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Environmental Protection

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Environmental Protection

Environmental Protection; acutely hazardous materials—risk management

Health and Safety Code § 25505.4 (repealed and new); §§ 25509.3, 25531, 25532, 25533, 25534, 25535, 25536, 25537, 25538, 25539, 25540, 25541 (new).
AB 3777 (La Follette); 1986 STAT. Ch. 1260
Sponsor: Author

Under existing law, all businesses,1 with specified exceptions,2 that handle3 a hazardous material,4 in excess of a specified quantity,5 are required to prepare a business plan6 for emergency response to a release7 or threatened release8 of a hazardous material.9 Under Chapter 1260, the legislature recognizes that some chemical manufacturing and processing facilities may represent a threat to public health and safety if chemicals are accidently released.10 The legislature further recognizes that programs designed to prevent uncontrolled releases or explosions of hazardous materials are the most effective way to protect the community health and safety, and to protect the environment.11 Therefore, in addition to a business plan, Chapter 1260

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1. CAL. HEALTH & SAFETY CODE § 25501(c) (definition of business).
2. Id. § 25503.5(b) (list of exempt businesses).
3. Id. § 25501(h) (handle means to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material in any fashion).
4. Id. § 25503(j) (definition of hazardous material).
5. Id. § 25503.5(a) (specified quantity means, at any one time during the reporting year, equal to, or greater than, a total weight of 500 pounds, or a total volume of 55 gallons, or 200 cubic feet at standard temperature and pressure).
6. Id. § 25501(d) (definition of business plan). A business plan must include (1) an annual inventory of chemicals handled by the business, (2) the emergency response plans and procedures in the event of a release or threatened release of a hazardous material, and (3) the safety training procedures for employees of the business. Id. § 25504(a)-(c).
7. Id. § 25501(n) (definition of release).
8. Id. § 25501(p) (definition of threatened release).
9. Id. § 25503.5(a). The administering agency must provide all information obtained from completed inventory forms, upon request, to emergency rescue personnel on a 24-hour basis. Id. § 25503.5(c).
10. Id. § 25531.
11. Id.
provides for the Office of Emergency Services to develop an acutely hazardous material\textsuperscript{12} registration form to be completed by the owner or operator of each business in the State, with specified exceptions,\textsuperscript{13} that, at any time, handles any acutely hazardous material.\textsuperscript{14} Before placing additional requirements upon a business, however, the county or city agency responsible for administering hazardous material business plans (administering agency)\textsuperscript{15} must determine that existing law or regulatory programs fail to substantially address and mitigate the purposes of Chapter 1260.\textsuperscript{16}

After receiving a completed registration form, the administering agency has ninety days to determine if a handler's operation presents an acutely hazardous material accident risk.\textsuperscript{17} A handler presenting such a risk may be required, by an administering agency, to prepare a risk management and prevention program (RMPP)\textsuperscript{18} within twelve months following the program's request.\textsuperscript{19} Chapter 1260 specifically

\textsuperscript{12.} Id. § 25532(a) (acutely hazardous material means any toxic material on the list prepared by the Environmental Protection Agency, according to criteria set forth in the Chemical Emergency Preparedness Program Interim Guidance document on November 1, 1985, and any supplemental amendments to the document). The Environmental Protection Agency's list of acutely hazardous materials was prepared as part of a Chemical Emergency Preparedness Program initiated after the Union Carbide plant catastrophe in Bhopal, India, on December 3, 1984. U.S. Environmental Protection Agency, Report No. EPA/560/7-85/012 (November 1985).

\textsuperscript{13.} CAL. HEALTH & SAFETY CODE § 25536(a), (b) (exempt from a registration requirement are (1) businesses handling acutely hazardous materials in quantities less than 55 gallons, 500 pounds, or 200 cubic feet at standard temperature and pressure; and (2) businesses that prove to an administering agency that the facility does not pose an accident risk). The specified quantity limits that determine if a business is exempt may be decreased for a specific acutely hazardous material because of public health, safety, and environmental concerns, and the administering agency may require a business that meets the modified quantity criteria to submit a registration form. Id. § 25536(d).

\textsuperscript{14.} Id. § 25533(a). The registration form is to include information included in existing hazardous material business plans, and a general description of the process and equipment used to handle the materials. Id. § 25533(b). The registration form must be developed by July 1, 1987, and acutely hazardous material handlers must submit a completed form by September 1, 1987. Id. § 25533(a).

\textsuperscript{15.} Id. § 25532(c) (definition of administering agency).

\textsuperscript{16.} Id. § 25536(c).

\textsuperscript{17.} Id. § 25534(a). See id. § 25532(b) (acutely hazardous material accident risk means a potential for the release of an acutely hazardous material into the environment which could produce a significant likelihood that persons exposed may suffer acute health effects resulting in significant injury or death). Any person who handles acutely hazardous materials, and who owns or operates two or more business facilities which are substantially identical, may prepare a single generic risk management and prevention program, if the handling of the acute hazardous materials is substantially similar at all facilities. Id. § 25534(i).

\textsuperscript{18.} RMPP means all of the administrative and operational programs which are designed to prevent acutely hazardous materials accident risks, including programs which include design safety of new and existing equipment, standard operating procedures, preventive maintenance programs, operator training and accident investigation procedures, risk assessment for unit operations or operating alternatives, emergency response planning, and internal or external audit procedures to ensure that these programs are being executed as planned. Id. § 25532(g).

\textsuperscript{19.} Id. § 25534(a).
requires an approved\(^{20}\) RMPP for each new or modified\(^{21}\) acutely hazardous material facility that is to commence operation after January 1, 1988.\(^{22}\)

Chapter 1260 requires that an RMPP be based upon an assessment of the business’s processes, operations, and procedures of the business.\(^{23}\) The assessment must also consider the offsite consequences of a complete release of all acutely hazardous materials under adverse environmental conditions, and the probabilities of releases and their effects based on the offsite consequence analysis.\(^{24}\) An RMPP for each facility must (1) analyze prior accidents; (2) specify the nature, age, and condition of the equipment; (3) describe design, operating, and maintenance controls, as well as detection, monitoring, or automatic controls which minimize the risk of accidents; (4) list a schedule for implementing new steps that will reduce the risk of accidents determined by the offsite consequences analysis; and (5) list the auditing, inspection, and recordkeeping procedures to confirm that the risk management plan is effectively carried out.\(^{25}\) A handler is required to review and revise a RMPP at least every three years, or within sixty days following a material modification of a facility.\(^{26}\) A RMPP or revised RMPP must be certified as complete by a registered professional\(^{27}\) and the facility operator.\(^{28}\) This plan must be implemented within one year after certification.\(^{29}\)

Under Chapter 1260, trade secrets\(^{30}\) must be disclosed to an administrative agency, if contained in information required to be disclosed.\(^{31}\) Trade secrets, however, may be disclosed by the administering

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20. Id. § 25535(e) (administering agency approval procedures).
21. Id. § 25532(e) (definition of modified facility).
22. Id. § 25534(b). A new or modified facility may not commence or continue operation without first implementing all RMPP programs and operations. Id. § 25535(e).
23. Id. § 25534(d).
24. Id.
25. Id. § 25534(c). The RMPP must also include a list of the handler’s employees responsible for implementing the RMPP, and a detailed safety training program to ensure proper compliance with the RMPP. Id. § 25534(g). The administering agency may require a business to submit any additional supporting technical information to clarify the contents of a RMPP. Id. § 25534(e). All records pertaining to a RMPP must be maintained for at least five years. Id. § 25534(f).
26. Id. § 25534(h).
27. Id. § 25532(f) (definition of registered professional).
28. Id. § 25534(j).
29. Id. § 25534(k). An extension of the one-year deadline may be granted by the administering agency upon a showing of good cause. Id.
30. Id. § 25538(a) (definition of trade secret). See also Cal. Evid. Code § 1060; Cal. Gov’t Code § 6254.7 (definitions of trade secret).
31. Id. § 25538(a), (f). Any information prohibited from disclosure by a federal statute or regulation may not be disclosed. Id. § 25538(e).
agency to other governmental agencies only in connection with official duties of those agencies, or pursuant to any law for the protection of health and safety. Unauthorized, intentional disclosure of trade secret information by government employees constitutes a misdemeanor.

