Repealed and added by Stats. 1996, Ch. 715, Sec. 14. Effective January 1, 1997.)

25535. (a) An owner or operator of a stationary source submitting an RMP pursuant to this article shall submit the RMP to the administering agency after the RMP is certified as complete by a qualified person and the stationary source owner or operator. The administering agency shall review the RMP and may authorize the air pollution control district or air quality management district in which the stationary source is located to conduct a technical review of the RMP. If, after review by the administering agency and technical review, if any, by the air pollution control district or air quality management district, the administering agency determines that the stationary source's RMP is deficient in any way, the administering agency shall notify the stationary source of these defects. The stationary source shall submit a corrected RMP within 60 days of the notification of defects, unless granted a one-time extension of no more than 30 days, of the notice to correct the RMP by the administering agency. Failure to fully comply with this notice or the unified program of this section shall be deemed a violation of this article for purposes of Section 25540.

(b) Upon implementation of an RMP, the stationary source shall notify the administering agency that the RMP has been implemented and shall summarize the steps taken in preparation and implementation of the RMP.

(c) The stationary source shall continue to carry out the program and activities specified in the RMP at the stationary source after the administering agency has been notified pursuant to subdivision (b).

(d) The owner or operator of the stationary source shall implement all programs and activities in the RMP before operations commence, in the case of a new stationary source, or before any new activities involving regulated substances are taken, in the case of a modified stationary source.

(Amended by Stats. 1996, Ch. 715, Sec. 15. Effective January 1, 1997.)

25535.1. (a) Except as otherwise provided in this article, an owner or operator of a stationary source shall prepare an RMP if an RMP is required pursuant to Part 68 (commencing with Section 68.1) of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations or if the administering agency makes a determination pursuant to Section 25534 that an RMP is required.

(b) An owner or operator of a stationary source required to prepare an RMP pursuant to this article shall submit the RMP to the Environmental Protection Agency and to the administering agency.

(c) Notwithstanding subdivision (b), if an RMP is required only because the administering agency has determined, pursuant to Section 25534, that an RMP is required, the RMP shall be submitted only to the administering agency.

(Added by Stats. 1996, Ch. 715, Sec. 16. Effective January 1, 1997.)

25535.2. Within 15 days after the administering agency determines that an RMP is complete, the administering agency shall make the RMP available
to the public for review and comment for a period of at least 45 days. A notice briefly describing and stating that the RMP is available for public review at a certain location shall be placed in a daily local newspaper and mailed to interested persons and organizations. The administering agency shall review the RMP, and any comments received, following the regulations adopted pursuant to subdivision (a) of Section 25534.05.

(Amended (as added by Stats. 1991, Ch. 816) by Stats. 1996, Ch.

715, Sec. 18. Effective January 1, 1997.)

25535.5. Any fee imposed on any stationary source to cover the administering agency's cost of implementing the accidental release prevention program pursuant to this article shall be imposed only through the single fee system established pursuant to Section 25404.5.

(Added by Stats. 1996, Ch. 715, Sec. 19. Effective January 1, 1997.)

25536. (a) Any stationary source with one or more covered processes shall comply with the requirements of this article no later than the latest date specified in Subpart A (commencing with Section 68.1) of Part 68 of Subchapter C of Chapter 7 of Title 40 of the Code of Federal Regulations.

(b) If the administering agency makes a determination pursuant to Section 25534 that a stationary source is required to prepare and submit an RMP, the stationary source shall submit the RMP in accordance with a schedule established by the administering agency after consultation with the stationary source. The administering agency shall not require an RMP to be submitted earlier than 12 months or later than three years after the owner or operator has received a notice of that determination from the administering agency.

(Repealed and added by Stats. 1996, Ch. 715, Sec. 21. Effective January 1, 1997.)

25536.5. (a) Any business which was required to prepare, submit, and implement a risk management and prevention program pursuant to this article as it read on December 31, 1996, and which is required to prepare and submit an RMP pursuant to this article, shall continue to implement the risk management and prevention program until the business has submitted an RMP as specified in this article.

(b) Any business which was required to prepare, submit, and implement a risk management and prevention program pursuant to this article as it read on December 31, 1996, and which is not required to prepare an RMP pursuant to this article is required to comply only with those requirements of this chapter that apply to the business.

(c) Any stationary source which was not required to prepare, submit, and implement a risk management and prevention program pursuant to this article as it read on December 31, 1996, but which is required to prepare and submit an RMP pursuant to this article, shall submit and implement an RMP not later than the deadlines specified in Subpart A (commencing with Section 68.1) of Part 68 of Subchapter C of Chapter 7 of Title 40 of the Code of Federal Regulations.

(Added by Stats. 1996, Ch. 715, Sec. 22. Effective January 1, 1997.)

25537. (a) The administering agency shall inspect every stationary source required to be registered pursuant to this article at least once every three years to determine whether the stationary source is in compliance with this article. The requirements of this section do not alter or affect the immunity provided a public entity pursuant to Section 818.6 of the Government Code.

(b) Subdivision (a) shall not be construed to affect the exemption from audit requirements established pursuant to Section 68.220(c) of Title 40 of the Code of Federal Regulations.

(Amended by Stats. 1996, Ch. 715, Sec. 23. Effective January 1, 1997.)

25537.5. (a) Where a stationary source has one or more covered processes, and is subject to the requirements of Article 1 (commencing with Section 25500) for the same substance, compliance with this article shall be deemed compliance with Article 1 (commencing with Section 25500) for that substance, to the extent not inconsistent with federal law and with Article 1 (commencing with Section 25500).

(b) Any stationary source which relies on subdivision (a) for compliance with the applicable requirements of Article 1 (commencing with Section 25500) shall annually submit to the administering agency a statement that the stationary source has made no changes required to be reported pursuant to Article 1 (commencing with Section 25500), or identifying all reportable changes.

(Added by Stats. 1996, Ch. 715, Sec. 24. Effective January 1, 1997.)

25538. (a) If a stationary source believes that any information required to be reported, submitted, or otherwise provided to the administering agency pursuant to this article involves the release of a trade secret, the stationary source shall provide the information to the administering agency and shall notify the administering agency in writing of that belief. Upon receipt of a claim of trade secret related to an RMP, the administering agency shall review the claim and shall segregate properly substantiated trade secret information from information that shall be made available to the public upon request in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code). As used in this section, "trade secret" has the same meaning as in subdivision (d) of Section 6254.7 of the Government Code and Section 1060 of the Evidence Code.

(b) Except as otherwise specified in this section, the administering agency may not disclose any properly substantiated trade secret that is so designated by the owner or operator of a stationary source.

(c) The administering agency may disclose trade secrets received by the administering agency pursuant to this article to authorized officers or employees of other governmental agencies only in connection with the official duties of that officer or employee pursuant to any law for the protection of health and safety.

(d) Any officer or employee or former officer or employee of the administering agency or any other government agency who, because of that employment or official position, has possession of or access to information designated as a trade secret pursuant to this section shall not knowingly and willfully disclose the information in any manner to any person not authorized to receive the information pursuant to this section. Notwithstanding Section 25515, any person who violates this subdivision, and who knows that disclosure of this information to the general public is prohibited by the section, shall, upon conviction, be punished by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(e) Any information prohibited from disclosure pursuant to any federal statute or regulation shall not be disclosed.

(f) This section does not authorize any stationary source to refuse to disclose to the administering agency any information required pursuant to this article.

(g) (1) Upon receipt of a request for the release of information to the public that includes information that the stationary source has notified the administering agency is a trade secret pursuant to subdivision (a), the administering agency shall notify the stationary source in writing of the request by certified mail, return receipt requested. The owner or operator of the stationary source shall have 30 days from receipt of the notification to provide the administering agency with any materials or information intended to supplement the information submitted pursuant to subdivision (a) and needed to substantiate the claim of trade secret. The administering agency shall review the claim of trade secret and shall determine whether the claim is properly substantiated.

(2) The administering agency shall inform the stationary source in writing, by certified mail, return receipt requested, of any determination by the administering agency that some, or all, of a claim of trade secret has not been substantiated. Not earlier than 30 days after the receipt by a stationary source of notice of the determination, the administering agency shall release the information to the public, unless, prior to the expiration of the 30-day period, the stationary source files an action in an appropriate court for a declaratory judgment that the information is subject to protection under subdivision (b) or for an injunction prohibiting disclosure of the information to the public, and promptly notifies the administering agency of that action.

(Amended by Stats. 1997, Ch. 17, Sec. 75. Effective January 1, 1998.)

25539. The office and each administering agency, in implementing this article, shall, upon request, involve and cooperate with local and state government officials, emergency planning committees, and professional associations.

(Amended by Stats. 1996, Ch. 715, Sec. 26. Effective January 1, 1997.)

25540. (a) Any person or stationary source that violates this article shall be civilly liable to the administering agency in an amount of not more than two thousand dollars ($2,000) for each day in which the

violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

(b) Any person or stationary source that knowingly violates this article after reasonable notice of the violation shall be civilly liable to the administering agency in a amount not to exceed twenty-five thousand dollars ($25,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of any hazardous materials.

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

(Amended by Stats. 2007, Ch. 623, Sec. 2. Effective January 1, 2008.)

25540.1. A person or stationary source that knowingly violates this article after reasonable notice of the violation is guilty of a misdemeanor and may, upon conviction, be punished by imprisonment in a county jail not to exceed one year. If the violation results in, or significantly contributes to, an emergency, including a fire, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of any hazardous materials.

(Added by Stats. 2007, Ch. 623, Sec. 3. Effective January 1, 2008.)

25540.5. Any person or stationary source who violates any rule or regulation, emission limitation, permit condition, order, fee requirement, filing requirement, duty to allow or carry out inspection or monitoring activities, or duty to allow entry, established pursuant to this article and for which delegation or approval of implementation and enforcement authority has been obtained pursuant to subsections (l) and (r) of Section 112 of the Clean Air Act (42 U.S.C. Sections 7412(l) and 7412(r)) or the regulations adopted pursuant thereto, is strictly liable for a civil penalty not to exceed ten thousand dollars ($10,000) for each day in which the violation occurs.

(Added by Stats. 1996, Ch. 715, Sec. 28. Effective January 1, 1997.)

25541. Any person or stationary source who knowingly makes any false material statement, representation or certification in any record, report, or other document filed, maintained, or used for the purpose of compliance with this article, or destroys, alters, or conceals any such record, report, or other document filed, maintained, or used for the purpose of compliance with this article, shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars ($25,000) for each day of violation, or by imprisonment in the county jail for not more than one year, or by both the fine and the imprisonment.

If the conviction is for a violation committed after a first conviction under this section, the person or stationary source shall be punished by a fine of not less than two thousand dollars ($2,000) or more than fifty thousand dollars ($50,000) per day of violation, or by imprisonment in the state prison for one, two, or three years or in the county jail for not more than one year, or both the fine and imprisonment.

Furthermore, if the violation results in, or significantly contributes to, an emergency, including a fire, to which the county or city is required to respond, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the acutely hazardous materials.

(Amended by Stats. 1996, Ch. 715, Sec. 29. Effective January 1, 1997.)

25541.3. Any person or stationary source who knowingly violates any requirement of this article, including any fee or filing requirement, for which delegation of federal implementation and enforcement authority has been obtained pursuant to subsections (l) and (r) of Section 112 of the federal Clean Air Act (42 U.S.C. Sections 7412(l) and 7412(r)), or who knowingly renders inaccurate any federally required monitoring device or method, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000) for each day of violation.

(Added by Stats. 1996, Ch. 715, Sec. 30. Effective January 1, 1997.)

25541.5. If civil penalties are recovered pursuant to Section 25540 or 25540.5, the same offense shall not be the subject of a criminal prosecution pursuant to Section 25541 or 25541.3. When an administering agency refers a violation to a prosecuting agency and a criminal complaint is filed, any civil action brought pursuant to this article for that offense shall be dismissed.

(Added by Stats. 1996, Ch. 715, Sec. 31. Effective January 1, 1997.)

25542. (a) It is the intent of the Legislature that for those facilities with an RMP incorporating some, or all, of the federal or state process safety management program under the Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 et seq.) and the Occupational Safety and Health Act of 1973, Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, where a violation may be penalized pursuant to this article and the process safety management program, penalties shall be imposed under only one program.

(b) It is the further intent of the Legislature that for any facility described in subdivision (a), the Division of Industrial Safety of the Department of Industrial Relations shall, to the maximum extent feasible, coordinate with the administering agency and other agencies in accordance with paragraph (4) of subdivision (a) of Section 25404.2.

(Added by Stats. 1996, Ch. 715, Sec. 32. Effective January 1, 1997.)

25543. The office shall obtain and maintain state delegation of the federal accidental release prevention program established pursuant to subsection (r) of Section 7412 of Title 42 of the United States Code. Substances that are regulated under this article only because they are regulated substances pursuant to paragraph (2) of subdivision (g) of Section 25532 and state threshold quantities shall not be a part of the state program for which delegation of federal implementation and enforcement authority is sought pursuant to this section and subdivision (a) of Section 25533.

(Repealed and added by Stats. 1996, Ch. 715, Sec. 34. Effective January 1, 1997.)

25543.1. (a) Any person may submit a petition to the office for the addition of a material to, or for the deletion of a material from, the regulated substances list adopted pursuant to subparagraph (B) of paragraph (2) of subdivision (g) of Section 25532 or to revise the existing state threshold quantities that are used as the standards for registration and RMP compliance.

(b) A petition submitted pursuant to subdivision (a) shall be accompanied by a submission fee, to be established by the office, in consultation with the Office of Environmental Health Hazard Assessment. The fee shall be in an amount that is sufficient to pay for the reasonable costs incurred by the office and the Office of Environmental Health Hazard Assessment necessary to carry out this section. Upon the receipt of the petition and fee, the office shall transmit to the Office of Environmental Health Hazard Assessment funds sufficient to pay for the reasonable costs incurred by the Office of Environmental Health Hazard Assessment to carry out this section.

(c) An owner or operator of a stationary source shall not delay implementation of this article in anticipation of a ruling on a petition to delist a regulated substance or to change a state threshold quantity.

(d) The office shall notify administering agencies of petitions for adding or delisting regulated substances or for changing state threshold quantities and shall take comments from administering agencies on the petitions. All comments shall be responded to in writing.

(e) The office shall notify the public of petitions for adding or delisting regulated substances or for changing state threshold quantities and shall take public comment on the petitions. All comments shall be responded to in writing.

(f) (1) The office shall request the Office of Environmental Health Hazard Assessment to review the petitions and make recommendations to the office regarding the petitions.

(2) Each recommendation made pursuant to paragraph (1) shall be based on current scientific knowledge and a sound and open scientific review and shall contain a finding whether a substance should be added to, or deleted from, the regulated substance list, or whether the state threshold quantity for a regulated substance should be revised.

(g) The petition review by the Office of Environmental Health Hazard Assessment shall take into consideration all of the following factors:

(1) The severity of any acute adverse health effect associated with an accidental release of the substance.

(2) The likelihood of an accidental release of the substance.

(3) The potential magnitude of human exposure to an accidental release of the substance.

(4) The results of other preexisting evaluations of the substances potential risks which take into account the factors specified in paragraphs (1), (2), and (3), including, but not limited to, studies or research undertaken by, or on behalf of, the Environmental Protection Agency for the purpose of complying with paragraph (3) of subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412 (r)(3)).

(5) The likelihood of the substance being handled in this state.

(6) The accident history of the substance.

(h) Upon receipt of a recommendation made pursuant to subdivision (f), the office may add or remove a substance or change an existing state threshold quantity as a requirement for this article.

(i) In reviewing a petition under this section, the office shall consider the views of administering agencies that have indicated support or opposition to the petition.

(Amended by Stats. 1996, Ch. 715, Sec. 35. Effective January 1, 1997.)

25543.2. (a) A stationary source that intends to modify a facility which may result either in a significant increase in the amount of regulated substances handled by the facility or in a significantly increased risk in handling a regulated substance, as compared to the amount of substances and the amount of risk identified in the facility's RMP relating to the covered process proposed for modification, shall do all the following, prior to operating the modified facility:

(1) Where reasonably possible, notify the administering agency in writing of the stationary source's intent to modify the facility at least five calendar days before implementing any modifications. As part of the notification process, the stationary source shall consult with the administering agency when determining whether the RMP should be reviewed and revised. Where prenotification is not reasonably possible, the stationary source shall provide written notice to the administering agency no later than 48 hours following the modification.

(2) Establish procedures to manage the proposed modification, which shall be substantially similar to the procedures specified in Section 1910.119 of Title 29 of the Code of Federal Regulations pertaining to process safety management, and notify the administering agency that the procedures have been established.

(b) The stationary source shall revise the appropriate documents, as required pursuant to subdivision (a), expeditiously, but not later than 60 days from the date of the facility modification.

(Amended by Stats. 1996, Ch. 715, Sec. 36. Effective January 1, 1997.)

25543.3. On or before June 30, 1998, the office, in consultation with the Office of Environmental Health Hazard Assessment, shall do all of the following:

(a) Review each regulated substance on the list established pursuant to subparagraph (B) of paragraph (2) of subdivision (g) of Section 25532 and, taking into consideration the factors specified in subdivision (g) of Section 25543.1, determine if the regulated substance should remain subject to regulation under this article or should be deleted from that list of regulated substances.

(b) Review the state threshold quantity for each regulated substance that the office determines should remain on the list of regulated substances, and determine, taking into consideration the factors specified in subdivision (g) of Section 25543.1, if the state threshold quantity should be revised.

(c) Adopt regulations, which amend the list of regulated substances adopted pursuant to subparagraph (B) of paragraph (2) of subdivision (g) of Section 25532, and adopt state threshold quantities for regulated substances, based on the determinations of the office under subdivisions (a) and (b).

(Added by Stats. 1996, Ch. 715, Sec. 37. Effective January 1, 1997.)

Article 3. Emergency Planning and Community Right to Know Act of 1986 Implementation

(Article 3 added by Stats. 1988, Ch. 558, Sec. 1.)

25545. The Office of Emergency Services shall develop informational guidelines for facilities required to comply with Chapter 116 (commencing with Section 11001) of Title 42 of the United States Code and with this chapter, and shall assist the administering agencies in assuring full distribution of these guidelines to those facilities.

(Added by Stats. 1988, Ch. 558, Sec. 1.)

Article 4. California Toxic Release Inventory Program Act of 2007

(Article 4 added by Stats. 2007, Ch. 616, Sec. 1. Effective January 1, 2008.)

25546. The Legislature finds and declares all of the following:

(a) The people of California have the right to know the hazards posed by toxic releases near their homes, schools, and workplaces. They have the right to know how much pollution is being released into the water, air, and soil.

(b) Since its inception in 1986, as part of the federal Emergency Planning and Community Right-to-Know Act of 1986, (EPCRA; Chapter 116 (commencing with Section 11001) of Title 42 of the United States Code), the Toxics Release Inventory (TRI) has supplied this essential information on toxic chemical releases to the public. The goal of the TRI is to empower citizens, through information, to hold companies and local governments accountable for how toxic chemicals are managed.

(c) It is the intent of the Legislature that California citizens do not lose access to the information necessary to understand the potential threats to public health and safety and the environment that is available through the Toxics Release Inventory as it existed on January 1, 2006, including the ease of accessibility.

(Added by Stats. 2007, Ch. 616, Sec. 1. Effective January 1, 2008.)

25546.1. This article shall be known, and may be cited, as the "California Toxic Release Inventory Program Act of 2007."

(Added by Stats. 2007, Ch. 616, Sec. 1. Effective January 1, 2008.)

25546.2. For purposes of this article, the following definitions shall apply:

(a) "Department" means the Department of Toxic Substances Control.

(b) "Facility" means a facility subject to the federal act, as provided by Section 11002 of Title 42 of the United States Code, as that section read on January 1, 2006, and that is subject to the existing federal regulations.

(c) "Existing federal regulations" mean the regulations found in Part 372 (commencing with Section 372.1) of Subchapter J of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations read on January 1, 2006, except as provided in subdivision (b) of Section 25546.3.

(d) "Federal act" means the federal Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA; Chapter 116 (commencing with Section 11001) of Title 42 of the United States Code).

(e) "Federal regulations" mean the regulations found in Part 372 (commencing with Section 372.1) of Subchapter J of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations may be revised or amended on or after January 1, 2006.

(f) "Program" means the California Toxic Release Inventory Program established pursuant to this article.

(g) "Toxic chemical" means a substance listed pursuant to Subpart D (commencing with Section 372.65) of Part 372 of Subchapter J of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations read on January 1, 2006, and not as those regulations may be subsequently amended, revised, or repealed after that date, except as provided in subdivision (b) of

Section 25546.3.

(h) "Toxic chemical release form" means the form required to be completed by the owner or operator of a facility pursuant to Section 11023 of Title 42 of the United States Code, as that section read on January 1, 2006.

(i) "Threshold quantity" means the amount of a toxic chemical specified in Sections 372.25, 372.27, and 372.28 of Title 40 of the Code of Federal Regulations as those regulations read on January 1, 2006, and not as those regulations may be subsequently amended, revised, or repealed after that date, except as provided in subdivision (b) of Section 25546.3.

(Added by Stats. 2007, Ch. 616, Sec. 1. Effective January 1, 2008.)

25546.3. (a) On or before January 1, 2009, the department shall develop and implement the California Toxic Release Inventory Program pursuant to this article.

(b) Notwithstanding any other provision of this article, the department shall, when implementing the program, comply with the requirements of the federal act with regard to ensuring that any requirement imposed pursuant to this article is no less stringent than, or is not otherwise preempted by, any requirement imposed pursuant to the federal act, including any changes to the existing federal regulations that decrease the threshold quantity or include additional toxic chemicals subject to the federal act.

(c) If there is a legal challenge to changes made to Section 312 of the federal act (42 U.S.C. Sec. 11022) or the federal regulations adopted pursuant to that section, that result in the changes being stayed or enjoined by a federal court, the department shall not require a facility to submit a toxic chemical release form pursuant to Section 25546.4 until the department determines that the court action has been settled or adjudicated.

(Added by Stats. 2007, Ch. 616, Sec. 1. Effective January 1, 2008.)

25546.4. (a) The program established pursuant to this article shall require a facility to submit a toxic chemical release form to the department, in accordance with the existing federal regulations, if the facility is not required by the federal regulations to submit a toxic chemical release form containing that same information.

(b) The program adopted pursuant to subdivision (a) shall require that the information be reported retroactively to the effective date of the change in the federal act or the existing federal regulations as to ensure no gap in data collection.

(c) The department shall evaluate California-specific reporting requirements and determine if this information can substitute, in whole or in part, for the information that would be required under the program. This review shall include, but not be limited to, reporting required pursuant to the Air Toxic "Hot Spot" Information and Assessment Act (Part 6 (commencing with Section 44300) of Division 26), the Hazardous Waste Source Reduction and Management Review Act of 1989 (Article 11.9 (commencing with Section 25244.12) of Chapter 6.5), and reporting required by the regional water quality control boards pursuant to the National Pollution Discharge Elimination System permits and waste discharge requirements.

(d) The department shall require the facility to utilize the same reporting forms in use, pursuant to the existing federal regulations, unless the department determines that an alternative form is necessary to substitute chemical release data reported under existing California-specific programs, to ensure that the information is consolidated. The department shall also prescribe the manner in which the information in the forms shall be transmitted.

(e) The department shall post a copy of each form received from each facility that is subject to the program on the department's publicly available Internet Web site.

(Added by Stats. 2007, Ch. 616, Sec. 1. Effective January 1, 2008.)

25546.5. (a) The department may adopt regulations to implement the program as emergency regulations. The emergency regulations adopted pursuant to this section shall be adopted by the department 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 hereby deemed an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(b) 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 department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

(Added by Stats. 2007, Ch. 616, Sec. 1. Effective January 1, 2008.)

HEALTH AND SAFETY CODE

CHAPTER 6.96. HAZARDOUS MATERIALS LIABILITY OF LENDERS AND FIDUCIARIES

(Chapter 6.96 added by Stats. 1996, Ch. 612, Sec. 1. Effective January 1, 1997.)

25548. (a) The Legislature hereby finds and declares all of the following:

(1) There is uncertainty in the law of this state with regard to the liability of lenders for hazardous material contamination involving property that is owned or used by borrowers, whether or not the property is collateral for the loan or obligation.

(2) There is also uncertainty in the law of this state with regard to the liability of trustees, executors, and other fiduciaries for hazardous material contamination involving property that is part of the fiduciary estate. Fiduciaries understand that the fiduciary estate may have that liability, but are concerned that a fiduciary may have independent personal liability, despite the absence of personal culpability for the contamination.

(3) The uncertainty as to liability or potential liability is attributable to the failure of existing law, except for the security interest exemption incorporated by reference in Section 25323.5, to recognize that usually the credit or fiduciary relationship is not sufficiently related to the hazardous material contamination to warrant, as a policy matter, the imposition of liability on lenders and fiduciaries.

(b) It is the intent of the Legislature, in enacting this chapter, to specify the type of lender and fiduciary conduct that will not incur liability for hazardous material contamination. However, the liability exemption has appropriate boundaries. For example, the exemption will not protect lenders or fiduciaries in transactions that are structured for the purpose of evading liability for hazardous material contamination if the lender or fiduciary is not acting within its respective capacity, or if the contamination is caused by the lender or fiduciary.

(c) This chapter does not apply to judicial actions filed, or administrative orders issued, before January l, 1997, or to proceedings to enforce judicial or administrative orders issued before January 1, 1997.

(Added by Stats. 1996, Ch. 612, Sec. 1. Effective January 1, 1997.)

25548.1. As used in this chapter, the following terms have the following meaning:

(a) "Actual benefit" means the amount, if any, realized by the lender upon the disposition of property acquired through foreclosure or its equivalent as a direct result of a removal or remedial action undertaken by another person, not to exceed the amount, if any, by which the disposition proceeds exceed the sum of the balance of all of the following:

(1) The loan or obligation or the amount of the lien, evidenced by the loan or obligation outstanding at foreclosure or its equivalent.

(2) The costs, including attorneys' fees, incurred by the lender in connection with the foreclosure or its equivalent, subsequent ownership, any removal or remedial action, and disposition of the property.

(b) "Borrower, debtor or obligor" means a person who is obligated to a lender under a loan or obligation, whether or not the lender maintains a security interest in that person's property.

(c) "Damages" includes compensatory damages, exemplary damages, punitive damages, and costs of every kind and nature, including, but not limited to, costs of a removal or remedial action.

(d) "Fiduciary" means a person who is acting in any of the following capacities:

(1) As trustee for a trust described in paragraph (1) or (2) of subdivision (a) of Section 82 of the Probate Code.

(2) As a fiduciary in any arrangement described in paragraphs (1) to (3), inclusive, or paragraphs (5) to (14), inclusive, of subdivision (b) of Section 82 of the Probate Code.

(3) A trustee appointed in proceedings under any state or federal bankruptcy law.

(4) An assignee or a trustee acting under an assignment made for the benefit of creditors.

(5) A court-appointed receiver.

(e) "Finance lease" means a transaction with respect to which both of the following apply:

(1) The lessor does not select or manufacture the goods or does not supply the goods, except in the case of a re-lease, whether it is created by a new transaction or substitution of the lessee.

(2) The lessor acquires the goods or right to possession and use of the goods in connection with the lease or a prior lease transaction.

(f) "Foreclosure or its equivalent" means the acquisition of property by a lender through any of the following:

(1) Judicial or nonjudicial foreclosure of the lender's security interest in the property or acceptance of a deed or other conveyance in satisfaction thereto.

(2) Acceptance of a deed in lieu or other conveyance in satisfaction of a loan or obligation previously contracted.

(3) Termination of a finance lease by consent or default.

(4) Any other formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations or promises from the borrower, by which the lender acquires, for subsequent disposition, actual possession of the property subject to a security interest.

(g) "Hazardous material" has the same meaning as defined in subdivision (d) of Section 25260.

(h) (1) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including, but not limited to, any legal or equitable title to real or personal property acquired incident to foreclosure or its equivalent.

(2) "Evidence of an interest" includes, but is not limited to, all of the following:

(A) Mortgages.

(B) Deeds of trust.

(C) Liens.

(D) Surety bonds and guarantees of obligations.

(E) Title held pursuant to a finance lease in which the lessor does not select initially the leased property.

(F) Legal or equitable title obtained pursuant to foreclosure or its equivalent.

(G) Assignments, pledges, or other rights to, or other forms of, encumbrance against property that are held primarily to protect a security interest.

(3) A person is not required to hold title or a security interest to maintain indicia of ownership.

(i) "Lender" means a person to the extent of the capacity in which that person maintains indicia of ownership primarily to protect a security interest or makes, acquires, renews, modifies, or holds a loan or obligation from a borrower. "Lender" includes either of the following persons:

(1) Any person who acts as, or on behalf of, a lender in connection with any aspect of the solicitation, negotiation, consummation, disbursement, administration, servicing, collection, enforcement, or foreclosure or its equivalent of a loan or obligation or security interest in property such as a surety, escrow, or title company.

(2) Any person who makes, secures, acquires, or holds a loan or obligation or security interest by assignment, sale, pledge, subrogation, succession, or operation of law, or becomes the receiver for the holder of a loan or obligation or security interest.

(j) "Loan or obligation" means a loan, revolving or nonrevolving line of credit, finance lease, sale-leaseback that provides for a purchase option in favor of the lessee, installment sale contract, sale on account, or other credit sale, letter of credit, forbearance or guaranty, collateral pledge, or other suretyship obligation, and any extension, renewal, or modification thereof. A loan or obligation may or may not involve a security interest in property.

(k) (1) Except as provided in paragraphs (3) and (4), "participate (or participation) in the management of the property" means actual participation in the management or operational affairs of the property by the lender while the borrower, under the loan or obligation, is in possession of the property, and the lender exercises decisionmaking control over the environmental compliance by the borrower, so that the lender assumes responsibility for the hazardous material handling or disposal practices of the borrower, or exercises control at a level comparable to that of a manager of the enterprise of the borrower, so that the lender assumes or manifests responsibility for the overall management of the enterprise encompassing the

day-to-day decisionmaking of the enterprise with respect to either of the following:

(A) Environmental compliance.

(B) All, or substantially all, of the operational, as opposed to financial or administrative, aspects of the enterprise other than environmental compliance.

(2) For purposes of paragraph (1), the following terms have the following meaning:

(A) "Operational aspects of the enterprise" includes, but is not limited to, functions such as that of facility or plant manager, operations manager, chief operating officer, or chief executive officer.

(B) "Financial or administrative aspects" includes, but is not limited to, functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, or chief financial officer.

(3) Notwithstanding paragraph (1), "participation in the management of the property" does not include an act or omission by a prospective lender prior to making, acquiring, or holding a loan or obligation. "Participation in the management of the property" also does not include the actions taken by a prospective lender who undertakes or requires an environmental inspection of property prior to making, acquiring, or holding a loan or obligation. A lender or prospective lender does not "participate in the management of the property" if the lender or prospective lender requires the borrower to clean up the property or requires the borrower to comply or come into compliance with any applicable law or regulation. This chapter does not require a lender to conduct or require an inspection prior to foreclosure or its equivalent to qualify for the exemption provided by this chapter, and the liability of a lender shall not be based on or affected by whether the lender conducts or requires an inspection prior to foreclosure or its equivalent.

(4) Loan policing and work out activities, as specified in paragraphs (5) and (6), that are consistent with holding ownership indicia primarily to protect a security interest and consistent with a loan or obligation made, acquired, or held primarily for purposes other than investment purposes, do not constitute participation in the management of the property. The authority for the lender to take those actions may, but are not required to, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations, or promises from the borrower. Loan policing and work out activities include all activities up to foreclosure or its equivalent.

(5) A lender who engages in loan policing activities prior to foreclosure or its equivalent is exempt from liability pursuant to this chapter if the lender does not, by those actions, participate in the management of the property. Those actions include, but are not limited to, all of the following:

(A) Requiring the borrower to conduct a removal or remedial action during the term of the security interest or loan or obligation.

(B) Requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws during the term of the security interest or loan or obligation.

(C) Securing or exercising authority to monitor or inspect the property, including onsite inspections, or the business or financial condition of the borrower during the term of the security interest or loan or obligation.

(D) Taking other actions to adequately police the loan, obligation, or security interest, such as requiring the borrower to comply with any warranties, covenants, conditions, representations, or promises in connection with the security interest or loan or obligation.

(6) (A) A lender who engages in work out activities prior to foreclosure or its equivalents is exempt from liability pursuant to this chapter if the lender does not, by those actions, participate in the management of the property.

(B) "Work out" means those actions by which a lender, at any time prior to foreclosure or its equivalent, seeks to prevent, cure, or mitigate a default by the borrower, or to preserve or prevent the diminution of the value of the property, security interest, or loan or obligation.

(C) Work out activities include, but are not limited to, all of the following:

(i) Restructuring or renegotiating the terms of the loan, obligation, or security interest.

(ii) Requiring payment of additional rent or interest.

(iii) Exercising rights pursuant to an assignment of accounts or other amounts owing to a lender.

(iv) Requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to a lender.

(v) Exercising forbearance.

(vi) Providing specific or general financial or other advice, suggestions, counseling, or guidance.

(vii) Exercising any right or remedy the lender is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(7) A lender does not participate in the management of the property by taking any response action under Section 107(d)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(d)(1)). However, the lender may be liable for damages, as defined by this chapter, that occur as a result of the gross negligence or willful misconduct of the lender in his or her performance of a response action under Section 107 (d)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(d)(1)).

(l) "Person" means any entity, including, but not limited to, an individual, estate, trust, firm, business trust, joint stock company, corporation, partnership, joint venture, limited liability company, association, or government. "Person" includes, but is not limited to, any city, county, district, the state, or the federal government, or any department, subdivision, or agency thereof.

(m) (1) "Primarily to protect a security interest" means that the indicia of ownership of a lender are held primarily for the purpose of securing payment or performance of an obligation.

(2) "Primarily to protect a security interest" does not include indicia of ownership held primarily for investment purposes or indicia of ownership held primarily for purposes other than as protection for a security interest. A lender may have other, secondary reasons for maintaining indicia of ownership, but the primary reason that any indicia of ownership are held shall be as protection for a security interest.

(n) "Property" means any real or personal property where hazardous materials are or were generated, handled, managed, deposited, stored, disposed of, placed, released, or otherwise have come to be located. In the context of a loan or obligation, "property" includes any real or personal property in which the obligor has or had an ownership, leasehold, or possessory interest, whether or not it was the subject of a security interest for the loan or obligation.

(o) "Release" has the same meaning as defined in Section 25320.

(p) "Remedial action" has the same meaning as defined in subdivision (g) of Section 25260.

(q) "Removal" means the cleanup or removal of released hazardous materials from the environment or the taking of other actions that may be necessary to prevent, minimize, or mitigate damages that may otherwise result from a release or threatened release, as further defined in Section 101(23) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9601(23)).

(r) "Security interest" means an interest in a property created or established for the purpose of securing a loan or obligation. Security interests include, but are not limited to, mortgages, deeds of trust, liens, and title pursuant to a finance lease. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, and accounts receivable financing arrangements and consignments if the transaction creates or establishes an interest in a property for the purpose of securing a loan or other obligation.

(Amended by Stats. 1998, Ch. 382, Sec. 1. Effective January 1, 1999.)

