

AMENDED IN SENATE SEPTEMBER 9, 2013

AMENDED IN SENATE SEPTEMBER 6, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1383**

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**Introduced by** ~~Committee on Labor and Employment~~  
~~(Roger Hernández (Chair), Alejo, Chau, and Holden)~~ *Assembly*  
*Member Roger Hernández*

March 4, 2013

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An act to amend Sections 25199.3 and 25200 of, and to add Sections 25107, 25122.10, 25178.2, 25186.4, and 25199.3.1 to, the Health and Safety Code, and to amend Section 21151.1 of the Public Resources Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1383, as amended, ~~Committee on Labor and Employment~~ *Roger Hernández*. Hazardous waste: permitting.

(1) Existing law requires the Department of Toxic Substances Control to post certain information regarding the status of the hazardous waste facilities program on or before January 1 of each odd-numbered year on its Internet Web site.

This bill would define the term “significant noncomplier” and would require the department to develop and maintain a searchable database that contains certain information regarding hazardous waste facilities permits, including information regarding significant noncompliers, for certain hazardous waste facilities.

(2) Existing law requires the department to issue a hazardous waste facilities permit to a facility that, in the judgment of the department, meets specified requirements. The permit is required to be issued for a

fixed term and existing law specifies a procedure for the continuation of that term. Existing law also authorizes the department to issue specified permits and grants of authorization to hazardous waste facilities managing specified types of hazardous waste, including standardized permits for hazardous waste facilities that are not subject to the federal Resource Conservation and Recovery Act of 1976 (RCRA). The department is required to issue a written report regarding the issuance of a hazardous waste facilities permit regarding the violations of specified laws or regulations by the applicant.

This bill would prohibit the department from issuing, renewing, or modifying a hazardous waste facilities permit for a hazardous waste facility, as defined, if the applicant, project proponent, or any of its affiliated entities is a significant noncomplier, unless the department makes a specified finding.

(3) Existing law establishes procedures for a land use decision by a local agency concerning a hazardous waste facility project, as defined, including the requirements imposed by the Permit Streamlining Act. An applicant for a hazardous waste facility project is authorized to submit applications for land use decisions and for one or more permits, including a hazardous waste facilities permit, simultaneously. A state agency is prohibited from refusing to issue a permit for a hazardous waste facility on the grounds that the applicant has not been granted a local land use permit.

This bill would require an applicant for a hazardous waste facilities permit for a hazardous waste facility project or for the modification of a hazardous waste facilities permit for a material expansion of a hazardous waste facility to file the application for a hazardous waste facilities permit with the department concurrently with the applications for any land use decisions that a local agency may require for the hazardous waste facility. The bill would require the department to serve as the lead agency for the issuance of the hazardous waste facilities permit pursuant to the California Environmental Quality Act and would require any other state agency that is required to issue a permit and any other local agency that is required to issue a land use decision to serve as a responsible agency. The bill would impose a state-mandated local program by imposing new duties upon local agencies.

The bill would require the department to take specified actions with regard to holding hearings, providing notice, and making certain environmental documents and other materials related to a hazardous waste facilities permit publicly available on its Internet Web site.

The bill would require the department to prepare and certify an environmental impact report and a health risk assessment for the permit in a specified manner and to either reject the application for the hazardous waste facilities permit or issue a draft hazardous waste facilities permit. The bill would prohibit the department from issuing a final hazardous waste facilities permit until all the local land use decisions for the hazardous waste facility have been issued.

(4) The California Environmental Quality Act requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. Existing law requires the preparation of an EIR, or the modification, addendum, or supplement of an existing environmental impact report, for the initial issuance of a hazardous waste facilities permit to an offsite large treatment facility or for the initial issuance of a hazardous waste facilities permit to a land disposal facility.

This bill would instead require the preparation of an EIR or the modification, addendum, or supplement of an existing EIR for the issuance of a hazardous waste facilities permit, including the initial issuance of a permit to a land disposal facility, or the issuance of a standardized hazardous waste facility permit or the modification of a permit for a facility undergoing a material expansion, as defined.