Chapter 1260 empowers an administering agency to enter a facility to verify that a RMPP has been implemented, and requires an administrative agency to inspect affected businesses at least once every three years to determine compliance with Chapter 1260. Any business violating, or knowingly violating, the provisions of Chapter 1260 is subject to civil liability to the administering agency. Furthermore, any business knowingly misrepresenting any document or record used for complying with Chapter 1260 is, upon conviction, guilty of a misdemeanor, or is guilty of a felony for a repeat offense. If either a civil or criminal violation results in, or significantly contributes to, an emergency, the business is liable for emergency response and clean-up costs.

If an administering agency adopted, by May 31, 1986, a local ordinance containing business inventory reporting requirements substantially similar to Chapter 1260, the submission date of a business plan required under Chapter 1260 may be extended to January 1, 1988. Such an extension of a business plan requires a schedule for the submission of the business plan and a copy of the local ordinance to be submitted by the administering agency to the Office of Emergency Services.

Under existing law, a business plan must include an annual inventory with information on all of the following which are handled in quantities equal to or greater than a specified quantity: (1) every hazardous substance or chemical product handled by the business listed by chemical name and common names; (2) the waste category of every hazardous waste handled by the business, including the

32. Id. § 25538(b), (c).
33. Id. § 25538(d) (punishment is a fine not exceeding $1,000, imprisonment for not more than 6 months in the county jail, or both).
34. Id. §§ 25535(d), 25537.
35. Id. § 25540(a), (b). Chapter 1260 imposes a fine of $2,000 for each day of violation; knowing violations of Chapter 1260, after reasonable notice of violation, increase the fine to $5,000 for each day of violation. Id.
36. Id. § 25541.
37. Id. §§ 25540(a), 25541.
38. Id. § 25505.4(a).
39. Id. § 25505.4(b).
40. See supra note 5 (specified quantity amounts).
general chemical and mineral composition of the waste listed by probable maximum and minimum concentrations; (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 in categories (1) and (2), above; (4) the maximum amount of each hazardous material, or mixture containing a hazardous material, disclosed in categories (1), (2), and (3), above, which is handled at any one time by the business during the year; (5) sufficient information on how and where the hazardous materials disclosed in categories (1), (2), and (3), above, 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 Standard Industrial Classification Code number of the business if applicable; and (7) the name and phone number of the person representing the business and who is able to assist emergency personnel if an emergency involving the business occurs during nonbusiness hours. 41 Chapter 1260 requires a business plan's annual inventory information to include the total estimated amounts of each hazardous waste handled by the business throughout the course of the year. 42

41. Id. § 25509(a).
42. Id. § 25509.3.
Environmental Protection

Environmental Protection; hazardous substance site clean-up—liability of response action contractors

Health and Safety Code §§ 25364.6, 25364.7 (new); § 25364 (amended).
SB 2067 (Seymour); 1986 STAT. Ch. 1501

Existing law authorizes the State to take removal\(^1\) or remedial action\(^2\) in response to the release\(^3\) or threatened release of a hazardous substance.\(^4\) The State must recover the costs of taking removal or remedial action from the person or persons determined to be liable for those costs.\(^5\) In addition, existing law prohibits any agreement from relieving a party of liability to the State for the costs incurred in taking removal or remedial action.\(^6\)

With the enactment of Chapter 1501, the State Department of Health Services (the Department) may indemnify and hold harmless a response action contractor\(^7\) for the contractor's acts or omissions in carrying out removal or remedial actions necessitated by a release of hazardous substances,\(^8\) subject to specified con-

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1. CAL. HEALTH & SAFETY CODE § 25323 (definition of removal).
2. Id. § 25322 (definition of remedial action). Under Chapter 1501, removal and remedial actions include actions taken to characterize a site, to prepare and implement a remedial action plan, and to redisseminate of any waste resulting from the removal or remedial action. Id. § 25364.6(f).
3. Id. §§ 25320, 25321 (definition of release).
4. Id. § 25351(d); see id. §§ 25316, 25317 (definition of hazardous substance). The Hazardous Substance Cleaning Account provides authorization and funds to the State to perform removal or remedial actions. Id. § 25351(d). See generally Review of Selected 1981 California Legislation, 13 PAC. L.J. 699, 705 (1982) (describing the provisions of the Hazardous Substance Cleaning Account).
5. CAL. HEALTH & SAFETY CODE § 25360.
6. Id. § 25364. Under Chapter 1501, a response action contractor means any person who entered into a contract, with the State Department of General Services, to take removal or remedial action in response to the release or threatened release of hazardous substances. Included in this definition are subcontractors of the response action contractor. Id. § 25364.6(h).
7. Id. § 25364.6(a), (c). The response action contractor is indemnified from liability to any person for personal injuries, costs, damages, or expenses, including the expenses of litigation or settlement, incurred by that person as a result of the contractor's acts or omissions. Id.
8. Before a contractor is granted indemnification, three reviews are necessary. The first review, by the Department, must determine that at least one of the following applies: (1) the Department cannot identify a party potentially responsible for releasing the hazardous substance; (2) a potentially responsible party has made an agreement with the Department pursuant to Health and Safety Code § 25355.5, but has not complied with that agreement; (3) a potentially responsible party has made an agreement with the Department, and the Department has contracted for removal or remedial action; (4) immediate corrective action at the hazardous substance release site is necessary pursuant to Health and Safety Code § 25354, and no potentially responsible party is ready, willing, and able to take corrective action; or (5) substantial endangerment to the public or the environment is imminent, necessitating removal
In addition to meeting the conditions, a response action contractor may be indemnified only if (1) the contractor’s acts did not result from gross negligence or intentional misconduct, (2) the contractor is not a responsible party for the release which is to be removed or remedied, and (3) the contractor has complied with contractual obligations to the State.

Environmental Protection; Hazardous Waste Management Act of 1986

Health and Safety Code §§ 25179.1, 25179.2, 25179.3, 25179.4, 25179.5, 25179.6, 25179.7, 25179.8, 25179.9, 25179.10, 25179.11, 25179.12 (new).
SB 1500 (Roberti); 1986 Stat. Ch. 1509
Sponsor: Author
Support: Food and Agriculture

Existing law requires that specified statutes and regulations be
followed before storing or disposing of any hazardous waste. With the enactment of Chapter 1509, the Hazardous Waste Management Act of 1986, the legislature intends to guide hazardous waste management towards more efficient and secure methods by establishing management priorities for future legislative and administrative action, and by adopting reasonable and realistic methods for addressing the environmental risks associated with land disposal of hazardous waste. Under Chapter 1509, the Department of Health Services (Department) must adopt criteria on or before January 1, 1988, for the disposal of hazardous waste landfill to minimize the formation and migration of leachate. Furthermore, the Department must adopt treatment standards specifying methods of treatment, and an associated performance level, or a level of treatment required prior to the land disposal of hazardous waste, on or before May 8, 1990. These treatment standards must be designed to minimize the hazardous characteristics of the waste and to minimize the potential for bioaccumulation or migration of hazardous waste constituents from the waste into the air, land, and water resources of California.

1. **CAL. HEALTH & SAFETY CODE** § 25123 (definition of storage).
2. **Id.** § 25113 (definition of disposal).
4. **CAL. HEALTH & SAFETY CODE** § 25179.1-.12.
5. **Id.** § 25179.2(f).
6. **Id.** § 25179.2(g). The legislature does not intend to impose hazardous waste management requirements upon hazardous waste generators, and storage, treatment, and disposal facilities located in the state which could encourage generators to seek disposal solutions in other states or countries. Nothing in Chapter 1509 will affect the authority of the Department to regulate facilities used for the management of nonhazardous agricultural drainage water. **Id.** § 25179.2(h).
7. **Id.** § 25179.3(g) (definition of hazardous waste landfill).
8. **Id.** § 25179.5(b) (criteria include appropriate standards for load bearing capacity, leachability, and permeability). See also id. § 25179.3(i) (definition of leachate).
9. **Id.** § 25179.3(j) (definition of treatment).
10. **Id.** § 25179.6(b)(1). The Department must adopt these standards as closely as possible with, but not later than six months following, the dates specified in the schedules required in Title 42 of the United States Code § 6924(g). If the Department specifies a method of treatment and an associated performance level, any person may use an alternative treatment method upon demonstrating that the alternative method will result in a level of performance substantially equivalent or greater than those levels achievable using the methods specified by the Department, unless the hazardous waste has a heating value of more than 3,000 British thermal units per pound of waste material. **Id.** See also id. § 25155.5(a) (incineration and other acceptable treatment for disposing of certain kinds of hazardous wastes).
11. **Id.** § 25179.6(b)(3)(A) (definition of minimization of hazardous characteristics and the potential for bioaccumulation or migration).
12. **Id.** § 25179.3(d) (definition of hazardous waste constituent).
13. **Id.** § 25179.6(b)(2). The Department must consider all applicable federal treatment standards to the extent that the federal standards minimize the hazardous characteristics of the waste and the potential for bioaccumulation or migration of waste constituents. Furthermore, the Department must adopt treatment standards for any hazardous waste for which the
Chapter 1509 prohibits any person from disposing liquid waste, liquid
hazardous waste, or hazardous waste containing free liquids in a
hazardous waste landfill, and provides that on or before May 8,
1990, the Department will prohibit the land disposal of any haz-
ardous waste, unless the waste is either a treated hazardous waste,
or a solid hazardous waste generated in the cleanup or decontami-
nation of any contaminated site which does not meet the established
treatment standards.