25548.2. (a) (1) Except as provided in Sections 25548.4 and 25548.5, a person, by reason of acting in the capacity of a lender, shall not be liable under any state or local statute, regulation, or ordinance to the extent of either of the following:

(A) To the extent that the statute, regulation, or ordinance requires the person to take a removal or remedial action, pay a penalty, fine, imposition, or assessment, or to forfeit the property specified in paragraph (2), and that liability arises from the release or threatened release of hazardous materials, at, from, or in connection with the property.

(B) To the extent that the statute, regulation, or ordinance authorizes damages arising from the release or threatened release of hazardous

materials, at, from, or in connection with the property specified in paragraph (2).

(2) The exemption from liability provided by paragraph (1) shall apply to the following property:

(A) Property in which the lender maintains indicia of ownership primarily to protect a security interest.

(B) Property that was acquired by the lender through foreclosure or its equivalent.

(C) Property that is owned, leased, possessed, or used by a person who is obligated to the lender under a loan or obligation and in which the lender holds no security interest.

(b) A lender who did not participate in the management of the property prior to foreclosure or its equivalent may sell, re-lease property held pursuant to a finance lease, whether by a new finance lease or by substitution of the lessee, liquidate, maintain business activities, wind up operations, undertake any response action under Section 107(d)(1) of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(d)(1)) and take measures to preserve, protect, or prepare the property prior to sale or other disposition. The lender may conduct those activities without voiding the exemption set forth in subdivision (a), subject to the requirements of subdivision (a) of Section 25548.5. However, the lender may be liable for damages, as defined by this chapter, that occur as a result of the lender's gross negligence or willful misconduct in the lender's performance of a response action under Section 107(d)(1) of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(d)(1).

(Added by Stats. 1996, Ch. 612, Sec. 1. Effective January 1, 1997.)

25548.3. (a) Except as provided in Sections 25548.4 and 25548.5 of this code, and in Sections 18001 and 18002 of the Probate Code, the liability of a fiduciary to any person under any state or local statute, regulation, or ordinance, to the extent that the statute, regulation, or ordinance requires or permits a removal or remedial action as a result of, or authorizes the recovery of damages, payment of a penalty, fine, imposition, or assessment arising from, the release or threatened release of hazardous material at, from, or in connection with any property held at any time by the fiduciary as part of the fiduciary estate, shall be limited to, and satisfied only from, the assets held in the fiduciary estate.

(b) This section does not expand the applicability of any state or local statute, regulation, or ordinance to a substance or material that is not otherwise subject to that statute, regulation, or ordinance.

(Added by Stats. 1996, Ch. 612, Sec. 1. Effective January 1, 1997.)

25548.4. This chapter does not do any of the following:

(a) Affect any rights, defenses, or immunities that are available to any lender or fiduciary under any applicable law.

(b) Create any liability for any lender or fiduciary.

(c) Create any private right of action against any lender or fiduciary.

(d) Exempt or excuse a lender or fiduciary who operates or directs the operation, or maintains the operation, of the property from compliance with the operational requirements of applicable laws. Those operational requirements include, but are not limited to, permitting, reporting, monitoring, emission limitation, corrective action, financial responsibility and assurance requirements, requirements to take removal or remedial action to respond to a release or threatened release of hazardous materials caused by the lender or fiduciary and the requirements of Division 26 (commencing with Section 39000) of this code or of Division 7 (commencing with Section 13000) of the Water Code. Operational requirements include the payment of fees, fines, and penalties, and compliance with any other enforcement provisions that are applicable as a result of the operation, or the direction of the operation, or the maintenance of the operation, of the property by the lender or fiduciary.

(e) Affect any liability of a fiduciary to a beneficiary of a fiduciary estate for breach of trust under Chapter 4 (commencing with Section 16400) of Part 4 of Division 9 of the Probate Code.

(f) Affect any liabilities of a fiduciary estate.

(g) Exempt a lender from liability imposed by Chapter 6.8 (commencing with Section 25300) for a removal or remedial action or the recovery of damages relating to a release or threatened release of hazardous material, to the extent that the lender is a responsible party pursuant to Section 107(a)(3) or (4) of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(a)(3) or (4)).

(h) Exempt a lender or fiduciary from any liability imposed by Chapter 6.5 (commencing with Section 25100).

(i) Exempt or excuse a lender from liability under any state or local statute, regulation, or ordinance for a known or suspected release or known or suspected threatened release of hazardous materials caused by events or conditions occurring prior to foreclosure or its equivalent, unless, after taking possession of the property, the lender promptly takes each of the following actions in accordance with applicable law:

(1) Suspends operations with respect to that portion of the property where the known or suspected release or known or suspected threatened release occurred or may occur.

(2) Removes from the suspended operations and affected areas on the property, all hazardous material not released into the environment and secures the suspended operations.

(3) Reports any known or suspected releases of hazardous material.

(j) Limit the application or enforcement of Section 25359.4 or 25359.5 or other state or local fencing, posting, securing, notification, or reporting laws with regard to property that is acquired by a lender through foreclosure or its equivalent, to the extent that those requirements are otherwise applicable to the property.

(k) Exempt a lender from compliance with an administrative order requiring immediate and temporary measures to prevent, abate, or minimize an emergency caused by a release or threatened release of hazardous material at, from, or in connection with, any property that has been acquired by the lender through foreclosure or its equivalent, when all of the following circumstances exist:

(1) The release or threatened release presents an imminent and substantial endangerment to the public health or welfare or the environment.

(2) No other person who is viable and potentially responsible for the release or threatened release has been identified and located by the agency issuing the order, following a reasonable effort by the agency to identify and locate any such person.

(3) The costs and expenses incurred by the lender to comply with the administrative order do not exceed twenty-five thousand dollars ($25,000).

(4) If the lender complies with the administrative order, the compliance would not, in and of itself, subject the lender to liability for a removal or remedial action or damages, fines, penalties, impositions, or assessments relating to the release or threatened release under any federal law.

(l) (1) Exempt a lender who has acquired title to property through foreclosure or its equivalent from operation and maintenance requirements that were established on the property as a result of a removal or remedial action conducted on the property.

(2) "Operation and maintenance requirements" include, but are not limited to, deed restrictions and requirements to maintain passive exposure controls and to perform monitoring. If there are requirements other than operation and maintenance requirements, which are applicable to the property to maintain the effectiveness of the removal or remediation action, the lender shall comply with those requirements unless the lender, upon foreclosure or its equivalent, notifies the appropriate agency that it does not intend to comply with the requirements and the agency concurs.

(m) Require a lender to conduct, or require a lender to direct the taking of, an inspection of the property after foreclosure or its equivalent to qualify for the exemption provided by this chapter, and the liability of a lender shall not be based on, or affected by, the lender not conducting, or not requiring, an inspection of the property after foreclosure or its equivalent.

(n) Require a fiduciary to conduct or require an inspection of the property in a fiduciary estate to qualify for the exemption provided by this chapter and the liability of the fiduciary shall not be based on, or affected by, the fiduciary not conducting or not requiring an inspection prior to holding the property as part of the fiduciary estate.

(Added by Stats. 1996, Ch. 612, Sec. 1. Effective January 1, 1997.)

25548.5. The exemptions set forth in Sections 25548.2 and 25548.3 shall not apply:

(a) If, after foreclosure or its equivalent is conducted, the lender does not undertake to sell, re-lease property held pursuant to a finance lease, whether by a new finance lease or by substitution of the

lessee, or otherwise undertake to be divested of the property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the property, taking all facts and circumstances into consideration. For purposes of establishing that a lender is seeking to sell, re-lease property held pursuant to a finance lease, whether by a new finance lease or substitution of the lessee, or be divested of property in a reasonably expeditious manner, the lender may use whatever commercially reasonable means as are relevant or appropriate with respect to the property, or may employ the following means:

(1) For purposes of this subdivision, the exemption set forth in subdivision (a) of Section 25548.2 shall apply following foreclosure or its equivalent, if, within 12 months following foreclosure or its equivalent, the lender does either of the following:

(A) Lists the property for sale, re-lease, or other disposition with a broker, dealer, or agent who deals with that type of property.

(B) Advertises the property for sale, re-lease, or other disposition on at least a monthly basis in either of the following:

(i) A real estate publication or trade or other publication suitable for advertising the property.

(ii) A newspaper of general circulation, which is a newspaper with a circulation over 10,000 or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure, covering the area where the property is located.

(2) For purposes of this subdivision, the 12-month period shall begin to run from the date that the lender acquires marketable title to the property if the lender, after the expiration of any redemption or other waiting period provided by law, has acted diligently to acquire marketable title. If the lender has failed to act diligently to acquire marketable title, the 12-month period shall begin to run on the date of foreclosure or its equivalent.

(b) If, after foreclosure or its equivalent, the lender does not comply with all applicable statutes, regulations, or ordinances that require the disclosure of information or conditions regarding the property to any person.

(c) If the fiduciary's negligent or intentional or reckless conduct causes or contributes to the release or threatened release of a hazardous material at, from, or in connection with a property held by the fiduciary as part of the fiduciary estate.

(d) With respect to liability that arises from a voluntary removal or remedial action taken by a fiduciary if, prior to initiating a voluntary removal or remedial action, the fiduciary does not notify the appropriate agency of the fiduciary's intent to conduct that action.

(e) With respect to liability that arises from conduct of, or ownership of the property by, the lender or fiduciary, other than in its capacity as a lender or fiduciary.

(f) Where the loan or obligation or fiduciary relationship or fiduciary transaction is structured for the purpose of evading liability for a release or threatened release of hazardous materials.

(g) If the fiduciary is both a beneficiary and fiduciary with respect to the same fiduciary estate, or as a fiduciary, receives benefits that exceed customary or reasonable compensation for the administration of the property permitted under other applicable law.

(h) To the extent of the actual benefit, if any, realized by a lender upon the disposition of property acquired through foreclosure or its equivalent as a result of a removal or remedial action undertaken by another person.

(i) If the lender participated in the management of the property before foreclosure or its equivalent, except that the lender's liability shall be limited to any release or threatened release which occurred while the lender participated in the management of the property.

(j) If the lender, by an act or failure to act caused or contributed to the release or threatened release of the hazardous material.

(k) If the lender made, secured, held, or acquired the loan or obligation primarily for investment purposes.

(l) If the lender outbids, rejects, or fails to act upon an offer of fair consideration for the property acquired through foreclosure or its equivalent, unless the lender is required, to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner. For purposes of this subdivision, the following terms shall have the following meaning:

(1) (A) "Fair consideration" means the sum of all of the following less the amounts specified in subparagraph (B):

(i) The value of the security interest or loan or obligation calculated as an amount equal to or in excess of, the sum of the outstanding principal, or comparable amount in the case of a finance lease, owed to the lender immediately preceding the acquisition of full title pursuant to foreclosure or its equivalent.

(ii) Any unpaid interest, rent, or penalties, whether arising before or after foreclosure or its equivalent.

(iii) All reasonable and necessary costs, fees, or other charges incurred by the lender incident to workout, foreclosure or its equivalent, retention, maintaining the business activities of the enterprise, preserving, protecting, and preparing the property prior to sale, re-leasing the property held pursuant to a finance lease, whether by a new finance lease or substitution of the lessee, or other disposition.

(iv) The lender's costs incurred for any removal or remedial action, including but not limited to, response costs for response action taken by the lender under Section 107(d)(1) of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Sec. 9607(d)(1)).

(B) In determining fair consideration, the following amounts shall be subtracted from the sum calculated pursuant to subparagraph (A):

(i) Any amounts received by the lender in connection with any partial disposition of the property.

(ii) Net revenues received as a result of maintaining the business activities of the enterprise.

(iii) Any amounts paid by the borrower subsequent to the acquisition of full title pursuant to foreclosure or its equivalent.

(C) In the case of a lender holding a junior security interest, junior loan, or junior obligation, "fair consideration" is the value of all outstanding higher priority security interests, loans or obligations plus the value of the security interest, loan or obligation held by the junior holder, calculated as set forth in this paragraph.

(2) "Outbids, rejects, or fails to act upon an offer of fair consideration" means that the lender outbids, rejects, or fails to act upon within 90 days from the date of receipt of a written, bona fide and firm offer of fair consideration for the property received at any time after six months following foreclosure or its equivalent. That six-month period shall begin to run from the date that the lender acquires marketable title, if the lender, after the expiration of any redemption or other waiting period provided by law, has acted diligently to acquire marketable title. If the lender has failed to act diligently to acquire marketable title, the six-month period shall begin to run on the date of foreclosure or its equivalent.

(3) "Written, bona fide and firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the property, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the lender's satisfaction the ability to perform.

(Added by Stats. 1996, Ch. 612, Sec. 1. Effective January 1, 1997.)

25548.6. A lender's compliance with the requirements of this chapter with regard to property that has been acquired by the lender through foreclosure or its equivalent shall not, in and of itself subject the lender to liability under any law for a removal or remedial action or damages, penalties, fines, impositions, or assessments relating to the release or threatened release of hazardous materials, as defined in subdivision (g) of Section 25548.1.

(Added by Stats. 1996, Ch. 612, Sec. 1. Effective January 1, 1997.)

25548.7. (a) If a provision of this chapter would result in any of the actions specified in subdivision (b), the provision shall be deemed inoperative. However, the inoperation of a provision shall not affect other provisions or applications of this chapter which can be given effect without the inoperative provision and to this end the provisions of this chapter are severable.

(b) Subdivision (a) shall apply if any provision of this chapter is inconsistent with federal law and the use or application of the provision would result in any of the following actions:

(1) The imposition of a penalty by a federal agency on the state or any local agency.

(2) A loss of federal authorization or loss of federal approval of a program conducted by the state or local agency.

(3) A loss of federal funding to the state or any local agency for a program.

(Added by Stats. 1996, Ch. 612, Sec. 1. Effective January 1, 1997.)

HEALTH AND SAFETY CODE

CHAPTER 6.97. HAZARDOUS MATERIALS INFORMATION AND CONSULTING SERVICES

(Chapter 6.97 added by Stats. 1987, Ch. 1432, Sec. 1.)

25550. If requested by an organization representing local businesses, a county shall meet with representatives of local businesses to determine whether there is a need for a hazardous materials information and consulting service to assist businesses in that county. If the county determines there is a need for the service, and the county possesses or could reasonably secure the necessary technical expertise, the county may establish a hazardous materials information and consulting service to provide the services specified in Section 25551, subject to the prosecution policies developed pursuant to Section 25552, to all the following persons:

(a) Any person subject to Chapter 6.5 (commencing with Section 25100), including, but not limited to, any person discharging hazardous waste into a surface impoundment pursuant to Article 9.5 (commencing with Section 25208) of Chapter 6.5.

(b) The owner or operator of an underground storage tank subject to Chapter 6.7 (commencing with Section 25280).

(c) Any business required to establish and implement a business plan for emergency response pursuant to Chapter 6.95 (commencing with Section 25500).

(Added by Stats. 1987, Ch. 1432, Sec. 1.)

25551. A county which establishes a hazardous materials information and consulting service pursuant to this chapter shall do all of the following:

(a) Develop informational materials or adapt existing materials on the regulatory programs specified in Section 25550 and publicize the availability of this information.

(b) Respond to telephone inquiries with verbal or written information.

(c) Conduct onsite consultations on the request of a person specified in Section 25550.

(d) Conduct seminars for business representatives and attend meetings, when invited, to explain the regulatory programs specified in Section 25550 and the service's availability.

(Added by Stats. 1987, Ch. 1432, Sec. 1.)

25551.2. A county may contract with another county, or enter into a memorandum of agreement with one or more nearby counties, to provide consulting services for businesses within a multicounty region.

(Added by Stats. 1987, Ch. 1432, Sec. 1.)

25552. (a) A county that establishes a program pursuant to Section 25550 shall, prior to establishing a fee structure pursuant to subdivision (a) of Section 25553, consult with the district attorney for that county to develop policies to be followed by the district attorney in making decisions concerning prosecution of violations discovered pursuant to this chapter. These policies shall include, but are not limited to, consideration of the following:

(1) Whether the violation is a knowing, willful, negligent, or inadvertent violation.

(2) Whether the violator agrees to the schedule of compliance specified by the county.

(3) Whether the violation was discovered during an onsite consultation carried out pursuant to this chapter.

(b) Schedules for compliance referred to in subdivision (a) shall not be subject to negotiation between the county and the violator.

(c) A county may take enforcement action, or refer for enforcement action, a violation subject to the policies adopted pursuant to subdivision (a) if the violation involves an imminent or substantial endangerment to public health and safety or the environment. If a county refers a violator for enforcement action to the appropriate state or local agency pursuant to this subdivision, the county shall include any recommendations for cleanup or abatement of the violation and information on whether the violator has voluntarily attempted to comply with the statute or regulation.

(Added by Stats. 1987, Ch. 1432, Sec. 1.)

25553. (a) (1) Each county may, upon a majority vote of the governing body, adopt a schedule of fees to be collected from businesses which request the services provided by this chapter. The fee schedule shall be developed by the county in consultation with local business representatives. The fee shall be set in an amount sufficient to pay only those costs incurred by the county in carrying out this chapter. In determining the fee schedule, the administering agency shall consider the volume and degree of hazard potential of the hazardous materials handled by the business.

(2) A county may seek supplemental funds for the support of activities carried out pursuant to this chapter from existing state funds which are available to local governmental entities for the costs of waste control and enforcement programs, to the extent that use of the funds will alleviate the disposal of hazardous wastes in solid waste landfills.

(b) A county which has established a hazardous materials information and consulting service pursuant to this chapter shall provide these services to an individual business which has not been assessed a fee as determined by the schedule adopted pursuant to subdivision (a). A business provided services pursuant to this subdivision shall pay a fee to the county for these services at a rate set by the county.

(Added by Stats. 1987, Ch. 1432, Sec. 1.)

HEALTH AND SAFETY CODE

CHAPTER 6.98. ENVIRONMENTAL QUALITY ASSESSMENT

(Chapter 6.98 added by Stats. 1986, Ch. 1507, Sec. 1.
Note: Chapters 6.10 and 6.11 are located earlier, between Chapter 6.9.1 and Chapter 6.91.)

25570. (a) The Legislature hereby finds and declares all of the following:

(1) The public has a low level of confidence in the ability of government or the private sector to ensure that manufacturers, users and disposers of hazardous substances comply fully with legal requirements for the management of these substances.

(2) Recent federal studies by Congress and executive agencies document that voluntary compliance with environmental regulations nationwide is at an all time low of 25 percent. Such factors as inadequate enforcement and inadequate understanding of complex requirements result in a level of compliance with environmental requirements which is lower than in the early 1970's.

(3) Another report documents that private sector investment in pollution control equipment has dropped 38 percent nationwide since 1980. Investment levels have dropped at the same time that legal requirements for hazardous substance management are taking effect.

(4) Small businesses which are faced with complex regulations often do not know how to most effectively manage chemicals, or how to comply with these regulations at the least cost to the business.

(b) The Legislature further declares all of the following:

(1) An Environmental Protection Agency policy statement issued in November of 1985 endorses the use of environmental quality assessments, which are also called environmental audits, and recommends that state and local governments initiate programs to encourage the broader use of the assessment process, and while the state should take steps to actively encourage the private sector use of environmental assessments, it is not the intention of the Legislature to require that any person or business utilize environmental assessors.

(2) Environmental assessments can encourage voluntary compliance with both the letter and the spirit of the law as well as encourage cost-effective process improvements. By reducing potential liability, assessments can reduce the long-term costs of hazardous substance management. In addition, the use of assessments can help to build public confidence that hazardous substances are being managed in an increasingly safe manner. The use of independent environmental assessments is an important emerging feature of specific state hazardous substance management programs.

(3) Many of California's major businesses have internal environmental assessment programs. Larger firms often maintain in-house staffs.

(4) The state should provide a list of registered independent third-party assessors for use by small- and medium-sized firms seeking technical assistance to achieve and maintain regulatory compliance.

(Added by Stats. 1986, Ch. 1507, Sec. 1.)

25570.1. This chapter shall be known and cited as the "Environmental Quality Assessment Act of 1986."

(Added by Stats. 1986, Ch. 1507, Sec. 1.)

25570.2. For purposes of this chapter, the following terms have the following meaning:

(a) "Air board" means the State Air Resources Board.

(b) "Cal-OSHA" means the Division of Occupational Safety and Health in the Department of Industrial Relations.

(c) "Department" means the Department of Toxic Substances Control.

(d) "Director" means the Director of Toxic Substances Control.

(e) "Water board" means the State Water Resources Control Board.

(f) "Environmental quality assessment" or "assessment" means a systematic, documented, periodic, and objective review of the operations and practices, used by any commercial or industrial business or individual whose activities are regulated or conducted under Chapter 6.5 (commencing with Section 25100), Chapter 6.8 (commencing with Section 25300), or Chapter 6.95 (commencing with Section 25500), to achieve, monitor, maintain, and where feasible exceed, compliance with state environmental, worker health and safety, and public health requirements for the manufacture and use of hazardous substances and the generation and disposal of hazardous wastes. A complete environmental assessment includes a number of different components related to hazardous substance and hazardous waste management and requires the expertise of a variety of assessors. An environmental assessment includes technical or managerial recommendations or actions, of a general or specific nature, in one or more of the following areas:

(1) Recommendations or specific actions for complying with, and where feasible, exceeding legal requirements in areas related to hazardous substance and hazardous waste management, including, but not limited to, air quality, water quality, emergency preparedness and response, hazard communications, and occupational safety and health.

(2) A qualitative review, or where feasible, a quantitative review, of the risks resulting from occupational, public or environmental exposure to hazardous substances.

(3) Recommendations or actions for anticipating and minimizing the risks specified in paragraph (2), including any potential liability, associated with regulated and unregulated hazardous substances, and any suggested management procedures or practices.

(g) "Environmental assessor" or "assessor" means an individual who, through academic training, occupational experience, and reputation, is qualified to objectively conduct one or more aspects of an environmental assessment. Environmental assessors may include, but shall not be limited to, specialists trained as analytical chemists, professional engineers, geologists, environmental management system auditors, epidemiologists, hydrologists, attorneys with expertise in hazardous substance law, physicians, industrial hygienists, toxicologists, registered environmental health specialists, and environmental program managers.

(h) "Hazardous substance" shall have the same meaning as found in Chapter 6.8 (commencing with Section 25300) and "hazardous waste" shall have the same meaning as found in Chapter 6.5 (commencing with Section 25100).

(Amended by Stats. 2002, Ch. 626, Sec. 7. Effective January 1, 2003.)

25570.3. (a) The director, in consultation with the Water Board, the Air Board, the Division of Occupational Safety and Health in the Department of Industrial Relations, and the Department of Consumer Affairs shall develop, adopt by regulation, and publicize criteria for, the voluntary registration of environmental assessors who have the experience or qualifications sufficient to conduct environmental assessments. The director shall determine minimum standards of performance and criteria for the establishment of two classes of environmental assessors.

(b) In establishing criteria for the registration of class I environmental assessors the director shall consider all of the following:

(1) The level of experience, including a minimum of two years of experience in successfully assisting businesses, government agencies, or labor organizations in the assessor's general field of expertise in managing hazardous substances or hazardous waste, or both.

(2) Evaluations from clients, colleagues, and professional associations.

(3) Skills or expertise that represent an area of specialty within a field, such as professional engineering or engineering geology, for which the state now offers a certification, licensing, or registration process.

(4) Pertinent specialized certification, licensing, or registration programs offered by professional associations or other private sector organizations.

(5) Specific areas of expertise, including, but not limited to, underground tank checks or removal, small generator waste reduction, recycling, treatment, and disposal, prevention and control of air emissions and water releases, assessment of soil or groundwater contamination, risk assessment and risk reduction recommendations, or occupational safety and health reviews.

(c) In addition to registration as a class I environmental assessor, an applicant for registration as a class II environmental assessor shall, in addition to any requirements specified by regulation, meet both of the following requirements:

(1) Possess a bachelor of science degree from an accredited college or university in a physical or biological science, engineering, or a related field.

(2) Have a minimum of eight years of professional-level

environmental experience, acquired within the last 10 years, of which four years shall be professional-level site mitigation experience acquired within the last six years.

(d) The director may appoint an ad hoc advisory committee to assist in developing the requirements for the registration of class I and class II environmental assessors. The members of the ad hoc committee shall represent the range of professional skills that may be possessed by class I and class II environmental assessors, and shall be registered or certified in their respective professions by the State of California.

(e) The director shall require each applicant for registration as a class I or class II environmental assessor to pay the following fees:

(1) For a class I environmental assessor:

(A) A nonrefundable application fee of up to fifty dollars ($50) for each applicant seeking registration as a class I environmental assessor.

(B) An annual fee of up to one hundred dollars ($100) for registration as a class I environmental assessor.

(2) For a class II environmental assessor:

(A) A nonrefundable application fee of up to one hundred twenty-five dollars ($125) for each applicant seeking registration as a class II environmental assessor.

(B) An annual fee of up to five hundred dollars ($500) for registration as a class II environmental assessor.

(f) (1) The director shall assess the fees specified in paragraphs (1) and (2) of subdivision (e) at a level sufficient to meet the costs of application processing, registration, listing and publication, audits, complaints, investigations, disciplinary proceedings, and those other activities that are reasonably necessary to administer and implement the environmental assessor registration program.

(2) The director shall deposit all fees collected pursuant to this section in the Environmental Quality Assessment Fund, which is hereby established in the State Treasury. The director may expend the funds in the Environmental Quality Assessment Fund, upon appropriation by the Legislature, to implement this chapter.

(g) Any applicant who is denied registration shall be notified in writing by a letter signed by the director or the director's designee, stating the reasons for the denial. The applicant may respond to the registration denial by providing additional information for the purpose of clarifying the application, and may request reconsideration of the denial.

(h) (1) On or before March of each year, the director shall, in collaboration with associations representing small and medium-sized businesses, publish, prepare, and disseminate a list of registered environmental assessors that are listed by class.

(2) The list prepared pursuant to paragraph (1) shall be arranged in accordance with the types of tasks performed by the registered environmental assessor, and, at a minimum, shall specify the professional and employment affiliations and the specific area of expertise of the assessor, and shall indicate whether the assessor is a sales representative, owner, or part owner of a business that manufactures or distributes technology for hazardous substances or hazardous waste management. In addition, the list shall provide an alphabetical listing of firms that provide environmental assessment services and that employ registered assessors. The registered assessors employed by each firm shall be listed with the firm's name by class. The director shall include a written disclaimer of liability as part of the published list of registered assessors.

(i) Each environmental assessor shall obtain a renewal of registration every five years following the date of the initial registration or renewal of registration. The director shall determine a renewal fee that is sufficient to cover the reasonable costs incurred in reassessing the qualifications of the applicant for renewal. In considering whether to renew a registration, the director shall also consider any factual complaints regarding the work of that assessor and may suspend or deny registration pursuant to subdivision (l).

(j) Notwithstanding any other provision of law, no state agency or employee of a state agency shall be held liable for any injury or damages resulting from the services provided by a registered environmental assessor listed pursuant to subdivision (h). In any litigation regarding the registration process or the list of assessors, the Attorney General shall defend a state employee or state agency involved with the development or implementation of the program specified in this chapter.

(k) The director may perform periodic audits of work performed and certified by an environmental assessor, as necessary, to ensure the desired standard of performance. A registered environmental assessor shall provide an authorized representative of the director with complete access, at any reasonable hour of the day, to all technical data, reports, records, environmental samples, photographs, maps, and files used in the preparation of certified reports, with the exception of proprietary or other confidential information.

(l) The director shall deny, suspend, or rescind an environmental assessor's registration when an assessor's performance falls below the minimum required standards of performance adopted pursuant to subdivision (a) or Section 25395.15, as determined by an audit conducted by an authorized representative of the director pursuant to subdivision (k) or Section 25395.12. In addition to a failure to meet the minimum standards of performance adopted pursuant to subdivision (a) or Section 25395.15, any one of the following findings shall be sufficient grounds for the denial, suspension, or rescission of a registration:

(1) Gross negligence.

(2) Inexcusable neglect of duty.

(3) Intentional misrepresentation of laboratory data or other intentional fraud.

(4) Charging for services not rendered, or for performing services that are not reasonably necessary.

(5) Abandonment of any client, except for instances involving the nonpayment of fees for services rendered.

(6) Conviction of a felony or misdemeanor involving the regulation of hazardous wastes, hazardous substances, or hazardous materials, including, but not limited to, a conviction of a felony or misdemeanor under Section 25395.13.

(7) Conviction of a felony or misdemeanor involving moral turpitude.

(8) Knowingly making a false statement regarding a material fact or knowingly fail to disclose a material fact in connection with an application for registration.

(m) The director shall adopt, by regulation, a procedure for the appeal of a denial, suspension, or rescission of registration.

(Amended by Stats. 2002, Ch. 626, Sec. 8. Effective January 1, 2003.)

25570.4. Nothing in this article shall be construed to authorize a person registered as an environmental assessor pursuant to Section 25570.3 to practice civil, electrical, or mechanical engineering, or to exempt a registered civil, electrical, or mechanical engineer who is also a registered environmental assessor from Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code.

(Added by Stats. 1995, Ch. 820, Sec. 4. Effective January 1, 1996.)

HEALTH AND SAFETY CODE

DIVISION 24, PART 1, CHAPTER 4, ARTICLE 12.5

Article 12.5. Hazardous Substance Release Cleanup

(Article 12.5 added by Stats. 1990, Ch. 1113, Sec. 2.)

33459. For purposes of this article, the following terms shall have the following meanings:

(a) "Department" means the Department of Toxic Substances Control.

(b) "Director" means the Director of Toxic Substances Control.

(c) "Hazardous substance" means any hazardous substance as defined in subdivision (h) of Section 25281, and any reference to hazardous substance in the definitions referenced in this section shall be deemed to refer to hazardous substance, as defined in this subdivision.

(d) "Local agency" means a single local agency that is one of the following:

(1) A local agency authorized pursuant to Section 25283 to implement Chapter 6.7 (commencing with Section 25280) of, and Chapter 6.75 (commencing with Section 25299.10) of, Division 20.

(2) A local officer who is authorized pursuant to Section 101087 to supervise a remedial action.

(e) "Qualified independent contractor" means an independent contractor who is any of the following:

(1) An engineering geologist who is certified pursuant to Section 7842 of the Business and Professions Code.

(2) A geologist who is registered pursuant to Section 7850 of the Business and Professions Code.

(3) A civil engineer who is registered pursuant to Section 6762 of the Business and Professions Code.

(f) "Release" means any release, as defined in Section 25320.

(g) "Remedy" or "remove" means any action to assess, evaluate, investigate, monitor, remove, correct, clean up, or abate a release of a hazardous substance or to develop plans for those actions. "Remedy" includes any action set forth in Section 25322 and "remove" includes any action set forth in Section 25323.

(h) "Responsible party" means any person described in subdivision (a) of Section 25323.5 of this code or subdivision (a) of Section 13304 of the Water Code.

(Amended by Stats. 2003, Ch. 42, Sec. 16. Effective July 7, 2003.)

33459.01. This article shall be known, and may be cited as, the "Polanco Redevelopment Act."

(Added by Stats. 1998, Ch. 438, Sec. 1.5. Effective January 1, 1999.)

33459.1. (a) (1) An agency may take any actions that the agency determines are necessary and that are consistent with other state and federal laws to remedy or remove a release of hazardous substances on, under, or from property within a project area, whether the agency owns that property or not, subject to the conditions specified in subdivision (b). Unless an administering agency has been designated under Section 25262, the agency shall request cleanup guidelines from the department or the California regional water quality control board before taking action to remedy or remove a release. The department or the California regional water quality control board shall respond to the agency's request to provide cleanup guidelines within a reasonable period of time. The agency shall thereafter submit for approval a cleanup or remedial action plan to the department or the California regional water quality control board before taking action to remedy or remove a release. The department or the California regional water quality control board shall respond to the agency's request for approval of a cleanup or remedial action plan within a reasonable period of time.

(2) The agency shall provide the department and local health and building departments, the California regional water quality control board, with notification of any cleanup activity pursuant to this section at least 30 days before the commencement of the activity. If an action taken by an agency or a responsible party to remedy or remove a release of a hazardous substance does not meet, or is not consistent with, a remedial action plan or cleanup plan approved by the department or the California regional water quality control board, the department or the California regional water quality control board that approved the cleanup or remedial action plan may require the agency to take, or cause the taking of, additional action to remedy or remove the release, as provided by applicable law. If an administering agency for the site has been designated under Section 25262, any requirement for additional action may be imposed only as provided in Sections 25263 and 25265. If methane or landfill gas is present, the agency shall obtain written approval from the California Integrated Waste Management Board prior to taking that action.

(b) Except as provided in subdivision (c), an agency may take the actions specified in subdivision (a) only under one of the following conditions:

(1) There is no responsible party for the release identified by the agency.

(2) A party determined by the agency to be a responsible party for the release has been notified by the agency or has received adequate notice from the department, a California regional water quality control board, the Environmental Protection Agency, or other governmental agency with relevant authority and has been given 60 days to respond and to propose a remedial action plan and schedule, and the responsible party has not agreed within an additional 60 days to implement a plan and schedule to remedy or remove the release that is acceptable to the agency and that has been found by the agency to be consistent, to the maximum extent possible, with the priorities, guidelines, criteria, and regulations contained in the National Contingency Plan and published pursuant to Section 9605 of Title 42 of the United States Code for similar releases, situations, or events.

(3) The party determined by the agency to be the responsible party for the hazardous substance release entered into an agreement with the agency to prepare a remedial action plan for approval by the department, the California regional water quality control board, or the appropriate local agency and to implement the remedial action plan in accordance with an agreed schedule, but failed to prepare the remedial action plan, failed to implement the remedial action plan in accordance with the agreed schedule, or otherwise failed to carry out the remedial action in an appropriate and timely manner. Any action taken by the agency pursuant to this paragraph shall be consistent with any agreement between the agency and the responsible party and with the requirements of the state or local agency that approved or will approve the remedial action plan and is overseeing or will oversee the preparation and implementation of the remedial action plan.

(c) Subdivision (b) does not apply to either of the following agencies:

(1) An agency taking actions to investigate or conduct feasibility studies concerning a release.

(2) An agency taking the actions specified in subdivision (a) if the agency determines that conditions require immediate action.

(d) An agency may designate a local agency in lieu of the department or the California regional water quality control board to review and approve a cleanup or remedial action plan and to oversee the remediation or removal of hazardous substances from a specific hazardous substance release site in accordance with the following conditions:

(1) The local agency may be so designated if it is designated as the administering agency under Section 25262. In that event, the local agency, as the administering agency, shall conduct the oversight of the remedial action in accordance with Chapter 6.65 (commencing with Section 25260) and all provisions of that chapter shall apply to the remedial action.

(2) The local agency may be so designated if cleanup guidelines were requested from a California regional water quality control board, and the site is an underground storage tank site subject to Chapter 6.7 (commencing with Section 25280) of Division 20, the local agency has been certified as a certified unified program agency pursuant to Section 25404.1, the State Water Resources Control Board has entered into an agreement with the local agency for oversight of those sites pursuant to Section 25297.1, the local agency determines that the site is within the guidelines and protocols established in, and pursuant to, that agreement, and the local agency consents to the designation.

(3) A local agency may not consent to the designation by an agency unless the local agency determines that it has adequate staff resources and the requisite technical expertise and capabilities available to adequately supervise the remedial action.