(5) 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 25107 is added to the Health and Safety  
2 Code, to read:  
3 25107. The Legislature finds and declares all of the following:  
4 (a) Hazardous waste facilities provide a valuable and necessary  
5 service in California, and the regulation of hazardous waste  
6 facilities allows these facilities to provide this valuable and

1 necessary service, *at the same time*, while also ensuring protection  
2 of the environment and general welfare.

3 (b) Central to the regulation of hazardous waste facilities is  
4 ensuring that the environmental impacts of those facilities are  
5 adequately considered during the permitting process, and the  
6 standardization within the department of this environmental review  
7 is desirable.

8 (c) Also central to the regulation of hazardous waste facilities  
9 is ensuring that entities that operate these facilities comply with  
10 applicable laws and regulations, and that entities that frequently  
11 fail to comply with applicable laws and regulations are not given  
12 new or renewed hazardous waste facilities permits.

13 SEC. 2. Section 25122.10 is added to the Health and Safety  
14 Code, to read:

15 25122.10. (a) “Significant noncomplier” means a facility, an  
16 owner, or an operator that is required pursuant to the federal act  
17 to obtain a hazardous waste facilities permit, in accordance with  
18 Section 25200, and for which the department finds either of the  
19 following conditions:

20 (1) The facility is owned or is operated by a person that, together  
21 with its affiliates and predecessors, or the owner or operator is a  
22 person that, has had three separate Class I violations, that have  
23 been formally noticed, and have not been rescinded or classified  
24 by the department as a violation other than a Class I violation, in  
25 the previous 10-year period.

26 (2) The facility, owner, or operator chronically and without  
27 reasonable basis, deviates from the terms of a permit, order,  
28 settlement document, or decree issued pursuant to this chapter by  
29 failing to perform work as required by the terms of the permit,  
30 order, settlement document, or decree so that the deviation or  
31 failure may be considered willful recalcitrance.

32 (b) For purposes of determining whether a facility, an owner,  
33 or an operator is a significant noncomplier, the department shall  
34 not include a violation or other noncompliance that occurred before  
35 the date of acquisition of all, or a portion of, the facility, through  
36 a bona fide, arms-length transaction, as defined by the department  
37 pursuant to regulation.

38 SEC. 3. Section 25178.2 is added to the Health and Safety  
39 Code, to read:

1 25178.2. (a) For purposes of this section “hazardous waste  
2 facilities permit” means a permit issued pursuant to Section 25200  
3 for a facility that is required to obtain a hazardous waste facility  
4 permit pursuant to the federal act.

5 (b) The department shall develop and maintain a searchable  
6 database that contains all of the following information:

7 (1) All persons or facility operators subject to, or seeking, a  
8 hazardous waste facilities permit pursuant to this chapter.

9 (2) All hazardous waste facilities permits issued pursuant to this  
10 chapter.

11 (3) All pending applications for hazardous waste facilities  
12 permits, including relevant status information.

13 (4) The identification of each hazardous waste facility, owner,  
14 or operator that the department determines is a significant  
15 noncomplier.

16 (5) All Class I violations issued to hazardous waste facilities in  
17 the previous 10 years and whether the violations have been  
18 corrected.

19 (c) On or before June 1, 2014, the department shall make the  
20 searchable database required by this section available to the public  
21 by posting it on its Internet Web site, and the department shall  
22 keep the database regularly updated thereafter.

23 SEC. 4. Section 25186.4 is added to the Health and Safety  
24 Code, to read:

25 25186.4. (a) Except as provided in subdivision (b), the  
26 department shall not issue, renew, or modify a hazardous waste  
27 facilities permit for a hazardous waste facility that is required to  
28 obtain a permit pursuant to the federal act if the department finds  
29 the applicant, project proponent, or affiliated entity is a significant  
30 noncomplier, including an application for a new, renewed, or  
31 modified hazardous waste facilities permit that is pending as of  
32 January 1, 2014. The department shall determine whether an  
33 applicant, project proponent, or any affiliated entity, that has filed  
34 an application for a new, renewed, or modified hazardous waste  
35 facilities permit that is pending as of January 1, 2014, is a  
36 significant noncomplier.