Chapter 1509 also provides six exceptions to the prohibition on
land disposal of hazardous waste. First, the Department may grant
an extension of the implementation date if recycling and treatment
capacity to process substantially all of the specific hazardous waste
will not be provided at the site of generation or at a commercial
offsite hazardous waste facility in California. Second, a variance
for hazardous waste may be granted if the person demonstrates,
to the satisfaction of the Department, certain specified
conditions, and that circumstances beyond the control of the applicant have prevented
the development of the needed capacity. Third, small containers of

Environmental Protection Agency has failed to adopt a treatment standard, and for any other
hazardous waste for which a federal treatment standard does not minimize the hazardous
characteristics of the waste and the potential for bioaccumulation or migration of waste
constituents. Id.

14. Id. § 25179.3(c) (definition of free liquids).
15. Id. § 25179.5(a). See also id. § 25179.3(g) (definition of hazardous waste landfill).
16. Id. § 25179.3(h) (definition of land disposal).
17. Id. § 25179.3(l) (definition of treated hazardous waste).
18. Id. § 25179.6(a). Disposal of the waste must also be approved by the Department or
another agency authorized to approve a cleanup or decontamination. Id.
19. Id.
20. Id. § 25179.7. The Department will establish the date based upon the earliest date on
which the Department projects that adequate recycling and treatment capacity will be available,
but no later than two years following the date the prohibition on land disposal of hazardous
waste would otherwise be implemented. Id.
21. Id. § 25179.8(a). The person must demonstrate that all of the following conditions
apply to the specified wastes: (1) the waste cannot be recycled, reused, or treated to meet the
adopted standards at a commercial offsite hazardous waste facility in California; (2) recycling
or treatment alternatives cannot be provided at the site of the waste generation; (3) measures
have been, or will be, taken to reduce the generation of the hazardous waste; and (4) land
disposal of hazardous waste is in compliance with all existing statutes and regulations. Id. §
25179.8(a)(1)-(4).
22. Id. § 25179.8(b) (the needed capacity will not be developed by the date established
by the Department). A variance granted by the Department will remain in effect for one year,
and may be renewed once if the applicant demonstrates to the Department's satisfaction that
the needed capacity can be provided by the end of the period of renewal, which is one year.
No variance or renewal may remain in effect beyond the two-year period following the effective
date after which land disposal of hazardous waste is prohibited. Id. § 25179.8(c). The
Department, when appropriate, may specify any treatment required prior to land disposal of
hazardous waste, and may impose requirements which are necessary to protect the public
health and the environment. Id. § 25179.8(e). See also id. § 25179.8(d) (a variance may also
be granted for agricultural drainage water if specific conditions are met).
hazardous waste in lab packs\textsuperscript{23} are exempt if they are disposed of properly.\textsuperscript{24} Fourth, special waste,\textsuperscript{25} or any hazardous waste generated in the extraction, beneficiation, or processing of ores and minerals, is exempt.\textsuperscript{26} Fifth, discharging hazardous waste into a surface impoundment which 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\textsuperscript{27} if (1) the surface impoundment is double-lined, and equipped with a leachate collection system;\textsuperscript{28} and (2) the waste is discharged into the impoundment for the purpose of treating the waste to comply with the adopted treatment standards, and (a) the residues which result from such treatment do not meet the treatment standards and are removed within one year from their placement for subsequent management, or (b) the operator has received an exemption from the regional water quality control board.\textsuperscript{29} Finally, a person operating a land treatment facility is exempt if the facility is in compliance with all the state and federal requirements applicable to land treatment facilities, and if the facility has either been issued a final permit or is operating in compliance with the requirements of interim status and the facility operator has submitted an application for a final permit.\textsuperscript{30}

\textit{SDS}

\textsuperscript{23} \textit{Id.} § 25179.3(k) (definition of a small container of hazardous waste in lab packs).
\textsuperscript{26} Cal. Health & Safety Code § 25179.10(a). Any person seeking this exemption must demonstrate to the satisfaction of the Department that no economically and technologically feasible alternatives exist to recycle, reuse, or treat the waste to meet the adopted standards. Such person must also show that there will be no migration of hazardous waste constituents, in concentrations which pollute or threaten to pollute the waters of California, from the disposal unit where the waste is to be discharged. This exemption will remain in effect for five years, and the Department may renew the exemption if the findings required by this section still apply. \textit{Id.} § 25179.10(b).
\textsuperscript{27} \textit{Id.} § 25179.11(a).
\textsuperscript{28} \textit{Id.} § 25179.11(a)(1). \textit{See} id. §§ 25208-25208.16 (Toxic Pits Clean Up Act of 1984).
\textsuperscript{29} \textit{Id.} § 25179.11(a)(2). Similarly, a surface impoundment which was constructed after July 1, 1986, and for which an application is submitted after September 1, 1986, is exempt if (1) the impoundment is double-lined and equipped with a leachate collection system; (2) the hazardous waste is discharged into the impoundment for the purpose of treating the waste to comply with the adopted treatment standards, the residues which result from such treatment do not meet the treatment standard, and such residues are removed within one year of their date of placement for subsequent management; and (3) the use of the surface impoundment is the only means by which the waste can be treated using the best demonstrated available technology. \textit{Id.} § 25179.11(b)(1)-(3). \textit{See also} id. § 25179.6(b)(3)(B) (definition of best demonstrated available technology).
\textsuperscript{30} \textit{Id.} § 25179.12(a). Land treatment facilities at which hazardous waste constituents have migrated from the treatment zone are not eligible for this exemption until the contamination has been removed to the satisfaction of the Department. \textit{Id.} § 25179.12(b).
Environmental Protection; hazardous waste management plan

Government Code §§ 65963.1, 66780.8 (new);
Health and Safety Code § 25204 (repealed); §§ 25117.2, 25135, 25135.1, 25135.2, 25135.3, 25135.4, 25135.5, 25135.6, 25135.7, 25135.8, 25173.5, 25199, 25199.1, 25199.2, 25199.3, 25199.4, 25199.5, 25199.6, 25199.7, 25199.8, 25199.9, 25199.10, 25199.11, 25199.13, 25199.14, 25200.1 (new); § 25117.7 (amended and renumbered).
AB 2948 (Tanner); 1986 STAT. Ch. 1504
Sponsor: Author
Support: Commission for Economic Development; League of Women Voters; California Chamber of Commerce; Department of Health Services; Sierra Club; League of California Cities

With the enactment of Chapter 1504, the legislature recognizes and declares that environmentally sound hazardous waste facilities1 are critical to the protection of the public health, the environment, and the state's economic growth.2 The goal of Chapter 1504 is to prevent hazardous waste3 from being permanently disposed into land, or emitted into the air, without being processed by an economically and technically feasible alternative technology.4 This goal is to be achieved by (1) implementing a state policy that ensures safe, effective, and economical hazardous waste management facilities are available when needed and are operated to protect public health and the environ-