(4) (A) Where a local agency has been designated pursuant to paragraph (2), the department or a California regional water quality control board may require that a local agency withdraw from the designation, after providing the agency with adequate notice, if both of the following conditions

are met:

(i) The department or a California regional water quality control board determines that an agency's designation of a local agency was not consistent with paragraph (2), or makes one of the findings specified in subdivision (d) of Section 101480.

(ii) The department or a California regional water quality control board determines that it has adequate staff resources and capabilities available to adequately supervise the remedial action, and assumes that responsibility.

(B) Nothing in this paragraph prevents a California regional water quality control board from taking any action pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(5) Where a local agency has been designated pursuant to paragraph (2), the local agency may, after providing the agency with adequate notice, withdraw from its designation after making one of the findings specified in subdivision (d) of Section 101480.

(e) To facilitate redevelopment planning, the agency may require the owner or operator of any site within a project area to provide the agency with all existing environmental information pertaining to the site, including the results of any Phase I or subsequent environmental assessment, as defined in Section 25200.14, any assessment conducted pursuant to an order from, or agreement with, any federal, state or local agency, and any other environmental assessment information, except that which is determined to be privileged. The person requested to furnish the information shall be required only to furnish that information as may be within their possession or control, including actual knowledge of information within the possession or control of any other party. If environmental assessment information is not available, the agency may require the owner of the property to conduct an assessment in accordance with standard real estate practices for conducting phase I or phase II environmental assessments.

(Amended by Stats. 2002, Ch. 1004, Sec. 1. Effective January 1, 2003.)

33459.3. (a) Notwithstanding any other provision of law, except as provided in Section 33459.7, an agency that undertakes and completes an action, or causes another person to undertake and complete an action pursuant to Section 33459.1, as specified in subdivision (c), to remedy or remove a hazardous substance release on, under, or from property within a redevelopment project, in accordance with a cleanup or remedial action plan prepared by a qualified independent contractor and approved by the department or a California regional water quality control board or the local agency, as appropriate, pursuant to subdivision (b), is not liable, with respect to that release only, under Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), or Chapter 6.8 (commencing with Section 25300), of Division 20 of this code, or any other state or local law providing liability for remedial or removal actions for releases of hazardous substances. If the remedial action was also performed pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20, and a certificate of completion is issued pursuant to subdivision (b) of Section 25264, the immunity from agency action provided by the certificate of completion, as specified in subdivision (c) of Section 25264, shall apply to the agency, in addition to the immunity conferred by this section. In the case of a remedial action performed pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20, and for which the administering agency is a local agency, the limitations on the certificate of completion set forth in paragraphs (1) to (6), inclusive, of subdivision (c) of Section 25264 are limits on any immunity provided for by this section and subdivision (c) of Section 25264.

(b) Upon approval of any cleanup or remedial action plan, pursuant to applicable statutes and regulations, the director or the California regional water quality control board or the local agency, as appropriate, shall acknowledge, in writing, within 60 days of the date of approval, that upon proper completion of the remedial or removal action in accordance with the plan, the immunity provided by this section shall apply to the agency.

(c) Notwithstanding any provision of law or policy providing for certification by a person conducting a remedial or removal action that the action has been properly completed, a determination that a remedial or removal action has been properly completed pursuant to this section shall be made only upon the affirmative approval of the director or the California regional water quality control board or the local agency, as appropriate. The department, California regional water quality control board, or local agency, as appropriate, shall, within 60 days of the date it finds that a remedial action has been completed, notify the agency in writing that the immunity provided by this section is in effect.

(d) The approval of a cleanup or remedial action plan under this section by a local agency shall also be subject to the concurrent approval of the department or a California regional water quality control board when the agency receiving the approval was formed by the same entity of which the local agency is a part.

(e) Upon proper completion of a remedial or removal action, as specified in subdivision (c), the immunity from agency action provided by the certificate of completion provided pursuant to subdivision (c) of Section 25264 and the immunity provided by this section extends to all of the following, but only for the release or releases specifically identified in the approved cleanup or remedial action plan and not for any subsequent release or any release not specifically identified in the approved cleanup or remedial action plan:

(1) Any employee or agent of the agency, including an instrumentality of the agency authorized to exercise some, or all, of the powers of an agency within, or for the benefit of, a redevelopment project and any employee or agent of the instrumentality.

(2) Any person who enters into an agreement with an agency for the redevelopment of property, if the agreement requires the person to acquire property affected by a hazardous substance release or to remove or remedy a hazardous substance release with respect to that property.

(3) Any person who acquires the property after a person has entered into an agreement with an agency for redevelopment of the property as described in paragraph (2).

(4) Any person who provided financing to a person specified in paragraph (2) or (3).

(f) Notwithstanding any other provision of law, the immunity provided by this section does not extend to any of the following:

(1) Any person who was a responsible party for the release before entering into an agreement, acquiring property, or providing financing, as specified in subdivision (e).

(2) Any person specified in subdivision (a) or (e) for any subsequent release of a hazardous substance or any release of a hazardous substance not specifically identified in the approved cleanup or remedial action plan.

(3) Any contractor who prepares the cleanup or remedial action plan, or conducts the removal or remedial action.

(4) Any person who obtains an approval, as specified in subdivision (b), or a determination, as specified in subdivision (c), by fraud, negligent or intentional nondisclosure, or misrepresentation, and any person who knows before the approval or determination is obtained or before the person enters into an agreement, acquires the property or provides financing, as specified in subdivision (e), that the approval or determination was obtained by these means.

(g) The immunity provided by this section is in addition to any other immunity of an agency provided by law.

(h) This section does not impair any cause of action by an agency or any other party against the person, firm, or entity responsible for the hazardous substance release which is the subject of the removal or remedial action taken by the agency or other person immune from liability pursuant to this section.

(i) This section does not apply to, or limit, alter, or restrict, any action for personal injury, property damage, or wrongful death.

(j) This section does not limit liability of a person described in paragraph (3) or (4) of subdivision (e) for damages under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(k) This section does not establish, limit, or affect the liability of an agency for any release of a hazardous substance that is not investigated or remediated pursuant to this section or Chapter 6.65 (commencing with Section 25260) of Division 20.

(l) The immunity provided for by this section is only conferred if both of the following apply:

(1) The action is in accordance with a cleanup or remedial action plan prepared by a qualified independent contractor and approved by the department or a California regional water quality control board or the local agency, as appropriate, pursuant to subdivision (b).

(2) The remedial or removal action is undertaken and properly completed, as specified in subdivision (c).

(m) The agency shall reimburse the department, the California

regional water quality control board, and the local agency for costs incurred in reviewing or approving cleanup or remedial action plans pursuant to this section.

(Amended by Stats. 1998, Ch. 438, Sec. 4. Effective January 1, 1999.)

33459.4. (a) Except as provided in Section 33459.7, if a redevelopment agency undertakes action to remedy or remove, or to require others to remedy or remove, including compelling a responsible party through a civil action, to remedy or remove a release of hazardous substance, any responsible party or parties shall be liable to the redevelopment agency for the costs incurred in the action. An agency may not recover the costs of goods and services that were not procured in accordance with applicable procurement procedures. The amount of the costs shall include the interest on the costs accrued from the date of expenditure and reasonable attorney's fees and shall be recoverable in a civil action. Interest shall be calculated based on the average annual rate of return on an agency's investment of surplus funds for the fiscal year in which costs were incurred.

(b) The only defenses available to a responsible party shall be the defenses specified in subdivision (b) of Section 25323.5.

(c) An agency may recover any costs incurred to develop and to implement a cleanup or remedial action plan approved pursuant to Sections 33459.1 and 33459.3, to the same extent the department is authorized to recover those costs. The scope and standard of liability for cost recovery pursuant to this section shall be the scope and standard of liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) as that act would apply to the department; provided, however, that any reference to hazardous substance therein shall be deemed to refer to hazardous substance as defined in subdivision (c) of Section 33459.

(d) An action for recovery of costs of a remedy or removal undertaken by a redevelopment agency under this section shall be commenced within three years after completion of the remedy or removal.

(e) The action to recover costs provided by this section is in addition to, and is not to be construed as restricting, any other cause of action available to a redevelopment agency.

(f) Except as provided in subdivision (m) of Section 33459.3, notwithstanding any other provision of state law or policy, an agency that undertakes and completes a remedial action, or otherwise causes a remedial action to be undertaken and completed pursuant to Sections 33459.1 and 33459.3, shall not be liable based on its ownership of property after a release occurred, for any costs that any responsible party for that release incurs to investigate or remediate the release or to compensate others for the effects of that release.

(Amended by Stats. 1998, Ch. 438, Sec. 5. Effective January 1, 1999.)

33459.5. Except as provided in Section 33459.3, nothing in this article shall limit the powers of the State Water Resources Control Board or a California regional water quality control board to enforce Division 7 (commencing with Section 13000) of the Water Code.

(Added by Stats. 1990, Ch. 1113, Sec. 2.)

33459.8. If an agency undertakes any action to remedy or remove a release of hazardous substances on, under, or from property within a project area, the agency shall amend its redevelopment plan and follow the same procedure, as specified, and the legislative body is subject to the same restrictions as provided for in Article 4 (commencing with Section 33330), for the adoption of a redevelopment plan, if the agency determines that as a result of the remedial or removal action, it will also be taking any of the following actions:

(a) Proposing to add new territory to the project area.

(b) Increasing either the limitation on the amount of funds to be allocated to the agency or the time limit on the establishing of loans, advances, and indebtedness established pursuant to subdivisions (1) and (2) of Section 33333.2.

(c) Lengthening the period during which the redevelopment plan is effective.

(d) Merging project areas.

(e) Adding significant additional capital improvement projects.

(Added by Stats. 1990, Ch. 1113, Sec. 2.)

HEALTH AND SAFETY CODE

DIVISION 37. REGULATION OF ENVIRONMENTAL PROTECTION

(Division 37 added by Stats. 1993, Ch. 418, Sec. 5. Effective January 1, 1994.)

57000. For purposes of this division, the following terms have the following meaning:

(a) "Agency" means the California Environmental Protection Agency.

(b) "Council" means the California Environmental Policy Council established by Section 71017 of the Public Resources Code.

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

(Amended by Stats. 1998, Ch. 881, Sec. 12. Effective January 1, 1999.)

57001. (a) Except as provided in subdivision (f), each office, board, and department within the agency shall, on or before December 31, 1995, implement a fee accountability program for the fees specified in subdivision (d). That fee accountability program shall be designed to encourage more efficient and cost-effective operation of the programs for which the fees are assessed, and shall be designed to ensure that the amount of each fee is not more than is reasonably necessary to fund the efficient operation of the activities or programs for which the fee is assessed.

(b) Before implementing the fee accountability program required by this section, each board, department, and office within the agency shall conduct a review of the fees identified in subdivision (d) which it assesses. The purpose of this review shall be to determine what changes, if any, should be made to all of the following, in order to implement a fee system which accomplishes the purposes set forth in subdivision (a):

(1) The amount of the fee.

(2) The manner in which the fee is assessed.

(3) The management and workload standards of the program or activity for which the fee is assessed.

(c) The fee accountability program of each board, department, or office within the agency shall include those elements of the requirements of Section 25206 which the secretary determines are appropriate in order to accomplish the purposes set forth in subdivision (a).

(d) This section applies to the following fees:

(1) The fee assessed pursuant to subdivision (d) of Section 13146 of the Food and Agricultural Code to develop data concerning the environmental fate of a pesticide when the registrant fails to provide the required information.

(2) The surface impoundment fees assessed pursuant to Section 25208.3.

(3) The fee assessed pursuant to Section 43203 to recover the costs of the State Air Resources Board in verifying manufacturer compliance on emissions from new vehicles prior to retail sale.

(4) The fee assessed pursuant to Section 44380 to recover the costs of the State Air Resources Board and the Office of Environmental Health Hazard Assessment in implementing and administering the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Part 6 (commencing with Section 44300) of Division 26).

(5) The fee assessed pursuant to Section 43212 of the Public Resources Code to recover the costs of the California Integrated Waste Management Board when it assumes the responsibilities of the local enforcement agency.

(6) The fee assessed pursuant to Section 43508 of the Public Resources Code to recover the costs of the California Integrated Waste Management Board in reviewing closure plans.

(7) The water rights permit fees assessed pursuant to Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of the Water Code.

(8) The fee assessed pursuant to subdivision (c) of Section 13260 of the Water Code for waste discharge requirements, including, but not limited to, requirements for storm water discharges, and the fee assessed pursuant to subdivision (i) of Section 12360 of the Water Code for National Pollution Discharge Elimination System permits.

(9) The costs assessed pursuant to Section 13304 of the Water Code to recover the costs of the State Water Resources Control Board or the California regional water quality control boards in implementing and enforcing cleanup and abatement orders.

(e) If a board, department, or office within the agency determines that the amount of a fee that is fixed in statute should be increased in order to implement a fee accountability system which accomplishes the purposes of subdivision (a), it shall notify the Legislature, and make recommendations concerning appropriate increases in the statutorily fixed fee amount. For fees whose amount is not fixed in statute, the board, department, or office may increase the fee only if it makes written findings in the record that it has implemented a fee accountability program which complies with this section.

(f) The Department of Toxic Substances Control shall be deemed to be in compliance with this section if it complies with Section 25206.

(Added by Stats. 1993, Ch. 418, Sec. 5. Effective January 1, 1994.)

57002. The agency shall conduct a study by surveying state, regional, and local agencies charged with implementing air quality, water quality, toxics, solid waste, and hazardous waste laws and regulations to determine how much revenue is derived from fines and penalties and to what purposes that revenue is directed. The study should include a review of the extent to which those funds are used to support state, regional, and local agency operations.

(Added by Stats. 1993, Ch. 418, Sec. 5. Effective January 1, 1994.)

57003. (a) Before a board, department or office within the agency adopts chemical risk assessment guidelines or policies for evaluating the toxicity of chemicals or prepares a health evaluation of a chemical that will be used in the regulatory process of another board, department, or office, the board, department, or office shall first convene a public workshop at which the guidelines, policies, or health evaluation may be discussed. The public workshop shall be designed to encourage a constructive dialogue between the scientists employed by the board, department, or office that prepared the proposed guidelines or policies or health evaluation and scientists not employed by that board, department, or office and to evaluate the degree to which the proposed guidelines or policies or health evaluation are based on sound scientific methods, knowledge, and practice. Following the workshop, the agency shall revise the guidelines, policies, or health evaluation, as appropriate, and circulate it for public comment for a period of at least 30 days.

(b) In any case where the guidelines, policies, or health evaluations described in subdivision (a) are proposed, or are being prepared, pursuant to a statutory requirement that specifies a procedure or a time period for carrying out the requirement, the requirements of subdivision (a) do not authorize a delay or a postponement in carrying out the statutory requirement.

(Added by Stats. 1993, Ch. 418, Sec. 5. Effective January 1, 1994.)

57004. (a) For purposes of this section, the following terms have the following meanings:

(1) "Rule" means either of the following:

(A) A regulation, as defined in Section 11342.600 of the Government Code.

(B) A policy adopted by the State Water Resources Control Board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) that has the effect of a regulation and that is adopted in order to implement or make effective a statute.

(2) "Scientific basis" and "scientific portions" mean those foundations of a rule that are premised upon, or derived from, empirical data or other scientific findings, conclusions, or assumptions establishing a regulatory level, standard, or other requirement for the protection of public health or the environment.

(b) The agency, or a board, department, or office within the agency, shall enter into an agreement with the National Academy of Sciences, the University of California, the California State University, or any similar scientific institution of higher learning, any combination of those entities, or with a scientist or group of scientists of comparable stature and qualifications that is recommended by the President of the University of California, to conduct an external scientific peer review of the scientific basis for any rule proposed for adoption by any board, department, or office within the agency. The scientific basis or scientific portion of a rule adopted pursuant to Chapter 6.6 (commencing with Section 25249.5) of Division 20 or Chapter 3.5 (commencing with Section 39650) of Division 26 shall be deemed to have complied with this section if it complies with the peer review

processes established pursuant to these statutes.

(c) No person may serve as an external scientific peer reviewer for the scientific portion of a rule if that person participated in the development of the scientific basis or scientific portion of the rule.

(d) No board, department, or office within the agency shall take any action to adopt the final version of a rule unless all of the following conditions are met:

(1) The board, department, or office submits the scientific portions of the proposed rule, along with a statement of the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based and the supporting scientific data, studies, and other appropriate materials, to the external scientific peer review entity for its evaluation.

(2) The external scientific peer review entity, within the timeframe agreed upon by the board, department, or office and the external scientific peer review entity, prepares a written report that contains an evaluation of the scientific basis of the proposed rule. If the external scientific peer review entity finds that the board, department, or office has failed to demonstrate that the scientific portion of the proposed rule is based upon sound scientific knowledge, methods, and practices, the report shall state that finding, and the reasons explaining the finding, within the agreed-upon timeframe. The board, department, or office may accept the finding of the external scientific peer review entity, in whole, or in part, and may revise the scientific portions of the proposed rule accordingly. If the board, department, or office disagrees with any aspect of the finding of the external scientific peer review entity, it shall explain, and include as part of the rulemaking record, its basis for arriving at such a determination in the adoption of the final rule, including the reasons why it has determined that the scientific portions of the proposed rule are based on sound scientific knowledge, methods, and practices.

(e) The requirements of this section do not apply to any emergency regulation adopted pursuant to subdivision (b) of Section 11346.1 of the Government Code.

(f) Nothing in this section shall be interpreted to, in any way, limit the authority of a board, department, or office within the agency to adopt a rule pursuant to the requirements of the statute that authorizes or requires the adoption of the rule.

(Amended by Stats. 2000, Ch. 1060, Sec. 40. Effective January 1, 2001.)

57005. (a) Commencing January 1, 1994, each board, department, and office within the agency, before adopting any major regulation, shall evaluate the alternatives to the requirements of the proposed regulation that are submitted to the board, department, or office pursuant to paragraph (7) of subdivision (a) of Section 11346.5 of the Government Code and consider whether there is a less costly alternative or combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed regulatory requirements.

(b) For purposes of this section, "major regulation" means any regulation that will have an economic impact on the state's business enterprises in an amount exceeding ten million dollars ($10,000,000), as estimated by the board, department, or office within the agency proposing to adopt the regulation in the assessment required by subdivision (a) of Section 11346.3 of the Government Code.

(c) On or before December 31, 1994, after consulting with the Secretary of Trade and Commerce, the director or executive officer of each board, department, and office within the agency, and after receiving public comment, the secretary shall adopt guidelines to be followed by the boards, departments, and offices within the agency concerning the methods and procedures to be used in conducting the evaluation required by this section.

(Amended by Stats. 1995, Ch. 938, Sec. 72.4. Effective January 1, 1996.)

57007. (a) The agency, and the offices, boards, and departments within the agency, shall institute quality government programs to achieve increased levels of environmental protection and the public's satisfaction through improving the quality, efficiency, and cost-effectiveness of the state programs that implement and enforce state and federal environmental protection statutes. These programs shall be designed to increase the level of environmental protection while expediting decisionmaking and producing cost savings. The secretary shall create an advisory group comprised of state and local government, business, environmental, and consumer representatives experienced in quality management to provide guidance in that effort. The secretary shall develop a model quality management program that local agencies charged with implementing air quality, water quality, toxics, solid waste, and hazardous waste laws and regulations may use at their discretion.

(b) The agency, and each board, department, and office within the agency, shall submit a biennial report to the Governor and Legislature, no later than December 1 with respect to the previous two fiscal years, reporting on the extent to which these state agencies have attained their performance objectives, and on their continuous quality improvement efforts.

(c) Nothing in this section abrogates any collective bargaining agreement or interferes with any established employee rights.

(d) For purposes of this section, "quality government program" means all of the following:

(1) A process for obtaining the views of employees, the regulated community, the public, environmental organizations, and governmental officials with regard to the performance, vision, and needs of the agency implementing the quality government program.

(2) A process for developing measurable performance objectiveness using the views of the persons and organizations specified in paragraph (1).

(3) Processes for continually improving quality and for training agency personnel, using the information obtained from implementing paragraphs (1) and (2).

(Amended by Stats. 2004, Ch. 644, Sec. 24. Effective January 1, 2005.)

57008. (a) For purposes of this section, the following definitions apply:

(1) "Agency" means the California Environmental Protection Agency.

(2) "Contaminant" means all of the following:

(A) A substance listed in Tables II and III of subparagraphs (A) and (B) of paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations.

(B) The five halogenated hydrocarbon industrial solvents that, in the experience of the State Water Resources Control Board and the Department of Toxic Substances Control are most commonly found as contaminants at sites subject to remediation under the Carpenter-Presley-Tanner Hazardous Substances Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20) and the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(C) Ten hazardous substances not included under subparagraphs (A) and (B) that, in the experience of the Department of Toxic Substances Control and the State Water Resources Control Board, are most commonly found as contaminants at sites subject to remediation under the Carpenter-Presley-Tanner Hazardous Substances Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20) and the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(3) "Screening number" means the concentration of a contaminant published by the agency as an advisory number pursuant to the process established in subdivisions (b) and (c). A screening number is solely an advisory number, and has no regulatory effect, and is published solely as a reference value that may be used by citizen groups, community organizations, property owners, developers, and local government officials to estimate the degree of effort that may be necessary to remediate a contaminated property. A screening number may not be construed as, and may not serve as, a level that can be used to require an agency to determine that no further action is required or a substitute for the cleanup level that is required to be achieved for a contaminant on a contaminated property. The public agency with jurisdiction over the remediation of a contaminated site shall establish the cleanup level for a contaminant pursuant to the requirements and the procedures of the applicable laws and regulations that govern the remediation of that contaminated property and the cleanup level may be higher or lower than a published screening number.

(b) (1) During the same period when the agency is carrying out the pilot study required by Section 57009 and preparing the informational document required by Section 57010, the agency shall initiate a scientific peer review of the screening levels published in Appendix 1 of Volume 2 of the technical report published by the San Francisco Regional Water Quality Control Board entitled "Application of Risk-Based Screening Levels and Decision-Making to Sites with Impacted Soil and Groundwater (Interim Final-August 2000)." The

agency shall conduct the scientific peer review process in accordance with Section 57004, and shall limit the review to those substances specified in paragraph (2) of subdivision (a). The agency shall complete the peer review process on or before December 31, 2004.

(2) The agency, in cooperation with the Department of Toxic Substances Control, the State Water Resources Control Board, and the Office of Environmental Health Hazard Assessment, shall publish a list of screening numbers for contaminants listed in paragraph (2) of subdivision (a) for the protection of human health and safety, and shall report on the feasibility of establishing screening numbers to protect water quality and ecological resources. The agency shall determine the screening numbers using the evaluation set forth in Section 25356.1.5 and the results of the peer review, and shall use the most stringent hazard criterion established pursuant to Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), as amended. The agency shall set forth separate screening levels for unrestricted land uses and a restricted, nonresidential use of land. In determining each screening number, the agency shall consider all of the following:

(A) The toxicology of the contaminant, its adverse effects on human health and safety, biota, and its potential for causing environmental damage to natural resources, including, but not limited to, beneficial uses of the water of the state, including sources of drinking water.

(B) Risk assessments that have been prepared for the contaminant by federal or state agencies pursuant to environmental or public health laws, evaluations of the contaminant that have been prepared by epidemiological studies and occupational health programs, and risk assessments or other evaluations of the contaminant that have been prepared by governmental agencies or responsible parties as part of a project to remediate a contaminated property.

(C) Cleanup levels that have been established for the contaminant at sites that have been, or are being, investigated or remediated under Chapter 6.8 (commencing with Section 25300) of Division 20, or cleaned up or abated under Division 7 (commencing with Section 13000) of the Water Code or under any other remediation program administered by a federal or local agency.

(D) Screening numbers that have been published by other agencies in the state, in other states, and by federal agencies.

(E) The results of external scientific peer review of the screening numbers made pursuant to Section 57004.

(c) (1) Before publishing the screening numbers pursuant to subdivision (b), the agency shall conduct two public workshops, one in the northern part of the state and the other in the southern part of the state, to brief interested parties on the scientific and policy bases for the development of the proposed screening numbers and to receive public comments.

(2) Following publication of the screening numbers pursuant to subdivision (b), the agency shall conduct three public workshops in various regions of the state to discuss the screening numbers and to receive public comments. The agency shall select an agency representative who shall serve as the chairperson for the workshops, and the agency shall ensure that ample opportunity is available for public involvement in the workshops. The deputy secretary for external affairs shall actively seek out participation in the workshops by citizen groups, environmental organizations, community-based organizations that restore and redevelop contaminated properties for park, school, residential, commercial, open-space or other community purposes, property owners, developers, and local government officials.

(d) Following the workshops required by subdivision (c), the agency shall revise the screening numbers as appropriate. The agency shall, from time to time, revise the screening numbers as necessary as experience is gained with their use and shall add screening numbers for contaminants to the list as information concerning remediation problems becomes available.

(e) The agency shall publish a guidance document for distribution to citizen groups, community-based organizations, property owners, developers, and local government officials that explains how screening numbers may be used to make judgments about the degree of effort that may be necessary to remediate contaminated properties, to facilitate the restoration and revitalization of contaminated property, to protect the waters of the state, and to make more efficient and effective decisions in local-level remediation programs.

(f) Nothing in this section affects the authority of the Department of Toxic Substances Control, the State Water Resources Control Board, or a regional water quality control board to take action under any applicable law or regulation regarding a release or threatened release of hazardous materials.

(Added by Stats. 2001, Ch. 764, Sec. 2. Effective January 1, 2002.)

57009. For purposes of this section, the following terms have the following meanings:

(1) "Agency" means the California Environmental Protection Agency.

(2) "Contaminated property" means a property located in the study area that is, or may be, subject to remediation pursuant to Chapter 6.10 (commencing with Section 25401) of Division 20.

(3) "Pilot screening numbers" means the levels published in Appendix 1 of Volume 2 of the technical report, except that, for purposes of the study required by this section, the levels published in Appendix 1 may be used only as informational screening numbers, as provided in paragraph (3) of subdivision (a) of Section 57008, and in a manner consistent with the technical report.

(4) "Study area" means the Los Angeles, Santa Ana, and San Diego regions, as established pursuant to Section 13200 of the Water Code.

(5) "Technical report" means the technical report published by the San Francisco Regional Water Quality Control Board entitled "Application of Risk-Based Screening Levels and Decision-Making to Sites with Impacted Soil and Groundwater (Interim Final-August 2000)" and any updates to the technical report.

(b) The agency shall conduct a study to evaluate the usefulness of pilot screening numbers in encouraging remediation at contaminated properties in the study area. The agency shall conduct the study in accordance with the requirements of subdivision (c) and shall develop information that bears on all of the following issues:

(1) The extent to which the pilot screening numbers are an adequate basis for estimating the degree of effort that may be necessary to remediate contaminated properties.

(2) Whether the availability of the pilot screening numbers as information provides an adequate basis for seeking funding from public or private sector sources to evaluate the feasibility of remediating a contaminated property and restoring it to productive use.

(3) The stages in the remediation process for which the pilot screening numbers are of the most use.

(4) The types of information derived from site investigations that are most useful, when combined with the pilot screening numbers, in making decisions concerning the feasibility of remediation of contaminated properties.

(5) Whether the availability of pilot screening numbers as information enables a person interested in the remediation of a contaminated property to determine, within an acceptable range, the relationship between the estimated cost of remediation of the property and the economic and social benefits that may derive from the property if it is restored to any of its reasonably foreseeable uses.

(c) The agency shall carry out the study required by subdivision (b) in the study area over the period commencing on March 1, 2002, until March 1, 2004. On or before June 30, 2004, the agency shall do all of the following:

(1) Prepare a brief document that explains what are screening numbers, what is the relationship of screening numbers to regulatory cleanup levels, and how screening numbers may be used to make judgments concerning the feasibility of restoring a contaminated property to productive use, and the degree of effort that may be required to remediate the property.

(2) Post the explanatory document prepared pursuant to paragraph (1), the technical report, and updates to the technical report, on the Internet Web sites maintained by the Department of Toxic Substances Control and by the California regional water quality control boards that have jurisdiction in the study area.

(3) Identify 25 contaminated properties in the study area that are remediated during the test period of March 1, 2002, until March 1, 2004, to determine the effects of the availability of the pilot screening numbers as information on the course of remediation and revitalization of contaminated properties and on assisting persons involved with the remediation to make meaningful decisions concerning the feasibility and effectiveness of remediation activities and assess whether the pilot screening numbers were more or less stringent than the required cleanup levels.

(d) The agency may not include in the pilot study more than 25 remediated contaminated properties in the study area.

(e) The study required by this section does not create any legal or

regulatory authorization to use the pilot screening numbers. The pilot screening numbers are only available as information.

(f) The agency shall evaluate the information developed by the study required by this section, use the information as appropriate to carry out the requirements of Section 57008, and, to the extent the information is timely, provide the information and the evaluation to the contractor preparing the study required by Section 57010.

(g) The agency shall post the information developed by the study required by this section and the information required under paragraph (2) of subdivision (c) on its Internet Web site.

(h) Nothing in this section affects the authority of the Department of Toxic Substances Control, the State Water Resources Control Board, or a regional water quality control board to take action under any applicable law or regulation regarding a release or threatened release of hazardous materials.

(Added by Stats. 2001, Ch. 764, Sec. 3. Effective January 1, 2002.)

57010. (a) On or before January 1, 2003, the California Environmental Protection Agency shall publish an informational document to assist citizen groups, community-based organizations, interested laypersons, property owners, local government officials, developers, environmental organizations, and environmental consultants to understand the factors that are taken into account, and the procedures that are followed, in making site investigation and remediation decisions under the Carpenter-Presley-Tanner Hazardous Substances Account Act (Chapter 6.8 (commencing with Section 25300)
of Division 20) and under the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(b) The agency shall make the informational document required by this section available to any person who requests it at no charge and shall also post the public information manual on the agency's Internet Web site. The agency shall update both the printed informational document and the Web site at appropriate intervals as new legislation or revised policies affect the administration of the Carpenter-Presley-Tanner Hazardous Substances Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20) and the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(Added by Stats. 2001, Ch. 764, Sec. 4. Effective January 1, 2002.)

57012. (a) Each agency listed in subdivision (d) shall maintain a list of all instruments and agreements restricting land uses imposed by that agency under Section 1471 of the Civil Code or any provision of law that is administered by that agency, in accordance with all of the following requirements:

(1) The list shall provide a description of location for each property that, at a minimum, provides the street address and the assessor's parcel number. If a street address or assessor's parcel number is not available, or if a street address or assessor's parcel number does not adequately describe the property affected by the instrument or agreement restricting land use, the list shall include a description of location or the location's geographic coordinates.

(2) The list shall provide a description of any restricted uses of the property, contaminants known to be present, and any remediation of the property, if known, that would be required to allow for its unrestricted use. The recorded instrument or agreement restricting land uses may be provided in lieu of the description required by this paragraph.

(3) Each agency shall update its list as new instruments and agreements restricting land uses are recorded and as instruments and agreements restricting land uses on properties are changed.

(b) Each agency listed in subdivision (d) shall display the list required under subdivision (a) on that agency's Web site, and shall make the list available to the public upon request.

(c) The California Environmental Protection Agency shall oversee the implementation of this section. In overseeing the implementation of this section, the California Environmental Protection Agency shall do all of the following:

(1) Maintain on its Web site hyperlinks to the individual lists posted pursuant to this section.

(2) Provide a search function that is able to search and retrieve information from each of the individual lists posted pursuant to this section.

(3) Create and post a list of all instruments and agreements restricting land uses that have been sent pursuant to subdivision (e) of Section 1471 of the Civil Code. The list created and posted pursuant to this paragraph shall meet all of the following requirements:

(A) The list shall identify the entity or jurisdiction that imposed the instrument or agreement restricting land uses.

(B) The list shall include the information required by paragraphs (1) and (2) of subdivision (a).

(C) The list shall be maintained for informational purposes only.

(D) The list shall contain a notation that information regarding the listed properties has been provided voluntarily, that the list is not all-inclusive, and that there may be additional sites where instruments or agreements restricting land uses have been imposed by other entities that have not been included on the list.

(d) This section applies to the California Environmental Protection Agency and to all of the following entities within the agency:

(1) The California Integrated Waste Management Board.

(2) The State Water Resources Control Board, and each California regional water quality control board.

(3) The Department of Toxic Substances Control.

(Added by Stats. 2002, Ch. 592, Sec. 2. Effective January 1, 2003.)

57013. (a) The Department of Toxic Substances Control may require a person submitting a report or data to submit the report or data in an electronic format, if the report is submitted to either of the following:

(1) The Department of Toxic Substances Control.

(2) A unified program agency implementing the unified program specified in Chapter 6.11 (commencing with Section 25404) of Division 20.

(b) The Department of Toxic Substances Control may require that a report or data submitted in electronic format include the latitude and longitude, which shall be accurate to within at least one meter, of the location where a sample analyzed in the report or data was collected.

(c) The Department of Toxic Substances Control shall adopt standards, that include electronic formats, for the submission of reports, which shall include formats for the submission of analytical and environmental compliance data. When adopting these standards, the Department of Toxic Substances Control shall only consider electronic formats that meet all of the following criteria:

(1) Are available at no cost.

(2) Are available in the public domain.

(3) Have available public domain means to import, manipulate, and store data.

(4) Allow importation of data into tables that indicate relational distances.

(5) Allow verification of data submission consistency.

(6) Allow inclusion of all of the following information:

(A) The physical site address from which the sample was taken, and information required for permitting and reporting an unauthorized release.

(B) Environmental assessment data taken during the initial site investigation phase, as well as the continuing monitoring and evaluation phases.

(C) The latitude and longitude, which shall be accurate to within at least one meter, of the location where a sample was collected.

(D) A description of all tests performed on the sample, the results of the testing, quality assurance and quality control information, available narrative information regarding the collection of the sample, and available information concerning the laboratory's analysis of the sample.

(7) Fulfill any additional criteria that the Department of Toxic Substances Control determines are appropriate for an effective electronic report submission program.

(d) In adopting standards pursuant to this section, the Department of Toxic Substances Control shall ensure the security of electronically submitted information.

(e) (1) The regulations adopted by the Department of Toxic Substances Control pursuant to this section may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. 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 an emergency and necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(2) Notwithstanding the time limitation in subdivision (e) of Section 11346.1 of the Government Code, an emergency regulation adopted or amended pursuant to this section shall not be repealed until one year after the effective date of the regulation, unless the Department of Toxic Substances Control readopts the regulation, in whole or in part, in compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, until the effective date of the regulations adopted pursuant to this section, the Department of Toxic Substances Control may implement this section using the following regulations adopted by the State Water Resources Control Board or the Secretary for Environmental Protection for the electronic submission of reports:

(A) Chapter 30 (commencing with Section 3900) of Division 3 of Title 23 of the California Code of Regulations.

(B) Subdivision 4 (commencing with Section 15100) of Division 1 of Title 27 of the California Code of Regulations.

(C) Subdivision 2 of Division 3 of Title 27 of the California Code of Regulations.

(Added by Stats. 2006, Ch. 562, Sec. 2. Effective January 1, 2007.)

57018. (a) For purposes of Sections 57019 and 57020, the following definitions shall apply:

(1) "Analytical test method" means a procedure used to sample, prepare, and analyze a specific matrix to determine the identity and concentration of a specified chemical and its metabolites and degradation product. An analytical test method shall conform to the standards adopted by the National Environmental Laboratory Accreditation Conference.