37 (b) The department may issue, renew, or modify a hazardous  
38 waste facilities permit, including modifying a hazardous waste  
39 facilities permit to reflect acquisition by a new person or a change  
40 in ownership or operational control, if the current owner or operator

1 of the hazardous waste facility is a significant noncomplier if the  
2 department finds both of the following:

3 (1) The person that acquired all, or a portion of, the interests of  
4 the owner or operator of the hazardous waste facility that is a  
5 significant noncomplier, does not qualify as a significant  
6 noncomplier.

7 (2) The person that acquired all, or a portion of, the interests of  
8 the owner or operator of the hazardous waste facility that is a  
9 significant noncomplier, acquired that entity through a bona fide,  
10 arms-length transaction, as defined by the department pursuant to  
11 regulation.

12 SEC. 5. Section 25199.3 of the Health and Safety Code is  
13 amended to read:

14 25199.3. (a) Notwithstanding any other provision of law, but  
15 except as provided in Section 25199.3.1, an applicant for a  
16 hazardous waste facility project may submit applications for a land  
17 use decision and for one or more permits to the appropriate public  
18 agencies simultaneously. Unless a state agency is prohibited by  
19 statute from approving a permit before the granting of a local land  
20 use decision, the state agency shall not refuse to issue a permit for  
21 a hazardous waste facility project on the grounds that the applicant  
22 has not been granted a land use permit, except that the state agency  
23 may provide that the permit shall not become effective until the  
24 applicant is granted a local land use permit.

25 (b) Any public agency may request another public agency to  
26 jointly review applications for a permit or land use decision for a  
27 hazardous waste facility project. A public agency may consolidate,  
28 with other public agencies, public meetings and hearings permitted  
29 or required by law or regulation for the issuance of a permit or the  
30 making of a land use decision for a hazardous waste facility project.

31 (c) The department shall coordinate the technical review of  
32 applications for permits for hazardous waste facility projects that  
33 are received by state agencies.

34 (d) Upon the request of a local agency, the department, and any  
35 other state agency that is authorized to issue a permit for a  
36 hazardous waste facility project, shall provide technical assistance  
37 to a local agency that is reviewing an application for a land use  
38 decision for the project.

39 SEC. 6. Section 25199.3.1 is added to the Health and Safety  
40 Code, to read:

1 25199.3.1. (a) Notwithstanding subdivision (l) of Section  
2 25199.1, for purposes of this section, “material expansion” means  
3 the expansion of an existing hazardous waste facility’s treatment,  
4 storage, or disposal capacity by 10 percent or more.

5 (b) The requirements of this section apply to the issuance of a  
6 hazardous waste facilities permit for a hazardous waste facility  
7 project or the modification of a hazardous waste facilities permit  
8 for a material expansion of a hazardous waste facility.

9 (c) (1) An applicant for a hazardous waste facilities permit or  
10 modification shall file the application for a hazardous waste  
11 facilities permit with the department concurrently with the  
12 applications for any land use decisions that a local agency may  
13 require for the hazardous waste facility. The department shall post  
14 all hazardous waste facilities permit applications and applications  
15 for a land use decision on the department’s Internet Web site.

16 (2) The department shall serve as the lead agency for the  
17 issuance of the hazardous waste facilities permit pursuant to the  
18 California Environmental Quality Act (Division 13 (commencing  
19 with Section 21000) of the Public Resources Code). Any other  
20 state agency that is required to issue a permit and any other local  
21 agency that is required to issue a land use decision shall serve as  
22 a responsible agency.

23 (d) The department shall prepare an environmental impact report  
24 and a health risk assessment for any hazardous waste facilities  
25 permit for a new facility and for any amendment to, or modification  
26 of, the hazardous waste facilities permit for a material expansion  
27 of the existing facility. The health risk assessment shall meet the  
28 same requirements as a health risk assessment prepared pursuant  
29 to subdivision (b) of Section 25356.1.5.

