

AMENDED IN SENATE JUNE 18, 2003

AMENDED IN ASSEMBLY APRIL 23, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1367

Introduced by Assembly Member Laird

February 21, 2003

An act to add Section 25150.9 to the Health and Safety Code, *and to amend Section 13173 of the Water Code*, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1367, as amended, Laird. ~~Hazardous waste~~ *Waste*: regulation.

(1) Existing law establishes various standards for management and control of hazardous waste. Existing law authorizes the Department of Toxic Substances Control to adopt standards and regulations for the management of hazardous waste, as specified.

This bill would authorize the department to adopt alternative ~~hazardous~~ waste management standards by regulation, for ~~hazardous~~ waste management activities that meet specified criteria. The bill would require the department to make specified findings and analysis, and to make that analysis available to the public, when it gives notice that it proposes to adopt those regulations and before adopting those regulations.

The bill would provide that the department's authority to adopt regulations pursuant to the bill's provisions shall remain in effect only until January 1, 2007, unless a later enacted statute deletes or extends that date. However, the bill would also provide that this would not



invalidate any regulation adopted pursuant to the bill’s authority before that date.

Since a violation of the regulations authorized by this bill would be a crime, the bill would impose a state-mandated local program.

(2) *The Porter-Cologne Water Quality Control Act defines the term “designated waste” and authorizes the State Water Resources Control Board to adopt policies with regard to designated waste.*

This bill would revise the definition of designated waste to include waste disposed pursuant to the alternative waste management regulations adopted in accordance with the bill.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25150.9 is added to the Health and
2 Safety Code, to read:

3 25150.9. (a) (1) Subject to the requirements of this section,
4 the department may, by regulation, establish ~~hazardous~~ waste
5 management standards as an alternative to one or more of the
6 standards specified in this chapter, for specified activities that do
7 not involve the management of any ~~hazardous~~ waste other than the
8 ~~hazardous~~ wastes identified in paragraph (4).

9 (2) The rulemaking file for any regulation adopted pursuant to
10 paragraph (1) shall specify the standard or standards of this chapter
11 for which the regulation provides alternative standards. Any
12 ~~person complying with the alternative standards established by the~~
13 ~~regulation~~ *person subject to the alternative standard or standards*
14 *shall comply with either the alternative standard or standards*
15 *specified in the department’s regulations or the standard or*
16 *standards specified in this chapter. In either case, that person is*
17 *deemed to be in compliance with the standard or standards of this*
18 *chapter for which the regulation is specified as being an*
19 *alternative.*



1 (3) (A) During the development of a regulation proposed to be
2 adopted pursuant to this section that affects a waste that is
3 proposed to be, or is currently, disposed of in a solid waste facility,
4 the department shall consult with the California Integrated Waste
5 Management Board ~~and~~, the State Water Resources Control
6 Board, *and any other appropriate governmental agency.*

7 (B) *If the department adopts a regulation pursuant to this*
8 *section for a waste that is required under this chapter, to be*
9 *disposed of in a class I hazardous waste disposal facility, and that*
10 *regulation allows that waste to be disposed of in a solid waste*
11 *landfill, the disposal of that waste in a solid waste landfill in*
12 *accordance with that regulation shall be performed as if the waste*
13 *were a designated waste, as defined in Section 13173 of the Water*
14 *Code.*

15 (4) This section applies only to the following ~~hazardous~~
16 wastes:

17 (A) Hazardous waste that substantially meets the criteria for
18 universal wastes listed in Section 273.81 of Title 40 of the Code
19 of Federal Regulations, and that is regulated as universal waste in
20 the regulations adopted pursuant to this subdivision.

21 (B) Any other ~~hazardous~~ waste that meets one or more of the
22 following criteria:

23 (i) The ~~hazardous~~ waste is generated by numerous households.