(2) "Bioconcentration factor" means the concentration of a chemical in an organism divided by its concentration in a test solution or environment.

(3) "Chemical" has the same meaning as a chemical substance, as defined in Section 2602 of Title 15 of the United States Code.

(4) "Manufacturer" means a person who produces a chemical in this state or who imports a chemical into this state for sale in this state.

(5) "Matrix" includes, but is not limited to, water, air, soil, sediment, sludge, chemical waste, fish, blood, adipose tissue, and urine.

(6) "Octanol-water partition coefficient" means the ratio of the concentration of a chemical in octanol and in water at equilibrium and at a specified temperature.

(7) "State agency" means the State Air Resources Board, the Department of Toxic Substances Control, the Integrated Waste Management Board, the Office of Environmental Health Hazard Assessment, the State Water Resources Control Board, and the California Environmental Protection Agency. "State agency" does not include the Department of Pesticide Regulation.

(Added by Stats. 2006, Ch. 699, Sec. 2. Effective January 1, 2007.)

57019. (a) The California Environmental Protection Agency shall coordinate all requests for information from manufacturers made pursuant to this section on behalf of the state agencies.

(b) In coordinating the requests made pursuant to this section, the California Environmental Protection Agency shall seek to accomplish the following objectives:

(1) Minimize or eliminate duplicate requests for the same or similar information.

(2) Coordinate with manufacturers of the same chemical to develop and submit the requested information in an equitable and resource-efficient manner.

(3) To the extent practicable minimize the cost burden on individual manufacturers.

(4) Maintain a record of requests made pursuant to this section.

(c) A state agency, before requesting any information from a manufacturer pursuant to subdivision (d), shall do all of the following:

(1) Post on its Internet Web site and the Internet Web site of the California Environmental Protection Agency an announcement that it seeks information pursuant to subdivision (d), including the chemical for which it seeks information, the type of information it is seeking, and the reason for seeking the information.

(2) Conduct a search for the information it seeks of all known public sources of information on the chemicals for which an announcement has been posted pursuant to paragraph (1). All known public sources include public and electronically searchable databases maintained by the federal government, state governments, and intergovernmental organizations.

(3) Make reasonable attempts to contact all manufacturers of chemicals listed for which an announcement has been posted pursuant to paragraph (1) to obtain any relevant information that may be held by those manufacturers but is not publicly available.

(4) Make reasonable attempts to consult with all manufacturers of chemicals listed for which an announcement has been posted pursuant to paragraph (1) to determine what additional information, if any, those manufacturers need to develop to assist the state agency in evaluating the fate and transport of those chemicals in the relevant matrices.

(5) Make reasonable attempts to consult with all manufacturers to evaluate the technical feasibility of developing the information requested by the agency.

(d) (1) A state agency may request a manufacturer to provide additional information on a chemical for which an announcement has been posted pursuant to paragraph (1) of subdivision (c).

(2) Upon request of a state agency, the manufacturer, within one year, shall provide the state agency with the additional information requested for the specified chemical.

(3) The information that the state agency requests may include, but is not limited to, any of the following:

(A) An analytical test method for that chemical, or for metabolites and degradation products for that chemical that are biologically relevant in the matrix specified by the state agency.

(B) The octanol-water partition coefficient and bioconcentration factor for humans for that chemical.

(C) Other relevant information on the fate and transport of that chemical in the environment.

(4) The manufacturer responding to a request pursuant to this subdivision shall collaborate and cooperate with the state agency making the request to the extent practicable for the following purposes:

(A) To ensure that the information being provided meets the needs of the state agency.

(B) To reduce disagreements over the information being provided.

(C) To decrease to the maximum extent possible the effort and resources the state agency must expend to verify and validate the information provided.

(e) The definitions in Section 57018 apply to this section.

(f) This section shall not be construed to limit the authority of a state agency to obtain information pursuant to any other provision of law.

(Added by Stats. 2006, Ch. 699, Sec. 3. Effective January 1, 2007.)

57020. (a) Notwithstanding Section 6254.7 of the Government Code, if a manufacturer believes that information provided to a state agency pursuant to Section 57019 involves the release of a trade secret, the manufacturer shall make the disclosure to the state agency and notify the state agency in writing of that belief. In its written notice, the manufacturer shall identify the portion of the information submitted to the state agency that it believes is a trade secret and provide documentation supporting its conclusion.

(b) Subject to this section, the state agency shall protect from disclosure a trade secret designated as such by the manufacturer, if that trade secret is not a public record.

(c) Upon receipt of a request for the release of information to the public that includes information that the manufacturer has notified the state agency is a trade secret and that is not a public record, the following procedure applies:

(1) The state agency shall notify the manufacturer that disclosed the information to the state agency of the request, in writing by certified mail, return receipt requested.

(2) The state agency shall release the information to the public, but not earlier than 30 days after the date of mailing the notice of the request for information, unless, prior to the expiration of the 30-day period, the manufacturer obtains an action in an appropriate court for a declaratory judgment that the information is subject to protection under this section or for a preliminary injunction prohibiting disclosure of the information to the public and promptly notifies the state agency of that action. In order to prevent the state agency from releasing the information to the public, the manufacturer shall obtain a declaratory judgment or preliminary injunction

within 30 days of filing an action for a declaratory judgment or preliminary injunction.

(d) This section does not authorize a manufacturer to refuse to disclose to the state agency information required by Section 57019.

(e) Any information that a court, pursuant to this section, determines is a trade secret and not a public record, or pending final judgment pursuant to subdivision (c), shall not be disclosed by the state agency to anyone, except to an officer or employee of a city or county, the state, or the United States, or to a contractor with a city or county, or the state, and its employees, if, in the opinion of the state agency, disclosure is necessary and required for the satisfactory performance of a contract, for the performance of work, or to protect the health and safety of the employees of the contractor.

(f) The definitions in Section 57018 apply to this section.

(Added by Stats. 2006, Ch. 699, Sec. 4. Effective January 1, 2007.)

HEALTH AND SAFETY CODE

(DIVISION 38.)

(Note: Division 38 (relating to Department of Toxic Substances Control, commencing with Section 58000), as set forth in Sec. 146 of Governor's Reorganization Plan No. 1 of 1991, has not been formally codified by statutory enactment. This heading was inserted editorially to clarify placement of Section 58004.5.)

58004.5. (a) The department succeeds to, and is vested with, all of the duties, powers, purposes, responsibilities, and jurisdiction of the Office of Environmental Health Hazard Assessment with regard to the Environmental Quality Assessment Act of 1986 (Chapter 6.98 (commencing with Section 25570)).

(b) The Director of Toxic Substances Control may expend the unexpended balance of any funds available for expenditure by the Director of Environmental Health Hazard Assessment in connection with the performance of the functions of the Director of Environmental Health Hazard Assessment in carrying out the Environmental Quality Assessment Act of 1986.

(c) All officers and employees of the Office of Environmental Health Hazard Assessment who are serving in the state civil service, other than as temporary employees, and engaged in the performance of a function in carrying out the Environmental Quality Assessment Act of 1986 shall be transferred to the department. The status, positions, and rights of those persons shall not be affected by the transfer and shall be retained by them as officers and employees of the Department of Toxic Substances Control, pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), except as to positions exempted from civil service.

(d) The department shall have possession and control of all records, papers, offices, equipment, supplies, money, funds, appropriations, licenses, permits, agreements, contracts, claims, judgments, and land or other property, real or personal, held for the benefit or use of the Office of Environmental Health Hazard Assessment for purposes of the functions transferred to the department to subdivision (a).

(e) Any regulation adopted before January 1, 2003, by the Office of Environmental Health Hazard Assessment or its predecessors, relating to carrying out the Environmental Quality Assessment Act of 1986, as specified in subdivision (a), that are in effect on January 1, 2003, shall remain in effect on and after January 1, 2003, and are enforceable by the department until readopted, amended, or repealed by the department.

(Added by Stats. 2002, Ch. 626, Sec. 9. Effective January 1, 2003. Note: This section relates to Division 38, as set forth in Sec. 146 of Governor's Reorganization Plan No. 1 of 1991, which has not been officially codified by statutory enactment.)

HEALTH AND SAFETY CODE

DIVISION 101, PART 3, CHAPTER 4, ARTICLE 5

Article 5. Released Waste

(Article 5 added by Stats. 1996, Ch. 1023, Sec. 303.3.
Effective September 29, 1996.
Note: Ch. 1023 probably intended to add this article within Part 3.)

101480. (a) For purposes of this article, the following definitions apply:

(1) "Local officer" means a county health officer, city health officer, or county director of environmental health.

(2) "Person" has the same meaning as set forth in Section 25118.

(3) "Release" has the same meaning as set forth in Section 25320.

(4) "Remedial action" means any action taken by a responsible party to clean up a released waste, to abate the effects of a released waste, or to prevent, minimize, or mitigate damages that may result from the release of a waste. "Remedial action" includes the restoration, rehabilitation, or replacement of any natural resource damaged or lost as a result of the release of a waste.

(5) "Responsible party" means a person who, pursuant to this section, requests the local officer to supervise remedial action with respect to a released waste.

(6) "Waste" has the same meaning as set forth in subdivision (b) of Section 101075.

(b) Whenever a release of waste occurs and remedial action is required, the responsible party for the release may request the local officer to supervise the remedial action. The local officer may agree to supervise the remedial action if he or she determines, based on available information, that adequate staff resources and the requisite technical expertise and capabilities are available to adequately supervise the remedial action.

(c) Remedial action carried out under this section shall be carried out only pursuant to a remedial action agreement entered into by the local officer and the responsible party. The remedial action agreement shall specify the testing, monitoring, and analysis the responsible party will carry out to determine the type and extent of the contamination caused by the released waste that is the subject of the remedial action, the remedial actions that will be taken, and the cleanup goals that the local officer determines are necessary to protect human health or safety or the environment, and that, if met, constitute a permanent remedy to the release of the waste.

(d) A local officer who enters into a remedial action agreement, as described in subdivision (c), may, after giving the responsible party adequate notice, withdraw from the agreement at any time after making one of the following findings:

(1) The responsible party is not in compliance with the remedial action agreement.

(2) Appropriate staff resources, technical expertise, or technical capabilities are not available to adequately supervise the remedial action.

(3) The release of the waste that is the subject of the remedial action is of a sufficiently complex nature or may present such a significant potential hazard to human health or the environment that it should be referred to the Department of Toxic Substances Control or a California regional water quality control board.

(e) After determining that a responsible party has completed the actions required by the remedial action agreement and that a permanent remedy for the release of waste has been achieved, the local officer may provide the responsible party with a letter or other document that describes the release of waste that occurred and the remedial action taken, and certifies that the cleanup goals embodied in the remedial action agreement were accomplished.

(Added by Stats. 1996, Ch. 1023, Sec. 303.3. Effective September 29, 1996.)

101483. This article shall not apply to any of the following:

(a) A hazardous substance release site listed pursuant to Section 25356, a site subject to an order or enforceable agreement issued pursuant to Section 25355.5 or 25358.3, or a site where the Department of Toxic Substances Control has initiated action pursuant to Section 25355.

(b) A site subject to a corrective action order issued pursuant to Section 25187 or 25187.7.

(c) A site subject to a cleanup and abatement order issued pursuant to Section 13304 of the Water Code.

(d) A facility that is subject to the requirements of Section 25200.10 or 25200.14.

(Added by Stats. 1996, Ch. 1023, Sec. 303.3. Effective September 29, 1996.)

101485. Nothing in this article shall be construed as prohibiting the Department of Toxic Substances Control from assuming jurisdiction over a release pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20, or a California regional water quality control board, or the State Water Resources Control Board from taking enforcement action against a release pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(Added by Stats. 1996, Ch. 1023, Sec. 303.3. Effective September 29, 1996.)

101487. A local officer shall provide written notification to the Department of Toxic Substances Control and the appropriate California regional water quality control board at least 10 working days prior to entering into a remedial action agreement with a responsible party pursuant to subdivision (c) of Section 101480. The written notification shall include all of the following:

(a) The name and address of the responsible party.

(b) The name and address of the site owner.

(c) The address and location of the site to which the remedial action agreement will apply.

(d) A description of any known or planned local, state, or federal regulatory involvement at the site.

(Added by Stats. 1996, Ch. 1023, Sec. 303.3. Effective September 29, 1996.)

101490. A local officer may charge the responsible party a fee to recover the reasonable and necessary costs incurred in carrying out this article.

(Added by Stats. 1996, Ch. 1023, Sec. 303.3. Effective September 29, 1996.)

PUBLIC RESOURCES CODE

DIVISION 30, PART 3, CHAPTER 3.5

CHAPTER 3.5. METALLIC DISCARDS

(Chapter 3.5 added by Stats. 1991, Ch. 849, Sec. 2.)

Article 1. Definitions

(Article 1 added by Stats. 1991, Ch. 849, Sec. 2.)

42160. The definitions in this article govern the construction of this chapter.
(Added by Stats. 1991, Ch. 849, Sec. 2.)

42161. "Metallic discard" means any large metal article or product, or any part thereof, including, but not limited to, metal furniture, machinery, major appliances, electronic products, and wood-burning stoves.
(Added by Stats. 1991, Ch. 849, Sec. 2.)

42162. "Salvage" means the controlled removal of metallic discards from the solid waste stream at a permitted solid waste facility for the express purpose of recycling or reuse.
(Added by Stats. 1991, Ch. 849, Sec. 2.)

42163. "Recycling residue" means nonhazardous residue or residue treated to be nonhazardous that is a direct result of metals recovery operations for the express purposes of recycling.
(Added by Stats. 1991, Ch. 849, Sec. 2.)

42164. "Solid waste landfill" means a solid waste landfill, as defined in Section 40195.1.
(Amended by Stats. 1996, Ch. 1041, Sec. 11. Effective January 1, 1997.)

42165. "Vehicle" means any device used for transportation. "Vehicle" includes bicycles, airplanes, and other transportation devices not used on highways, and automobiles and other vehicles, as defined in Section 670 of the Vehicle Code.
(Added by Stats. 1991, Ch. 849, Sec. 2.)

42166. "Major appliance" means any domestic or commercial device, including, but not limited to, a washing machine, clothes dryer, hot water heater, dehumidifier, conventional oven, microwave oven, stove, refrigerator, freezer, air-conditioner, trash compactor, and residential furnace.
(Added by Stats. 1991, Ch. 849, Sec. 2.)

42167. "Materials that require special handling" means all of the following:
(a) Sodium azide canisters in unspent airbags that are determined to be hazardous by federal and state law or regulation.
(b) Encapsulated polychlorinated biphenyls (PCBs), Di(2-Ethylhexylphthalate) (DEHP), and metal encased capacitors, in major appliances.
(c) Chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and other non-CFC replacement refrigerants, injected in air-conditioning/refrigeration units.
(d) Used oil, as defined in subparagraph (A) of paragraph (1) of subdivision (a) of Section 25250.1 of the Health and Safety Code, in major appliances. Materials described in subparagraph (B) of paragraph (1) of subdivision (a) of Section 25250.1 of the Health and Safety Code are not excluded from the definition of used oil for the purposes of this section.
(e) Mercury found in switches and temperature control devices in major appliances.
(f) Any other material that, when removed from a major appliance, is a hazardous waste regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.
(Amended by Stats. 2004, Ch. 880, Sec. 11. Effective January 1, 2005.)

42168. "Solid waste facility" means a solid waste facility as defined in Section 40194.
(Added by Stats. 1991, Ch. 849, Sec. 2.)

Article 2. Disposal of Metallic Discard

(Article 2 added by Stats. 1991, Ch. 849, Sec. 2.)

42170. (a) After January 1, 1994, no solid waste facility shall accept for disposal any major appliance, vehicle, or other metallic discard which contains enough metal to be economically feasible to salvage as determined by the solid waste facility operator.
(b) After January 1, 1994, no person shall place a major appliance or other metallic discard in mixed municipal solid waste or dispose of a major appliance or other metallic discard in or on land, except for a solid waste landfill operator who complies with subdivision (a). This material shall be delivered to a facility to process for reuse or recycling, placed in a solid waste facility for salvage, or disposed of at a solid waste landfill if economically infeasible to salvage.
(c) Notwithstanding any other provision of law, any solid waste facility operator who salvages major appliances, vehicles, other metallic discards or other recyclables shall not be required to revise the solid waste facilities permit to implement these activities.
(d) This section shall be subject to enforcement pursuant to Chapter 1 (commencing with Section 45000) of Part 5.
(Added by Stats. 1991, Ch. 849, Sec. 2.)

42171. The board shall evaluate the use of recycling residue for use as solid waste landfill cover materials or for use as extenders for currently used cover material. If used as daily cover or as extenders to daily cover, recycling residues shall have all of the physical characteristics required by regulations for cover materials adopted pursuant to Section 43020. The results of this evaluation shall be reported in the report required pursuant to Section 40507.
(Amended by Stats. 1992, Ch. 1293, Sec. 3. Effective January 1, 1993.)

42172. The board shall conduct its evaluation of recycling residue in consultation with the Department of Toxic Substances Control, the State Air Resources Board, the state water board, and any other agency having pertinent jurisdiction. Recycling residue used as daily cover or as extenders in daily cover shall meet performance standards and requirements for cover material as specified in the regulations adopted pursuant to Section 43020.
(Amended by Stats. 1992, Ch. 1293, Sec. 4. Effective January 1, 1993.)

Article 3. Processing Metallic Discards

(Article 3 added by Stats. 1991, Ch. 849, Sec. 2.)

42175. Materials that require special handling shall be removed from major appliances and vehicles in which they are contained prior to crushing for transport or transferring to a baler or shredder for recycling.
(Amended by Stats. 1997, Ch. 884, Sec. 4. Effective January 1, 1998.)

42175.1. (a) Any hazardous material that becomes a hazardous waste when released or removed from any major appliance shall be managed pursuant to
Article 10.1 (commencing with Section 25211) of Chapter 6.5 of Division 20 of the Health and Safety Code.
(b) Any mercury-containing motor vehicle light switch that becomes a hazardous waste when removed from any vehicle shall be managed pursuant to Article 10.2 (commencing with Section 25214.5) of Chapter 6.5 of Division 20 of the Health and Safety Code.
(c) Failure to comply with the requirements of Section 42175 is a violation of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.
(Amended by Stats. 2002, Ch. 626, Sec. 10. Effective January 1, 2003.)

Article 4. Fees and Surcharges for Recycling Residue

(Article 4 added by Stats. 1991, Ch. 849, Sec. 2.)

42185. No city or county shall impose any fees, except facility operating fees, state-mandated fees, or fees pursuant to Sections 41901, 41902, 41903, and 43213, or surcharges on the disposal of recycling residue

generated from the metals recovery and reuse of major appliances, vehicles, and other metallic discards, provided the residue is not delivered to the solid waste facility mixed with other solid waste.

(Added by Stats. 1991, Ch. 849, Sec. 2.)

PUBLIC RESOURCES CODE

DIVISION 30, PART 3, CHAPTER 8.5

CHAPTER 8.5. ELECTRONIC WASTE RECYCLING

(Chapter 8.5 added by Stats. 2003, Ch. 526, Sec. 5.
Effective January 1, 2004.
Conditionally inoperative as provided in Sections 42485 and 42486.)

Article 1. General Provisions

(Article 1 added by Stats. 2003, Ch. 526, Sec. 5.
Effective January 1, 2004.
Conditionally inoperative as provided in Sections 42485 and 42486.)

42460. This act shall be known, and may be cited, as the Electronic Waste Recycling Act of 2003.

(Added by Stats. 2003, Ch. 526, Sec. 5. Effective January 1, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42461. The Legislature finds and declares all of the following:

(a) The purpose of this chapter is to enact a comprehensive and innovative system for the reuse, recycling, and proper and legal disposal of covered electronic devices, and to provide incentives to design electronic devices that are less toxic, more recyclable, and that use recycled materials.

(b) It is the further purpose of this chapter to enact a law that establishes a program that is cost free and convenient for consumers and the public to return, recycle, and ensure the safe and environmentally-sound disposal of covered electronic devices.

(c) It is the intent of the Legislature that the cost associated with the handling, recycling, and disposal of covered electronic devices is the responsibility of the producers and consumers of covered electronic devices, and not local government or their service providers, state government, or taxpayers.

(d) In order to reduce the likelihood of illegal disposal of these hazardous materials, it is the intent of this chapter to ensure that any cost associated with the proper management of covered electronic devices be internalized by the producers and consumers of covered electronic devices at or before the point of purchase, and not at the point of discard.

(e) Manufacturers of covered electronic devices, in working to achieve the goals and objectives of this chapter, should have the flexibility to partner with each other and with those public sector entities and business enterprises that currently provide collection and processing services to develop and promote a safe and effective covered electronic device recycling system for California.

(f) The producers of electronic products, components, and devices should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in those products.

(g) Electronic products, components, and devices, to the greatest extent feasible, should be designed for extended life, repair, and reuse.

(h) The purpose of the Hazardous Electronic Waste Recycling Act is to provide sufficient funding for the safe, cost-free, and convenient collection and recycling of 100 percent of the covered electronic waste discarded or offered for recycling in the state, to eliminate electronic waste stockpiles and legacy devices by December 31, 2007, to end the illegal disposal of covered electronic devices, to establish manufacturer responsibility for reporting to the board on the manufacturer's efforts to phase out hazardous materials in electronic devices and increase the use of recycled materials, and to ensure that electronic devices sold in the state do not violate the regulations adopted by the Department of Toxic Substances Control pursuant to Section 25214.10 of the Health and Safety Code.

(Added by Stats. 2003, Ch. 526, Sec. 5. Effective January 1, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

Article 2. Definitions

(Article 2 added by Stats. 2003, Ch. 526, Sec. 5.
Effective January 1, 2004.
Conditionally inoperative as provided in Sections 42485 and 42486.)

42463. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) "Account" means the Electronic Waste Recovery and Recycling Account created in the Integrated Waste Management Fund under Section 42476.

(b) "Authorized collector" means any of the following:

(1) A city, county, or district that collects covered electronic devices.

(2) A person or entity that is required or authorized by a city, county, or district to collect covered electronic devices pursuant to the terms of a contract, license, permit, or other written authorization.

(3) A nonprofit organization that collects or accepts covered electronic devices.

(4) A manufacturer or agent of the manufacturer that collects, consolidates, and transports covered electronic devices for recycling from consumers, businesses, institutions, and other generators.

(5) An entity that collects, handles, consolidates, and transports covered electronic devices and has filed applicable notifications with the department pursuant to Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(c) "Board" means the California Integrated Waste Management Board.

(d) "Consumer" means a person who purchases a new or refurbished covered electronic device in a transaction that is a retail sale or in a transaction to which a use tax applies pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(e) "Department" means the Department of Toxic Substances Control.

(f) (1) Except as provided in paragraph (2), "covered electronic device" means a video display device containing a screen greater than four inches, measured diagonally, that is identified in the regulations adopted by the department pursuant to subdivision (b) of Section 25214.10.1 of the Health and Safety Code.

(2) "Covered electronic device" does not include any of the following:

(A) A video display device that is a part of a motor vehicle, as defined in Section 415 of the Vehicle Code, or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.

(B) A video display device that is contained within, or a part of a piece of industrial, commercial, or medical equipment, including monitoring or control equipment.

(C) A video display device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air-conditioner, dehumidifier, or air purifier.

(D) An electronic device, on and after the date that it ceases to be a covered electronic device under subdivision (e) of Section 25214.10.1 of the Health and Safety Code.

(g) "Covered electronic waste" or "covered e-waste" means a covered electronic device that is discarded.

(h) "Covered electronic waste recycling fee" or "covered e-waste recycling fee" means the fee imposed pursuant to Article 3 (commencing with Section 42464).

(i) "Covered electronic waste recycler" or "covered e-waste recycler" means any of the following:

(1) A person who engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of reuse or recycling.

(2) A person who changes the physical or chemical composition of a covered electronic device, in accordance with the requirements of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code and the regulations adopted pursuant to that chapter, by deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for purposes of segregating components, for purposes of recovering or recycling those components, and who arranges for the transport of those components to an end user.

(3) A manufacturer who meets any conditions established by this chapter and Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code for the collection or recycling of covered electronic waste.

(j) "Discarded" has the same meaning as defined in subdivision (b) of Section 25124 of the Health and Safety Code.

(k) "Electronic waste recovery payment" means an amount

established and paid by the board pursuant to Section 42477.

(l) "Electronic waste recycling payment" means an amount established and paid by the board pursuant to Section 42478.

(m) "Hazardous material" has the same meaning as defined in Section 25501 of the Health and Safety Code.

(n) "Manufacturer" means either of the following:

(1) A person who manufactures a covered electronic device sold in this state.

(2) A person who sells a covered electronic device in this state under that person's brand name.

(o) "Person" means an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. Notwithstanding Section 40170, "person" also includes a city, county, city and county, district, commission, the state or a department, agency, or political subdivision thereof, an interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(p) "Recycling" has the same meaning as defined in subdivision (a) of Section 25121.1 of the Health and Safety Code.

(q) "Refurbished," when used to describe a covered electronic device, means a device that the manufacturer has tested and returned to a condition that meets factory specifications for the device, has repackaged, and has labeled as refurbished.

(r) "Retailer" means a person who makes a retail sale of a new or refurbished covered electronic device. "Retailer" includes a manufacturer of a covered electronic device who sells that covered electronic device directly to a consumer through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or the Internet, or any other similar electronic means.

(s) (1) "Retail sale" has the same meaning as defined under Section 6007 of the Revenue and Taxation Code.

(2) "Retail sale" does not include the sale of a covered electronic device that is temporarily stored or used in California for the sole purpose of preparing the covered electronic device for use thereafter solely outside the state, and that is subsequently transported outside the state and thereafter used solely outside the state.

(t) "Vendor" means a person that makes a sale of a covered electronic device for the purpose of resale to a retailer who is the lessor of the covered electronic device to a consumer under a lease that is a continuing sale and purchase pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(u) "Video display device" means an electronic device with an output surface that displays, or is capable of displaying, moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display, in that it cannot be easily removed from the display by the consumer, that produces the moving image on the screen. A video display device may use, but is not limited to, a cathode ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology.

(Amended by Stats. 2006, Ch. 538, Sec. 600. Effective January 1, 2007. Conditionally inoperative as provided in Sections 42485 and 42486.)

Article 3. Covered Electronic Waste Recycling Fee

(Article 3 added by Stats. 2003, Ch. 526, Sec. 5. Effective January 1, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42464. (a) On and after January 1, 2005, or as otherwise provided by Section 25214.10.1 of the Health and Safety Code, a consumer shall pay a covered electronic waste recycling fee upon the purchase of a new or refurbished covered electronic device, in the following amounts:

(1) Six dollars ($6) for each covered electronic device with a screen size of less than 15 inches measured diagonally.

(2) Eight dollars ($8) for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.

(3) Ten dollars ($10) for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

(b) Except as provided in subdivision (d), a retailer shall collect from the consumer a covered electronic waste recycling fee at the time of the retail sale of a covered electronic device.

(c) (1) A retailer may retain 3 percent of the covered electronic waste recycling fee as reimbursement for all costs associated with the collection of the fee and shall transmit the remainder of the fee to the state pursuant to Section 42464.4.

(2) If a retailer makes an election pursuant to paragraph (2) of subdivision (d), and the conditions of subparagraphs (A), (B), and (C) of paragraph (2) of subdivision (d) are met, the vendor, in lieu of the retailer, may retain 3 percent of the covered electronic waste recycling fee as reimbursement for all costs associated with the collection of the fee and the vendor shall transmit the remainder of the fee to the state pursuant to Section 42464.4.

(d) (1) If a retailer elects to pay the covered electronic waste recycling fee on behalf of the consumer, the retailer shall provide an express statement to that effect on the receipt given to the consumer at the time of sale. If a retailer elects to pay the covered electronic waste recycling fee on behalf of the consumer, the fee is a debt owed by the retailer to the state, and the consumer is not liable for the fee.

(2) A retailer may elect to pay the covered electronic waste recycling fee on behalf of the consumer by paying the covered electronic waste recycling fee to the retailer's vendor, but only if all of the following conditions are met:

(A) The vendor is registered with the State Board of Equalization to collect and remit the covered electronic waste recycling fee pursuant to this chapter.

(B) The vendor holds a valid seller's permit pursuant to Article 2 (commencing with Section 6066) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code.

(C) The retailer pays the covered electronic waste recycling fee to the vendor that is separately stated on the vendor's invoice to the retailer.

(D) The retailer provides an express statement on the invoice, contract, or other record documenting the sale that is given to the consumer, that the covered electronic waste recycling fee has been paid on behalf of the consumer.

(3) For the purpose of making the election in paragraph (2), if the conditions set forth in subparagraphs (A), (B), (C), and (D) of paragraph (2), are met, the covered electronic waste recycling fee is a debt owed by the vendor to the state, and the retailer is not liable for the fee.

(e) The retailer shall separately state the covered electronic waste recycling fee on the receipt given to the consumer at the time of sale.

(f) On or before August 1, 2005, and, thereafter, no more frequently than annually, and no less frequently than biennially, the board, in collaboration with the department, shall review, at a public hearing, the covered electronic waste recycling fee and shall make any adjustments to the fee to ensure that there are sufficient revenues in the account to fund the covered electronic waste recycling program established pursuant to this chapter. Adjustments to the fee that are made on or before August 1, shall apply to the calendar year beginning the following January 1. The board shall base an adjustment of the covered electronic waste recycling fee on both of the following factors:

(1) The sufficiency, and any surplus, of revenues in the account to fund the collection, consolidation, and recycling of covered electronic waste that is projected to be recycled in the state.

(2) The sufficiency of revenues in the account for the board and the department to administer, enforce, and promote the program established pursuant to this chapter, plus a prudent reserve not to exceed 5 percent of the amount in the account.

(Amended by Stats. 2005, Ch. 59, Sec. 2. Effective July 18, 2005. Conditionally inoperative as provided in Sections 42485 and 42486.)

42464.2. The State Board of Equalization shall collect the covered electronic waste recycling fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For the purposes of this section, the reference in the Fee Collection Procedures Law to "feepayer" shall include a retailer, a consumer, and a vendor, in the case of a retailer's election pursuant to paragraph (2) of subdivision (d) of Section 42464.

(Amended by Stats. 2005, Ch. 59, Sec. 3. Effective July 18, 2005. Conditionally inoperative as provided in Sections 42485 and 42486.)

42464.4. (a) The covered electronic waste recycling fee shall be due and payable quarterly on or before the last day of the month following

each calendar quarter. The payments shall be accompanied by a return in the form as prescribed by the State Board of Equalization or that person authorized to collect, including, but not limited to, electronic media.

(b) The State Board of Equalization may require the payment of the fee and the filing of returns for other than quarterly periods.

(Added by Stats. 2004, Ch. 863, Sec. 8. Effective September 29, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42464.6. (a) The State Board of Equalization shall not accept or consider a petition for redetermination of fees determined under this chapter if the petition is founded upon the grounds that an item is or is not a covered electronic device. The State Board of Equalization shall forward to the department any appeal of a determination that is based on the grounds that an item is or is not a covered electronic device.

(b) The State Board of Equalization shall not accept or consider a claim for refund of fees paid pursuant to this chapter if the claim is founded upon the grounds that an item is or is not a covered electronic device. The State Board of Equalization shall forward to the department any claim for refund that is based on the grounds that an item is or is not a covered electronic device.

(Added by Stats. 2004, Ch. 863, Sec. 8.5. Effective September 29, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42464.8. Notwithstanding Section 55381 of the Revenue and Taxation Code, the State Board of Equalization may disclose the name, address, account number, and account status of a person registered with the State Board of Equalization to collect and remit the covered electronic waste recycling fee.

(Added by Stats. 2005, Ch. 59, Sec. 4. Effective July 18, 2005. Conditionally inoperative as provided in Sections 42485 and 42486.)

Article 4. Manufacturer Responsibility

(Article 4 added by Stats. 2003, Ch. 526, Sec. 5.
Effective January 1, 2004.
Conditionally inoperative as provided in Sections 42485 and 42486.)

42465. On and after the date specified in subdivision (a) of Section 42464, a person shall not sell a new or refurbished covered electronic device to a consumer in this state if the board or department determines that the manufacturer of that covered electronic device is not in compliance with this chapter or as provided otherwise by Section 25214.10.1 of the Health and Safety Code.

(Amended by Stats. 2004, Ch. 863, Sec. 9. Effective September 29, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42465.1. On and after January 1, 2005, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, a person may not sell or offer for sale in this state a new or refurbished covered electronic device unless the device is labeled with the name of the manufacturer or the manufacturer's brand label, so that it is readily visible.

(Amended by Stats. 2004, Ch. 863, Sec. 10. Effective September 29, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42465.2. (a) On or before July 1, 2005, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, and at least once annually thereafter as determined by the board, each manufacturer of a covered electronic device sold in this state shall do all of the following:

(1) Submit to the board a report that includes all of the following information:

(A) An estimate of the number of covered electronic devices sold by the manufacturer in the state during the previous year.

(B) A baseline or set of baselines that show the total estimated amounts of mercury, cadmium, lead, hexavalent chromium, and PBB's used in covered electronic devices manufactured by the manufacturer in that year and the reduction in the use of those hazardous materials from the previous year.

(C) A baseline or set of baselines that show the total estimated amount of recyclable materials contained in covered electronic devices sold by the manufacturer in that year and the increase in the use of those recyclable materials from the previous year.

(D) A baseline or a set of baselines that describe any efforts to design covered electronic devices for recycling and goals and plans for further increasing design for recycling.

(E) A list of those retailers, including, but not limited to, Internet and catalog retailers, to which the manufacturer provided a notice in the prior 12 months pursuant to Section 42465.3 and subdivision (c) of Section 25214.10.1 of the Health and Safety Code.

(2) Make information available to consumers, that describes where and how to return, recycle, and dispose of the covered electronic device and opportunities and locations for the collection or return of the device, through the use of a toll-free telephone number, Internet Web site, information labeled on the device, information included in the packaging, or information accompanying the sale of covered electronic device.

(b) (1) For the purposes of complying with paragraph (1) of subdivision (a), a manufacturer may submit a report to the board that includes only those covered electronic devices that include applications of the compounds listed in subparagraph (B) of paragraph (1) of subdivision (a) that are exempt from the Directive 2002/95/EC adopted by the European Parliament and the Council of the European Union on January 27, 2003, and any amendments made to that directive, if both of the following conditions are met, as modified by Section 24214.10 of the Health and Safety Code:

(A) The manufacturer submits written verification to the department that demonstrates, to the satisfaction of the department, that the manufacturer is in compliance with Directive 2002/95/EC, and any amendments to that directive, for those covered electronic devices for which it is not submitting a report to the board pursuant to this subdivision.

(B) The department certifies that the manufacturer is in compliance with Directive 2002/95/EC, and any amendments to that directive, for those covered electronic devices for which the manufacturer is not submitting a report to the board pursuant to this subdivision.

(2) When reporting pursuant to this subdivision, a manufacturer is required only to report on specific applications of compounds used in covered electronic devices that are exempt from Directive 2002/95/EC.

(c) Any information submitted to the board pursuant to subdivision (a) that is proprietary in nature or a trade secret shall be subject to protection under state laws and regulations governing that information.

(Amended by Stats. 2004, Ch. 863, Sec. 11. Effective September 29, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42465.3. A manufacturer of a covered electronic device shall comply with the notification requirements of subdivision (c) of Section 25214.10.1 of the Health and Safety Code.