30 (e) The department shall take both of the following actions to  
31 provide for public participation and environmental review of the  
32 hazardous waste facilities permit or modification, when required  
33 to give notice pursuant to this section:

34 (1) The department shall mail or deliver notice to all owners of  
35 all real property as shown on the latest equalized assessment roll  
36 within 1,000 feet, for nonresidential property, or 2,000 feet, for  
37 residential property, of the real property that is the subject of the  
38 application for a hazardous waste facilities permit. In lieu of using  
39 the assessment roll, the department may use records of the county

1 assessor or tax collector that contain more recent information than  
2 the assessment roll.

3 (2) The department shall provide notice by placing a display  
4 advertisement of at least one-eighth page in at least one newspaper  
5 of general circulation for the city, or if the proposed facility is not  
6 located in a city, the county in which the real property that is the  
7 subject of the application for a hazardous waste facilities permit  
8 is located.

9 (f) (1) The department shall coordinate with the city, or if the  
10 proposed facility is not located in a city, the county, in which the  
11 real property that is the subject of the application for a hazardous  
12 waste facilities permit is located.

13 (2) The department shall hold at least one public scoping  
14 meeting, as described in Section 21083.9 of the Public Resources  
15 Code, in the jurisdiction of the city or county specified in paragraph  
16 (1) before taking any action pursuant to the California  
17 Environmental Quality Act (Division 13 (commencing with Section  
18 21000) of the Public Resources Code).

19 (3) The department shall give public notice pursuant to  
20 subdivision (e) of a scoping meeting at least 30 days before holding  
21 the scoping meeting. The scoping meeting shall be held as close  
22 as practicable to the location of the proposed facility and shall be  
23 held more than two miles from the proposed facility location only  
24 when there is not a publicly accessible meeting location within  
25 two miles of the proposed facility location.

26 (g) The department shall prepare a draft environmental impact  
27 report and draft a health risk assessment. The department shall  
28 allow at least a 45-day public comment period on the draft  
29 environmental impact report and the draft health risk assessment,  
30 and the department shall hold at least one public hearing during  
31 the public comment period in the city, or if the proposed facility  
32 is not located in a city, in the county in which the hazardous waste  
33 facility is proposed to be located. The department shall give public  
34 notice of the public hearing pursuant to subdivision (e) at least 30  
35 days before the public hearing.

36 (h) The department may certify the final environmental impact  
37 report and approve the health risk assessment only at a public  
38 hearing. The department shall give public notice of the public  
39 hearing and of the public availability of the final environmental  
40 impact report and health risk assessment pursuant to subdivision

1 (e) at least 10 days before the public hearing to certify the  
2 environmental impact report and approve the health risk  
3 assessment.

4 (i) (1) After the department certifies the environmental impact  
5 report and approves the health risk assessment pursuant to  
6 subdivision (h), the department shall either reject the application  
7 for the hazardous waste facilities permit or issue a draft hazardous  
8 waste facilities permit that is revised to take into account the results  
9 of the final environmental impact report and the health risk  
10 assessment.

11 (2) A draft hazardous waste facilities permit issued pursuant to  
12 paragraph (1) shall be known as a “revised draft permit.”

13 (3) The department shall give public notice of the availability  
14 of the revised draft permit pursuant to subdivision (e) and take  
15 public comments on the revised draft permit for at least 60 days.  
16 The department shall not issue a final hazardous waste facilities  
17 permit until all of the local land use decisions that a local agency  
18 may require for the hazardous waste facility have been issued.

19 (j) After all local land use decisions have been issued for a  
20 hazardous waste facility project and after the 60-day public  
21 comment period on the revised draft permit has ended, the  
22 department may issue the final hazardous waste facilities permit  
23 at a public hearing. The department shall give public notice of the  
24 public hearing pursuant to subdivision (e) at least 30 days before  
25 holding the public hearing to approve the final hazardous waste  
26 facilities permit.