24 (ii) The ~~hazardous waste~~ *waste is a hazardous waste that is*
25 *generated at numerous locations where prolonged accumulation of*
26 *the hazardous waste, under the requirements of this chapter and the*
27 *regulations adopted by the department governing accumulation*
28 *and storage of hazardous waste, presents greater than normal*
29 *public health or environmental risks. This type of location*
30 *includes, but is not limited to, ~~public~~ elementary and secondary*
31 *~~schools~~ ~~schoolsites~~, day care centers, and nonhospital facilities*
32 *that provide day care or residential care for the elderly or the*
33 *physically or mentally impaired. This type of location also*
34 *includes small government buildings frequented by numerous*
35 *members of the public where it ~~is either unsafe or is not~~ *may not**
36 *be reasonably feasible to manage hazardous waste in accordance*
37 *with the requirements of this chapter and the regulations adopted*
38 *by the department governing accumulation of hazardous waste.*

39 (iii) The ~~hazardous~~ waste is generated by a wide variety of
40 types of establishments, including, but not limited to, households,



1 retail and commercial businesses, office complexes, small
2 businesses, government organizations, and large industrial
3 facilities.

4 (iv) The hazardous waste is a material that, ~~due to its hazardous~~
5 ~~characteristics~~, is being or has been phased out of common use
6 because the use of the material presents unacceptable risks to
7 public health or safety or the environment.

8 ~~(v) Due to the unique characteristics of the hazardous waste or~~

9 (v) *The department determines that due to the unique*
10 *characteristics of the waste or the circumstances surrounding its*
11 *generation or subsequent management, one or more requirements*
12 *of this chapter are determined by the department to be*
13 *inappropriate, unsafe, or unworkable for the management of that*
14 *hazardous waste. management, an alternative standard may be*
15 *more appropriate for the management of that waste than one or*
16 *more of the requirements of this chapter.*

17 (5) *The department may not adopt regulations pursuant to this*
18 *section that establish alternative standards for the requirements of*
19 *this chapter that concern the disposal of waste that, on January 1,*
20 *2004, is required to be disposed of in a class I hazardous waste*
21 *disposal facility under this chapter, unless all of the following*
22 *apply:*

23 (A) *The waste meets one of the following criteria:*

24 (i) *The waste is household hazardous waste, as defined in*
25 *Section 25218.1, or, in the case of a nonhazardous waste, the waste*
26 *would be household hazardous waste if it met the definition of*
27 *hazardous waste.*

28 (ii) *The waste is generated by the abatement of human health*
29 *hazards present in residential buildings.*

30 (iii) *The waste is generated by an elementary or secondary*
31 *schoolsite or a state or local government agency or district, and*
32 *the waste is being removed from service in an area accessible to*
33 *the public because it presents an imminent or substantial*
34 *endangerment to public health, as determined by the department*
35 *in the rulemaking record. This clause does not apply to liquid*
36 *waste generated in school laboratories.*

37 (iv) *The waste is a hazardous waste and is classified as a*
38 *special waste in accordance with Section 66261.122 of Title 22 of*
39 *the California Code of Regulations.*



1 (B) *The waste is a material other than soil. This subparagraph*
2 *does not apply to nonsoil waste containing de minimus amounts of*
3 *soil, or waste soil meeting the criteria in clause (i) of*
4 *subparagraph (A).*

5 (C) *The department determines and demonstrates in the*
6 *analysis required pursuant to paragraph (1) of subdivision (b) that*
7 *there is no readily available technology for recycling the waste. If*
8 *the department determines that a recycling technology is*
9 *available, but that an adequate collection and recycling*
10 *infrastructure does not yet exist, the department may adopt*
11 *regulations that establish alternative disposal standards for a*
12 *limited period of time that is sufficient to allow the establishment*
13 *of that infrastructure.*

14 (b) Before adopting a regulation pursuant to subdivision (a),
15 the department shall do all of the following:

16 (1) Prepare an analysis, pursuant to subdivision (c), of the
17 ~~hazardous~~ waste management activity to which the alternative
18 management standards will apply. The department shall first
19 prepare the analysis as a preliminary analysis and make it available
20 to the public at the same time that the department gives notice,
21 pursuant to Section 11346.4 of the Government Code, that it
22 proposes to adopt a regulation pursuant to this section establishing
23 ~~hazardous~~ waste management standards as an alternative to one or
24 more of the requirements of this chapter. The department shall
25 include, in the notice, a reference that the department has prepared
26 *and incorporated in the rulemaking file* a preliminary analysis and
27 a statement concerning where a copy of the preliminary analysis
28 can be obtained. The information in the preliminary analysis shall
29 be updated and the department shall make the analysis available
30 to the public as a final analysis not less than 10 working days prior
31 to the date that the department adopts the regulation. *For purposes*
32 *of complying with the notification requirements of this paragraph,*
33 *the department shall establish a list of interested parties and shall*
34 *provide the required notice to all parties on the list. The*
35 *department shall use the best available technology to establish a*
36 *list that includes as many known, interested parties as possible.*

37 (2) Make, *and incorporate in the rulemaking file*, the findings
38 and demonstrations required by subdivision (d).

39 (3) Impose, as may be necessary, conditions and limitations on
40 the application of the alternative management standards that



1 ensure that the affected activity will not pose a significant potential
2 hazard to human health or safety or to the environment.

3 (c) Before the department gives notice of a proposal to adopt
4 a regulation establishing alternative management standards
5 pursuant to subdivision (a), and before the department adopts the
6 regulation, the department shall evaluate the affected ~~hazardous~~
7 waste management activity and shall prepare, as required by
8 paragraph (1) of subdivision (b), an analysis that addresses all of
9 the following aspects of the activity, to the extent that the
10 requirement or requirements for which alternative management
11 standards will be established may affect these aspects of the
12 activity:

13 (1) The types of ~~hazardous~~ waste streams and the estimated
14 amounts of ~~hazardous~~ waste that are managed as part of the activity
15 and the hazards to human health or safety or to the environment
16 posed by reasonably foreseeable mismanagement of those
17 ~~hazardous~~ wastes and their ~~hazardous~~ constituents. The estimate
18 of the amounts of ~~hazardous~~ waste that are managed as part of the
19 activity shall be based upon information reasonably available to
20 the department.

21 (2) The complexity of the activity, and the amount and
22 complexity of operator training, equipment installation and
23 maintenance, and monitoring that are required to ensure that the
24 activity is conducted in a manner that safely and effectively
25 manages the particular ~~hazardous~~ waste stream.

26 (3) The chemical or physical hazards that are associated with
27 the activity and the degree to which those hazards are similar to,
28 or differ from, the chemical or physical hazards that are associated
29 with the production processes that are carried out in the facilities
30 that produce the ~~hazardous~~ waste that is managed as part of the
31 activity.

32 (4) The types of accidents that might reasonably be foreseen to
33 occur during the management of particular types of ~~hazardous~~
34 waste streams as part of the activity, the likely consequences of
35 those accidents, and the actual reasonably available accident
36 history associated with the activity.

37 (5) The types of locations at which the activity may be carried
38 out, an estimate of the number of these locations, and the types of
39 hazards that may be posed by proximity to the land uses described
40 in subdivision (b) of Section 25232. The estimate of the number



1 of locations at which the activity may be carried out shall be based
2 upon information reasonably available to the department.

3 (d) The department may not give notice proposing the adoption
4 of, and the department may not adopt, a regulation pursuant to
5 subdivision (a) unless it first finds and demonstrates, using
6 appropriate information, including the information developed in
7 the analysis prepared pursuant to subdivision (c), all of the
8 following conditions:

9 (1) One of the following applies:

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

13 (B) The standard or standards in this chapter for which
14 alternative standards would be established is or are not a
15 requirement of the federal act, or the regulations adopted to
16 implement the federal act.

17 (C) The ~~hazardous~~ waste meets the criteria in subparagraph (A)
18 of paragraph (4) of subdivision (a).