(Amended by Stats. 2004, Ch. 863, Sec. 12. Effective September 29, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

Article 5. Administration

(Article 5 added by Stats. 2003, Ch. 526, Sec. 5.
Effective January 1, 2004.
Conditionally inoperative as provided in Sections 42485 and 42486.)

42472. (a) The imposition of a covered electronic waste recycling fee is a matter of statewide interest and concern and is applicable uniformly throughout the state. A city, county, city and county, or other public agency may not adopt, implement, or enforce an ordinance, resolution, regulation, or rule requiring a consumer, manufacturer, or retailer to recycle covered electronic devices or imposing a covered electronic waste recycling fee upon a manufacturer, retailer, or consumer, unless expressly authorized under this chapter.

(b) Nothing in this section prohibits the adoption, implementation, or enforcement of any local ordinance, resolution, regulation, or rule governing curbside or drop off recycling programs operated by, or pursuant to a contract with, a city, county, city and county, or other public agency, including any action relating to fees for these programs. Nothing in this section shall be construed to affect any contract, franchise, permit, license, or other arrangement regarding the collection or recycling of solid waste or household hazardous waste.

(Added by Stats. 2003, Ch. 526, Sec. 5. Effective January 1, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42473. The Legislature declares that the imposition of a covered electronic waste recycling fee would not result in the imposition of a tax within the meaning of Article XIII A of the California Constitution, because the amount and nature of the fee has a fair and reasonable relationship to the adverse environmental burdens imposed by the disposal of covered electronic devices and there is a sufficient nexus between the fee imposed and the use of those fees to support the recycling and reuse of these devices.

(Added by Stats. 2003, Ch. 526, Sec. 5. Effective January 1, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42474. (a) Civil liability in an amount of up to two thousand five hundred dollars ($2,500) per offense may be administratively imposed by the board for each sale of a covered electronic device for which a covered electronic waste recycling fee has not been paid pursuant to Section 42464.

(b) A civil penalty in an amount of up to five thousand dollars ($5,000) per offense may be imposed by a superior court for each sale of a covered electronic device for which a covered electronic waste recycling fee has not been paid pursuant to Section 42464.

(c) Civil liability in an amount of up to twenty-five thousand dollars ($25,000) may be administratively imposed by the board against manufacturers for failure to comply with this chapter, except as otherwise provided in subdivision (a).

(Added by Stats. 2003, Ch. 526, Sec. 5. Effective January 1, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42474.5. This chapter and all regulations adopted pursuant to this chapter may be enforced by the department pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(Added by Stats. 2003, Ch. 526, Sec. 5. Effective January 1, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42475. (a) The board shall administer and enforce this chapter in consultation with the department.

(b) The board and the department may adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that are necessary to implement this chapter, and any other regulations that the board and the department determines are necessary to implement the provisions of this chapter in a manner that is enforceable.

(c) The board shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that ensure the protection of any proprietary information submitted to the board by a manufacturer of covered electronic devices.

(d) The board and the department may prepare, publish, or issue any materials that the board or department determines to be necessary for the dissemination of information concerning the activities of the board or department under this chapter.

(e) In carrying out this chapter, the board and the department may solicit and use any and all expertise available in other state agencies, including, but not limited to, the department, the Department of Conservation, and the State Board of Equalization.

(Amended by Stats. 2004, Ch. 863, Sec. 13. Effective September 29, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42475.2. (a) The board and the department may each adopt regulations to implement and enforce this chapter as emergency regulations.

(b) The emergency regulations adopted pursuant to this chapter shall be adopted 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, 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 board or the department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the department or the board, whichever occurs sooner.

(Amended by Stats. 2004, Ch. 863, Sec. 15. Effective September 29, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42475.3. The board in collaboration with the department shall convene a covered electronic waste working group comprised of representatives from manufacturers of covered electronic devices and other interested parties to develop and, by July 1, 2005, advise the board and the State and Consumer Services Agency on environmental purchasing criteria that may be used by state agencies to identify covered electronic devices with reduced environmental impacts. In defining criteria, the group shall consider the environmental impacts of products over their entire life cycle, as well as tradeoffs in other product attributes such as safety, product functionality, and cost. The group shall also consider any federal product evaluation or rating system, or market based system to promote the development and sale of environmentally conscious products.

(Added by Stats. 2003, Ch. 526, Sec. 5. Effective January 1, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42475.4. (a) The board shall annually establish, and update as necessary, statewide recycling goals for covered electronic waste. In implementing this section, the board shall do all of the following:

(1) Post on its Web site information on the amount of covered electronic devices sold in the state in the previous year as reported to the board.

(2) Post on its Web site information on the amount of covered electronic waste recycled in the state in the previous year as reported to the board.

(3) Develop and adopt recycling goals, with input from manufacturers, retailers, covered electronic waste recyclers, and collectors, that reflect projections of covered electronic device sales, rates of obsolescence, and stockpiles.

(b) Nothing in this section authorizes the board to establish any recycling rates or dates by which a manufacturer of covered electronic devices shall comply with this chapter, or to impose any other recycling goal or target on a manufacturer of those devices.

(Added by Stats. 2003, Ch. 526, Sec. 5. Effective January 1, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

Article 6. Financial Provisions

(Article 6 added by Stats. 2003, Ch. 526, Sec. 5. Effective January 1, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42476. (a) The Electronic Waste and Recovery and Recycling Account is hereby established in the Integrated Waste Management Fund. All fees collected pursuant to this chapter shall be deposited in the account. Notwithstanding Section 13340 of the Government Code, the funds in the account are hereby continuously appropriated, without regard to fiscal year, for the following purposes:

(1) To pay refunds of the covered electronic waste recycling fee imposed under Section 42464.

(2) To make electronic waste recovery payments to an authorized collector of covered electronic waste pursuant to Section 42479.

(3) To make electronic waste recycling payments to covered electronic waste recyclers pursuant to Section 42479.

(4) To make payments to manufacturers pursuant to subdivision (g).

(b) (1) The money in the account may be expended for the following purposes only upon appropriation by the Legislature in the annual Budget Act:

(A) For the administration of this chapter by the board and the department.

(B) To reimburse the State Board of Equalization for its administrative costs of registering, collecting, making refunds, and auditing retailers and consumers in connection with the covered electronic waste recycling fee imposed under Section 42464.

(C) To provide funding to the department to implement and enforce Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, as that chapter relates to covered electronic devices, and any regulations adopted by the department pursuant to that chapter.

(D) To establish the public information program specified in subdivision (d).

(2) Any fines or penalties collected pursuant to this chapter shall be deposited in the Electronic Waste Penalty Subaccount, which is hereby established in the account. The funds in the Electronic Waste Penalty Subaccount may be expended by the board or department only upon appropriation by the Legislature.

(c) Notwithstanding Section 16475 of the Government Code, any interest earned upon funds in the Electronic Waste Recovery and Recycling Account shall be deposited in that account for expenditure pursuant to this chapter.

(d) Not more than 1 percent of the funds annually deposited in the Electronic Waste Recovery and Recycling Account shall be expended for the purposes of establishing the public information program to educate the public in the hazards of improper covered electronic device storage and disposal and

on the opportunities to recycle covered electronic devices.

(e) The board shall adopt regulations specifying cancellation methods for the recovery, processing, or recycling of covered electronic waste.

(f) The board may pay an electronic waste recycling payment or electronic waste recovery payment for covered electronic waste only if all of the following conditions are met:

(1) The covered electronic waste, including any residuals from the processing of the waste, is handled in compliance with all applicable statutes and regulations.

(2) The manufacturer or the authorized collector or recycler of the electronic waste provide a cost free and convenient opportunity to recycle electronic waste, in accordance with the legislative intent specified in subdivision (b) of Section 42461.

(3) If the covered electronic waste is processed, the covered electronic waste is processed in this state according to the cancellation method authorized by the board.

(4) The board declares that the state is a market participant in the business of the recycling of covered electronic waste for all of the following reasons:

(A) The fee is collected from the state's consumers for covered electronic devices sold for use in the state.

(B) The purpose of the fee and subsequent payments is to prevent damage to the public health and the environment from waste generated in the state.

(C) The recycling system funded by the fee ensures that economically viable and sustainable markets are developed and supported for recovered materials and components in order to conserve resources and maximize business and employment opportunities within the state.

(g) (1) The board may make a payment to a manufacturer that takes back a covered electronic device from a consumer in this state for purposes of recycling the device at a processing facility. The amount of the payment made by the board shall equal the value of the covered electronic waste recycling fee paid for that device. To qualify for a payment pursuant to this subdivision, the manufacturer shall demonstrate both of the following to the board:

(A) The covered electronic device for which payment is claimed was used in this state.

(B) The covered electronic waste for which a payment is claimed, including any residuals from the processing of the waste, has been, and will be, handled in compliance with all applicable statutes and regulations.

(2) A covered electronic device for which a payment is made under this subdivision is not eligible for an electronic waste recovery payment or an electronic waste recycling payment under Section 42479.

(Amended by Stats. 2004, Ch. 863, Sec. 16. Effective September 29, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42476.5. A person who exports covered electronic waste, or a covered electronic device intended for recycling or disposal, to a foreign country, or to another state for ultimate export to a foreign country, shall do all of the following at least 60 days prior to export:

(a) Notify the department of the destination, disposition, contents, and volume of the waste, or device intended for recycling or disposal to be exported, and include with the notification the demonstrations required pursuant to subdivisions (b) to (e), inclusive.

(b) Demonstrate that the waste or device is being exported for the purposes of recycling or disposal.

(c) Demonstrate that the importation of the waste or device is not prohibited by an applicable law in the state or country of destination and that any import will be conducted in accordance with all applicable laws. As part of this demonstration, required import and operating licenses, permits, or other appropriate authorization documents shall be forwarded to the department.

(d) Demonstrate that the exportation of the waste or device is conducted in accordance with applicable United States or applicable international law.

(e) (1) Demonstrate that the waste or device will be managed within the country of destination only at facilities whose operations meet or exceed the binding decisions and implementing guidelines of the Organization for Economic Cooperation and Development for the environmentally sound management of the waste or device being exported.

(2) The demonstration required by this subdivision applies to any country of destination, notwithstanding that the country is not a member of the Organization for Economic Cooperation and Development.

(Amended by Stats. 2004, Ch. 863, Sec. 17. Effective September 29, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42476.6. Section 42476.5 does not apply to a component part of a covered electronic device that is exported to an authorized collector or recycler and that is reused or recycled into a new electronic component.

(Added by Stats. 2003, Ch. 526, Sec. 5. Effective January 1, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42477. (a) On July 1, 2004, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, and on July 1 every two years thereafter, the board in collaboration with the department shall establish an electronic waste recovery payment schedule for covered electronic wastes generated in this state to cover the net cost for an authorized collector to operate a free and convenient system for collecting, consolidating and transporting covered electronic wastes generated in this state.

(b) The board shall make the electronic waste recovery payments either directly to an authorized collector or to a covered electronic waste recycler for payment to an authorized collector pursuant to this article.

(Amended by Stats. 2004, Ch. 863, Sec. 18. Effective September 29, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42478. (a) Except as provided in subdivision (b), on July 1, 2004, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, and on July 1 every two years thereafter, the board, in collaboration with the department, shall establish a covered electronic waste recycling payment schedule for covered electronic wastes generated in this state to cover the average net cost for an electronic waste recycler to receive, process, and recycle each major category, as determined by the board, of covered electronic waste received from an authorized collector. The board shall make the electronic waste recycling payments to a covered electronic waste recycler pursuant to this article.

(b) Until the board adopts a new payment schedule that covers the average net cost for an electronic waste recycler to receive, process, and recycle each major category, as determined by the board of covered electronic waste received from an authorized collector, the amount of the covered electronic waste recycling payment shall be equal to twenty-eight cents ($0.28) per pound of the total weight of covered electronic waste received from an authorized collector and subsequently processed for recycling.

(Amended by Stats. 2004, Ch. 863, Sec. 19. Effective September 29, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

42479. (a) (1) For covered electronic waste collected for recycling on and after January 1, 2005, the board shall make electronic waste recovery payments and electronic waste recycling payments for the collection and recycling of covered electronic waste to an authorized collector or covered electronic waste recycler, respectively, upon receipt of a completed and verified invoice submitted to the board by the authorized collector or recycler in the form and manner determined by the board.

(2) To the extent authorized pursuant to Section 42477, a covered electronic waste recycler shall make the electronic waste recovery payments to an authorized collector upon receipt of a completed and verified invoice submitted to the recycler by the authorized collector in the form and manner determined by the board.

(b) An e-waste recycler is eligible for a payment pursuant to this section only if the e-waste recycler meets all of the following requirements:

(1) The e-waste recycler is in compliance with applicable requirements of Article 6 (commencing with Section 66273.70) of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations.

(2) The e-waste recycler demonstrates to the board that any facility utilized by the e-waste recycler for the handling, processing, refurbishment, or recycling of covered electronic devices meets all of the following standards:

(A) The facility has been inspected by the department within the past 12 months and had been found to be operating in conformance with all applicable laws, regulations, and ordinances.

(B) The facility is accessible during normal business hours for unannounced inspections by state or local agencies.

(C) The facility has health and safety, employee training, and environmental compliance plans and certifies compliance with the plans.

(D) The facility meets or exceed the standards specified in Chapter

1 (commencing with Section 1171) of Part 4 of Division 2, Division 4 (commencing with Section 3200), and Division 5 (commencing with Section 6300),
of the Labor Code or, if all or part of the work is to be performed in another state, the equivalent requirements of that state.

(Amended by Stats. 2004, Ch. 863, Sec. 20. Effective September 29, 2004. Conditionally inoperative as provided in Sections 42485 and 42486.)

Article 7. State Agency Procurement

(Article 7 added by Stats. 2003, Ch. 526, Sec. 5.
Effective January 1, 2004.
Conditionally inoperative as provided in Sections 42485 and 42486.)

42480. (a) (1) A state agency that purchases or leases covered electronic devices shall require each prospective bidder, to certify that it, and its agents, subsidiaries, partners, joint venturers, and subcontractors for the procurement, have complied with this chapter and any regulations adopted pursuant to this chapter, or to demonstrate that this chapter is inapplicable to all lines of business engaged in by the bidder, its agents, subsidiaries, partners, joint venturers, or subcontractors.

(2) The certification requirement set forth in paragraph (1) does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

(b) Failure to provide certification pursuant to this section shall render the prospective bidder and its agents, subsidiaries, partners, joint venturers, and subcontractors ineligible to bid on the procurement of covered electronic devices.

(c) The bid solicitation documents shall specify that the prospective bidder is required to cooperate fully in providing reasonable access to its records and documents that evidence compliance with this chapter.

(d) Any person awarded a contract by a state agency that is found to be in violation of this section is subject to the following sanctions:

(1) The contract shall be voided by the state agency to which the equipment, materials, or supplies were provided.

(2) The contractor is ineligible to bid on any state contract for a period of three years.

(3) If the Attorney General establishes in the name of the people of the State of California that any money, property, or benefit was obtained by a contractor as a result of violating this section, the court may, in addition to any other remedy, order the disgorgement of the unlawfully obtained money, property, or benefit in the interest of justice.

(Amended by Stats. 2005, Ch. 381, Sec. 9. Effective January 1, 2006. Conditionally inoperative as provided in Sections 42485 and 42486.)

Article 8. Inapplicability of Chapter

(Article 8 added by Stats. 2003, Ch. 526, Sec. 5.
Effective January 1, 2004.
Note: Termination provisions affect Chapter 8.5, commencing with Section 42460.)

42485. Except as provided in subdivision (b) of Section 42486, the board and the department shall not implement this chapter if either of the following occur:

(a) A federal law, or a combination of federal laws, takes effect and does all of the following:

(1) Establishes a program for the collection, recycling, and proper disposal of covered electronic waste that is applicable to all covered electronic devices sold in the United States.

(2) Provides revenues to the state to support the collection, recycling, and proper disposal of covered electronic waste, in an amount that is equal to, or greater than, the revenues that would be generated by the fee imposed under Section 42464.

(3) Requires covered electronic device manufacturers, retailers, handlers, processors, and recyclers to dispose of those devices in a manner that is in compliance with all applicable federal, state, and local laws, and prohibits the devices from being exported for disposal in a manner that poses a significant risk to the public health or the environment.

(b) A trial court issues a judgment, which is not appealed, or an appellate court issues an order affirming a judgment of a trial court, holding that out-of-state manufacturers or retailers, or both, may not be required to collect the fee authorized by this chapter. The out-of-state manufacturers or retailers, or both, shall continue to collect the fee during the appellate process.

(Amended by Stats. 2004, Ch. 863, Sec. 21. Effective September 29, 2004. Note: Termination provisions affect Chapter 8.5, commencing with Section 42460.)

42486. (a) Except as provided in subdivision (b), the provisions of this chapter shall become inoperative on the date that either of the events described in subdivision (a) or (b) of Section 42485 occurs, and if both occur, the earlier date.

(b) On the date specified in subdivision (a), the provisions of this chapter shall remain operative only for the collection of fees, the liability for which accrued prior to that date, making refunds, effecting credits, the disposition of moneys collected, and commencing an action or proceeding pursuant to this chapter.

(Added by Stats. 2004, Ch. 863, Sec. 22. Effective September 29, 2004. Note: Termination provisions affect Chapter 8.5, commencing with Section 42460.)

PUBLIC RESOURCES CODE

DIVISION 30, PART 7, CHAPTER 2, ARTICLE 2.5

Article 2.5. Solid Waste Disposal and Codisposal Site Cleanup Program

(Article 2.5 added by Stats. 1993, Ch. 655, Sec. 1. Effective January 1, 1994.)

48020. (a) For purposes of this article, the following terms have the following meaning:

(1) "Codisposal site" means a hazardous substance release site listed pursuant to Section 25356 of the Health and Safety Code, where the disposal of hazardous substances, hazardous waste, and solid waste has occurred.

(2) "Trust fund" means the Solid Waste Disposal Site Cleanup Trust Fund created pursuant to Section 48027.

(b) The board shall, on January 1, 1994, initiate a program for the cleanup of solid waste disposal sites and for the cleanup of solid waste at codisposal sites where the responsible party either cannot be identified or is unable or unwilling to pay for timely remediation, and where cleanup is needed to protect public health and safety or the environment.

(c) The board shall not expend more than 5 percent of the funds appropriated for the purpose of the program by a statute other than the Budget Act to administer that program, unless a different amount is otherwise appropriated to administer the program in the annual Budget Act. If a different amount is appropriated to administer the program in the annual Budget Act, it shall be set forth in a separate line item. All remaining funds appropriated for the purposes of the program shall be expended on direct cleanup pursuant to subdivision (b) or emergency actions at solid waste facilities, disposal sites, sites involving solid waste handling, and for solid waste at codisposal sites.

(Amended by Stats. 2006, Ch. 762, Sec. 1. Effective January 1, 2007.)

48021. (a) In prioritizing the sites for cleanup pursuant to Section 48020, the board shall consider the degree of risk to public health and safety and the environment posed by conditions at a site, the ability of the site owner to clean up the site without monetary assistance, the ability of the board to clean up the site adequately with available funds, maximizing the use of available funds, and other factors as determined by the board.

(b) (1) In administering the program authorized by Section 48020, the board may expend funds directly for cleanup, provide loans to parties who demonstrate the ability to repay state funds, and provide partial grants to public entities, to assist in site cleanup.

(2) The board may expend funds directly for the cleanup of a publicly owned site only if the board determines that the public entity lacks resources or expertise to timely manage the cleanup itself.

(3) In addition to the criteria specified in subdivision (a), in considering partial grants that provide greater than 50 percent of the funds directly for cleanup, the board shall consider the amount of contributions of moneys or in-kind services from the applicant; the availability of other appropriate funding sources to remediate the site; the degree of public benefit; the presence of innovative and cost-effective programs to abate or prevent solid waste problems to be addressed by the grants; and other factors as determined by the board.

(c) (1) In addition to the expenditures specified in subdivision (b), the board may expend a portion of the funds appropriated for the program to abate illegal disposal sites.

(2) For the purposes of this subdivision, the board may provide grants to public entities.

(3) Where funds are provided by the board to address illegal disposal sites within a jurisdiction, the local enforcement agency shall provide ongoing enforcement to prevent recurring illegal disposal at the site.

(4) For the purposes of this subdivision, an activity to remove or abate solid waste disposed into a municipal storm sewer is eligible to receive a partial grant, if the grant is used for solid waste cleanup, solid waste abatement, or any other activity that mitigates the impact of solid waste, and an ongoing program is established to prevent recurring solid waste disposal into the municipal storm sewer.

(d) In developing and implementing the program, the board shall consult with certified local enforcement agencies and the regional water boards.

(Amended by Stats. 2006, Ch. 762, Sec. 2. Effective January 1, 2007.)

48022. The Legislature finds and declares all of the following:

(a) Pursuant to the legal framework and definitions pertaining to solid waste contained in this division, the board and the local enforcement agencies have general authority and responsibility for responding to environmental conditions at solid waste disposal sites to ensure protection of the public health and safety and the environment.

(b) The definitions of "solid waste," "solid waste disposal," and "solid waste landfill" establish some of the parameters for the general authority and responsibility of the board and the local enforcement agencies.

(c) The Solid Waste Disposal and Codisposal Site Cleanup Program established under this article establishes a mechanism for funding the cleanup of solid waste disposal sites and the solid waste at codisposal sites under specified conditions and circumstances.

(d) A burn dump site is a solid waste disposal site and, as such, is a site that is eligible for funding pursuant to the program, provided all other criteria for program eligibility are met.

(e) Pursuant to the Health and Safety Code, the Department of Toxic Substances Control has general jurisdiction, authority, and responsibility regarding hazardous substance release sites.

(f) Pursuant to the Water Code, the State Water Resources Control Board and the regional water quality control boards have general jurisdiction, authority, and responsibility regarding protection of the waters of the state, including, but not limited to, solid waste and hazardous waste discharges.

(g) Most burn dump sites impact multiple media. Burn dump sites usually contain hazardous substances and, therefore, most can be characterized generally as hazardous substance release sites. Burn dump sites also contain predominantly solid waste and, therefore, can be characterized generally as solid waste disposal sites. Some burn dump sites impact, or have the potential to impact, waters of the state.

(h) Burn dump sites are presumed to be solid waste disposal sites, subject to the general authority and responsibility of the board and the local enforcement agencies. In addition to this general presumption, it is the intent of the Legislature to require that the procedures set forth in Section 48022.5 be followed to ensure that hazardous substances and hazardous wastes at burn dump sites are adequately characterized and safely managed and remediated in consultation with, or under the direct oversight of, the department or the appropriate regional water quality control board, or both.

(Added by Stats. 2002, Ch. 589, Sec. 1. Effective January 1, 2003.)

48022.5. (a) For the purposes of this section, the following terms have the following meanings, unless the context clearly requires otherwise:

(1) "Burn dump site" means a solid waste disposal site that meets all of the following conditions:

(A) Was operated prior to 1972.

(B) Is closed.

(C) Prior to closure, was a site where open burning was conducted.

(2) "Department" means the Department of Toxic Substances Control.

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

(4) "Remediation oversight agency" means the entity responsible for environmental oversight on a burn dump site remediation project.

(5) "Sensitive land use" means either of the following:

(A) Use for residences, schools, day care facilities, hospitals and hospices, and other facilities or structures that have a high density of occupation on a daily basis.

(B) Use as a park, golf course, or any other, similar open-space area that is made available for public use, when the park, golf course, or open-space area has a potential for human exposure to hazardous substances.

(b) On or before June 30, 2003, the department, in consultation with the board and the State Water Resources Control Board, shall develop protocols to be utilized by the board and the local enforcement agencies for site investigation and characterization of hazardous substances at burn dump sites.

(1) The protocols shall include, but need not be limited to, both of the following items:

(A) Sampling and analysis protocols to be utilized by the board and the local enforcement agencies for site investigation and characterization of

hazardous substances at burn dump sites.

(B) Appropriate abatement measures for nonsensitive land uses.

(2) In addition, the protocols may include either or both of the following items:

(A) Cleanup guidelines, levels, or thresholds for one or more typical constituents of concern based on nonsensitive land uses.

(B) Specifications for confirmation sampling on partial and complete clean-closed sites.

(c) Whenever the board receives an application for funding under this article for a burn dump site, the board shall use the protocols developed by the department under subdivision (b) to investigate and characterize hazardous substances at the site.

(d) Once sufficient site information is available, the board shall notify the department and the appropriate regional board of the board's interest in providing funding and remediation oversight for the site.

(e) For a nonsensitive land use site, the board shall proceed as the remediation oversight agency, following the notification required under subdivision (d), unless the department or regional board requests a site consultation meeting under subdivision (g).

(f) For an existing or proposed sensitive land use site, the board shall request a site consultation meeting under subdivision (g).

(g) For sites with existing or proposed sensitive land uses or water quality impacts, or where otherwise requested by the department or a regional board, the board, the department, the State Water Resources Control Board, and the appropriate regional board shall hold a site consultation meeting to determine which agency will provide remediation oversight. If, following a review of the site information, the department or a regional board requests to provide remediation oversight, that request shall be granted. If the department or a regional board does not request to provide remediation oversight, remediation oversight of the site shall remain with the board. In cases where the board requested the meeting, the determination of remediation oversight agency shall be made within 30 days of the board's request for the meeting.

(h) The board may require the imposition of an environmental restriction on any burn dump site where solid waste or residuals from the burning of solid waste is left in place. The environmental restriction shall meet the requirements described in Section 1471 of the Civil Code, and the restrictions shall run with the land.

(i) On or before March 30, 2003, the board and the department shall enter into an agreement relating to the funding of any activities of the department appropriately conducted pursuant to this section.

(j) Nothing in this section is intended to limit the authority of the board, the department, the State Water Resources Control Board, or a regional board pursuant to other provisions of law.

(k) Nothing in this section is intended to preclude any qualifying entity from applying for and receiving funding assistance under any other provision of law.

(Added by Stats. 2002, Ch. 589, Sec. 2. Effective January 1, 2003.)

48023. (a) If the board expends any funds pursuant to this article, the board shall, to the extent feasible, seek repayment from responsible parties in an amount equal to the amount expended, a reasonable amount for the board's cost of contract administration, and an amount equal to the interest that would have been earned on the expended funds.

(b) In implementing this article, the board is vested, in addition to its other powers, with all the powers of an enforcement agency under this division.

(c) The amount of any cost incurred by the board pursuant to this article shall be recoverable from responsible parties in a civil action brought by the board or, upon the request of the board, by the Attorney General pursuant to Section 40432.

(Amended by Stats. 2007, Ch. 130, Sec. 216. Effective January 1, 2008.)

48023.5. (a) In addition to the remedies authorized under Section 48023, any costs or damages incurred under this article by the board constitute a lien upon the real property owned by any responsible party that is subject to the remedial action. The lien shall attach regardless of whether the responsible party is insolvent. A lien imposed under this section shall arise at the time costs are first incurred by the board with respect to a remedial action at the site.

(b) A lien established under this section shall be subject to the notice and hearing procedures required by due process of the law. Prior to imposing the lien, the board shall send the property owner via certified mail a "Notice of Intent to Place A Lien" letter. This letter shall provide that the owner, within 14 calendar days from the date of receipt of the letter, may object to the imposition of the lien either in writing or through an informal proceeding before a neutral official. This neutral official shall be the board's executive director or his or her designee, who may not have had any prior involvement with the site. The issue before the neutral official shall be whether the board has a reasonable basis for its determination that the statutory elements for lien placement under this section are satisfied. During this proceeding the property owner may present information or submit documents, or both, to establish that the board should not place a lien as proposed. The neutral official shall assure that a record of the proceeding is made, and shall issue a written decision. The decision shall state whether the property owner has established any issue of fact or law to alter the board's intention to file a lien, and the basis for the decision.

(c) The board may not be considered a responsible party for a remediated site merely because a lien is imposed under this section.

(d) A lien imposed under this section shall continue until the liability for the costs or damages incurred under this article, or a judgment against the responsible party, is satisfied. However, if it is determined by a court that the judgment against the responsible party will not be satisfied, the board may exercise its rights under the lien.

(e) A lien imposed under this section shall have the force and effect of, and the priority of, a judgment lien upon its recordation in the county in which the property subject to the lien is located. The lien shall contain a legal description of the real property that is subject to, or affected by, the remedial action, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll.

(f) All funds recovered under this section on behalf of the board's solid waste disposal and codisposal site cleanup program shall be deposited in the Solid Waste Disposal Site Cleanup Trust Fund established under Section 48027.

(Added by Stats. 2002, Ch. 625, Sec. 16. Effective September 17, 2002.)

48024. Any contract entered into by the board pursuant to Section 48021 or 48022 is exempt from approval by the Department of General Services pursuant to Section 10295 of the Public Contract Code.

(Added by Stats. 1993, Ch. 655, Sec. 1. Effective January 1, 1994.)

48025. The board may adopt regulations for the implementation of this article.

(Added by Stats. 1993, Ch. 655, Sec. 1. Effective January 1, 1994.)

48026. All expenses which are incurred by the board in carrying out this article shall be payable solely from the trust fund. No liability or obligation is imposed upon the state pursuant to this part, and the board shall not incur a liability or obligation beyond the extent to which money is provided in the trust fund for the purposes of this article.

(Added by Stats. 1993, Ch. 655, Sec. 1. Effective January 1, 1994.)

48027. (a) (1) The Legislature hereby finds and declares that effective response to cleanup at solid waste disposal and codisposal sites requires that the state have sufficient funds available in the trust fund created pursuant to subdivision (b).

(2) The Legislature further finds and declares that the maintenance of the trust fund is of the utmost importance to the state and that it is essential that any money in the trust fund be used solely for the purposes authorized in this article and not be used, loaned, or transferred for any other purpose.

(b) The Solid Waste Disposal Site Cleanup Trust Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the money in the trust fund is hereby continuously appropriated to the board for expenditure, without regard to fiscal years, for the purposes of this article.

(c) The following money shall be deposited into the trust fund:

(1) Funds appropriated by the Legislature from the Integrated Waste Management Account to the board for solid waste disposal or codisposal site cleanup.

(2) Any interest earned on the money in the trust fund.

(3) Any cost recoveries from responsible parties for solid waste disposal or codisposal site cleanup and loan repayments pursuant to this article.

(d) If this article is repealed, the trust fund shall be dissolved and all money in the fund shall be distributed to solid waste landfill operators who have paid into the trust fund during effective life of the trust fund.

(e) Any trust fund distributions received by solid waste landfill operators pursuant to subdivision (c) may be used for only any of the following activities, as related to solid waste landfills:

(1) Solid waste landfill closure and postclosure maintenance operations.

(2) Implementation of Part 258 (commencing with Section 258.1) of Title 40 of the Code of Federal Regulations.

(3) Corrective actions at the solid waste landfill.

(f) The balance in the trust fund each July 1 shall not exceed thirty million dollars ($30,000,000).

(Amended by Stats. 1996, Ch. 1038, Sec. 37. Effective September 29, 1996.)

48028. Any funds appropriated for the purpose of the program that are not expended shall remain in the trust fund for future expenditure by the board for the purposes of this article or until this article is repealed.

(Amended by Stats. 1999, Ch. 496, Sec. 3. Effective January 1, 2000.)

PUBLIC RESOURCES CODE

DIVISION 34, PART 1.5

PART 1.5. PERMIT ASSISTANCE CENTERS

(Part 1.5 added by Stats. 1999, Ch. 65, Sec. 3.
Effective January 1, 2000.)

71040. The Secretary for Environmental Protection shall establish an electronic online permit assistance center through the Internet. The electronic online permit assistance center shall be available for use by any business or other entity subject to a law or regulation implemented by a board, department, or office within the California Environmental Protection Agency, and shall provide a business or other entity with assistance in complying with those laws and regulations. The center, which shall be called the "California Government-On Line to Desktops" or "CALGOLD" program, shall provide special software, "hotlinks" and other online resources and tools that may be used by a business or other entity to streamline and expedite compliance with laws and regulations implemented by a board, department, or office within the California Environmental Protection Agency. The CALGOLD program shall, to the extent feasible, incorporate permit assistance activities of local and federal entities and of other entities of the state into its operations.

(Amended by Stats. 2003, Ch. 228, Sec. 45. Effective August 11, 2003.)

71041. The CALGOLD program shall be reviewed periodically and, when necessary, updated to assist businesses in the state that would benefit from information on permitting and regulatory compliance, including emerging industries and life sciences industries.

(Added by Stats. 2006, Ch. 283, Sec. 1. Effective January 1, 2007.)

CIVIL CODE

DIVISION 2, PART 2, TITLE 3, CHAPTER 3

CHAPTER 3. ENVIRONMENTAL RESPONSIBILITY ACCEPTANCE ACT

(Chapter 3 added by Stats. 1997, Ch. 873, Sec. 1. Effective January 1, 1998.)

850. The definitions set forth in Section 25260 of the Health and Safety Code govern the construction of this chapter. In addition, the following definitions apply for purposes of this chapter only:

(a) "Actual awareness" means actual knowledge of a fact pertaining to an obligation under this chapter, including actual knowledge of a release exceeding the notification threshold. Only actual awareness possessed by those employees or representatives of an owner of a site who are responsible for monitoring, responding to or otherwise addressing the release shall be attributable to the owner. Only actual awareness possessed by those employees or representatives of a potentially responsible party who are responsible for monitoring, responding to, or otherwise addressing, the release shall be attributable to the potentially responsible party.

(b) "Commitment statement" means a written statement executed by the notice recipient which recites expressly the language specified in Section 854.

(c) "Mediation" means an informal process in which the disputing parties select a neutral third party to assist them in reaching a negotiated settlement in which the neutral third party has no power to impose a solution on the parties, but rather has the power only to assist the parties in shaping solutions to meet their interests and objectives.

(d) "Negative response" means a written response by the recipient of a notice of potential liability indicating that the recipient will not undertake any response action, or a deemed negative response pursuant to subdivision (c) of Section 851 in the event of the recipient's failure to respond.

(e) "Neutral third party" means an experienced professional, such as an attorney, engineer, environmentalist, hydrologist, or retired judge, who has served as a mediator.

(f) "Notice of potential liability" means a notice, sent by the owner of the site, stating that a release that exceeds the notification threshold has occurred at the site and that the owner believes that the recipient of the notice is a responsible party with respect to the release. The notice of potential liability shall describe the location of the site and the nature of the release.

(g) "Notice recipient" means any one of the following:

(1) A person who receives a notice of potential liability pursuant to subdivision (a) of Section 851.

(2) A person who provides a release report pursuant to subdivision (b) of Section 851.

(3) A person who offers a commitment statement to the owner of a site pursuant to subdivision (c) of Section 851.

(h) "Notification threshold" means any release of such a magnitude that:

(1) The release is the subject of a response action which has been ordered by, or is being performed by, an oversight agency; or

(2) The release is impeding the ability of the owner of the site to sell, lease, or otherwise use the site.

(i) "Operation and maintenance" means any activity as defined in subdivision (a) of Section 25318.5 of the Health and Safety Code.

(j) "Oversight agency" means any agency, as defined in subdivision (c) of Section 25260 of the Health and Safety Code, that has jurisdiction over a response action performed in connection with a release that is the subject of a notice of potential liability. Subject to any other limitation imposed by law, an oversight agency retains full discretion as to when it exercises jurisdiction over a site.