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1. CAL. HEALTH & SAFETY CODE § 25117.1 (definition of hazardous waste facility).
3. CAL. HEALTH & SAFETY CODE § 25117 (definition of hazardous waste).
4. 1986 Cal. Stat. ch. 1504, sec. 1(a)(4), at ______. Attaining this goal will require, as an alternative to traditional land disposal methods, that residuals repositories be utilized for the byproducts of preferred hazardous waste treatment technologies. Id. See also GOVERNOR'S TASK FORCE, supra note 2, at 89-95 (residuals management and treatment).
ment; 5 (2) providing a process for siting and permitting new facilities that is more expeditious than currently exists; 6 and (3) promoting the partnership of local and state government, the public, and industry to plan and site needed hazardous waste facilities. 7 The legislature also recognizes that all local communities in the state must share the burden of hazardous waste management, and that all local governments must consider the feasibility and propriety of identifying suitable sites for treatment and disposal facilities in their general plans. 8

HAZARDOUS WASTE MANAGEMENT PLANNING

Under existing law, each county must prepare a solid waste management plan for all waste disposal within the county and for all waste originating in the county. 9 The legislature, under Chapter 1504, recognizes that an equivalent process for hazardous waste management 10 has not been established at the local level. 11 Furthermore, despite requests made by the State Department of Health Services (Department), no mandate exists that requires a county to include a hazardous waste management plan in the solid waste management plan. 12 In response, Chapter 1504 permits a county to prepare a hazardous waste management plan in lieu of the hazardous waste management portion of the county’s solid waste management plan. 13 A county electing to prepare a hazardous waste management plan may receive funding from the newly created Hazardous Waste Management Planning Subaccount. 14 Should a county elect not to

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5. 1986 Cal. Stat. ch. 1504, sec. 1(b), at ___.
6. Id. sec. 1(a)(3), at ___.
7. Id. sec. 1(b)(2), at ___. See also HAZARDOUS WASTE MANAGEMENT PLAN, supra note 2, at 164-94 (recommendations for improving hazardous waste management facilities); see also GOVERNOR’S TASK FORCE, supra note 2, at 81-84 (strategy for managing toxic and solid waste).
8. 1986 Cal. Stat. ch. 1504, sec. 1(b)(3), at ___. To assure that local facility siting decisions adequately consider the waste management needs of the region or the State, Chapter 1504 declares that an appeal process to a body with a regional or statewide perspective is needed. Id. sec. 1(b)(4), at ___.
9. CAL. GOV’T CODE § 66780.1. See also HAZARDOUS WASTE MANAGEMENT PLAN, supra note 2, at 117-18 (recommended county solid waste management planning).
10. CAL. HEALTH & SAFETY CODE § 25117.2 (definition of hazardous waste management).
11. Id. § 25135(a)(1).
12. Id. § 25135(a)(2).
13. CAL. GOV’T CODE § 66780.8; CAL. HEALTH & SAFETY CODE § 25135 (the county must notify the Department of the county’s plans to prepare a hazardous waste management plan by March 31, 1987). See also HAZARDOUS WASTE MANAGEMENT PLAN, supra note 2, at 182-85 (recommended functions of the local hazardous waste management plans).
14. CAL. HEALTH & SAFETY CODE § 25135.8(a) (the Hazardous Waste Management Subaccount is within the Hazardous Waste Control Account). Funding must be upon appro-
prepare a hazardous waste management plan or fail to make an election by March 1, 1987, one or more cities within the county, acting jointly, may prepare the plan, thereby acting in place of the county. Chapter 1504 further provides that a multi-county council of government may prepare a regional hazardous waste management plan to serve as a resource document at the regional level. To assist a county or regional council of government in preparing a hazardous waste management plan, Chapter 1504 requires that by June 30, 1987, the Department must (1) develop guidelines for the preparation and adoption of hazardous waste management plans, and (2) provide planning data specific to each county or region.

Under Chapter 1504, a county hazardous waste management plan must be prepared in cooperation with affected local jurisdictions, the public, and a county advisory committee. The plan is to serve as

15. Notice of an election not to prepare a hazardous waste management plan must be made to the cities within the county by March 31, 1987. CAL. HEALTH & SAFETY CODE § 25135.1(c).

16. Id. Funding for a city or cities acting in place of a county can only be received if the proposal to prepare a hazardous waste management plan is approved by a majority of the cities within the county which contain a majority of the population of the incorporated area, and the proposal is received by the Department by June 30, 1987. Id. See also HAZARDOUS WASTE MANAGEMENT PLAN, supra note 2, at 185-86 (recommended preparation, approval, and implementation).

17. CAL. HEALTH & SAFETY CODE § 25135.3 (list of authorized multi-county councils of government).

18. Id. Multi-county councils of government are eligible to apply for funding from the Hazardous Waste Management Subaccount. Id. § 25135.3(a). Funds to multi-county councils of government are disbursed after funds to counties are made and specified reserves are allocated to the Department to cover administrative costs. Id. § 25135.8(b)(3). See also HAZARDOUS WASTE MANAGEMENT PLAN, supra note 2, at 189-90 (recommended planning for regionally needed facilities).


20. Planning data to be developed are listed in Health and Safety Code § 25135.5(b)(2)(A)-(F). Id.

21. Id. § 25135.5(a), (b). See also HAZARDOUS WASTE MANAGEMENT PLAN, supra note 2, at 185-86 (recommended preparation, approval, and implementation).

22. Public involvement is to be to the fullest extent possible, by public hearings, informational meetings, and other appropriate forums. CAL. HEALTH & SAFETY CODE § 25135.6(b).

23. Id. § 25135.6(b). The county's board of supervisors must appoint at least seven members to the advisory committee and the committee must include at least one representative of industry, one representative of an environmental group, one representative of the public, and at least three members to represent the cities appointed by the city selection committee specified in Government Code §§ 50270-50279.4. Id. § 25135.2(a). The advisory committee must advise the county governments and agencies on issues related to the planning process, and hold informal public meetings and workshops to provide information to the public and to receive comments during the preparation of the hazardous waste management plan. Id. §
the primary planning document for the county's hazardous waste management and must include, but is not limited to, (1) an analysis of the hazardous waste stream generated in the county; (2) the expected rate of hazardous waste production until 1994; (3) a description of existing hazardous waste facilities; (4) an analysis of the county's potential for recycling hazardous waste and for reducing the volume and hazard of hazardous waste at the source of generation; (5) a consideration of the need to manage the small volumes of hazardous waste produced by businesses and households; (6) the county's need for additional facilities; (7) an identification of suitable locations for new sites; (8) a statement of goals, objectives, and policies for the management of hazardous waste through the year 2000; and (9) a schedule describing the implementation of the plan through the year 2000.24

A draft of an elected county's hazardous waste management plan must be prepared and submitted to the Department by December 31, 1987,25 and the county must conduct hearings during the succeeding three months in 1987 to permit the public, industry, business organizations, and the hazardous waste management industry to comment orally and in writing on the plan.26 A final draft incorporating both recommendations made during the hearings and changes prescribed by the Department27 must be approved by September 30, 1988, by a majority of the cities which contain a majority of the population of the county's incorporated area.28 The Department must in turn approve or disapprove the final hazardous waste management plan by December 31, 1988,29 using criteria established in Chapter 1504.30

Within ninety days after the Department approves a county hazardous waste management plan, the county must incorporate the plan, by reference, into the county's general plan, or enact an

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25 135.2(b). See also HAZARDOUS WASTE MANAGEMENT PLAN, supra note 2, at 190-92 (recommendations for ensuring that local, regional, and state-wide facility needs are met).
24  CAL. HEALTH & SAFETY CODE § 25135.1(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 by the county. Id. § 25135.1(e).
25  Id. § 25135.6(b).
26  Id. § 25135.6(c). See also HAZARDOUS WASTE MANAGEMENT PLAN, supra note 2, at 190-92 (recommendations for ensuring that local, regional, and State-wide facility needs are met).
27  CAL. HEALTH & SAFETY CODE § 25135.6(e).
28  Id. § 25135.6(f).
29  An extension of four months will be given to a county to complete the hazardous waste management plan if the county shows the Department that the county has made substantial steps toward completing the plan. Id. § 25135.7(a).
30  Id. § 25135.7(a)(1)-(4) (list of approval criteria).
ordinance requiring that land use decisions\textsuperscript{3}\textsuperscript{1} be consistent with the county's hazardous waste management plan.\textsuperscript{3}\textsuperscript{2} Furthermore, Chapter 1504 prohibits the establishment of a new, or the expansion of an existing, offsite\textsuperscript{3}\textsuperscript{3} hazardous waste facility that is inconsistent with a hazardous waste management plan incorporated into a county's general plan.\textsuperscript{3}\textsuperscript{4}