19 (2) There are special characteristics or circumstances
20 associated with the ~~hazardous~~ waste, the generating or other
21 management activity, or the universe of persons that generate or
22 manage the ~~hazardous~~ waste that make the alternative
23 management standards to be adopted by regulation more
24 appropriate than the corresponding standard or standards
25 contained in this chapter.

26 (3) One of the following applies:

27 (A) The ~~hazardous~~ waste management activity, to which the
28 alternative standards would apply, is not significant as a potential
29 hazard to human health or safety or to the environment, when
30 conducted in accordance with the conditions, limitations, and
31 other requirements specified in the regulations adopted pursuant
32 to subdivision (a).

33 (B) The standard or standards in this chapter for which
34 alternative standards would be established are not significant in
35 either of the following:

36 (i) Preventing or mitigating any potential hazard to human
37 health or safety or to the environment posed by the activity subject
38 to the alternative standards.



1 (ii) Ensuring that the activity is conducted in compliance with
2 applicable requirements of this chapter and the regulations
3 adopted pursuant to this chapter.

4 (C) The conditions, limitations, and other requirements
5 specified in the regulations adopted pursuant to subdivision (a)
6 accomplish the same purpose as the corresponding standard or
7 standards in this chapter, but at less cost or greater administrative
8 convenience and without increasing potential risks to human
9 health or safety or the environment.

10 (4) Compliance with the alternative management standards, in
11 lieu of the corresponding standard or standards in this chapter, is
12 not likely to result in any of the following:

13 (A) A significant reduced ability to track the ~~hazardous~~ waste
14 or to ensure that the ~~hazardous~~ waste is properly disposed of.

15 (i) *If the alternative management standards proposed by the*
16 *department would allow for a deviation from the hazardous waste*
17 *manifest requirements adopted pursuant to Section 25160, the*
18 *department shall include in the analysis prepared pursuant to*
19 *subdivision (c) an explanation of how the proposed alternate*
20 *tracking or recordkeeping system would ensure that the affected*
21 *hazardous waste will be properly tracked and managed.*

22 (ii) *The requirement of clause (i) does not apply to a proposed*
23 *alternative tracking or recordkeeping system that applies to*
24 *household hazardous waste, as defined in Section 25218.1.*

25 (B) A significant increased potential for any of the following
26 to occur:

27 (i) Release of ~~hazardous~~ waste or its constituents to the
28 environment.

29 (ii) Unauthorized persons or animals to come in contact with,
30 or otherwise be exposed to, ~~hazardous~~ waste or its constituents.

31 (iii) Mismanagement of the ~~hazardous~~ waste.

32 (e) The authority of the department to adopt regulations
33 pursuant to this section shall remain in effect only until January 1,
34 2007, unless a later enacted statute, which is enacted on or before
35 January 1, 2007, deletes or extends that date. This subdivision does
36 not invalidate any regulation adopted pursuant to this section prior
37 to January 1, 2007.

38 SEC. 2. *Section 13173 of the Water Code is amended to read:*

39 13173. “Designated waste” means either of the following:

40 (a) Hazardous waste that *meets either of the following criteria:*



1 (1) *The hazardous waste* has been granted a variance from
2 hazardous waste management *disposal* requirements pursuant to
3 Section 25143 of the Health and Safety Code.

4 (2) *The hazardous waste is disposed of in other than a class 1*
5 *hazardous waste disposal facility, in accordance with the*
6 *regulations adopted by the Department of Toxic Substances*
7 *Control pursuant to Section 25150.9 of the Health and Safety*
8 *Code.*

9 (b) Nonhazardous waste that consists of, or contains, pollutants
10 that, under ambient environmental conditions at a waste
11 management unit, could be released in concentrations exceeding
12 applicable water quality objectives or that could reasonably be
13 expected to affect beneficial uses of the waters of the state as
14 contained in the appropriate state water quality control plan.

15 *SEC. 3.* No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.

24 _____
25 CORRECTIONS
26 **Text — Pages 3,4,8.**

27 _____
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