(k) "Reasonable steps," as used in subdivision (a) of Section 851, means the least expensive means available to ascertain the potentially responsible parties. If the owner cannot otherwise identify any apparent, potentially responsible parties, then "reasonable steps" includes:

(1) Conducting a title search; and

(2) Reviewing all environmental reports in the owner's possession of which the owner has actual awareness pertaining to the site.

(l) "Release" means the release, as defined in Sections 25320 and 25321 of the Health and Safety Code, of a hazardous material or hazardous materials.

(m) "Release report" means a notice sent by a responsible party to the owner of the site stating that a release has occurred on the site which is likely to exceed the notification threshold. The release report shall describe the location of the site and the nature of the release.

(n) "Remedial action" means any action as defined in Section 25322 of the Health and Safety Code.

(o) "Removal action" means any action as defined in subdivision (a) of Section 25323 of the Health and Safety Code.

(p) "Response action" means any removal actions, including, but not limited to, site investigations and remedial actions, including, but not limited to, operation and maintenance measures.

(q) "Responsible party" means any person who is liable under state or local law for taking action in response to a release.

(r) "Site" means any parcel of commercial, industrial, or agricultural real property where a hazardous materials release has occurred.

(s) "Written action" means any official action by any oversight agency where the oversight agency has expressly exercised its cleanup authority in writing, pursuant to the oversight agency's procedures, directing a response action at the site.

(Added by Stats. 1997, Ch. 873, Sec. 1. Effective January 1, 1998.)

851. (a) An owner of a site who has actual awareness of a release exceeding the notification threshold shall take all reasonable steps as defined in subdivision (j) of Section 850 to expeditiously identify the potentially responsible parties. The owner shall, as soon as reasonably possible after obtaining actual awareness of the potentially responsible parties, send a notice of potential liability to the identified potentially responsible parties and the agency, as defined in subdivision (c) of Section 25260 of the Health and Safety Code, that the owner believes to be the appropriate oversight agency. For any release exceeding the notification threshold of which the owner has actual awareness that occurred prior to, but within three years of, the effective date of this section, the notice shall be given on or before December 31, 1998.

(b) A potentially responsible party who has actual awareness of a release which is likely to exceed the notification threshold shall as soon as reasonably possible after obtaining actual awareness of the release provide the owner of the site where the release occurred with a release report. For any release exceeding the notification threshold of which the potentially responsible party has actual awareness that occurred prior to, but within three years of, the effective date of this section, the release report shall be given on or before December 31, 1998. A potentially responsible party may issue, at the potentially responsible party's option, a commitment statement to the owner of the site within 120 days of the potentially responsible party's issuance of a release report. The fact that a release report is issued shall not constitute an admission of liability and may not be admitted as evidence against a potentially responsible party in any litigation.

(c) When a notice of potential liability is issued, a notice recipient shall respond to the owner, in writing, and by certified mail, return receipt requested, within 120 days from the date that the notice of potential liability was mailed. The notice recipient's response shall be either a commitment statement or a negative response. The notice recipient's failure to submit the written response within the 120-day period, or failure to strictly comply with the form of the written response, as provided in Section 854, shall be deemed a negative response. The owner may agree in writing to extend the period during which the notice recipient may respond to the notice of potential liability. An extension of up to 120 days shall be provided if the notice recipient commits to do a site investigation, the results of which shall be provided to the owner and the oversight agency.

(d) (1) The common law duty to mitigate damages shall apply to any failure of the owner of a site to give a timely notice of potential liability when the owner is required to give this notice pursuant to this chapter. Where an owner fails to mitigate damages by not giving a timely notice of potential liability, the owner's damage claim shall be reduced in accordance with common
law principles by the amount that the potentially responsible party proves would have likely been mitigated had a timely notice of potential liability been given.

(2) Common law principles shall apply to the failure of the potentially responsible party to issue a timely release report. Where a

potentially responsible party fails to give a timely release report, the potentially responsible party, in accordance with common law principles, shall
be responsible to the owner of the site, for damages that the owner proves are likely caused by such failure to provide a release report.

(3) Any party who argues the applicability of this subdivision carries the burden of proof in that regard.

(4) Nothing in this section is intended to create a new cause of action or defense beyond that which already exists under common law.

(5) Subdivisions (a) and (b), and paragraphs (1) and (2) of this subdivision, shall not apply when the party to whom a notice of potential liability or release report is owed already possesses actual awareness of the information required to be transmitted in such notice of potential liability or release report.

(e) (1) Except as provided in paragraph (2), the requirements of this chapter shall not apply to a site listed pursuant to Section 25356 of the Health and Safety Code for response action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code or to a site where an oversight agency has issued an order or entered into an enforceable agreement pursuant to any authority, including, but not limited to, an order or enforceable agreement entered into by a local agency, the Department of Toxic Substance Control, the State Water Resources Control Board, or a regional water quality control board pursuant to Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), Chapter 6.8 (commencing with Section 25300), Chapter 6.85 (commencing with Section 25396), or Chapter 6.11 (commencing with Section 25404) of Division 20 of the Health and Safety Code, or pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(2) The requirements of this chapter shall apply if either of the following applies:

(A) The order or enforceable agreement is issued or entered into after the owner accepts a commitment statement.

(B) The Department of Toxic Substance Control, State Water Resources Control Board, or regional water quality control board that issued the order or entered into an enforceable agreement consents in writing to the applicability of this chapter to the site.

(f) It is the intent of the Legislature for this chapter to resolve disputes between, and affect the rights of, private parties only. Nothing in this chapter shall affect the authority of the Department of Toxic Substance Control, the State Water Resources Control Board, a regional water quality control board, or any other oversight agency.

(g) Notwithstanding any other provision of this chapter, any time prior to accepting a commitment statement, the owner may provide the notice to the notice recipient that the provisions of subdivision (c), paragraph (2) of subdivision (e), and Sections 852 and 854, shall not apply to the site, in which case the provisions of subdivision (c), paragraph (2) of subdivision (e), and Sections 852 and 854 shall not apply to the site and the owner and notice recipient shall be entitled to pursue all other legal remedies and defenses authorized by law.

(Added by Stats. 1997, Ch. 873, Sec. 1. Effective January 1, 1998.)

852. (a) Within 45 days after issuance of the commitment statement, the owner may transmit to the notice recipient by certified mail, return receipt requested, an executed copy of the commitment statement, indicating its acceptance. If the owner does not execute the commitment statement, the commitment statement shall be deemed to have been rejected upon expiration of the 45-day period. A notice recipient has no obligation with respect to the provisions of a rejected commitment statement.

(b) (1) Except as otherwise provided in this chapter, or unless the owner or the notice recipient has elected not to proceed with the mediation, if the owner rejects the commitment statement, the owner and notice recipient shall participate in a mediation process prior to the commencement of any litigation which pertains to a release covered by the commitment statement. The mediation process shall be supervised by a neutral third party mutually agreed upon by the owner and the notice recipient in order to mediate a mutually agreeable settlement between the owner and notice recipient of all issues related to the release.

(2) Either the notice recipient or the owner may elect not to proceed further with the mediation process at any time prior to completion of those proceedings.

(3) To the extent a mutually agreeable settlement is reached which allocates the liability and assigns the rights and obligations of the owner and notice recipient in a manner different from or inconsistent with this chapter, the settlement shall supersede the terms of this chapter pursuant to subdivision (f) of Section 853. If a settlement of all issues cannot be reached within 90 days after the owner's rejection of the commitment statement, the neutral third party shall declare the mediation process unsuccessful and terminate the process. The owner and notice recipient may mutually agree to extend the mediation process but shall communicate any such extension in writing to the neutral third party. If the party issuing the commitment statement fails, for any reason, to participate in the mediation within 90 days of the rejection of the commitment statement, the owner may proceed with litigation.

(4) After the termination of an unsuccessful mediation process, the parties shall be free to litigate or otherwise resolve their respective claims. The parties may mutually agree to the terms of the commitment statement at any time after the termination of an unsuccessful mediation process, in which case this chapter shall govern the rights and obligations of the parties.

(5) Any applicable statute of limitations shall be tolled for 90 days following issuance of a notice of potential liability, a release report, or a commitment statement.

(6) Any applicable statute of limitations shall be tolled from the time the owner rejects a commitment statement until the termination of the mediation process. If mediation is not commenced within 90 days after the owner's rejection of the commitment statement, the tolling of the statute of limitations shall terminate unless otherwise agreed to by the parties.

(7) Unless the owner and notice recipient agree otherwise, the fees and costs of the neutral third party shall be borne equally by the notice recipient and the owner.

(c) Upon taking effect, the commitment statement shall have all of the following results:

(1) The commitment statement shall constitute a binding promise that the notice recipient will undertake any response action as required by an oversight agency through a written action, directed to the owner or notice recipient, in connection with the release that is the subject of the notice of potential liability or release report. The commitment statement shall not create any obligations with respect to releases occurring after the commitment statement is signed, or with respect to any other release that is not the subject of the notice of potential liability.

(2) The commitment statement shall constitute a binding promise that the owner shall provide reasonable site access to the notice recipient to take any action that is reasonably necessary or appropriate to conduct a response action. This grant of access shall not affect the rights of the owner if the notice recipient's activities onsite result in physical damage to the site which the notice recipient fails to repair within a reasonable period after completion of all onsite activities. Unless otherwise ordered by the oversight agency, the notice recipient shall take all reasonable steps to avoid interfering with the owner's use of the site.

(3) Except for civil actions seeking damages for personal injury or wrongful death, once a commitment statement has been accepted, the court shall stay any action brought by the owner of the site against the notice recipient that issued the commitment statement, including, but not limited to, actions in trespass, nuisance, negligence, and strict liability, which arise from or relate to a release for which a commitment statement has been issued. The stay shall be effective for a period of not more than two years from the date of acceptance of the commitment statement, but only so long as the site response action is proceeding to the satisfaction of an oversight agency. The stay shall not apply to any civil action that is based on fraud, failure to disclose, or misrepresentation related to any transaction between the owner of the site and the notice recipient, to any civil action for breach of the commitment statement, or to any civil action which is unrelated to the release. The owner and notice recipient may elect to extend the period of the stay by written agreement.

(4) In an action by an owner who has accepted a commitment statement against the notice recipient who issued the commitment statement, and which arises from or relates to a release for which a commitment statement has been issued, only the following damages shall be recoverable to the extent otherwise authorized by law:

(A) Damages for personal injuries or wrongful death caused by the release.

(B) Damages for breach of a commitment statement.

(C) Damages from the failure of a prospective purchaser to perform

under a sales contract because of the release, where such failure to perform occurs prior to the issuance of the commitment statement.

(D) Damages for the lost use of the property prior to the issuance of a commitment statement caused by the release.

(E) Recovery of costs of investigating and responding to the release where such costs are incurred prior to the issuance of the commitment statement.

(F) Remedies for any breach of a preexisting contract entered into prior to the acceptance of a commitment statement.

(G) Damages for lost rents and any other damages recoverable under law associated with lost use of the site caused by any notice recipient during site response action activities.

(5) An owner may obtain rescission of a commitment statement if a notice recipient repudiates its obligations under the commitment statement, in which case Sections 852 and 854 shall no longer apply to the site.

(6) The notice recipient and owner shall copy each other with respect to all correspondence and proposed workplans to and from the oversight agency that relate to the site.

(d) Nothing in this chapter shall affect the authority of an oversight agency under the law to bring an administrative, criminal, or civil action against either a notice recipient or the owner, nor does it compel any action on the part of the oversight agency.

(e) At any time after the commitment statement is accepted, either the owner or the notice recipient may file an action against the other for material breach of rights and obligations associated with the commitment statement. Subject to the stay provided for in paragraph (3) of subdivision (c), the parties may litigate these claims in the same action as any other claims they may have in connection with the release that is the subject of the commitment statement.

(f) Whenever a notice recipient issues a commitment statement, the following notice shall be provided in 14 point boldface type if printed or in boldface capital letters if typed:

"THIS FORM WAS DEVELOPED AS PART OF A PROCESS ENACTED BY THE
CALIFORNIA LEGISLATURE TO PROVIDE OWNERS OF PROPERTY AND POTENTIALLY
RESPONSIBLE PARTIES AN ALTERNATIVE TO LITIGATING DISPUTES OVER CONTAMINATION.
IT IS YOUR OPTION AS TO WHETHER YOU SIGN THIS FORM OR OTHERWISE PARTICIPATE
IN THIS PROCESS. IF YOU CHOOSE NOT TO PARTICIPATE IN THE PROCESS, YOU SHOULD
NOTIFY THE PARTY WHO SENT YOU THIS FORM. THIS FORM INVOLVES A TRADEOFF
WHEREBY EACH PARTY ACQUIRES AND RELINQUISHES CERTAIN RIGHTS. UNDER THIS
FORM, THE PROPERTY OWNER GETS THE ASSURANCE THAT THE POTENTIALLY RESPONSIBLE
PARTY IS OBLIGATED TO PERFORM INVESTIGATORY AND CLEANUP ACTIONS IN THE EVENT
THAT GOVERNMENT AUTHORITIES ELECT TO REQUIRE THESE ACTIONS. ON THE OTHER
HAND, THE PROPERTY OWNER FOREGOES CERTAIN CLAIMS ASSOCIATED WITH RESIDUAL
CONTAMINATION THAT GOVERNMENTAL AUTHORITIES ALLOW TO REMAIN IN PLACE ON THE
PROPERTY. IF YOU ELECT NOT TO SIGN THIS FORM, THE PROCESS DEVELOPED BY THE
LEGISLATURE CONTEMPLATES THAT YOU WILL ATTEMPT TO MEDIATE ANY DISPUTES
REGARDING THE CONTAMINATION. HOWEVER, MEDIATION IS NEITHER MANDATORY NOR
BINDING. IF YOU HAVE QUESTIONS ABOUT THE PROCESS, YOU MAY WISH TO CONSULT AN
ATTORNEY."

(g) Any applicable statute of limitations shall be tolled for two and one-half years from the date of acceptance of the commitment statement. If at the end of two years from the date of acceptance of the commitment statement an oversight agency has not issued a written action directed to the owner or notice recipient, the owner has 60 days in which he or she may terminate the commitment statement; and, in this event, it shall have no further force or effect. In the event the owner terminates the commitment statement, subdivision (c) shall no longer apply to the site and shall no longer govern the rights and obligations of the owner or notice recipient.

(Added by Stats. 1997, Ch. 873, Sec. 1. Effective January 1, 1998.)

853. (a) Neither the failure to issue a commitment statement nor its issuance shall be construed as an admission that the recipient of the notice of potential liability is liable under any federal, state, or local law, including common law, for the release that the party agrees to investigate or respond. Neither the failure to issue a commitment statement nor the contents of the commitment statement shall be admissible evidence in any proceeding, as defined in Section 901 of the Evidence Code, except that the contents of the commitment statement shall be admissible evidence in an action to enforce the commitment statement to the extent that such contents would be admissible under other applicable law.

(b) Nothing in this chapter shall subject a notice recipient to any damages, fines, or penalties for a failure to make a written response, either positive or negative, to a notice of potential liability.

(c) Nothing in this chapter shall subject the owner of a site to any damages, fines, or penalties for a failure to send a notice of potential liability pursuant to Section 851. Failure by the owner of a site to send a notice of potential liability of a release in a timely fashion shall not be deemed to create any liability for the owner under a theory of negligence per se.

(d) Nothing in this chapter imposes an affirmative duty on the owner of a site, or any potentially responsible party, to discover, or determine the nature or extent of, a hazardous materials release at the site. This chapter does not affect such an affirmative duty to the extent it is imposed by any other law.

(e) Subject to the defenses specified in Section 101(35) and 107(b) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Secs. 9601(35) and 9607(b)), a cause of action is hereby established whereby a notice recipient may recover from any responsible party any reasonable response costs for conducting a response action as may be approved or overseen by an oversight agency or as incurred pursuant to a commitment statement. Liability among responsible parties shall be allocated based upon the equitable factors specified in subdivision (c) of Section 25356.3 of the Health and Safety Code. No third-party beneficiary rights are created by a commitment statement, except as provided in subdivision (b) of Section 854. This cause of action applies to costs incurred prior to enactment of this subdivision. However, no recovery may be obtained under this subdivision for costs incurred more than three years prior to the filing of litigation to recover those costs. The cause of action established pursuant to this subdivision shall not apply against a current or former owner of a site unless that owner operated a business that caused a release being addressed by a response action at the site and the costs incurred by the notice recipient were in response to a release caused by the owner.

(f) Nothing in this chapter shall affect or limit the rights of an owner under preexisting contract. Nothing in this chapter shall affect or limit the right of a notice recipient and owner to agree to an allocation of liability or to an assignment of rights and obligations that is different from or inconsistent with this chapter. Such agreements shall supersede the terms of this chapter.

(g) Nothing in this chapter shall make a notice recipient a responsible party, beyond the obligations the notice recipient undertakes pursuant to this chapter.

(h) Nothing in this chapter shall apply to causes of action for wrongful death or personal injury. However, the pleading of a cause of action for wrongful death or personal injury shall not affect the applicability of this chapter to other causes of action in the same civil action.

(Added by Stats. 1997, Ch. 873, Sec. 1. Effective January 1, 1998.)

854. A commitment statement shall be executed in substantially the following form:

NOTICE OF ASSUMPTION OF
COUNTY OF _____ GOVERNMENT IMPOSED SITE
STATE OF INVESTIGATION AND/OR
CALIFORNIA REMEDIAL ACTION ORDERS
("COMMITMENT STATEMENT")

(a) The undersigned notice recipient is aware of, or has received a

notice of potential liability pursuant to, Section 851 of the Civil Code ("notice of potential liability") in connection with a release of hazardous materials at a parcel of property ("site") having the following legal description: (Insert description here)

(b) The undersigned notice recipient and the undersigned owner of the site and the owner's successors, heirs, and assigns agree, upon the proper and timely execution and delivery of this commitment statement, to abide by the requirements of Chapter 3 (commencing with Section 850) of Title 3 of Part 2 of Division 2 in connection with the release that is the subject of the notice of potential liability.

(c) The undersigned notice recipient hereby commits to undertake any response action as required by an oversight agency through a written action, directed to the owner or notice recipient, in connection with the release that is the subject of the notice of potential liability or release report. This commitment runs with the land and binds, in addition to the current owner of the site, all of the owner's successors in interest, including current and future lenders having a security interest in the site.

(d) The owner of the site and the owner's successors, heirs, and assigns agree, upon the proper and timely execution and delivery of this commitment statement, to all of the following:

(1) The undersigned notice recipient or the party's designee shall be allowed such access to the site as may be required to perform its obligations under this commitment statement, provided that the undersigned notice recipient shall be liable for any physical damage it causes in conducting a response action, which the notice recipient fails to repair within a reasonable period after completion of all onsite activities.

(2) The parties, their successors, heirs, and assigns shall provide each other with copies of any communication or correspondence with an oversight agency in connection with the release of hazardous materials at the site.

(3) Provided that the undersigned notice recipient performs all of its obligations under this commitment statement, and except as otherwise provided in subdivisions (c) and (e) of Section 852 of the Civil Code, no claim for damages, accruing after the acceptance of the commitment statement, shall be brought against the undersigned notice recipient by the owner of the site or by the owner's successors, heirs, and assigns.

(e) The contents of this commitment statement shall be inadmissible evidence in any proceeding, as defined in Section 901 of the Evidence Code, except in an action to enforce this commitment statement to the extent that such contents would be admissible under other applicable law. This commitment statement may be enforced fully by the owner of the site and all parties identified in paragraph (b). There are no third-party beneficiary rights created by this commitment statement.

(f) The owner of the site shall provide a copy of this commitment statement to any prospective purchaser or lessee of the site until this commitment statement is terminated or until all response actions have been completed in accordance with the commitment statement.

(g) If the owner transfers the site, the owner shall notify the undersigned parties to this commitment statement, by mail, within 14 business days of the property transfer.

(h) As provided by law, this commitment statement shall become effective if the owner executes this commitment statement within 45 days from the date of issuance, in which case its terms shall go into effect upon receipt of that acceptance by the issuer of this commitment statement. If the owner rejects this commitment statement, the rejection shall be subject to the mediation provisions of subdivision (b) of Section 852.

(i) If at the end of two years from the date of acceptance of this commitment statement, an oversight agency has not issued a written action directed to the owner or notice recipient, the owner has 60 days in which he or she may terminate the commitment statement; and, in this event, it shall have no further force or effect.

_____ _____

Notice recipient Date
(Notice recipient's name,
address, and telephone number)
(Notarial affidavit)

_____ _____

Owner Date
(Owner's name, address,
and telephone number)
(Notarial affidavit)

(Added by Stats. 1997, Ch. 873, Sec. 1. Effective January 1, 1998.)

855. The notification requirements of Section 851 shall not become effective until 180 days after the effective date of this chapter.

(Added by Stats. 1997, Ch. 873, Sec. 1. Effective January 1, 1998.)

CIVIL CODE

DIVISION 3, PART 1, TITLE 3

TITLE 3. TRANSFER OF OBLIGATIONS
(Title 3 enacted 1872.)

1457. The burden of an obligation may be transferred with the consent of the party entitled to its benefit, but not otherwise, except as provided by Section 1466.
(Enacted 1872.)

1458. A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such.
(Enacted 1872.)

1459. A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.
(Enacted 1872.)

1460. Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee, in the same manner as if they had personally entered into them. Such convenants are said to run with the land.
(Enacted 1872.)

1461. The only covenants which run with the land are those specified in this Title, and those which are incidental thereto.
(Enacted 1872.)

1462. Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it then in existence, runs with the land.
(Enacted 1872.)

1463. The last section includes covenants "of warranty," "for quiet enjoyment," or for further assurance on the part of a grantor, and covenants for the payment of rent, or of taxes or assessments upon the land, on the part of a grantee.
(Enacted 1872.)

1465. A covenant running with the land binds those only who acquire the whole estate of the covenantor in some part of the property.
(Enacted 1872.)

1466. No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for a breach of the covenant before he acquired the estate, or after he has parted with it or ceased to enjoy its benefits.
(Enacted 1872.)

1467. Where several persons, holding by several titles, are subject to the burden or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity.
(Enacted 1872.)

1468. Each covenant, made by an owner of land with the owner of other land or made by a grantor of land with the grantee of land conveyed, or made by the grantee of land conveyed with the grantor thereof, to do or refrain from doing some act on his own land, which doing or refraining is expressed to be for the benefit of the land of the convenantee, runs with both the land owned by or granted to the covenantor and the land owned by or granted to the covenantee and shall, except as provided by Section 1466, or as specifically provided in the instrument creating such covenant, and notwithstanding the provisions of Section 1465, benefit or be binding upon each successive owner, during his ownership, of any portion of such land affected thereby and upon each person having any interest therein derived through any owner thereof where all of the following requirements are met:

(a) The land of the covenantor which is to be affected by such covenants, and the land of covenantee to be benefited, are particularly described in the instrument containing such covenants;

(b) Such successive owners of the land are in such instrument expressed to be bound thereby for the benefit of the land owned by, granted by, or granted to the covenantee;

(c) Each such act relates to the use, repair, maintenance or improvement of, or payment of taxes and assessments on, such land or some part thereof, or if the land owned by or granted to each consists of undivided interests in the same parcel or parcels, the suspension of the right of partition or sale in lieu of partition for a period which is reasonable in relation to the purpose of the covenant;

(d) The instrument containing such covenants is recorded in the office of the recorder of each county in which such land or some part thereof is situated.

Where several persons are subject to the burden of any such covenant, it shall be apportioned among them pursuant to Section 1467, except that where only a portion of such land is so affected thereby, such apportionment shall be only among the several owners of such portion. This section shall apply to the mortgagee, trustee or beneficiary of a mortgage or deed of trust upon such land or any part thereof while but only while he, in such capacity, is in possession thereof.
(Amended by Stats. 1973, Ch. 474.)

1469. Each covenant made by the lessor in a lease of real property to do any act or acts on other real property which is owned by the lessor and is contiguous (except for intervening public streets, alleys or sidewalks) to the real property demised to the lessee shall, except as provided by Section 1466, be binding upon each successive owner, during his ownership, of any portion of such contiguous real property affected thereby where all of the following requirements are met:

(a) Such contiguous real property is particularly described in the lease;

(b) Such successive owners are in the lease expressed to be bound thereby for the benefit of the demised real property;

(c) Each such act relates to the use, repair, maintenance or improvement of, or payment of taxes and assessments on, such contiguous real property or some part thereof;

(d) The lease is recorded in the same manner as grants of real property, in the office of the recorder of each county in which such contiguous real property or some part thereof is situate. Such lease shall include the description of any such contiguous land described in any unrecorded instrument, the contents of which unrecorded instrument are incorporated by reference in such recorded lease.

Where several persons are subject to the burden of any such covenant, it shall be apportioned among them pursuant to Section 1467, except that where only a portion of such contiguous real property is so affected thereby, such apportionment shall be only among the several owners of such portion. This section shall apply to the mortgagee, trustee or beneficiary of a mortgage or deed of trust upon such contiguous real property or any part thereof while but only while he, in such capacity, is in possession thereof.
(Amended by Stats. 1965, Ch. 1502.)

1470. Each covenant made by the lessor in a lease of real property not to use or permit to be used contrary to the terms of such lease any other real property which is owned by the lessor and is contiguous (except for intervening public streets, alleys or sidewalks) to the real property demised to the lessee shall, except as provided by Section 1466, be binding upon each successive owner, during his ownership, of any portion of such contiguous real property affected thereby and upon each person having any interest therein derived through any owner thereof where all of the following requirements are met:

(a) Such contiguous real property is particularly described in the lease;

(b) Such successive owners and persons having any such interest are in the lease expressed to be bound thereby for the benefit of the demised real property;

(c) The lease is recorded in the same manner as grants of real property, in the office of the recorder of each county in which such contiguous real property or some part thereof is situate. Such lease shall include therein the description of any such contiguous land described in any unrecorded instrument, the contents of which unrecorded instrument are incorporated by reference in such recorded lease.

Where several persons are subject to the burden of any such covenant, it shall be apportioned among them pursuant to Section 1467, except that where only a portion of such contiguous real property is so affected thereby, such apportionment shall be only among the several owners of, and persons having any such interest in, such portion. This section shall apply to the mortgagee, trustee or beneficiary of a mortgage or deed of trust upon such contiguous real property or any part thereof while and only while he, in such capacity, is in possession thereof.

(Amended by Stats. 1963, Ch. 2054.)

1471. (a) Notwithstanding Section 1468 or any other provision of law, a covenant made by an owner of land or by the grantee of land to do or refrain from doing some act on his or her own land, which doing or refraining is expressed to be for the benefit of the covenantee, regardless of whether or not it is for the benefit of land owned by the covenantee, shall run with the land owned by or granted to the covenantor if all the following requirements are met:

(1) The land of the covenantor that is to be affected by the covenant is particularly described in the instrument containing the covenant.

(2) The successive owners of the land are expressed to be bound thereby for the benefit of the covenantee in the instrument containing the covenant.

(3) Each act that the owner or grantee will do or refrain from doing relates to the use of land and each act is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials, as defined in Section 25260 of the Health and Safety Code.

(4) The instrument containing the covenant is recorded in the office of the recorder of each county in which the land or some portion thereof is situated and the instrument includes in its title the words: "Environmental Restriction."

(b) Except as provided by Section 1466 or as specifically provided in the instrument creating a covenant made pursuant to this section, the covenant shall be binding upon each successive owner, during his or her ownership, of any portion of the land affected thereby and upon each person having any interest therein derived through any owner thereof.

(c) If several persons are subject to the burden of a covenant recorded pursuant to this section, it shall be apportioned among them pursuant to Section 1467, except if only a portion of the land is so affected thereby, the apportionment shall be only among the several owners of that portion.

(d) This section shall apply to the mortgagee, trustee, or beneficiary of a mortgage or deed of trust upon the land or any part thereof while, but only while, he or she, in that capacity, is in possession thereof.

(e) (1) If an instrument containing a covenant is recorded pursuant to paragraph (4) of subdivision (a) as an "Environmental Restriction," in accordance with this section, the office of the recorder of the county may send a certified copy of the instrument to the California Environmental Protection Agency, for posting on its Web site, for informational purposes only, pursuant to Section 57012 of the Health and Safety Code, unless the instrument indicates that it is required by a board or department specified in paragraphs (1) to (3), inclusive, of subdivision (d) of Section 57012 of the Health and Safety Code.

(2) Notwithstanding any provision of law, the office of the recorder of the county and any of its employees shall not be subject to any liability under any state law or in any action for damages if the office of the recorder does not send a certified copy of the instrument pursuant to paragraph (1).

(f) The office of the recorder of the county may assess a reasonable fee, as determined by resolution of its governing body, to cover the costs of taking the action authorized by subdivision (e).

(Amended by Stats. 2002, Ch. 592, Sec. 1. Effective January 1, 2003.)

EDUCATION CODE

TITLE 1, DIVISION 1, PART 10.5, CHAPTER 1

CHAPTER 1. SCHOOLSITES

(Chapter 1 added by Stats. 1996, Ch. 277, Sec. 3.
Effective January 1, 1997.
Operative January 1, 1998.)

Article 1. General Provisions

(Article 1 added by Stats. 1996, Ch. 277, Sec. 3.
Effective January 1, 1997.
Operative January 1, 1998.)

17210. As used in this article, the following terms have the following meanings:

(a) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(b) "Environmental assessor" means a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570) of Division 20 of the Health and Safety Code, a professional engineer registered in this state, a geologist registered in this state, a certified engineering geologist registered in this state, or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field. In addition, any person who conducts phase I environmental assessments shall have at least two years' experience in the preparation of those assessments and any person who conducts a preliminary endangerment assessment shall have at least three years' experience in conducting those assessments.

(c) "Handle" has the meaning the term is given in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(d) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(e) "Hazardous material" has the meaning the term is given in subdivision (d) of Section 25260 of the Health and Safety Code.

(f) "Operation and maintenance," "removal action work plan," "respond," "response," "response action," and "site" have the meanings those terms are given in Article 2 (commencing with Section 25310) of the state act.

(g) "Phase I environmental assessment" means a preliminary assessment of a property to determine whether there has been or may have been a release of a hazardous material, or whether a naturally occurring hazardous material is present, based on reasonably available information about the property and the area in its vicinity. A phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, prior releases of a hazardous material, data base searches, review of relevant files of federal, state, and local agencies, visual and other surveys of the property, review of historical aerial photographs of the property and the area in its vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of the phase I environmental assessment. A phase I environmental assessment conducted pursuant to the requirements adopted by the American Society for Testing and Materials for due diligence for commercial real estate transactions and that includes a review of all reasonably available records and data bases regarding current and prior gas or oil wells and naturally occurring hazardous materials located on the site or located where they could potentially effect the site, satisfies the requirements of this article for conducting a phase I environmental assessment unless and until the Department of Toxic Substances Control adopts final regulations that establish guidelines for a phase I environmental assessment for purposes of schoolsites that impose different requirements from those imposed by the American Society for Testing and Materials.

(h) "Preliminary endangerment assessment" means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children's health, children's learning abilities, public health or the environment. A preliminary endangerment assessment requires sampling and analysis of a site, a preliminary determination of the type and extent of hazardous material contamination of the site, and a preliminary evaluation of the risks that the hazardous material contamination of a site may pose to children's health, public health, or the environment, and shall be conducted in a manner that complies with the guidelines published by the Department of Toxic Substances Control entitled "Preliminary Endangerment Assessment: Guidance Manual," including any amendments that are determined by the Department of Toxic Substances Control to be appropriate to address issues that are unique to schoolsites.

(i) "Proposed schoolsite" means real property acquired or to be acquired or proposed for use as a schoolsite, prior to its occupancy as a school.

(j) "Regulated substance" means any material defined in subdivision (g) of Section 25532 of the Health and Safety Code.

(k) "Release" has the same meaning the term is given in Article 2 (commencing with Section 25310) of Chapter 6.8 of Division 20 of the Health and Safety Code, and includes a release described in subdivision (d) of Section 25321 of the Health and Safety Code.

(l) "Remedial action plan" means a plan approved by the Department of Toxic Substances Control pursuant to Section 25356.1 of the Health and Safety Code.

(m) "State act" means the Carpenter-Presley-Tanner Hazardous Substance Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code).

(Amended by Stats. 2001, Ch. 159, Sec. 56. Effective January 1, 2002.)

17210.1. (a) Notwithstanding any other provision of law:

(1) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, the state act applies to schoolsites where naturally occurring hazardous materials are present, regardless of whether there has been a release or there is a threatened release of a hazardous material.

(2) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, all references in the state act to hazardous substances shall be deemed to include hazardous materials and all references in the state act to public health shall be deemed to include children's health.

(3) All risk assessments conducted by school districts that elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10 at sites addressed by this article shall include a focus on the risks to children's health posed by a hazardous materials release or threatened release, or the presence of naturally occurring hazardous materials, on the schoolsite.

(4) The response actions selected under this article shall, at a minimum, be protective of children's health, with an ample margin of safety.

(b) In implementing this article, a school district shall provide a notice to residents in the immediate area prior to the commencement of work on a preliminary endangerment assessment utilizing a format developed by the Department of Toxic Substances Control.

(c) Nothing in this article shall be construed to limit the authority of the Department of Toxic Substances Control or the State Department of Education to take any action otherwise authorized under any other provision of law.

(d) Unless the Legislature otherwise funds its costs for overseeing actions taken pursuant to this article, the Department of Toxic Substances Control shall comply with Chapter 6.66 (commencing with Section 25269) of Division 20 of the Health and Safety Code when recovering its costs incurred in carrying out its duties pursuant to this article.

(e) Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code does not apply to schoolsites at which all necessary response actions have been completed.

(Amended by Stats. 2001, Ch. 865, Sec. 1. Effective October 14, 2001.)

17211. Prior to commencing the acquisition of real property for a new schoolsite or an addition to an existing schoolsite, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 17251. The governing board may direct the district's advisory committee established pursuant to Section 17388 to evaluate the property pursuant to those site selection standards and to report its findings to the governing board at the public hearing.

(Added by Stats. 1996, Ch. 277, Sec. 3. Effective January 1, 1997. Operative January 1, 1998.)

17212. The governing board of a school district, prior to acquiring any site on which it proposes to construct any school building as defined in Section 17283 shall have the site, or sites, under consideration investigated by competent personnel to ensure that the final site selection is determined by an evaluation of all factors affecting the public interest and is not limited to selection on the basis of raw land cost only. If the prospective schoolsite is located within the boundaries of any special studies zone or within an area designated as geologically hazardous in the safety element of the local general plan as provided in subdivision (g) of Section 65302 of the Government Code, the investigation shall include any geological and soil engineering studies by competent personnel needed to provide an assessment of the nature of the site and potential for earthquake or other geologic hazard damage.

The geological and soil engineering studies of the site shall be of such a nature as will preclude siting of a school in any location where the geological and site characteristics are such that the construction effort required to make the school building safe for occupancy is economically unfeasible. No studies are required to be made if the site or sites under consideration have been the subject of adequate prior studies. The evaluation shall also include location of the site with respect to population, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions, and other factors affecting the operating costs, as well as the initial costs, of the total project.

For the purposes of this article, a special studies zone is an area which is identified as a special studies zone on any map, or maps, compiled by the State Geologist pursuant to Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code.

(Added by Stats. 1996, Ch. 277, Sec. 3. Effective January 1, 1997. Operative January 1, 1998.)