**Procedures for Permitting New Hazardous Waste Facilities**

Under Chapter 1504, the legislature recognizes that the process to approve construction and operation of a hazardous waste facility under existing law is uncoordinated, is without a formal administrative process for local discretionary land use decisions, and lacks predictability and public involvement.\textsuperscript{3}\textsuperscript{5} In response, the legislature declares that Chapter 1504 is to expedite approval of needed hazardous waste facilities, increase public involvement, and provide an appeal process for local hazardous waste facility decisions.\textsuperscript{3}\textsuperscript{6} Furthermore, no hazardous waste facility permit\textsuperscript{3}\textsuperscript{7} may be issued to a facility which commences operation on or after January 1, 1987, unless the operator of the facility complies with financial assurance regulations, which require the operator to adequately respond to damage claims arising out of the operation of the facility.\textsuperscript{3}\textsuperscript{8}

**A. Hazardous Waste Facility Projects**

Chapter 1504 provides that provisions of the Permit Streamlining

\begin{itemize}
\item \textsuperscript{3}\textsuperscript{1} Land use decisions include zoning, subdivision, conditional use permit, and variance decisions. *Id.* § 25135.7(b). See also HAZARDOUS WASTE MANAGEMENT PLAN, *supra* note 2, at 187-89 (recommended coordination of city and county general plans with local hazardous waste management plans).
\item \textsuperscript{3}\textsuperscript{2} CAL. HEALTH \\& SAFETY CODE § 25135.7(b). Any amendment to an adopted county hazardous waste management plan requires approval of the Department, the county, and a majority of the cities within the county which contain a majority of the population of the county's incorporated area. *Id.* § 25135.7(c).
\item \textsuperscript{3}\textsuperscript{3} *Id.* § 25117.11 (definition of offsite facility). See *id.* § 25117.12 (definition of onsite facility).
\item \textsuperscript{3}\textsuperscript{4} *Id.* § 25135.4(a). This provision does not apply to cities or counties which do not have an approved hazardous waste management plan. *Id.* § 25135.4(c).
\item \textsuperscript{3}\textsuperscript{5} *Id.* § 25199(a). See also HAZARDOUS WASTE MANAGEMENT PLAN, *supra* note 2, at 88-118 (review of existing siting, permitting, and planning processes for hazardous waste management facilities); GOVERNOR'S TASK FORCE, *supra* note 2, at 65-77 (summary of California's waste problem).
\item \textsuperscript{3}\textsuperscript{6} CAL. HEALTH \\& SAFETY CODE § 25199(c). See also HAZARDOUS WASTE MANAGEMENT PLAN, *supra* note 2, at 161-76 (recommended improvements for permitting facilities); *id.* at 163 (timeline for recommended permitting process).
\item \textsuperscript{3}\textsuperscript{7} CAL. HEALTH \\& SAFETY CODE § 25199.1(h) (definition of a permit under Chapter 1504).
\item \textsuperscript{3}\textsuperscript{8} *Id.* § 25200.1. See also HAZARDOUS WASTE MANAGEMENT PLAN, *supra* note 2, at 222-25 (recommended improvements in compensation for facility siting).
\end{itemize}
Act\textsuperscript{39} are applicable to all public agencies that make a land use decision,\textsuperscript{40} or issue a use or operation permit for a project undertaken to site and construct a new hazardous waste facility or to significantly expand or modify\textsuperscript{41} an existing hazardous waste facility (hazardous waste facility project).\textsuperscript{42} With the exception of a land disposal facility\textsuperscript{43} permit,\textsuperscript{44} approval or disapproval of a land use decision or permit for a hazardous waste facility must comply with the time schedule specified in the Permit Streamlining Act.\textsuperscript{45}

To further expedite the siting process, Chapter 1504 provides for the coordinated review of land use decisions and permit applications for a hazardous waste facility project\textsuperscript{46} by (1) allowing the applicant to submit applications to the appropriate public agencies simultaneously;\textsuperscript{47} (2) authorizing any public agency to request another public agency to jointly review applications;\textsuperscript{48} (3) prohibiting a state agency from refusing to issue a permit because the applicant has not been granted a land use permit;\textsuperscript{49} (4) allowing consolidation of public agency meetings and hearings;\textsuperscript{50} (5) requiring the department to coordinate state agency technical review\textsuperscript{51} of applications;\textsuperscript{52} and (6)
allowing, upon request from a local agency, a state agency to provide technical assistance to the local agency that is reviewing an application for a land use decision for the project. Chapter 1504 also states that the Office of Permit Assistance in the Office of Planning and Research must, for all hazardous waste facility projects (1) encourage public agencies to employ the above-listed expediting procedures; (2) assist in planning joint review and processing between agencies; (3) act as a mediator for disputes arising from the application process; and (4) work with the applicant and public agencies to ensure that deadlines are met.

Once a local agency has determined that an application for a hazardous waste facility project is complete, the local agency has sixty days to issue an initial written determination whether the hazardous waste facility project is consistent with the local general plan and the county's hazardous waste management plan.

B. Offsite, Multi-User Hazardous Waste Facility Projects

In addition to the legislation enacted for a hazardous waste facility project, Chapter 1504 enacts provisions specifically for siting an offsite, multi-user hazardous waste facility project (specified hazardous waste facility project). Chapter 1504 requires the proponent of a specified hazardous waste facility project to file a notice of intent with the Office of Permit Assistance and the applicable city...
Environmental Protection

or county at least ninety days prior to filing an application. In turn, the Office of Permit Assistance must immediately notify the affected state agencies, and the local agency must notify the public of the proponent’s intent. Within ninety days after receiving a notice of intent, the Office of Permit Assistance must convene a public meeting in the affected city or county to inform the public of the nature, function, scope, and application procedures of the proposed facility. In addition, the affected local agency must appoint, within the same ninety days, a seven-member local assessment committee whose duty is to negotiate with the project’s proponent, represent generally the affected public, and advise the legislative body of the affected jurisdiction.

After the ninety-day notice period, and once a local agency accepts as complete a specified hazardous waste management facility project application, the local agency must notify the Office of Permit Assistance whose responsibility is to convene, within sixty days, a meeting of the lead agency and the responsible agencies for the project, the proponent, the local assessment committee, and the interested public, for the purpose of determining issues which concern the agencies required to approve the project and issues which concern the public. Following the meeting, the proponent and the local assessment committee must meet to establish the terms and conditions under which the specified hazardous waste facility project will be acceptable to the community. In addition, the proponent must pay a fee to hire independent consultants to review the project. When the facility proponent and the committee cannot reach an

61. Id. § 25199.7(a).
62. Id.
63. Id. Notification by a local agency includes publishing a notice in a paper of general circulation in the affected area, posting notices in the area affected by the proposed project, and notifying, by direct mail, the owners of property contiguous to the site. Id.
64. Id. § 25199.7(c).
65. Id. § 25199.7(d). The local assessment committee is composed of three representatives of the community at large, two representatives of environmental or public interest groups, and two representatives of affected businesses and industries. Id. § 25199.7(d)(1). No member may have a direct financial interest in the proposed project. Id.
66. Id. § 25199.7(d).
67. Id. § 25199.1(f) (definition of lead agency).
68. Id. § 25199.1(k) (definition of responsible agency).
69. Id. § 25199.7(e). The meeting takes place in the jurisdiction where the application is filed. Id.
70. Id. § 25199.7(f).
71. Id. § 25199.7(g). The fees are deposited into the newly created Local Agency Technical Assistance Account within the General Fund, the moneys of which may be expended, upon appropriation by the legislature, for technical assistance to local assessment committees. Id.
agreement, the Office of Permit Assistance is authorized to appoint a mediator.72

Chapter 1504 further expedites the permit process for specified hazardous waste facility projects by allowing the proponent to request the responsible agencies to continue processing the project’s permits if a legal action is commenced to challenge the project’s Environmental Impact Report.73 Other legal actions against a specified hazardous waste facility project may, at the discretion of the court, be stayed until all permits for the project have been obtained.74 A court, however, may enjoin a lead or responsible agency from approving a permit, if approval would result in an imminent or substantial danger to the public health or environment.75