27 (k) The department shall make all environmental documents,  
28 application materials, public comments, responses, and technical  
29 documents related to a hazardous waste facilities permit subject  
30 to this section publicly available on its Internet Web site.

31 (l) The requirements in this section are in addition to those  
32 contained in other applicable laws, including, but not limited to,  
33 the California Environmental Quality Act (Division 13  
34 (commencing with Section 21000) of the Public Resources Code).

35 SEC. 7. Section 25200 of the Health and Safety Code is  
36 amended to read:

37 25200. (a) (1) The department shall issue hazardous waste  
38 facilities permits to use and operate one or more hazardous waste  
39 management units at a facility that in the judgment of the  
40 department meets both of the following requirements:

1 (A) Meets the building standards published in the California  
2 Building Standards Code relating to hazardous waste facilities.

3 (B) Complies with the other standards and requirements adopted  
4 pursuant to this chapter.

5 (2) The department shall impose conditions on each hazardous  
6 waste facilities permit specifying the types of hazardous wastes  
7 that may be accepted for transfer, storage, treatment, or disposal.  
8 The department may impose any other condition on a hazardous  
9 waste facilities permit that is consistent with the intent of this  
10 chapter.

11 (3) The department shall not issue a hazardous waste facilities  
12 permit to a significant noncomplier, as specified in Section  
13 25186.4.

14 (b) The department may impose, as a condition of a hazardous  
15 waste facilities permit, a requirement that the owner or operator  
16 of a hazardous waste facility that receives hazardous waste from  
17 more than one producer comply with an order of the director that  
18 prohibits the facility operator from refusing to accept a hazardous  
19 waste based on geographical origin that is authorized to be accepted  
20 and may be accepted by the facility without extraordinary hazard.

21 (c) (1) (A) A hazardous waste facilities permit issued by the  
22 department shall be for a fixed term, which shall not exceed 10  
23 years for a land disposal facility, storage facility, incinerator, or  
24 other treatment facility.

25 (B) Except as provided in subparagraph (C), before the fixed  
26 term of a permit expires, the owner or operator of a facility  
27 intending to extend the term of the facility's permit shall submit  
28 a complete Part A application for a permit renewal. At any time  
29 following the submittal of the Part A application, the owner or  
30 operator of a facility shall submit a complete Part B application,  
31 or any portion thereof, as well as any other relevant information,  
32 as and when requested by the department. To the extent not  
33 inconsistent with the federal act, when a complete Part A renewal  
34 application, and any other requested information, has been  
35 submitted before the end of the permit's fixed term, the permit is  
36 deemed extended until the renewal application is approved or  
37 denied and the owner or operator has exhausted all applicable  
38 rights of appeal.

1 (C) If the owner or operator of the hazardous waste facility is  
2 a significant noncomplier, the owner or operator is subject to  
3 Section 25186.4.

4 (D) This section does not limit or restrict the department's  
5 authority to impose any additional or different conditions on an  
6 extended permit that are necessary to protect human health and  
7 the environment.

8 (E) In adopting new conditions for an extended permit, the  
9 department shall follow the applicable permit modification  
10 procedures specified in this chapter and the regulations adopted  
11 pursuant to this chapter.

12 (F) When prioritizing pending renewal applications for  
13 processing and in determining the need for any new conditions on  
14 an extended permit, the department shall consider any input  
15 received from the public.

16 (2) The department shall review each hazardous waste facilities  
17 permit for a land disposal facility five years after the date of  
18 issuance or reissuance, and shall modify the permit, as necessary,  
19 to assure that the facility continues to comply with the currently  
20 applicable requirements of this chapter and the regulations adopted  
21 pursuant to this chapter.

22 (3) This subdivision does not prohibit the department from  
23 reviewing, modifying, or revoking a permit at any time during its  
24 term.

25 (d) (1) When reviewing an application for a permit renewal,  
26 the department shall consider improvements in the state of control  
27 and measurement technology as well as changes in applicable  
28 regulations.