17212.1. It is the intent of the Legislature that corporations, public utilities, local publicly owned utilities, governmental agencies, and school districts work collaboratively in assessing the safety of a proposed schoolsite or addition to an existing schoolsite.

(Added by Stats. 2004, Ch. 578, Sec. 1. Effective January 1, 2005.)

17212.2. (a) The governing board of a school district may make a written request upon a person, corporation, public utility, local publicly owned utility, or governmental agency for information necessary or useful to assess and determine the safety of a proposed schoolsite or an addition to an existing schoolsite, pursuant to Section 17251 and this chapter, including pipelines, electric transmission and distribution lines, railroads, and storage tanks. The written request shall identify the physical location of the schoolsite for which information is sought, describe the information sought, and contain a statement as to why the information is needed or useful. Information requested may include all of the following:

(1) Railroad operations involving hazardous or toxic materials, as reported to a governmental agency; frequency, speed, and schedule of railroad traffic; grade, curves, and condition of railroad tracks; and railroad accident occurrence.

(2) Whether there are existing pipelines, planned pipelines, or easements for pipelines on, or in proximity to, as specified pursuant to regulations adopted pursuant to Section 17251, the schoolsite, including the location of the pipeline, the age of the pipeline, the pipeline material, the class of pipeline, the diameter of the pipeline, the depth at which the pipeline is buried, the wall thickness of the pipeline, the product or products transported by the pipeline, the operating pressure of the pipeline, the history of spills or leaks of material being transported by the pipeline, as reported to a governmental agency, and the location of the shutoff valves for the pipeline that are capable of preventing or halting the transport of product or products to the schoolsite.

(3) Whether there are easements for planned or existing lines for the transmission or distribution of electricity, electrical transformers, or electrical substations on or in proximity to, as specified pursuant to regulations adopted pursuant to Section 17251, the schoolsite, the location of easements for, planned, or existing lines, transformers, or substations, the voltages currently handled or planned to be handled by the line, transformer, or substation, the ground clearance, if applicable, of a line, transformer, or substation, and the depth of burial, if applicable, of the line, transformer, or substation as specified by the Public Utilities Commission.

(4) The location, age, construction type, safety record, and product stored in a storage tank.

(b) A person, corporation, public utility, local publicly owned utility, or governmental agency receiving a written request for information pursuant to this section shall provide a written response within 30 calendar days of receipt of the request, that provides the requested information, identifies available public information or an available report to a governmental agency, or provides written justification why the requested information is not being provided. A claim that the requested information is proprietary or confidential is a legitimate justification for the requested information to not be provided. The governing board of a school district may grant additional time to respond to a request for information pursuant to this section.

(c) A school district may file a complaint with the appropriate regulatory agency or legislative body for a violation of the requirements of this section. The regulatory agency or legislative body may appoint a representative to work toward informally resolving the complaint.

(Amended by Stats. 2005, Ch. 22, Sec. 27. Effective January 1, 2006.)

17212.5. Geological and soil engineering studies as described in Section 17212 shall be made, within the boundaries of any special studies zone, for the construction of any school building as defined in Section 17283, or if the estimated cost exceeds twenty-five thousand dollars ($25,000), for the reconstruction or alteration of or addition to any school building for work which alters structural elements. The Department of General Services may require similar geological and soil engineering studies for the construction or alteration of any school building on a site located outside of the boundaries of any special studies zone. No studies need be made if the site under consideration has been the subject of adequate prior studies.

No school building shall be constructed, reconstructed, or relocated on the trace of a geological fault along which surface rupture can reasonably be expected to occur within the life of the school building.

A copy of the report of each investigation conducted pursuant to this section shall be submitted to the Department of General Services pursuant to Article 3 (commencing with Section 17280) of this chapter and to the State Department of Education. The cost of geological and soil engineering studies and investigations conducted pursuant to this section may be treated as a capital expenditure. The dollar amount set forth in this section shall be increased on an annual basis, according to a construction costs inflation index recognized and selected by the department.

(Amended by Stats. 2001, Ch. 422, Sec. 1. Effective January 1, 2002.)

17213. The governing board of a school district may not approve a project involving the acquisition of a schoolsite by a school district, unless all of the following occur:

(a) The school district, as the lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site, unless if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section

25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, extremely hazardous substances, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood.

(b) The school district, as the lead agency, as defined in Section 21067 of the Public Resources Code, in preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and other busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or extremely hazardous materials, substances, or waste. The school district, as the lead agency, shall include a list of the locations for which information is sought.

(c) The governing board of the school district makes one of the following written findings:

(1) Consultation identified none of the facilities or significant pollution sources specified in subdivision (b).

(2) The facilities or other pollution sources specified in subdivision (b) exist, but one of the following conditions applies:

(A) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(B) The governing board finds that corrective measures required under an existing order by another governmental entity that has jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.

(C) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(D) The governing board finds that neither of the conditions set forth in subparagraph (B) or (C) can be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(d) As used in this section:

(1) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(2) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(3) "Extremely hazardous substances" means any material defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

(4) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(5) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the State Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

(Amended by Stats. 2007, Ch. 130, Sec. 54. Effective January 1, 2008.)

17213.1. As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10), the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite, the governing board shall contract with an environmental assessor to supervise the preparation of, and sign, a Phase I environmental assessment of the proposed schoolsite unless the governing board decides to proceed directly to a preliminary endangerment assessment, in which case it shall comply with paragraph (4).

(1) The Phase I environmental assessment shall contain one of the following recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so, the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the signed assessment, proof that the environmental assessor meets the qualifications specified in subdivision (b) of Section 17210, and the renewal fee shall be submitted to the Department of Toxic Substances Control. The Department of Toxic Substances Control shall conduct its review and approval, within 30 calendar days of its receipt of that assessment, proof of qualifications, and the renewal fee. In those instances in which the Department of Toxic Substances Control requests additional information after receipt of the Phase I environmental assessment pursuant to paragraph (3), the Department of Toxic Substances Control shall conduct its review and approval within 30 calendar days of its receipt of the requested additional information. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment and shall notify, in writing, the State Department of Education and the governing board of the school district of the approval.

(3) If the Department of Toxic Substances Control determines that the Phase I environmental assessment is not complete or disapproves the Phase I environmental assessment, the department shall inform the school district of the decision, the basis for the decision, and actions necessary to secure department approval of the Phase I environmental assessment. The school district shall take actions necessary to secure the approval of the Phase I environmental assessment, elect to conduct a preliminary endangerment assessment, or elect not to pursue the acquisition or the construction project. To facilitate completion of the Phase I environmental assessment, the information required by this paragraph may be provided by telephonic or electronic means.

(4) (A) If the Department of Toxic Substances Control concludes after its review of a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the Department of Toxic Substances Control shall notify, in writing, the State Department of Education and the governing board of the school district of that decision and the basis for that decision. The school district shall submit to the

State Department of Education the Phase I environmental assessment and requested additional information, if any, that was reviewed by the Department of Toxic Substances Control pursuant to that subparagraph. Submittal of the Phase I assessment and additional information, if any, to the State Department of Education shall be prior to the State Department of Education issuance of final site or plan approvals affect by that Phase I assessment.

(B) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes after it reviews a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to supervise the preparation of, and sign, a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The agreement entered into with the Department of Toxic Substances Control may be entitled an "Environmental Oversight Agreement" and shall reference this paragraph. A school district may, with the concurrence of the Department of Toxic Substances Control, enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of a preliminary endangerment assessment without first having prepared a Phase I environmental assessment. Upon request from the school district, the Director of the Department of Toxic Substances Control shall exercise its authority to designate a person to enter the site and inspect and obtain samples pursuant to Section 25358.1 of the Health and Safety Code, if the director determines that the exercise of that authority will assist in expeditiously completing the preliminary endangerment assessment. The preliminary endangerment assessment shall contain one of the following conclusions:

(i) A further investigation of the site is not required.

(ii) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(5) The school district shall submit the preliminary endangerment assessment to the Department of Toxic Substances Control for its review and approval and to the State Department of Education for its files. The school district may entitle a document that is meant to fulfill the requirements of a preliminary endangerment assessment a "preliminary environmental assessment" and that document shall be deemed to be a preliminary endangerment assessment if it specifically refers to the statutory provisions whose requirements it intends to meet and the document meets the requirements of a preliminary endangerment assessment.

(6) At the same time a school district submits a preliminary endangerment assessment to the Department of Toxic Substances Control pursuant to paragraph (5), the school district shall publish a notice that the assessment has been submitted to the department in a local newspaper of general circulation, and shall post the notice in a prominent manner at the proposed schoolsite that is the subject of that notice. The notice shall state the school district's determination to make the preliminary endangerment assessment available for public review and comment pursuant to subparagraph
(A) or (B):

(A) If the school district chooses to make the assessment available for public review and comment pursuant to this subparagraph, it shall offer to receive written comments for a period of at least 30 calendar days after the assessment is submitted to the Department of Toxic Substances Control, commencing on the date the notice is originally published, and shall hold a public hearing to receive further comments. The school district shall make all of the following documents available to the public upon request through the time of the public hearing:

(i) The preliminary endangerment assessment.

(ii) The changes requested by the Department of Toxic Substances Control for the preliminary endangerment assessment, if any.

(iii) Any correspondence between the school district and the Department of Toxic Substances Control that relates to the preliminary endangerment assessment.

For the purposes of this subparagraph, the notice of the public hearing shall include the date and location of the public hearing, and the location where the public may review the documents described in clauses (i) to (iii), inclusive. If the preliminary endangerment assessment is revised or altered following the public hearing, the school district shall make those revisions or alterations available to the public. The school district shall transmit a copy of all public comments received by the school district on the preliminary endangerment assessment to the Department of Toxic Substances Control. The Department of Toxic Substances Control shall complete its review of the preliminary endangerment assessment and public comments received thereon and shall either approve or disapprove the assessment within 30 calendar days of the close of the public review period. If the Department of Toxic Substances Control determines that it is likely to disapprove the assessment prior to its receipt of the public comments, it shall inform the school district of that determination and of any action that the school district is required to take for the Department of Toxic Substances Control to approve the assessment.

(B) If the school district chooses to make the preliminary endangerment assessment available for public review and comment pursuant to this subparagraph, the Department of Toxic Substances Control shall complete its review of the assessment within 60 calendar days of receipt of the assessment and shall either return the assessment to the school district with comments and requested modifications or requested further assessment or concur with the adequacy of the assessment pending review of public comment. If the Department of Toxic Substances Control concurs with the adequacy of the assessment, and the school district proposes to proceed with site acquisition or a construction project, the school district shall make the assessment available to the public on the same basis and at the same time it makes available the draft environmental impact report or negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for the site, unless the document developed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) will not be made available until more than 90 days after the assessment is approved, in which case the school district shall, within 60 days of the approval of the assessment, separately publish a notice of the availability of the assessment for public review in a local newspaper of general circulation. The school district shall hold a public hearing on the preliminary endangerment assessment and the draft environmental impact report or negative declaration at the same time, pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). All public comments pertaining to the preliminary endangerment assessment shall be forwarded to the Department of Toxic Substances Control immediately. The Department of Toxic Substances Control shall review the public comments forwarded by the school district and shall approve or disapprove the preliminary endangerment assessment within 30 days of the district's approval action of the environmental impact report or the negative declaration.

(7) The school district shall comply with the public participation requirements of Sections 25358.7 and 25358.7.1 of the Health and Safety Code and other applicable provisions of the state act with respect to those response actions only if further response actions beyond a preliminary endangerment assessment are required and the district determines that it will proceed with the acquisition or construction project.

(8) If the Department of Toxic Substances Control disapproves the preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(9) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(10) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed

schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(11) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.

(b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a Phase I environmental assessment, a preliminary endangerment assessment, or information concerning either of these assessments, any of which is required by this section, may not be held liable in any action filed against the school district for making either of these assessments available for public review.

(d) The changes made to this section by the act amending this section during the 2001 portion of the 2001-02 Regular Session do not apply to a schoolsite acquisition project or a school construction project, if either of the following occurred on or before the effective date of the act amending this section during the 2001 portion of the 2001-02 Regular Session:

(1) The final preliminary endangerment assessment for the project was approved by the Department of Toxic Substances Control pursuant to this section as this section read on the date of the approval.

(2) The school district seeking state funding for the project completed a public hearing for the project pursuant to this section, as this section read on the date of the hearing.

(Amended by Stats. 2002, Ch. 935, Sec. 16. Effective January 1, 2003.)

17213.2. As a condition of receiving state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), all of the following apply:

(a) If a preliminary endangerment assessment prepared pursuant to Section 17213.1 discloses the presence of a hazardous materials release, or threatened release, or the presence of naturally occurring hazardous materials, at a proposed schoolsite at concentrations that could pose a significant risk to children or adults, and the school district owns the proposed schoolsite, the school district shall enter into an agreement with the Department of Toxic Substances Control to oversee response action at the site and shall take response action pursuant to the requirements of the state act as may be required by the Department of Toxic Substances Control.

(b) Notwithstanding subdivision (a), a school district need not take action in response to a release of hazardous material to groundwater underlying the schoolsite if the release occurred at a site other than the schoolsite and if the following conditions apply:

(1) The school district did not cause or contribute to the release of a hazardous material to the groundwater.

(2) Upon the request of the Department of Toxic Substances Control or its authorized representative the school district provides the Department of Toxic Substances Control or its authorized representative with access to the schoolsite.

(3) The school district does not interfere with the response action activities.

(c) If at anytime during the response action the school district determines that there has been a significant increase in the estimated cost of the response action, the school district shall notify the State Department of Education.

(d) A school district that is required by the Department of Toxic Substances Control to take response action at a proposed schoolsite is subject to both of the following prohibitions:

(1) The school district may not begin construction of a school building until the Department of Toxic Substances Control determines all of the following:

(A) That the construction will not interfere with the response action.

(B) That site conditions will not pose a significant threat to the health and safety of workers involved in the construction of the school building.

(C) That the nature and extent of any release or threatened release of hazardous materials or the presence of any naturally occurring hazardous materials have been fully characterized.

(2) The school district may not occupy a school building following construction until it obtains from the Department of Toxic Substances Control a certification that all response actions, except for operation and maintenance activities, necessary to ensure that hazardous materials at the schoolsite no longer pose a significant risk to children and adults at the schoolsite have been completed and that the response action standards and objectives established in the final removal action work plan or remedial action plan have been met and are being maintained. After a school building is constructed and occupied, a school district may continue with ongoing operation and maintenance activities if the Department of Toxic Substances Control certifies before occupancy that neither site conditions nor the ongoing operation and maintenance activities pose a significant risk to children or adults at the schoolsite.

(e) If, at anytime during construction at a schoolsite, a previously unidentified release or threatened release of a hazardous material or the presence of a naturally occurring hazardous material is discovered, the school district shall cease all construction activities at the sites notify the Department of Toxic Substances Control, and take actions required by subdivision (a) that are necessary to address the release or threatened release or the presence of any naturally occurring hazardous materials. Construction may be resumed if the Department of Toxic Substances Control determines that the construction will not interfere with any response action necessary to address the hazardous material release or threatened release or the presence of a naturally occurring hazardous material, determines that the site conditions will not pose a significant threat to the health and safety of workers involved in the construction of the schoolsite, and certifies that the nature and extent of the release, threatened release, or presence of a naturally occurring hazardous material have been fully characterized.

(f) Construction may proceed at any portions of the site that the Department of Toxic Substances Control determines are not affected by the release or threatened release of hazardous materials, or presence of any naturally occurring hazardous materials, provided that all of the following apply:

(1) Those portions of the site have been fully characterized.

(2) The Department of Toxic Substances Control determines that the construction will not interfere with any response action necessary to address the release or threatened release of hazardous materials, or presence of any naturally occurring hazardous materials.

(3) The site conditions will not pose a significant threat to the health and safety of workers involved with construction.

(g) The Department of Toxic Substances Control shall notify the State Department of Education, the Division of the State Architect, and the Office of Public School Construction when the Department of Toxic Substances
Control certifies that all necessary response actions have been completed at a schoolsite. The Department of Toxic Substances Control shall also notify the Division of the State Architect whenever a response action has an impact on the design of a school facility and shall specify the conditions that must be met in the design of the school facility in order to protect the integrity of the response action.

(h) The school district shall reimburse the Department of Toxic Substances Control for all response costs incurred by the department.

(i) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(Amended by Stats. 2000, Ch. 443, Sec. 5. Effective September 14, 2000.)

17215. (a) In order to promote the safety of pupils, comprehensive community planning, and greater educational usefulness of schoolsites, before acquiring title to or leasing property for a new schoolsite, the governing board of each school district, including any district governed by a city board of education, or a charter school, shall give the State Department of Education written notice of the proposed acquisition or lease and shall submit any information required by the State Department of Education if the site is within two miles, measured by air line, of that point on an airport runway or

a potential runway included in an airport master plan that is nearest to the site.

(b) Upon receipt of the notice required pursuant to subdivision (a), the State Department of Education shall notify the Department of Transportation in writing of the proposed acquisition or lease. If the Department of Transportation is no longer in operation, the State Department of Education shall, in lieu of notifying the Department of Transportation, notify the United States Department of Transportation or any other appropriate agency, in writing, of the proposed acquisition or lease for the purpose of obtaining from the department or other agency any information or assistance that it may desire to give.

(c) The Department of Transportation shall investigate the site and, within 30 working days after receipt of the notice, shall submit to the State Department of Education a written report of its findings including recommendations concerning acquisition or lease of the site. As part of the investigation, the Department of Transportation shall give notice thereof to the owner and operator of the airport who shall be granted the opportunity to comment upon the site. The Department of Transportation shall adopt regulations setting forth the criteria by which a site will be evaluated pursuant to this section.

(d) The State Department of Education shall, within 10 days of receiving the Department of Transportation's report, forward the report to the governing board of the school district or charter school. The governing board or charter school may not acquire title to or lease the property until the report of the Department of Transportation has been received. If the report does not favor the acquisition or lease of the property for a schoolsite or an addition to a present schoolsite, the governing board or charter school may not acquire title to or lease the property. If the report does favor the acquisition or lease of the property for a schoolsite or an addition to a present schoolsite, the governing board or charter school shall hold a public hearing on the matter prior to acquiring or leasing the site.

(e) If the Department of Transportation's recommendation does not favor acquisition or lease of the proposed site, state funds or local funds may not be apportioned or expended for the acquisition or lease of that site, construction of any school building on that site, or for the expansion of any existing site to include that site.

(f) This section does not apply to sites acquired prior to January 1, 1966, nor to any additions or extensions to those sites.

(Amended by Stats. 2005, Ch. 229, Sec. 1. Effective January 1, 2006.)

17215.5. (a) Prior to commencing the acquisition of real property for a new schoolsite in an area designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production, the governing board of a school district shall make all of the following findings:

(1) The school district has notified and consulted with the city, county, or city and county within which the prospective schoolsite is to be located.

(2) The final site selection has been evaluated by the governing board of the school district based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land.

(3) The school district will attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect the pupils and employees at the schoolsite.

(b) Subdivision (a) shall not apply to any schoolsite approved by the State Department of Education prior to January 1, 1997.

(Added by renumbering Section 39006 by Stats. 2000, Ch. 135, Sec. 39. Effective January 1, 2001.)

17216. No action undertaken by the State Department of Education or by any other state agency or by any political subdivision pursuant to this chapter, or in compliance with this chapter, shall be construed to affect any rights arising under the provisions of Section 19 of Article 1 of the California Constitution.

(Added by Stats. 1996, Ch. 277, Sec. 3. Effective January 1, 1997. Operative January 1, 1998.)

17217. (a) The governing board of a school district may acquire a site for a school building contiguous to the boundaries of the district and upon the acquisition of the site it shall become a part of the district.

(b) The site may not be acquired until all of the following conditions are met:

(1) A majority of the members of the governing board of the acquiring school district approves a petition requesting approval of the acquisition.

(2) The petition is filed with the county superintendent of schools with jurisdiction over the acquiring school district. If the site is in a county that is not the county in which the acquiring school district is located, the petition shall be filed with each of the county superintendents of the counties concerned. Within 10 working days of the date the petition is filed, each superintendent of schools of those counties shall notify the governing board of each school district involved that the petition was filed.

(3) The county committee on school district organization of the county of the acquiring school district approves the petition. If the site is in a county that is not the county in which the acquiring school district is located, each of the county committees on school district organization concerned shall approve the petition. The county committees on school district organization shall approve or disapprove a petition within 60 days from the day the governing board filed the petition with the county superintendent of schools.

(c) Notwithstanding subdivision (b), if each of the county committees on school district organization does not approve the petition as required by paragraph (3) of subdivision (b), the petition may be submitted to the Superintendent of Public Instruction for approval. If the Superintendent of Public Instruction approves the petition, the governing board may acquire the site.

(d) In approving the acquisition of a site pursuant to this section, the county committees on school district organization and the Superintendent of Public Instruction shall consider the extent to which the following are met:

(1) The proposed site acquisition will not promote racial or ethnic discrimination or segregation.

(2) The proposed site acquisition will not result in any substantial increase in costs to the state.

(3) The proposed site acquisition will not significantly disrupt the educational programs in the school districts affected by the proposed site acquisition and will continue to promote sound education performance in those school districts.

(4) The proposed site acquisition will not result in a significant increase in school housing costs.

(5) The proposed site acquisition is not primarily designed to result in a significant increase in property values causing financial advantage to property owners because territory was transferred from one school district to an adjoining school district.

(6) The proposed site acquisition will not cause a substantial negative effect on the fiscal management or fiscal status of any school district affected by the proposed site acquisition.

(e) The power of eminent domain may be used for the purposes of this section.

(f) A schoolsite is contiguous for the purpose of this section although separated from the boundaries of the district by a road, street, stream, or other natural or artificial barrier or right-of-way.

(Amended by Stats. 2003, Ch. 798, Sec. 1. Effective January 1, 2004.)

17218. The governing board of a school district which has been included in a school district unification proposal approved by the electors of the territory involved pursuant to Chapter 2 (commencing with Section 4206) of Part 3, may, prior to the time the new unified school district becomes effective for all purposes, acquire a site for a school building at any place within the new unified school district, and upon the acquisition of the site it shall become a part of the district pending the date when the new unified school district becomes effective for all purposes. The site shall not be acquired until the county committee on school district organization of the county or of each of the counties concerned has received the proposal for acquisition of the site and reported its recommendations thereon to the governing boards of the districts concerned and to each county superintendent of schools concerned. The report of the county committee shall be made within 60 days from the time the proposal for acquisition of the site was submitted to it.

(Added by Stats. 1996, Ch. 277, Sec. 3. Effective January 1, 1997. Operative January 1, 1998.)

17219. (a) Whenever a school district acquires or has acquired a site for school purposes, as determined by the State Allocation Board, and does not use the site within (1) five years of the date of acquisition for the kindergarten, if any, and any of grades 1 to 8, inclusive, maintained by an elementary school district or a unified school district, or, (2) seven years of the date of acquisition for any of grades 7 to 12, inclusive, maintained by a high school district or a unified school district, or if a school district has a site at any grade level that has previously been used but has not been used for school purposes within the preceding five years, the school district shall be subject to nonuse payments, unless the State Allocation Board, from time to time, makes a determination that the school district will utilize the property for the purpose for which it was intended within a reasonable period of time, in a specific amount for each additional year in which the site is retained and not used by the district beyond the foregoing specified periods, except the first additional year shall be deemed to end not earlier than April 30, 1973.

(b) Payment shall not be required under this section as to any site having a value of twenty thousand dollars ($20,000) or less. Commencing on January 1, 1988, and annually thereafter, the State Allocation Board shall increase this exemption figure by the amount of the current fiscal year inflation adjustment specified in Section 42238.1, if any.

(c) The payments required shall be computed by the Executive Officer of the State Allocation Board and certified to the Controller, and payments shall be equal to one one-hundredth (1/100) of the original purchase price of the site modified by either a factor reflecting the change in assessed value of all lands in the state from the date of purchase of the site to the current date or any other factor that in the determination of the State Allocation Board is applicable to the site under consideration.

(d) Whenever the State Allocation Board has determined that a school district in good faith has, within the preceding year, advertised the schoolsite for sale to the highest bidder pursuant to the provisions of Article 4 (commencing with Section 17455) of Chapter 4 of Part 10.5 and has received no bids that in the judgment of the State Allocation Board reflect the fair market value of the property, the Executive Officer of the State Allocation Board shall not compute any nonuse payments for the site for a period of one year beyond the date of the determination.

(e) Nonuse payments shall not be required for any year with respect to a schoolsite that for one-half or more of the number of days of that year has been utilized for any of the following purposes:

(1) By the school district, or by any other governmental entity pursuant to agreement with the school district, for school purposes, for use as a civic center, or for community playground, playing field, or other outdoor recreational purposes. "Civic center," for this purpose, means a site used for one or more of the purposes described in Section 40041.

(2) By the State Allocation Board, pursuant to agreement with the school district, for the storage of emergency portable classrooms.

(3) By the school district, or by any other public or private entity pursuant to agreement with the school district, for the operation of a child care program.

(f) Nonuse payments shall not be required for any year with respect to a schoolsite that was leased at least one-half of the days in that year in a manner that subjected the site to property taxes equal to the taxes that would have been paid if the site had been sold.

(Added by Stats. 1996, Ch. 277, Sec. 3. Effective January 1, 1997. Operative January 1, 1998.)

17220. If the State Allocation Board determines a school district to be exempt from the requirement to make nonuse payments for any year as to any schoolsite on any basis authorized under subdivision (e) or (f) of Section
17219, that exemption shall continue to apply to that schoolsite for each subsequent year for which the superintendent of the school district certifies to the State Allocation Board, on a timely basis, that the basis of exemption continues to exist.

(Added by Stats. 1996, Ch. 277, Sec. 3. Effective January 1, 1997. Operative January 1, 1998.)

17221. The amount of any nonuse payments required of any school district under Section 17219 shall be reduced, without regard to fiscal year, by the amount of the proceeds, resulting from the lease of district property that is subject to that section, that are expended by the district the payment of bond debt service costs that are directly related to the actual construction of school facilities.

(Added by Stats. 1996, Ch. 277, Sec. 3. Effective January 1, 1997. Operative January 1, 1998.)

17222. The Controller shall, during the next fiscal year following that in which the Executive Officer of the State Allocation Board certifies to him or her the amount of payment, deduct the total amount of the payment of each district in equal amounts from each of the February, March, April and May installments of the apportionments made to the district from the State School Fund under Sections 46304, 46305, and 41050, Sections 41330 to 41343, inclusive, and Sections 41600 to 41972, inclusive, whichever are in effect. However, in no event shall the deductions exceed an amount which would result in a district's receiving, in any school year, from the State School Fund, less than one hundred twenty dollars ($120) per pupil in average daily attendance in the district during the preceding school year. On order of the Controller, the amount so deducted shall be transferred to the State School Site Utilization Fund which is hereby created.

(Added by Stats. 1996, Ch. 277, Sec. 3. Effective January 1, 1997. Operative January 1, 1998.)

17223. (a) Whenever a school district has either begun to use an unused site or has sold that site within two years of the date the Controller, pursuant to Section 17222, has deducted a certified nonuse payment from the district's State School Fund apportionment, the State Allocation Board shall certify that fact to the Controller. The Controller shall then cease to withhold any additional payments and shall return to the district from the State School Site Utilization Fund the payments, without interest, which had been withheld for the particular site during the prior fiscal year and the current fiscal year.

(b) If the school district begins to use or has sold the site more than two years after the aforesaid date, the State Allocation Board shall so certify to the Controller and no further payments shall be withheld as specified in Section 17222.

(Added by Stats. 1996, Ch. 277, Sec. 3. Effective January 1, 1997. Operative January 1, 1998.)

17224. Any funds in the State School Site Utilization Fund, including interest, that are not subject to return to a school district pursuant to Section 17223 shall revert to the Deferred Maintenance Fund.

(Amended by Stats. 1998, Ch. 330, Sec. 8. Effective August 21, 1998.)

Article 2. Disposal of Sites

(Article 2 added by Stats. 1996, Ch. 277, Sec. 3.
Effective January 1, 1997.
Operative January 1, 1998.)

17230. Notwithstanding the provisions of Article 4 (commencing with Section 17455) of Chapter 4 of this part and in addition to the requirements placed upon school districts pursuant to Section 54222 of the Government Code, the governing board of any school district may sell, for less than fair market value, any schoolsite that is deemed to be surplus property of the district, to any park district, city, or county in which the school district is wholly or partially situated for use or partial use as park or recreational purposes or open-space purposes if the governing board adopts a resolution specifying that it will sell or transfer the property for less than fair market value to such an entity for that purpose. The offer to sell shall be made in writing, but the terms by which the property may be sold or transferred need not be specifically provided.

(Added by Stats. 1996, Ch. 277, Sec. 3. Effective January 1, 1997. Operative January 1, 1998.)

17231. The sale or transfer may be made for cash and other valuable consideration, or for other valuable consideration, as deemed appropriate by the governing board of the school district. The sale or transfer may be made without first taking a vote of the electors of the district.

(Added by Stats. 1996, Ch. 277, Sec. 3. Effective January 1, 1997. Operative January 1, 1998.)

17232. A school district's offer to sell or transfer the land shall be made to all park districts, cities, and counties in which the school

district is wholly or partially situated pursuant to this article and shall remain open for not less than 60 days. The sale or transfer shall be made to whichever public entity first accepts the offer, or whichever public entity can negotiate satisfactorily for the purchase or transfer of the surplus land.

(Added by Stats. 1996, Ch. 277, Sec. 3. Effective January 1, 1997. Operative January 1, 1998.)

17233. Notwithstanding Article 4 (commencing with Section 17455) of Chapter 4 of this part, Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code, or any other provision of law, any unimproved real property that was acquired by a school district pursuant to Section 35270.5, which property the governing board of the school district has deemed to be surplus property of the district, may not be sold to any person or entity within 20 years of its acquisition by the district unless the district has first made a bona fide offer to sell the property to the person or entity that owned the property at the time of its acquisition by the district or, if applicable, offered to that person or entity a right of first refusal of any bona fide offer acceptable to the district made by another to purchase the property.

(Added by Stats. 1996, Ch. 277, Sec. 3. Effective January 1, 1997. Operative January 1, 1998.)

17234. The failure to comply with any provision of this article shall not invalidate any sale or transfer of real property to a purchaser or encumbrancer for value.

(Added by Stats. 1996, Ch. 277, Sec. 3. Effective January 1, 1997. Operative January 1, 1998.)

GOVERNMENT CODE

CHAPTER 1. ADMINISTRATION

(Chapter 1 added by Stats. 1961, Ch. 2037.)

12800. There are in the state government the following agencies: State and Consumer Services; Business, Transportation and Housing; California Environmental Protection; California Health and Human Services; Labor and Workforce Development; Natural Resources; and Youth and Adult Correctional.

Whenever the term "Agriculture and Services Agency" appears in any law, it means the "State and Consumer Services Agency," and whenever the term "Secretary of Agriculture and Services Agency" appears in any law, it means the "Secretary of State and Consumer Services."

Whenever the term "Business and Transportation Agency" appears in any law, it means the "Business, Transportation and Housing Agency," and whenever the term "Secretary of the Business and Transportation Agency" appears in any law, it means the "Secretary of Business, Transportation and Housing."

Whenever the term "Health and Welfare Agency" appears in any law, it means the "California Health and Human Services Agency," and whenever the term "Secretary of the Health and Welfare Agency" appears in any law, it means the "Secretary of California Health and Human Services."

Whenever the term "Resources Agency" appears in any law, it means the "Natural Resources Agency," and whenever the term "Secretary of the Resources Agency" appears in any law, it means the "Secretary of the Natural Resources Agency."

(Amended by Stats. 2008, Ch. 205, Sec. 1. Effective January 1, 2009.)

12801. Each agency is under the supervision of an executive officer known as the secretary. Each secretary shall be appointed by, and hold office at the pleasure of, the Governor. The appointment of each secretary is subject to confirmation by the Senate. The annual salary of each secretary is provided for by Chapter 6 (commencing with Section 11550) of Part 1.

(Amended by Stats. 1982, Ch. 454, Sec. 44.)

12802. (a) The Natural Resources Agency shall succeed to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction previously vested in the Resources Agency.

(b) The Secretary of the Natural Resources Agency shall succeed to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction previously vested in the Secretary of the Resources Agency.

(Added by Stats. 2008, Ch. 205, Sec. 2. Effective January 1, 2009.)

12802.5. The Governor may, with respect to the Resources Agency, appoint an Assistant Secretary for Energy Matters who may serve as Secretary for Resources designee on the Energy Resources Conservation and Development Commission and an Assistant Secretary for Coastal Matters who may serve as Secretary for Resources designee on the State Coastal Commission.

(Added by Stats. 1977, Ch. 660.)

12802.8. The Governor may, with respect to the Business, Transportation and Housing Agency, appoint a Deputy Secretary of Housing, who shall serve as the secretary's primary advisor on housing matters.

The Deputy Secretary of Housing shall hold office at the pleasure of the secretary and shall receive a salary as shall be fixed by the secretary with the approval of the Department of Finance.

(Added by Stats. 1980, Ch. 1153.)

12803. (a) The California Health and Human Services Agency consists of the following departments: Health Care Services; Mental Health; Developmental Services; Public Health; Social Services; Alcohol and Drug Abuse; Aging; Rehabilitation; and Community Services and Development.

(b) The agency also includes the Office of Statewide Health Planning and Development and the State Council on Developmental Disabilities.

(c) The Department of Child Support Services is hereby created within the agency commencing January 1, 2000, and shall be the single organizational unit designated as the state's Title IV-D agency with the responsibility for administering the state plan and providing services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations as required by Section 654 of Title 42 of the United States Code. State plan functions shall be performed by other agencies as required by law, by delegation of the department, or by cooperative agreements.

(Amended by Stats. 2006, Ch. 241, Sec. 6. Effective January 1, 2007. Operative July 1, 2007, by Sec. 37 of Ch. 241.)

12803.3. (a) For purposes of this section, the following definitions shall apply:

(1) "Director" means the Director of the Office of Systems Integration.

(2) "Office" means the Office of Systems Integration.

(3) "Services" means all functions, responsibilities, and services deemed to be functions, responsibilities, and services of the Systems Integration Division, also known as Systems Management Services, of the California Health and Human Services Agency Data Center, as determined by the Secretary of California Health and Human Services.

(b) (1) The Systems Integration Division of the California Health and Human Services Agency Data Center is hereby transferred to the California Health and Human Services Agency and shall be known as the Office of Systems Integration. The Office of Systems Integration shall be the successor to, and is vested with, all of the duties, powers, purposes, responsibilities, and jurisdiction of the Systems Integration Division of the California Health and Human Services Agency Data Center.

(2) Notwithstanding any other law, all services of the Systems Integration Division of the California Health and Human Services Agency Data Center shall become the services of the Office of Systems Integration.

(c) The office shall be under the supervision of a director, known as the Director of the Office of Systems Integration, who shall be appointed by, and serve at the pleasure of, the Secretary of California Health and Human Services.

(d) No contract, lease, license, or any other agreement to which the California Health and Human Services Data Center is a party on the date of the transfer as described in paragraph (1) of subdivision (b) shall be void or voidable by reason of this section, but shall continue in full force and effect. The office shall assume from the California Health and Human Services Data Center all of the rights, obligations, and duties of the Systems Integration Division. This assumption of rights, obligations, and duties shall not affect the rights of the parties to the contract, lease, license, or agreement.