**APPEAL OF LAND USE DECISIONS FOR OFFSITE, MULTI-USER FACILITIES**

Under Chapter 1504, the legislature recognizes that California is without a formal administrative appeal process for local discretionary land use decisions to site and construct specified hazardous waste facilities.76 In response, Chapter 1504 enables proponents of a specified hazardous waste facility project to appeal77 a local land use decision under the following circumstances: (1) if a land use permit is denied, but all state-level permits for the facility have been obtained;78 (2) if a land use permit is denied before an Environmental Impact Report is completed and certified;79 and (3) if a land use

72. Id. § 25199.7(h). The proponent pays one-half of the costs of hiring the mediator and remaining costs are paid by the General Fund, upon appropriation by the legislature. Id.
73. Id. § 25199.8(a). If a responsible agency receives a proponent’s request to continue the permitting process, the schedules of the Permit Streamlining Act still apply. Id. See also HAZARDOUS WASTE MANAGEMENT PLAN, supra note 2, at 174-76 (judicial review of agency permitting decisions). See also CAL. PUB. RES. CODE §§ 21000-21177 (provisions of an Environmental Impact Report).
74. CAL. HEALTH & SAFETY CODE § 25199.8(b).
75. Id. § 25199.8(c). A court may also enjoin a lead or responsible agency if other compelling reasons show that the action or proceeding should not be stayed. Id.
76. Id. § 25199(a)(4).
77. An appeal must be submitted to the Governor or the Governor’s designee within 30 days after the local agency takes final action on the land use decision. Id. § 25199.9(a). The Hazardous Waste Management Plan developed a limited appeal process, which is reflected in Chapter 1504, to retain local decision-making while providing an appeal process for use in those rare instances when the local process fails, the foremost problem being rejection of needed hazardous waste management facilities for reasons other than technical safety of the facilities (often termed political rejections). HAZARDOUS WASTE MANAGEMENT PLAN, supra note 2, at 229; See also id. at 232-46 (review of recommended limited appeal process).
78. CAL. HEALTH & SAFETY CODE § 25199.9(b).
79. Id. § 25199.9(c). Within 30 days after an appeal is filed pursuant to this subdivision, the Governor or the Governor’s designee may convene an appeal board to become the lead
permit is approved, but the conditions imposed on the permit are so onerous and restrictive that their imposition is the same as a denial. Any interested person may submit an appeal of an approved specified hazardous waste facility project; however, the appeal must be based solely on the grounds that the conditions imposed in the permit do not adequately protect the public health, safety, or welfare.

If an appeal is authorized under Chapter 1504, the Governor or the Governor's designee must convene an appeal board for each appeal. Within thirty days after an appeal is authorized, the appeal board must conduct a public hearing in the city or county where the specified hazardous waste facility project is located, with arguments and evidence presented by the proponent or interested party and the local agency whose land use decision is being appealed. Within fifteen days after the public hearing, the appeal board must decide,
based on specified criteria, whether to accept an appeal. An appeal of a denied land use permit requires the affirmative vote of at least four members of the appeal board to be accepted, while an appeal of an approved land use permit requires the affirmative vote of at least five members of the appeal board to be accepted.

A. Appeal of Denied Land Use Permit

If an appeal is accepted and pertains to either (1) the denial of a land use decision by a local agency after all other state agency permits have been obtained, or (2) the denial of a land use decision by the local agency before an Environmental Impact Report is prepared and certified by the local agency, the appeal board must conduct an informal workshop, within thirty days, in the affected city or county on the subject of the appeal. Within forty-five days of accepting the appeal, the appeal board must hold a public hearing in the community to hear arguments and evidence to enable the board to reach a tentative decision. In reaching a tentative decision, the appeal board must adopt a rebuttable presumption that the land use decision under appeal is supported by substantial reasons and that the reasons for reversing the local agency’s action are not compelling when weighed against statewide, regional, or county hazardous waste management policies, goals, and objectives. The proponent has the burden of proof to rebut the presumption and to establish compelling reasons to reverse the local agency’s decision. Within forty-five days after the public hearing, the appeal board must, by an affirmative vote of at least four members, issue a written decision either agreeing or disagreeing with the local land use decision based on specified criteria. An appeal board decision favoring the

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87. The board may accept an appeal if the argument and evidence tend to show that, when the local agency’s reasons for disapproving the application are weighed against statewide, regional, or county hazardous waste management policies, goals, and objectives, compelling reasons to review the disapproval of the application exist. Id. § 25199.11(c). To accept an appeal of an approved permit with conditions imposed in the permit that are onerous and restrictive, or that inadequately protect the public health, safety, or welfare, the board must find that the appellant has demonstrated a substantial likelihood of prevailing on the merits. Id. § 25199.13(c).
88. Id. §§ 25199.11(c), .13(c).
89. Id.
90. Id. § 25199.11(d). See also HAZARDOUS WASTE MANAGEMENT PLAN, supra note 2, at 235-43 (recommended appeal process for denied local facility siting decisions).
91. CAL. HEALTH & SAFETY CODE § 25199.11(d).
92. Id.
93. Id.
94. Id. § 25199.11(e). The appeal board cannot reverse the local agency’s decision unless the appeal board makes all of the following findings: (1) the significant environmental impacts
local land use decision must state the reasons for the appeal board's position. If the appeal board agrees with the proponent's appeal, the appeal board must issue a tentative decision calling for a reversal of the local agency's land use decision. The local agency then has sixty days to approve the proponent's application for a land use decision, or the appeal board must, 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 must require the local agency to approve the proponent's application. A final decision of the appeal board is deemed the final administrative action.

B. Appeal of Approved Land Use Permit

If an appeal is accepted and pertains to either (1) an approved land use decision by a local agency, but conditions imposed on the permit are so onerous that their imposition is the same as a denial, or (2) an approved land use decision by a local agency that has conditions that do not adequately protect the public health, safety, or welfare, the appeal board must hold a public hearing to hear arguments and evidence, within thirty days after accepting an appeal, and the hearing must be convened in the city or county where the specified hazardous waste facility project is located. The scope of the hearing is restricted to the subject matters the board determines are directly related to the subject matter of the appeal. In reaching a decision, the appeal board must adopt a rebuttable presumption that the local land use decision is supported by substantial reasons and that no compelling reasons to modify the decision exist. The proponent or interested party has the burden of proof to rebut the

will be adequately mitigated; (2) the project was consistent with the applicable city or county general plan; (3) if a hazardous waste management plan is adopted by the county, the project is consistent with the plan; (4) alternative locations have been adequately considered; and (5) reversing the local agency's land use decision is consistent with statewide, regional, and county hazardous waste management policies, goals, and objectives. Id. § 25199.11(f).

95. Id. § 25199.11(e).
96. Id.
97. Id. § 25199.11(g).
98. Id. If the local agency does not approve the application for the land use decision as required by the appeal board, the Attorney General must bring an action to require the local agency to approve the application. Id.
99. Id. § 25119.14.
100. Id. § 25199.13(d). See also HAZARDOUS WASTE MANAGEMENT PLAN, supra note 2, at 243-46 (recommended appeal process for approved local facility siting decisions).
101. CAL. HEALTH & SAFETY CODE § 25199.13(d).
102. Id.
presumption and to establish, by clear and convincing evidence, that compelling reasons exist to modify the local agency’s land use decision.\textsuperscript{103} Within thirty days of the public hearing, the appeal board must, by an affirmative vote of at least five members of the appeal board, issue a written, final decision based on specified criteria.\textsuperscript{104} If the decision agrees with either the proponent or interested person, the appeal board must require the local agency to modify the conditions of the land use decision.\textsuperscript{105} A decision made after the public hearing by the appeal board is the final administrative action.\textsuperscript{106}

**Offsite, Multi-User Hazardous Waste Facility Tax**

Chapter 1504 authorizes, with specified exceptions,\textsuperscript{107} a local government to impose a tax or a user fee on an offsite, multi-user hazardous waste facility located within the local government’s jurisdiction.\textsuperscript{108} The tax or user fee cannot exceed ten percent of the facility’s annual gross receipts for the treatment, storage, or disposal of hazardous waste at the facility.\textsuperscript{109}

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\textsuperscript{103} \textit{Id.}.