29 (2) Each permit issued or renewed under this section shall  
30 contain the terms and conditions that the department determines  
31 necessary to protect human health and the environment.

32 (e) A permit issued pursuant to the federal act by the  
33 Environmental Protection Agency in the state for which no state  
34 hazardous waste facilities permit has been issued shall be deemed  
35 to be a state permit enforceable by the department until a state  
36 permit is issued. In addition to complying with the terms and  
37 conditions specified in a federal permit deemed to be a state permit  
38 pursuant to this section, an owner or operator who holds that permit  
39 shall comply with the requirements of this chapter and the  
40 regulations adopted by the department to implement this chapter.

1 SEC. 8. Section 21151.1 of the Public Resources Code is  
2 amended to read:

3 21151.1. (a) Notwithstanding paragraph (6) of subdivision (b)  
4 of Section 21080, or Section 21080.5 or 21084, or any other  
5 provision of law, except as provided in this section, a lead agency  
6 shall prepare or cause to be prepared by contract, and certify the  
7 completion of, an environmental impact report or, if appropriate,  
8 a modification, addendum, or supplement to an existing  
9 environmental impact report, for a project involving any of the  
10 following:

11 (1) The burning of municipal wastes, hazardous waste, or  
12 refuse-derived fuel, including, but not limited to, tires, if the project  
13 is either of the following:

14 (A) The construction of a new facility.

15 (B) The expansion of an existing facility that burns hazardous  
16 waste that would increase its permitted capacity by more than 10  
17 percent.

18 (2) The issuance of a hazardous waste facilities permit pursuant  
19 to Section 25200 of the Health and Safety Code, including, but  
20 not limited to, the initial issuance of a hazardous waste facilities  
21 permit to a land disposal facility, as defined in subdivision (d) of  
22 Section 25199.1 of the Health and Safety Code, and the issuance  
23 of a standardized hazardous waste facility permit pursuant to  
24 Section 25201.6 of the Health and Safety Code to a new hazardous  
25 waste facility or the modification of such a permit for a facility  
26 undergoing a material expansion, as defined in Section 25199.3.1  
27 of the Health and Safety Code.

28 (3) A base reuse plan as defined in Section 21083.8.1. The  
29 Legislature hereby finds that no reimbursement is required pursuant  
30 to Section 6 of Article XIII B of the California Constitution for an  
31 environmental impact report for a base reuse plan if an  
32 environmental impact report is otherwise required for that base  
33 reuse plan pursuant to any other provision of this division.

34 (b) For purposes of subparagraph (B) of paragraph (1) of  
35 subdivision (a), the amount of expansion of an existing facility  
36 shall be calculated by comparing the proposed facility capacity  
37 with whichever of the following is applicable:

38 (1) The facility capacity authorized in the facility's hazardous  
39 waste facilities permit pursuant to Section 25200 of the Health and  
40 Safety Code or its grant of interim status pursuant to Section

1 25200.5 of the Health and Safety Code, or the facility capacity  
2 authorized in a state or local agency permit allowing the  
3 construction or operation of a facility for the burning of hazardous  
4 waste, granted before January 1, 1990.

5 (2) The facility capacity authorized in the facility's original  
6 hazardous waste facilities permit, grant of interim status, or a state  
7 or local agency permit allowing the construction or operation of  
8 a facility for the burning of hazardous waste, granted on or after  
9 January 1, 1990.

10 (c) For purposes of paragraph (2) of subdivision (a), the issuance  
11 of a hazardous waste facilities permit does not include the issuance  
12 of a closure or postclosure permit pursuant to Chapter 6.5  
13 (commencing with Section 25100) of Division 20 of the Health  
14 and Safety Code.

15 (d) Paragraph (1) of subdivision (a) does not apply to a project  
16 that does any of the following:

17 (1) Exclusively burns digester gas produced from manure or  
18 any other solid or semisolid animal waste.

19 (2) Exclusively burns methane gas produced from a disposal  
20 site, as defined in Section 40122, that is used only for the disposal  
21 of solid waste, as defined in Section 40191.