(e) All books, documents, records, and property of the Systems Integration Division shall be in the possession and under the control of the office.

(f) All officers and employees of the Systems Integration Division shall be designated as officers and employees of the agency. The status, position, and rights of any officer or employee shall not be affected by this designation and all officers and employees shall be retained by the agency pursuant to the applicable provisions of the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5), except as to any position that is exempt from civil service.

(g) (1) All contracts, leases, licenses, or any other agreements to which the California Health and Human Services Data Center is a party regarding any of the following are hereby assigned from the California Health and Human Services Data Center to the office:

(A) Statewide Automated Welfare System (SAWS).

(B) Child Welfare Services/Case Management System (CWS/CMS).

(C) Electronic Benefit Transfer (EBT).

(D) Statewide Fingerprinting Imaging System (SFIS).

(E) Case Management Information Payrolling System (CMIPS).

(F) Employment Development Department Unemployment Insurance Modernization (UIMOD) Project.

(2) All other contracts, leases, or agreements necessary or related to the operation of the Systems Integration Division of the California Health and Human Services Data Center are hereby assigned from the California Health and Human Services Data Center to the office.

(h) It is the intent of the Legislature that the transfer of the Systems Integration Division of the California Health and Human Services Agency Data Center pursuant to this section shall be retroactive to the

passage and enactment of the Budget Act of 2005 and that existing employees of the Systems Integration Division of the California Health and Human Services Agency Data Center and the newly established Office of Systems Integration shall not be negatively impacted by the reorganization and transfer conducted pursuant to this section.

(i) It is the intent of the Legislature to review fully implemented information technology projects managed by the office to assess the viability of placing the management responsibility for those projects in the respective program department.

(j) On or before April 1, 2006, the Department of Finance shall report to the Chairperson of the Joint Legislative Budget Committee the date that the administration shall conduct an assessment for each of the projects managed by the office. The California Health and Human Services Agency, the California Health and Human Services Agency Data Center, or its successor, the State Department of Social Services, and the office shall provide to the Department of Finance all information and analysis the Department of Finance deems necessary to conduct the assessment required by this section. Each assessment shall consider the costs, benefits, and any associated risks of maintaining the project management responsibility in the office and of moving the project management responsibility to its respective program department.

(k) The California Health and Human Services Agency shall not place or transfer information technology projects in the office, without further legislation authorizing these activities.

(Added by Stats. 2005, Ch. 78, Sec. 8. Effective July 19, 2005.)

12803.4. The Secretary of the California Health and Human Services Agency shall evaluate, on or before April 1, 2006, how the use of established state and federal programs and databases may be optimized in order to facilitate the automatic enrollment of eligible customers into the California Alternate Rates for Energy or CARE program established pursuant to Section 739.1 of the Public Utilities Code, while complying with state and federal privacy laws.

(Added by Stats. 2005, Ch. 662, Sec. 2. Effective January 1, 2006.)

12803.5. The Governor, upon recommendation of the Secretary of the Health and Welfare Agency, may appoint not to exceed two deputies for the secretary.

(Amended by Stats. 1978, Ch. 432.)

12803.6. (a) The Governor shall authorize the secretary of the Labor and Workforce Development Agency, in collaboration with the secretary of the California Health and Human Services Agency, to make available the expertise of state employees and programs to support the employment-related needs of individuals with disabilities. Using existing resources, the agencies shall develop a sustainable, comprehensive strategy to do all of the following:

(1) Bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population.

(2) Support the goals of equality of opportunity, full participation, independent living, and economic self-sufficiency for these individuals.

(3) Ensure that state government is a model employer of individuals with disabilities.

(4) Support state coordination with, and participation in, benefits planning training and information dissemination projects supported by private foundations and federal grants.

(b) (1) The Labor and Workforce Development Agency shall monitor and enforce implementation of Section 188 of the federal Workforce Investment Act of 1998 (29 U.S.C. Sec. 2938), and shall require local workforce investment boards to report as follows:

(A) By July 1, 2003, each local workforce investment board shall report to the Labor and Workforce Development Agency or its designated department on the steps it has taken to ensure compliance with Section 188 of the federal Workforce Investment Act of 1998 (29 U.S.C. Sec. 2938), in regard to the provisions as they apply to persons with disabilities.

(B) By October 31, 2003, each local workforce investment board that chooses to participate in the federal Ticket to Work and Self-Sufficiency program shall report to the California Workforce Investment Board on its readiness to meet the eligibility standards to serve as an employment network under the federal Ticket to Work and Self-Sufficiency program (Section 1148(f), Part A, Title XI of the Social Security Act, 42 U.S.C. Section 1320b-19).

(2) The Labor and Workforce Development Agency shall report its findings, based on the reports described in subparagraph (A) of paragraph (1), to the Governor and the Legislature.

(Added by Stats. 2002, Ch. 1088, Sec. 2. Effective January 1, 2003.)

12803.65. (a) The Governor shall rename and establish, in the Labor and Workforce Development Agency, the existing California Governor's Committee on Employment of Disabled Persons as the "California Governor's Committee on Employment of People with Disabilities" or "CGCEPD."

(b) (1) The California Governor's Committee on Employment of People with Disabilities shall include, but not be limited to, the following:

(A) Four individuals with disabilities representing disabled persons, two appointed by the Governor and one each appointed by the Senate Committee on Rules and the Speaker of the Assembly, each for a three-year term.

(B) The Directors of the Employment Development Department, State Department of Health Services, State Department of Mental Health, State Department of Developmental Services, State Department of Social Services, and Department of Rehabilitation, and the Chair of the State Independent Living Council.

(C) Representatives from the State Department of Health Services' California Health Incentive Improvement Project.

(D) A representative from the California Workforce Investment Board.

(E) Representatives from any other department or program that may have a role in increasing the capacity of state programs to support the employment-related needs of individuals with disabilities.

(F) A representative from a local one-stop or local workforce investment board, to be appointed by the Governor.

(G) A business representative with experience in employing persons with disabilities, to be appointed by the Governor.

(2) The members of the California Governor's Committee on Employment of People with Disabilities shall select a chair from among the members, and shall hold open meetings no less than quarterly.

(c) The California Governor's Committee on Employment of People with Disabilities shall consult with and advise the Labor and Workforce Development Agency and the California Health and Human Services Agency on all issues related to full inclusion in the workforce of persons with disabilities, including development of the comprehensive strategy required pursuant to Section 12803.6 and implementation of the grant program established pursuant to Section 12803.7.

(d) The California Governor's Committee on Employment of People with Disabilities shall also:

(1) Coordinate and provide leadership, as necessary, with regard to efforts to increase inclusion in the workforce of persons with disabilities.

(2) Report annually to the Legislature and the Governor on the employment status of Californians with disabilities.

(e) The California Governor's Committee on Employment of People with Disabilities shall provide support to the State Workforce Investment Board and the local one-stop centers in their efforts to achieve full compliance with Sections 18002, 18004, 18006, and 18008 of the Unemployment Insurance Code, and shall identify the extent to which any one-stops are not in full compliance with those sections and the reasons for the lack of compliance, including the need for additional resources.

(f) The California Governor's Committee on Employment of People with Disabilities shall meet quarterly with the California Health Incentive Improvement Project, administered by the State Department of Health Services, and the project's steering committee, to the extent funding for the project continues and the activities of the California Governor's Committee on Employment of People with Disabilities are not inconsistent with the charge of the California Health Incentive Improvement Project.

(g) Using existing funding, the California Governor's Committee on Employment of People with Disabilities shall facilitate, promote, and coordinate collaborative dissemination of information on employment supports and benefits, which shall include the Ticket to Work program and health benefits, to individuals with disabilities, consumers of public services, employers, service providers, and state and local agency staff.

(h) Using existing funding, the California Governor's Committee on

Employment of People with Disabilities shall receive primary administrative and staff support from the State Employment Development Department.

(Added by Stats. 2002, Ch. 1088, Sec. 3. Effective January 1, 2003.)

12803.7. The California Governor's Committee on Employment of People with Disabilities, in conjunction with the Department of Rehabilitation, pursuant to Section 12803.65 and to the extent that funds are available, shall make grants available to counties and local workforce investment boards, through collaborative efforts of public agencies and private organizations, including organizations that serve people with disabilities, to accomplish both of the following purposes:

(a) To develop local strategies, including, but not limited to, regular cross-agency staff training, for enhancing employment opportunities for individuals with disabilities.

(b) To fund comprehensive local or regional benefits planning and outreach programs to assist individuals with disabilities in removing barriers to work.

(Added by Stats. 2002, Ch. 1088, Sec. 4. Effective January 1, 2003.)

12803.8. The secretary shall provide all possible assistance to any county desiring to integrate or otherwise unify services administered by one or more departments in the Health and Welfare Agency. This assistance shall include, but not be limited to, the provision of technical assistance, modification or waiving of administrative regulations, and supporting legislation to modify statutory requirements impeding the integration of services.

The directors of departments within the Health and Welfare Agency shall cooperate with the secretary in assisting the counties to achieve the integration of health, social service, and other programs. At the request of the secretary, the directors of departments shall make available all reasonable resources necessary to meet the legislative intent of integrating these services at the local level.

(Added by Stats. 1977, Ch. 1252.)

12804. The Agriculture and Services Agency is hereby renamed the State and Consumer Services Agency.

The State and Consumer Services Agency consists of the following: the Department of General Services; the Department of Technology Services; the Department of Consumer Affairs; the Franchise Tax Board; the Public Employees' Retirement System; the State Teachers' Retirement System; the Department of Fair Employment and Housing; the Fair Employment and Housing Commission; the California Science Center; the California Victim Compensation and Government Claims Board; the California African-American Museum; the State Building and Standards Commission; the Alfred E. Alquist Seismic Safety Commission; and the Office of Information Security and Privacy Protection.

(Amended by Stats. 2007, Ch. 183, Sec. 9. Effective January 1, 2008.)

12804.5. The Secretary of the State and Consumer Services Agency is hereby authorized to develop programs for technical and fiscal assistance to facilitate nonprofit, self-help community vegetable gardens and related supporting activities.

(Added by Stats. 1980, Ch. 1054.)

12804.7. The State and Consumer Services Agency succeeds to and is vested with all the duties, powers, purposes, and responsibilities, and jurisdiction vested in the Department of Food and Agriculture by Part 3 (commencing with Section 3801) of Division 3 of the Food and Agricultural Code with respect to the Museum of Science and Industry.

(Added by renumbering Section 12804.5 (as added by Stats. 1981, Ch. 399) by Stats. 1985, Ch. 106, Sec. 49.)

12805. (a) The Resources Agency is hereby renamed the Natural Resources Agency. The Natural Resources Agency consists of the departments of Forestry and Fire Protection, Conservation, Fish and Game, Boating and Waterways, Parks and Recreation, and Water Resources; the State Lands Commission; the Colorado River Board; the San Francisco Bay Conservation and Development Commission; the Central Valley Flood Protection Board; the Energy Resources Conservation and Development Commission; the Wildlife Conservation Board; the Delta Protection Commission; the Native American Heritage Commission; the California Conservation Corps; the California Coastal Commission; the State Coastal Conservancy; the California Tahoe Conservancy; the Santa Monica Mountains Conservancy; the Coachella Valley Mountains Conservancy; the San Joaquin River Conservancy; the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy; the Baldwin Hills Conservancy; the San Diego River Conservancy; and the Sierra Nevada Conservancy.

(b) No existing supplies, forms, insignias, signs, or logos shall be destroyed or changed as a result of changing the name of the Resources Agency to the Natural Resources Agency, and those materials shall continue to be used until exhausted or unserviceable.

(Repealed and added by Stats. 2008, Ch. 205, Sec. 4. Effective January 1, 2009.)

12805.1. The Secretary of the Resources Agency shall facilitate coordination between the Department of Fish and Game and the California Coastal Commission in a manner consistent with, and in furtherance of, the goals and policies of Division 20 (commencing with Section 30000) of the Public Resources Code (the California Coastal Act of 1976) and of Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code (the Natural Community Conservation Planning Act).

(Added by Stats. 2000, Ch. 87, Sec. 6. Effective July 5, 2000.)

12805.2. (a) The Resources Agency, in consultation with each department, board, conservancy, and commission within the agency, shall develop and maintain a database of lands and easements that have been acquired by the departments and boards within the Resources Agency. The database shall include, but need not be limited to, all of the following:

(1) The name of the owner of the land or easement.

(2) The location of the land or easement.

(3) The statutory authority for the acquisition of the land or easement.

(b) In conjunction with the database described in subdivision (a), the Resources Agency shall do all of the following:

(1) On or before September 1, 2002, and each year thereafter, request that all departments, boards, commissions, and conservancies within the Resources Agency provide the Secretary of the Resources Agency with information on any acquisitions of land or funding that was directed to the acquisition of land, undertaken by the department, board, commission, or conservancy.

(2) To the extent that the information is available, on or before January 10, 2003, and each year thereafter, require that all departments, boards, commissions, and conservancies within the Resources Agency provide the Secretary of the Resources Agency with general information, including a general geographic description of land acquisition priorities and potential funding sources during the next fiscal year.

(3) To the extent feasible, review and evaluate any available information from federal agencies pertaining to its land acquisition activities to coordinate and better understand the impact on California state proposals.

(4) Provide a report to the Governor and the Legislature on or before December 31, 2003, and each year thereafter, that does both of the following:

(A) Describes the amount of land acquired by each department, board, commission, and conservancy within the Resources Agency during the past year and the amount of money spent for the acquisition.

(B) Projects the approximate amount of land that will be acquired by the Resources Agency during the following year.

(5) Provide the report described in paragraph (4) to the Secretary of Food and Agriculture and the Director of Conservation.

(6) Establish a uniform open process to ensure that information is readily available to the general public, local, state, and federal agencies, adjacent landowners, and other interested parties of record regarding any state hearings to approve proposed state land acquisitions.

(7) Develop strategies with local, state, and federal agencies so that a revenue stream is established to ensure management plans are adequately funded for all new acquisitions.

(c) This section shall be implemented only during those fiscal years for which funding is provided for the purposes of this section in the annual Budget Act or in another measure.

(Added by Stats. 2002, Ch. 8, Sec. 3. Effective January 1, 2003.)

12805.4. (a) The Secretary of the Resources Agency shall convene a committee to develop and submit to the Governor and the Legislature, on or before December 31, 2008, a Strategic Vision for a Sustainable Sacramento-San Joaquin Delta.

(b) The committee shall include all of the following:

(1) The Secretary of the Resources Agency.

(2) The Secretary of the Business, Transportation and Housing Agency.

(3) The Secretary for Environmental Protection.

(4) The Secretary of Food and Agriculture.

(5) The President of the Public Utilities Commission.

(c) The strategic vision shall address all of the following:

(1) Sustainable ecosystem functions, including aquatic and terrestrial flora and fauna.

(2) Sustainable land use and land use patterns.

(3) Sustainable transportation uses, including streets, roads and highways, and waterborne transportation.

(4) Sustainable utility uses, including aqueducts, pipelines, and power transmission corridors.

(5) Sustainable water supply uses.

(6) Sustainable recreation uses, including current and future recreational and tourism uses.

(7) Sustainable flood management strategies.

(8) Other aspects of sustainability deemed desirable by the committee.

(d) The committee shall seek input from elected officials, governmental agencies, interested parties, educational institutions, and affected local communities. The Governor or the committee may appoint a "blue ribbon" or citizen commission, advisory committee, task force, or any other group or groups that the Governor or the committee deems necessary or desirable to assist in carrying out this section.

(e) For the purposes of carrying out this section, the committee may also seek input from other policy and resource leaders.

(f) All relevant state agencies, at the request of the committee, shall make available staff and resources to assist in the preparation of the strategic vision.

(g) (1) The committee, its members, and state agencies represented on the committee may contract for consultants to assist in the preparation of the strategic vision.

(2) Contracts entered into pursuant to paragraph (1) shall terminate no later than December 31, 2008.

(3) Contracts entered into pursuant to paragraph (1) are exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(Added by Stats. 2006, Ch. 535, Sec. 1. Effective January 1, 2007.)

12805.5. (a) The Governor, utilizing the staff and resources of state agencies, shall transmit to the Legislature, not later than March 15 of each year, an environmental report designated as the "Environmental Report of the Governor" setting forth all of the following:

(1) A review of environmental developments during the preceding calendar year, including trends in air quality, water quality, solid waste, the generation and disposal of hazardous waste, population growth, the growth in number of vehicles, depletion of natural resources, and other indicators of environmental quality and pollution.

(2) Forecasts of trends in major indicators of environmental quality, resource depletion, and pollution.

(3) Insofar as possible within existing resources, an evaluation of the economic and human health costs of resource depletion, pollution, and changes in environmental quality.

(4) Additional material on the California environment that is pertinent and of interest, with historical analysis and future projections whenever possible.

(5) Summaries of state policies and actions that relate to environmental developments and trends.

(6) A status update on the California Environmental Technology Program established pursuant to Section 12812.5.

(b) In conjunction with the environmental report, the Governor shall present an environmental message reviewing significant environmental achievements of the past year, outlining problem areas, and defining environmental policy, and shall make recommendations as may be appropriate for programs to decrease pollution, improve environmental quality, and protect natural resources.

(Amended by Stats. 1993, Ch. 1306, Sec. 2. Effective October 11, 1993.)

12805.6. The Resources Agency shall identify, for future conservation, key buffer properties adjacent to large ecologically valuable working landscapes that provide significant economic benefits to the state, such as active military or National Guard properties, whose future viability could be threatened by encroachment of incompatible land use activities. An acquisition of a land or conservation easement on property identified pursuant to this section shall occur with a willing seller.

(Added by Stats. 2006, Ch. 77, Sec. 6. Effective July 18, 2006.)

12806. (a) The California Health and Human Services Agency shall succeed to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction vested in the Health and Welfare Agency.

(b) The Secretary of the California Health and Human Services Agency shall succeed to, and is vested with, all the duties, powers, purposes, responsibilities, and jurisdiction vested in the Secretary of the Health and Welfare Agency.

(Repealed and added by Stats. 1998, Ch. 817, Sec. 4. Effective January 1, 1999.)

12807. (a) The Resources Agency succeeds to and is vested with all the duties, powers, purposes, responsibilities, and jurisdiction vested in the Health and Welfare Agency in respect to the Office of Atomic Energy Development and Radiation Protection, which, by Section 12803, is renamed the Office of Nuclear Energy and transferred to the Resources Agency.

The Secretary of the Resources Agency succeeds to and is vested with all the duties, powers, purposes, responsibilities, and jurisdiction vested in the Administrator of the Health and Welfare Agency in respect to the Office of Atomic Energy Development and Radiation Protection.

(b) Any reference to the Health and Welfare Agency or to the administrator of that agency in any law pertaining to the Office of Atomic Energy Development and Radiation Protection or the Office of Nuclear Energy shall be considered a reference to the Resources Agency or to the Secretary of the Resources Agency, as the case may be, unless the context otherwise requires.

(Added by Stats. 1969, Ch. 138.)

12807.5. The Secretary of the Resources Agency, in reviewing projects pursuant to Sections 5096.87 and 5096.128 of the Public Resources Code, shall consider the arborescent prototype park project of the Southgate Recreation and Park District in Sacramento County.

It is the intent of the Legislature that, if the secretary deems that project to be among projects of highest priority and there are insufficient moneys available under the Z'berg-Collier Park Bond Act and the Nejedly-Hart State, Urban, and Coastal Park Bond Act of 1976 to fund a one hundred seventy-two thousand dollar ($172,000) grant to the district for that project, any deficiency in that grant be made from other available sources.

(Amended by Stats. 2006, Ch. 538, Sec. 253. Effective January 1, 2007.)

12807.6. (a) The Resources Agency shall establish a revolving low-interest loan program and a grant program for commercial fishing vessel owners, operators, and crew members whose primary source of income for each of the last five years has been derived from commercial fishing. The purpose of the low-interest loan program and the grant program is to provide financial assistance to these commercial fishermen who have suffered devastating economic losses from the drought.

(b) Commercial fishing vessel owners, operators, and crew members may apply for a loan under the program at an interest rate not to exceed 3 percent per annum in order to assist them in rescheduling their debts for commercial fishing vessels, homes, and motor vehicles. Applicants shall demonstrate to the Resources Agency the necessity to reschedule these loans.

(c) The Resources Agency may provide grants, not to exceed three months' payment or five thousand dollars ($5,000), whichever is less, to commercial fishermen for the purpose of making payments on commercial fishing vessels, homes, and motor vehicles. Applicants for these grants shall have previously submitted applications for low-interest loans pursuant to

subdivision (b). Checks for the amount of the grant shall be issued to the lender who holds title to the property.

(Added by Stats. 1991, 1st Ex. Sess., Ch. 11, Sec. 3. Effective October 7, 1991.)

12808. The Health and Welfare Agency and the Resources Agency may use the unexpended balances of funds available for use by the Human Relations Agency in connection with the functions of the Human Relations Agency that are transferred to or vested in the Health and Welfare Agency or the Resources Agency by Section 12803, 12806, or 12807, as the case may be. Such funds shall be used by the Health and Welfare Agency and the Resources Agency only for the purposes for which they were originally appropriated or otherwise made available to the Human Relations Agency.

(Amended by Stats. 1982, Ch. 624, Sec. 6.)

12809. All officers and employees of the Human Relations Agency who, on the effective date of the 1972 amendment of this section, are serving in the state civil service, other than as temporary employees, and engaged in the performance of a function transferred to or vested in the Health and Welfare Agency or the Resources Agency by Section 12803, 12806, or 12807 shall be transferred to the Health and Welfare Agency or the Resources Agency, as the case may be. The status, positions, and rights of such persons shall not be affected by the transfer, and shall be retained by them as officers and employees of the Health and Welfare Agency or the Resources Agency pursuant to the State Civil Service Act, except as to positions exempt from civil service in the Human Relations Agency.

(Amended by Stats. 1982, Ch. 624, Sec. 7.)

12810. The Health and Welfare Agency and the Resources Agency shall have the possession and control of all records, papers, offices, equipment, supplies, moneys, funds, appropriations, land and other property, real or personal, held for the benefit or use of the Human Relations Agency in the performance of the duties, powers, purposes, responsibilities, and jurisdiction of the Human Relations Agency that are transferred to or vested in the Health and Welfare Agency or the Resources Agency by Section 12803, 12806, or 12807.

(Amended by Stats. 1982, Ch. 624, Sec. 8.)

12811.2. Any reference in any law in effect on June 30, 1979, to the Health and Welfare Agency or to the secretary of that agency, with respect to the Department of Corrections or the Department of the Youth Authority shall be considered a reference to the Youth and Adult Correctional Agency or to the Secretary of the Youth and Adult Correctional Agency, as the case may be, unless the context otherwise requires.

(Added by Stats. 1982, Ch. 624, Sec. 11.)

12811.3. (a) Notwithstanding any other provision of law and subject to the provisions of subdivision (i), any employee of a department, board, or commission under the jurisdiction of the Department of Corrections and Rehabilitation, who is designated as a peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may transfer from his or her current position to another department, board, or commission under the jurisdiction of the Department of Corrections and Rehabilitation.

(b) Any peace officer who desires to transfer to another department, board, or commission pursuant to subdivision (a), and who is prohibited from carrying a firearm pursuant to state or federal law may not transfer to a department, board, or commission that requires the use of a firearm.

(c) Any peace officer who desires to transfer to another department, board, or commission pursuant to subdivision (a) to a position requiring the ability to carry a firearm, as determined by the department, board, or commission, and who has not completed the required training pursuant
to Section 832 of the Penal Code, shall successfully complete the required training before appointment to his or her new peace officer position.

(d) (1) Any peace officer who desires to transfer shall not be required to undergo a psychological screening pursuant to subdivision (f) of Section 1031 or subdivision (a) of Section 13601 of the Penal Code, unless the Secretary of the Department of Corrections and Rehabilitation, or his or her designee, makes a determination that a peace officer is required to undergo all or a portion of a psychological screening as described in subdivision (f) of Section 1031 of this code or subdivision (a) of Section 13601 of the Penal Code.

(2) The Secretary of the Department of Corrections and Rehabilitation shall promulgate emergency regulations in order to implement paragraph (1). Notwithstanding subdivision (b) of Section 11346.1, no showing of an emergency shall be necessary in order to adopt, amend, or repeal the emergency regulations required by this paragraph.

(e) Any peace officer who has successfully completed a course of training pursuant to Section 13602 of the Penal Code and who transfers to another department, board, or commission pursuant to subdivision (a) shall not be required to complete a new course of training pursuant to Section 13602 of the Penal Code. However, each department, board, or commission may prescribe additional training to be provided to an employee who transfers pursuant to subdivision (a) and shall provide that training within the first six months of appointment to his or her new peace officer position.

(f) Any peace officer who desires to transfer to another department, board, or commission pursuant to subdivision (a) shall not be required to undergo a new background investigation pursuant to Section 1029.1.

(g) Nothing in this section shall affect an employee's seniority calculation as provided for under current law or any memorandum of understanding between the state and any applicable bargaining unit agreement in effect upon the effective date of this section.

(h) The provisions of the Unit 6 Memorandum of Understanding, which expires July 2, 2006, as modified by the ratified addendum dated June 30, 2004, relating to the release of copies of videotaped incidents, shall be subject to the California Public Records Act.

(i) This section shall become operative only when the Secretary of the Department of Corrections and Rehabilitation certifies in writing that it is necessary to prevent or minimize employment actions, including, but not limited to, layoffs, demotions, reductions in time base, or involuntary transfers of employees. In addition, the Secretary of the Department of Corrections and Rehabilitation shall have the sole authority to designate any or all departments, boards, or commissions eligible to have its peace officer employees transfer pursuant to subdivision (a) and any or all departments, boards, or commissions that shall accept peace officer employees under this section.

(Amended by Stats. 2008, Ch. 698, Sec. 7. Effective January 1, 2009. Section conditionally operative as provided in subd. (i).)

12812.2. (a) One of the deputies to the Secretary for Environmental Protection shall be a deputy secretary for law enforcement and counsel, who, subject to the direction and supervision of the secretary, shall have the responsibility and authority to do all of the following:

(1) Develop a program to ensure that the boards, departments, offices, and other agencies that implement laws or regulations within the jurisdiction of the California Environmental Protection Agency take consistent, effective, and coordinated compliance and enforcement actions to protect public health and the environment. The program shall include training and cross-training of inspection and enforcement personnel of those boards, departments, offices, or other agencies to ensure consistent, effective, and coordinated enforcement.

(2) In consultation with the Attorney General, establish a cross-media enforcement unit to assist a board, department, office, or other agency that implements a law or regulation within the jurisdiction of the California Environmental Protection Agency, to investigate and prepare matters for enforcement action in order to protect public health and the environment. The unit may inspect and investigate a violation of a law or regulation within the jurisdiction of the board, department, office, or other agency, including a violation involving more than one environmental medium and a violation involving the jurisdiction of more than one board, department, office, or agency. The unit shall exercise its authority consistent with the authority granted to the head of a department pursuant to Article 2 (commencing with Section 11180) of Chapter 2 of Part 1.

(3) Refer a violation of a law or regulation within the jurisdiction of a board, department, office, or other agency that implements a law or regulation within the jurisdiction of the California Environmental Protection Agency to the Attorney General, a district attorney, or city attorney for the filing of a civil or criminal action.

(4) Exercise the authority granted pursuant to paragraph (3) only after providing notice to the board, department, office, or other agency

unless the secretary determines that notice would compromise an investigation or enforcement action.

(b) Nothing in this section shall authorize the deputy secretary for law enforcement and counsel to duplicate, overlap, compromise, or otherwise interfere with an investigation or enforcement action undertaken by a board, department, office, or other agency that implements a law or regulation subject to the jurisdiction of the California Environmental Protection Agency.

(c) The Environmental Protection Agency shall post on its Web site, updated no later than December 1 of each year, the status of the implementation of this section.

(Amended by Stats. 2004, Ch. 644, Sec. 5. Effective January 1, 2005.)

12812.3. One of the deputies to the Secretary for Environmental Protection authorized pursuant to Section 12812.1 shall be a deputy secretary for external affairs who shall provide public outreach, communication to individuals and communities impacted by permitted activities, and technical support to businesses subject to regulation by one or more boards, departments, or offices within the California Environmental Protection Agency.

(Added by Stats. 1999, Ch. 65, Sec. 2. Effective January 1, 2000.)

12812.5. On or before March 1, 1994, the California Environmental Protection Agency, using existing resources and in consultation with other relevant agencies in state and local government, shall do all of the following:

(a) Establish an environmental technologies clearinghouse, which shall include, but not be limited to, maintaining information on California-based environmental technology companies and information on funding sources for environmental technology endeavors and making this information available to interested parties.

(b) Make available technical assistance within the California Environmental Protection Agency to assist California-based environmental technology companies to improve export opportunities, and to enhance foreign buyers' awareness of, and access to, environmental technologies and services offered by California-based companies. The technical assistance may include, but is not limited to, organizing and leading trade missions, receiving reverse trade missions, referral services, reviewing project opportunities, and notifying California-based companies of export opportunities and trade shows.

(c) Perform research studies and solicit technical advice to identify international market opportunities for California-based environmental technology companies.

(d) Participate in federally and other nonstate funded technical exchange programs, when appropriate, to increase foreign buyers' interest in California's environmental technologies.

(e) Coordinate activities in state government, and with the federal government and other countries' governments, to take advantage of trade promotion and financial assistance opportunities available to California-based environmental technology companies.

(Amended by Stats. 2004, Ch. 644, Sec. 6. Effective January 1, 2005.)

12812.6. The Secretary for Environmental Protection shall coordinate greenhouse gas emission reductions and climate-change activities in state government.

(Added by Stats. 2004, Ch. 230, Sec. 4. Effective August 16, 2004.)

12813. The Labor and Workforce Development Agency consists of the following:

(a) Office of the Secretary of Labor and Workforce Development.

(b) Agricultural Labor Relations Board.

(c) California Workforce Investment Board.

(d) Department of Industrial Relations, including the California Apprenticeship Council, California Occupational Safety and Health Appeals Board, California Occupational Safety and Health Standards Board, Commission on Health and Safety and Workers' Compensation, Industrial Welfare Commission, State Compensation Insurance Fund, and Workers' Compensation Appeals Board.

(e) Employment Development Department, including the California Unemployment Insurance Appeals Board, and the Employment Training Panel.

(Amended by Stats. 2003, Ch. 639, Sec. 1. Effective January 1, 2004.)

12814. (a) Notwithstanding any other provision of law, each state agency or department or political subdivision of the state may isolate any of its automated applications, computer hardware, or networking devices from nonproprietary networks, input streams, power sources, or other devices at any time and for any duration from 3 a.m. on December 31, 1999, to 12 p.m. on January 1, 2000, inclusive, if the Governor, the Chief Information Officer, upon designation of the Governor, or the Governor's Year 2000 Problem Executive Council, as established in Executive Order D-3-99, grants a written authorization for the proposed isolation.

(b) For the purposes of this section, the term "Year 2000 Problem" has the same meaning as that set forth in subdivision (a) of Section 3269 of the Civil Code.

(Added by Stats. 1999, Ch. 784, Sec. 19. Effective October 10, 1999.)

HEALTH & SAFETY CODE

HSC	Affected by Year	Chapter	Effect
25173.6	2008	760 *	Am
25174	2008	760 *	Am
25210.9	2008	179	Am
25214.1	2008	575	Am
25214.1.5	2008	575	Ad
25214.12	2008	575	Am
25214.13	2008	575	Am
25214.14	2008	575	Am
25214.15	2008	575	Am
25214.17	2008	575	Am
25214.18	2008	575	Am
25214.2	2008	575	Am
25214.22	2008	575	Ad
25214.22.1	2008	575	Ad
25214.23	2008	575	Ad
25214.24	2008	575	Ad
25214.26	2008	575	Ad
25214.3	2008	575	Am
25214.3.1	2008	575	Ad
25214.3.2	2008	575	Ad
25214.3.3	2008	575	Ad
25214.3.4	2008	575	Ad
25214.4	2008	575	Am
25214.4.2	2008	575	Am
25214.4.3	2008	581	Ad
25214.4.3	2008	581	Ad
25214.8.10	2008	572	Ad
25214.8.10	2008	572	Ad
25214.8.11	2008	572	Ad
25214.8.12	2008	572	Ad
25214.8.13	2008	572	Ad
25214.8.14	2008	572	Ad
25214.8.15	2008	572	Ad
25214.8.16	2008	572	Ad
25214.8.17	2008	572	Ad
25214.8.18	2008	572	Ad
25214.8.20	2008	572	Ad
25251	2008	560	Ad
25251	2008	560	Ad & R & Ad
25252	2008	559	Ad
25252.5	2008	559	Ad
25253	2008	559	Ad
25254	2008	559	Ad

25255	2008	559	Ad

HSC	Affected by Year	Chapter	Effect
25256	2008	560	Ad
25256.1	2008	560	Ad
25256.2	2008	560	Ad
25256.3	2008	560	Ad
25257	2008	559	Ad
25257.1	2008	560	Ad
25270.2	2008	179	Am
25299.24	2008	616	Am
25299.30	2008	616	S
25299.30	2008	616	S
25299.31	2008	616	S
25299.32	2008	616	S
25299.33	2008	616	S
25299.34	2008	616	S
25299.77	2008	616	S
25299.78	2008	616	S
25299.79	2008	616	S
25299.80	2008	616	S
25299.81	2008	616	S
25299.81	2008	616	Am
25299.90	2008	616	S
25299.90	2008	616	S
25299.91	2008	616	S
25299.92	2008	616	S
25299.93	2008	616	S
25299.94	2008	616	S
25299.95	2008	616	S
25299.96	2008	616	S
25299.97	2008	616	Am & S
25299.99.1	2008	616	S
25299.99.1	2008	616	S
25299.99.2	2008	616	S
25299.99.3	2008	616	S
25356.1	2008	644	Am
25395.35	2008	760 *	Ad
25395.35	2008	760 *	Ad
25395.36	2008	760 *	Ad
25404	2008	571	Am
25515	2008	562	Am

STATUTORY RECORD, 2008

CIVIL CODE

There were no statutes adopted in 2007 that amend the specified parts of the Civil Code.

EDUCATION CODE

There were no statutes adopted in 2007 that amend the specified parts of the Civil Code.

PUBLIC RESOURCES CODE

There were no statutes adopted in 2008 that amend the specified parts of the Public Resources Code.

GOVERNMENT CODE

	Affected By		
Section	Year	Chapter	Effect
12800	2008	205	Am
12802	2008	205	Ad
12805	2008	205	R & Ad

STATUTORY RECORD

SUPERIOR NOTES

Superior Notes Referenced by the Statutory Record

Note # 0722
Repeal operative January 1, 2016.

Note # 0730
Repeal operative December 31, 2011.

Note # 0967
Subdivisions (a) and (b) operative January 1, 2009.

Note # 0976
Any section of any act enacted by the Legislature during the 2008 calendar year that takes effect on or before January 1, 2009, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2008 calendar year and takes effect on or before January 1, 2009, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

Note # 0995
Operative only when the Secretary of the Department of Corrections and Rehabilitation certifies in writing that it is necessary to prevent or minimize employment actions, including, but not limited to, layoffs, demotions, reductions in time base, or involuntary transfers of employees.

Note # 1049
Repeal operative July 1, 2014.

Note # 1069
Effective January 1, 2012.