\textsuperscript{104} \textit{Id.} \S 25199.13(e). The appeal board cannot issue a decision modifying the local agency decision unless clear and convincing evidence exists 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. \textit{Id.} \S 25199.13(f). The appeal board cannot issue a decision approving an appeal by an interested person unless the 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. \textit{Id.} \S 25199.13(g).

\textsuperscript{105} \textit{Id.} \S 25199.13(f), (g).

\textsuperscript{106} \textit{Id.} \S 25199.14. A local agency failing to comply with the board’s decision will have an action brought against that agency by the Attorney General to require compliance with the decision. \textit{Id.} \S 25199.13(f), (g).

\textsuperscript{107} \textit{Id.} \S 25173.5(b) (specified exceptions include a hazardous waste facility already taxed pursuant to Health and Safety Code \S 25149.1, a specified hazardous waste facility commencing operation before January 1, 1987, and a tax on the portion of gross receipts derived from recycling of hazardous wastes).

\textsuperscript{108} \textit{Id.} \S 25173.5(a).

\textsuperscript{109} \textit{Id.}
Environmental Protection; hazardous wastes and substances—
disclosure statements

Health and Safety Code §§ 25110.1, 25110.8, 25112.5, 25117.10, 25186.5, 25200.4 (new); §§ 25118, 25165, 25358.3 (amended).
AB 4308 (Wright); 1986 Stat. Ch. 1304
Sponsor: Department of Health Services

Existing law authorizes the Department of Health Services (the Department) to issue hazardous waste facility permits and hazardous waste hauler's registrations. Chapter 1304 mandates that if the applicant is not a public agency, the application must include a disclosure statement containing (1) the name, business address, and social security number of the applicant and of any officers, directors, or partners; (2) the name and address of any company which deals with hazardous substances in which the applicant holds at least a five percent equity or debt liability interest; (3) a description of any licenses, permits, or registrations held by the applicant concerning the handling of hazardous waste; (4) a listing and explanation of any final administrative order, or license revocation or suspension issued by a government authority relating to hazardous materials, received by the applicant in the three years preceding the filing of the statement; (5) a listing and explanation of any civil or criminal prosecutions pending at the time the statement is filed, relating to hazardous materials received by the applicant; (6) a listing of any agencies in other states which have regulated hazardous materials or activities involving the applicant; and (7) a listing and explanation of any federal or state conviction, judgment, or settlement, within three years prior to the filing of the statement, relating to hazardous waste activities.

3. CAL. HEALTH & SAFETY CODE § 25110.1 (definition of applicant).
4. Id. §§ 25165(b) (application for hazardous waste hauler's registration); 25200.4 (application to use and operate a hazardous waste facility). In enacting Chapter 1304, the legislature expressly stated that the provisions of Chapter 1304 will extend strict state regulation to persons involved in hazardous waste management activities, to foster and justify the public confidence and trust in the credibility and integrity of the hazardous waste industry in California. 1986 Cal. Stat. ch. 1304, sec. 1(b), at _____.
5. CAL. HEALTH & SAFETY CODE § 25112.5(a).
Chapter 1304 further provides that every person holding or applying for a hazardous waste license, must file a disclosure statement with the Department on or before January 1, 1989. However, a corporation which has held a hazardous waste facility permit or operated a hazardous waste facility since January 1, 1984, may submit copies of periodic reports in lieu of the disclosure statement.

Existing law authorizes the Director of Health Services (the Director) to contract for any necessary removal or remedial action whenever there is a release or a threatened release of a hazardous substance which might endanger the public or the environment. Chapter 1304 specifies that any person other than a public agency, bidding on a hazardous waste clean-up contract, must submit a disclosure statement to the Department. Under Chapter 1304, the Director may prohibit a person from bidding on such a contract if the Director determines, in writing, that the bidder has (1) been convicted of a crime which is significantly related to the bidder’s fitness to perform those duties required under the contract; (2) failed to comply with a federal or state statute relating to hazardous waste activities, if the violation shows a recurring pattern or may pose a threat to public health or safety, or to the environment; or (3) had a license, permit, or registration involving hazardous waste activities revoked or suspended.

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6. This provision does not apply to federal, state, or local agencies. Id. § 25186.5(b).
7. Id. § 25118 (definition of person).
8. Id. § 25117.10 (definition of license).
9. Id. § 25186.5(b). If any required information changes, or if additional information should be added after the filing of the disclosure statement, that information must be provided within 30 days of the change or addition. Id. § 25186.5(c).
10. Id. Periodic reports include, but are not limited to, those reports which the corporation is required to file with the Securities and Exchange Commission in the three years preceding the submittal. Id.
11. Id. § 25358.3(a)(2).
12. Id. § 25358.3(d).
13. Under Chapter 1304, a conviction means a plea or verdict of guilty, or a conviction following a plea of nolo contendere. Id. § 25358.3(d)(1).
14. Id.
15. Id. § 25358.3(d)(2). If the bidder is a business concern, the Director may prohibit the bid if any officer, director, partner, or person holding more than five percent of the equity in or debt liability of that entity has committed any offenses specified under Health and Safety Code § 25358.3(d)(2). Id. See also id. § 25110.8 (definition of business concern).
16. Id. § 25358.3(d)(3).
Environmental Protection; oil spill liability

Harbors and Navigation Code § 294 (new).
AB 4044 (Farr); 1986 STAT. Ch. 1498
Sponsor: Author
Support: Attorney General; City of San Diego

Under existing law, the owner or operator of any vessel engaged in the commercial transportation, storage, or transfer of petroleum, fuel oil, or hazardous substances is absolutely liable without regard to fault for any proximately caused property damage due to the discharge or leaking of the above listed pollutants into the navigable waters of the State. Liability is not imposed, however, if the discharge or leakage is caused by an external or independent agency which could not have been reasonably foreseen.

With the enactment of Chapter 1498, the legislature recognizes that offshore oil and natural gas exploration and procurement activities will inevitably produce oil spills and other accidents. In addition, the hazardous natural conditions of earthquakes, violent storms, and dense fog off the California coast combine with the inevitability of accidents to pose a serious threat to the coastal environment of the State. Accordingly, Chapter 1498 expands the doctrine of absolute liability to include offshore oil and natural gas exploration and procurement activities that result in economic and property damage.

1. CAL. HARB. & NAV. CODE § 293 (any person owning, operating, or chartering by demise).
2. Id. § 21 (definition of vessel).
3. Id. § 293 (any substance designated as a hazardous substance pursuant to 33 U.S.C. § 1321(b)(2) (1982)).
4. Id. (property damage also includes any damage or injury to the natural resources of the State, including, but not limited to, marine and wildlife resources).
5. Id. (navigable waters of the State means all portions of the sea within the territorial jurisdiction of the State, and all inland waters navigable in fact).
6. Id. (claimants must have incurred property damage within the State). A claimant may be the State, a county, city, or district, or any individual, corporation, association, or partnership. Id.
7. Id.
8. 1986 Cal. Stat. ch. 1498, sec. 1(e), at ________(activities include undersea exploration, recovery, processing, production, and transportation by both pipeline and vessel).
9. Id.
10. Id. sec. 1(b), at ________.
11. Id. sec. 1(a), at ________.
12. CAL. HARB. & NAV. CODE § 294(a)-(k).
SCOPE OF LIABILITY

Chapter 1498 provides that any responsible person is absolutely liable without regard to fault to an injured party for damages caused by the discharge or leaking of natural gas, oil, drilling waste, or exploration from specified sources into marine waters. A prevailing plaintiff under Chapter 1498 is entitled to recover damages for (1) injury or harm to real or personal property; (2) business loss, including loss of income; (3) costs of cleanup, removal, or treatment of the pollutants; (4) cost of wildlife rehabilitation; and (5) attorney’s fees, reasonable costs of the suit, and the cost of any necessary expert witness. If the injured party is a government entity, the entity may recover additional damages for loss of public use and enjoyment, costs to assess the damage to natural resources and monitor cleanup, as well as lost taxes.