22 (3) Exclusively burns forest, agricultural, wood, or other biomass  
23 wastes.

24 (4) Exclusively burns hazardous waste in an incineration unit  
25 that is transportable and that is either at a site for not longer than  
26 three years or is part of a remedial or removal action. For purposes  
27 of this paragraph, "transportable" means any equipment that  
28 performs a "treatment" as defined in Section 66216 of Title 22 of  
29 the California Code of Regulations, and that is transported on a  
30 vehicle as defined in Section 66230 of Title 22 of the California  
31 Code of Regulations, as those sections read on June 1, 1991.

32 (5) Exclusively burns refinery waste in a flare on the site of  
33 generation.

34 (6) Exclusively burns in a flare methane gas produced at a  
35 municipal sewage treatment plant.

36 (7) Exclusively burns hazardous waste, or exclusively burns  
37 hazardous waste as a supplemental fuel, as part of a research,  
38 development, or demonstration project that, consistent with federal  
39 regulations implementing the Resource Conservation and Recovery  
40 Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been

1 determined to be innovative and experimental by the Department  
2 of Toxic Substances Control and that is limited in type and quantity  
3 of waste to that necessary to determine the efficacy and  
4 performance capabilities of the technology or process. However,  
5 a facility that operated as a research, development, or demonstration  
6 project and for which an application is thereafter submitted for a  
7 hazardous waste facility permit for operation other than as a  
8 research, development, or demonstration project shall be considered  
9 a new facility for the burning of hazardous waste and shall be  
10 subject to subdivision (a).

11 (8) Exclusively burns soils contaminated only with petroleum  
12 fuels or the vapors from these soils.

13 (9) Exclusively treats less than 3,000 pounds of hazardous waste  
14 per day in a thermal processing unit operated in the absence of  
15 open flame, and submits a worst-case health risk assessment of  
16 the technology to the Department of Toxic Substances Control for  
17 review and distribution to the interested public. This assessment  
18 shall be prepared in accordance with guidelines set forth in the Air  
19 Toxics Assessment Manual of the California Air Pollution Control  
20 Officers Association.

21 (10) Exclusively burns less than 1,200 pounds per day of  
22 medical waste, as defined in Section 117690 of the Health and  
23 Safety Code, on hospital sites.

24 (11) Exclusively burns chemicals and fuels as part of firefighter  
25 training.

26 (12) Exclusively conducts open burns of explosives subject to  
27 the requirements of the air pollution control district or air quality  
28 management district and in compliance with the regulations  
29 adopted by the Federal Occupational Safety and Health  
30 Administration (OSHA) or by the Division of Occupational Safety  
31 and Health (Cal-OSHA) of the Department of Industrial Relations.

32 (13) Exclusively conducts onsite burning of less than 3,000  
33 pounds per day of fumes directly from a manufacturing or  
34 commercial process.

35 (14) Exclusively conducts onsite burning of hazardous waste  
36 in an industrial furnace that recovers hydrogen chloride from the  
37 flue gas if the hydrogen chloride is subsequently sold, distributed  
38 in commerce, or used in a manufacturing process at the site where  
39 the hydrogen chloride is recovered, and the burning is in  
40 compliance with the requirements of the air pollution control

1 district or air quality management district and the Department of  
2 Toxic Substances Control.

3 (e) Paragraph (1) of subdivision (a) does not apply to a project  
4 for which the State Energy Resources Conservation and  
5 Development Commission has assumed jurisdiction under Chapter  
6 6 (commencing with Section 25500) of Division 15.

7 (f) This section does not exempt a project from any other  
8 requirement of this division.

9 (g) For purposes of this section, offsite facility means a facility  
10 that serves more than one generator of hazardous waste.

11 SEC. 9. No reimbursement is required by this act pursuant to  
12 Section 6 of Article XIII B of the California Constitution because  
13 a local agency or school district has the authority to levy service  
14 charges, fees, or assessments sufficient to pay for the program or  
15 level of service mandated by this act, within the meaning of Section  
16 17556 of the Government Code.

O