Under Chapter 1498, an injured party cannot seek damages for personal injury or wrongful death, but is permitted to pursue these

13. Id. § 294(g)(7) (responsible person means any of the following: (1) the owner or transporter of natural gas, oil, or drilling waste which causes an injury covered by Chapter 1498; or (2) the owner, operator, or lessee of, or person who charters by demise, any offshore well, undersea site, facility, oil rig, oil platform, vessel, or pipeline that is the source of natural gas, oil, drilling waste, or is the source or location of exploration which causes an injury covered by Chapter 1498). The United States, the State, or any public agency cannot be a responsible party to a suit brought under Chapter 1498. Id.
14. Id. § 294(g)(2) (definition of injured party). The State, or a county, city, or district may be an injured party. Id.
15. Id. § 294(g)(3) (definition of natural gas). Natural gas does not include natural gas carried in a vessel for use as a fuel in that vessel. Id.
16. Id. § 294(g)(5) (definition of oil). Oil does not include oil carried in a vessel for use as a fuel in that vessel. Id.
17. Id. (definition of drilling waste).
18. Id. § 294(g)(4) (exploration means only boring and soil sampling).
19. Id. § 294(a)(1)-(4) (specified sources may be any one of the following: (1) any offshore well or undersea site where exploration for, or extraction or recovery of, natural gas or oil occurs; (2) any offshore facility, oil rig, oil platform where exploration for, or extraction, recovery, processing, or storage of, natural gas or oil occurs; (3) any vessel offshore in which natural gas, oil, or drilling waste is transported, processed, or stored; or (4) any pipeline located offshore in which natural gas, oil, or drilling waste is transported).
20. Id. § 294(a).
21. Id. § 294(g)(1)(A).
22. Id. § 294(g)(1)(B).
23. Id. § 294(g)(1)(C).
24. Id. § 294(g)(1)(D).
25. Id. § 294(e). The court may award attorney’s fees and reasonable costs of the suit to a prevailing defendant if the court finds the plaintiff brought the suit in bad faith or solely for the purpose of harassment. Id.
26. Id. § 294(g)(1)(E) (the State, or a city, county, or district).
27. Id. § 294(g)(1)(E)(i) (only within the jurisdiction of the government entity).
28. Id. § 294(g)(1)(E)(iv).
29. Id. § 294(g)(1)(E)(ii).
30. Id. § 294(g)(1)(E)(iii).
causes of action under any other provision or theory of law. In addition, Chapter 1498 does not prohibit any person who has been damaged by natural gas, oil, drilling waste, or exploration from pursuing a cause of action under any other provision or principle of law.

**Exemptions From Liability**

Under Chapter 1498, a responsible person remains absolutely liable for the costs incurred by the State or a local government in removing a pollutant. A responsible person is not liable to an injured party, however, for damages caused solely by any act of war, or by an unanticipated grave natural disaster or other act of God which could not have been prevented or avoided by the exercise of due care or foresight. Chapter 1498 also exempts a responsible person from absolute liability when damages are caused by (1) an injured party's sole negligence or intentional malfeasance; (2) the criminal acts of a third party; (3) natural seepage; (4) the discharge or leaking of oil or natural gas from private pleasure vessels; or (5) a discharge authorized by a state or federal permit. The exemptions under Chapter 1498 do not create an otherwise unavailable defense regarding any action brought under any other provision or principle of law, including common law.

**Civil Procedure**

In determining whether a party is a responsible person, Chapter 1498 authorizes a court to consider the results of any chemical or other scientific tests to determine if the substance which caused the damage matches any oil or substance controlled by the defendant. The burden is on the defendant to produce the test results on both

31. Id. § 294(k).
32. Id. § 294(f). Chapter 1498, however, prohibits double recovery. See id.
33. Id. § 294(b)(1).
34. Id. (including a civil war, insurrection, or other hostilities).
35. Id. (an unanticipated grave natural disaster or act of God must be of an exceptional, inevitable, and irresistible character).
36. Id.
37. Id. § 294(b)(2).
38. Id. § 294(b)(3) (other than the defendant or an agent or employee of the defendant).
39. Id. § 294(b)(4) (not caused by a responsible party).
40. Id. § 294(b)(5).
41. Id. § 294(b)(2)-(6); id. § 294(b)(6) (discharge authorized by permit).
42. Id. § 294(f).
43. Id. § 294(d).
the damage-causing substance, and the substances under the defendant's control. Chapter 1498 also provides that any party may request and receive samples of substances within another party's control.

Under Chapter 1498, liability is joint and several. Furthermore, any person not joined to the suit and deemed to be a responsible person, upon a motion and sufficient showing, must be joined to the action. Chapter 1498 also provides that a judgment obtained by a plaintiff that is more favorable than a settlement offer rejected by the defendant will bear interest at an annual rate of ten percent, for the amount exceeding the settlement offer, until satisfaction of the judgment. Finally, the provisions of Chapter 1498 are severable: If any provision is held invalid, that invalidity will not affect the other provisions or application of Chapter 1498.

**JTH**

44. *Id.* The burden of producing test results will be waived if samples are unavailable to test, or reliable tests for the substance in question have not been developed. *Id.*

45. *Id.*

46. *Id.* § 294(i). Chapter 1498, however, does not bar a cause of action that a responsible party has or would have, by reason of subrogation or otherwise, against any person. *Id.* Chapter 1498 does not appear to be inconsistent with 1986 California Proposition 51, since Chapter 1498 specifically excludes damages for personal injury and does not address noneconomic damages for injury to property. See Cal. Civ. Code §§ 1431-1431.5.

47. *Id.* § 294(c).

48. *Id.* § 294(j). Chapter 1498 cross-references to Civil Code § 3291 which deals specifically with personal injury claims; however, Civil Code § 3291 will apparently still apply to Chapter 1498 despite Harbors and Navigation Code § 294(k) denying personal injury claims to be brought under Chapter 1498.

49. 1986 Cal. Stat. ch. 1498, sec. 3, at ______.

**Environmental Protection; transportation of hazardous waste**


AB 2930 (La Follette); 1986 STAT. Ch. 551

Sponsor: Author

Support: Department of Health Services

Existing law requires any person engaged in the transportation of hazardous waste, with specified exceptions, to have a valid

2. *Id.* § 25117 (definition of hazardous waste).
3. *Id.* §§ 25163(b) (exceptions include persons transporting only septic tank, cesspool, seepage pit, or chemical toilet waste, that does not contain a hazardous waste originating from
Environmental Protection

registration issued by the State Department of Health Services (Department). Chapter 551 requires any person transporting hazardous waste in a vehicle to carry a valid registration certificate. Chapter 551 also requires that the registration certificate be shown upon demand to specified officers. In addition, pursuant to Chapter 551, any person who, without having a valid registration certificate in the driver's possession, knowingly transports, or authorizes the transportation of, hazardous waste is subject to a fine of not more than $500 for each day of violation, imprisonment in the county jail not to exceed six months, or both.

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other than the body of a human or animal, and persons who hold an unrevoked registration issued by a health officer or a health officer's representative; 25163(c) (exceptions include persons transporting hazardous waste that do not exceed a total volume of five gallons or do not exceed a total weight of 50 pounds and satisfy 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 transport; (2) different hazardous waste materials are not mixed within a container during transport; (3) extremely hazardous wastes do not exceed 2.2 pounds and have not been generated in the course of any business; and (4) the person transporting the hazardous waste is the producer of the hazardous waste and is responsible for producing no more than 100 kilograms of hazardous waste in any month).


5. CAL. HEALTH & SAFETY CODE § 25163(a). A person who knowingly transports hazardous waste without a valid registration is subject to the following penalties: A fine of not less than $2,000 or more than $25,000 for each day of violation, imprisonment in the county jail not to exceed one year, or both. Id. § 25191(a). Second or subsequent violations are punishable by imprisonment in the state prison for 16, 20, or 24 months, or in the county jail for not more than one year; by a fine not less than $2,000 or exceeding $50,000 for each day of violation; or by both fine and imprisonment. Id.

6. Id. § 25163(a)(2). A registration certificate must be issued by the Department. Anticipating the need of hazardous waste haulers for copies of registration certificates, Chapter 551 enables registered haulers to obtain additional copies from the Department upon payment of a $2 fee for each copy requested. Id.

7. Id. (any representative of the Department, officer of the California Highway Patrol, local health officer, or public officer designated by the Department).

8. Id. § 25191(c)(3) (each day or partial day that a violation occurs is a separate violation).