

AMENDED IN ASSEMBLY AUGUST 22, 2014

AMENDED IN ASSEMBLY AUGUST 18, 2014

AMENDED IN ASSEMBLY JUNE 24, 2014

AMENDED IN ASSEMBLY JUNE 12, 2014

AMENDED IN SENATE JANUARY 17, 2014

AMENDED IN SENATE JANUARY 6, 2014

SENATE BILL

No. 812

Introduced by Senator De León

February 22, 2013

An act to amend Sections 25178, ~~25200, and 25200.1~~ 25187, 25187.2, 25200, 25360, and 25360.1 of, to add Sections ~~25196.7, 25200.20, 25200.21, and 25200.22~~ 25200.22, 25205.5, and 25246.1 to, and to add *and repeal* Article 8.8 (commencing with Section 25199.20) ~~to~~ of Chapter 6.5 of Division 20 of, the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 812, as amended, De León. Hazardous waste.

(1) Existing law requires facilities handling hazardous waste to obtain a permit from the Department of Toxic Substances Control. Existing law requires an owner or operator of a facility intending to renew the facility's permit to submit a complete Part A application for a permit renewal prior to the expiration of the permit. Existing law requires the owner or operator to submit a complete Part B application when requested by the department. Existing law requires the department to issue a permit if the facility meets specified requirements.

This bill would instead require the owner or operator of a facility to submit complete Part A and Part B applications for a permit renewal at least 2 years prior to the expiration date of the permit. The bill would require the department to issue a final permit decision for an application for permit renewal within 36 months of the expiration of the facility's permit. The bill would deem an application for permit renewal be denied if ~~the department fails to issue a final permit decision~~ *has not been issued* for the application within that time period. ~~The bill would require the department, on or before January 1, 2016, to adopt regulations requiring financial bonds or other security for a hazardous waste facility, and establishing additional specified criteria to be used by the department in its permitting decisions.~~

~~(2) Existing law authorizes a hazardous waste facility in existence on a specified date or on the effective date of any statute or regulation that subjects the facility to the hazardous waste permitting requirements to continue to operate under a grant of interim status pending the review and decision of the department on the permit application.~~

~~This bill would provide that interim status granted on or after January 1, 2015, terminates 5 years from the date the interim status is granted or on the date the department takes final action on the application for a permit, whichever is earlier.~~

~~(2) Existing law requires the department, in the case of a release of hazardous waste or constituents into the environment from a hazardous waste facility that is required to obtain a permit, to pursue available remedies, including the issuance of an order for corrective action, before using available legal remedies, except in specified circumstances.~~

~~This bill would repeal the above requirements and would instead require the department, under specified circumstances, to request an owner or operator of a hazardous waste facility to submit to the department for review and approval a written cost estimate to cover activities associated with a corrective action based on available data, history of releases, and site activities, as specified. The bill would require the owner or operator to submit the corrective action cost estimate within 60 days of the department's request. The bill would require the owner or operator, within 90 days of the approval of the corrective action cost estimate, to fund the cost estimate or enter into a schedule of compliance for assurances of financial responsibility for completing the corrective action.~~

(3) Existing law requires the department, on or before January 1 of each odd-numbered year, to post on its Internet Web site specified information.

This bill would add certain information that would need to be posted.

~~(4) Existing law authorizes the department to take enforcement actions for alleged violations of any law or regulations regulating hazardous waste.~~

~~This bill would require the department, as part of any enforcement action alleging a release of hazardous waste in violation of law, to contract with an independent 3rd party to conduct required testing to verify that the release of the hazardous waste has been abated and the site remediated.~~

(4) Existing law authorizes the Department of Toxic Substances Control to issue an order under the hazardous waste control laws requiring that a violation be corrected and imposing a civil penalty to specified persons, including a person who has violated various provisions regulating hazardous waste or provisions concerning removal and remedial actions for hazardous substance releases. A person who is issued that order is required to pay for oversight of the removal or remedial action.

Existing law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, authorizes the department to take or oversee removal and remedial actions related to the release of hazardous substances. Existing law authorizes the Attorney General to recover from the liable person, as defined, the costs incurred by the department or a California regional water quality control board in carrying out the act and requires that any monetary obligation owed to the department pursuant to the act or the hazardous waste control laws be subject to a specified rate of interest earned in the Surplus Money Investment Fund.

This bill would require a person to pay for oversight of any corrective action required of the person with respect to hazardous waste, and would authorize the recovery by the Attorney General of costs incurred with regard to carrying out or overseeing a removal action, a remedial action, or a corrective action under the act or under the hazardous waste control laws. The bill would require any monetary obligation owed to the department under the act or these laws to accrue interest at the same rate as the modified adjusted rate per annum imposed for underpayments of sales and use taxes to the state.

~~(5) This bill would establish the Bureau of Internal Affairs within the department to investigate any complaint alleging departmental~~

~~misconduct. The bill would further require the bureau to review policies, practices, and procedures of the department upon the request of the Governor, the Senate Committee on Rules, or the Speaker of the Assembly. The bill would establish, until January 1, 2020, the DTSC Citizen Community Oversight Committee within the department and require the committee to perform various duties, including, among other things, receiving complaints alleging departmental misconduct and referring allegations of departmental misconduct to the bureau, to the Criminal Investigation Division of the California Environmental Protection Agency, or to another entity, as appropriate. make recommendations to the department to increase public participation in, and the transparency of, the department’s decisionmaking, and to serve as a resource and liaison for communities and residents in communication with the department. The bill would require the department, by July 1, 2017, to develop and implement programmatic reforms designed to improve the protectiveness, timeliness, legal defensibility, and enforceability of the department’s permitting program.~~

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

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

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) The mission of the Department of Toxic Substances Control,
- 4 as noted in its mission statement, is “to protect California’s people
- 5 and environment from harmful effects of toxic substances through
- 6 the restoration of contaminated resources, enforcement, regulation
- 7 and pollution prevention.”
- 8 (2) In an effort to protect the public health and minimize
- 9 environmental impacts, the state requires that each hazardous waste
- 10 management facility that treats, stores, handles, or disposes of
- 11 hazardous waste obtain a permit or other authorization from the
- 12 department.
- 13 (3) Currently, the department regulates 117 facilities across the
- 14 state that store, treat, or dispose of hazardous waste. Of these
- 15 facilities, nearly a quarter are operating on permits whose original
- 16 expiration dates have passed.
- 17 (4) One facility operated by Exide Technologies in Vernon,
- 18 California has been allowed to operate on an interim permit for

1 over 30 years, regardless of its repeated violations of environmental
2 and public health standards.

3 (5) Unfortunately, many communities continue to suffer from
4 toxic emissions and releases with limited protection from our
5 current hazardous waste management regulatory system.

6 (6) The longstanding problems at the Exide Technologies facility
7 are only the most recent examples of the system's failures.

8 (b) It is the intent of the Legislature to strengthen our hazardous
9 waste management regulatory system to better protect vulnerable
10 communities and residents from toxic pollution by ~~addressing~~
11 ~~loopholes in~~ *improving* the permitting system.

12 SEC. 2. Section 25178 of the Health and Safety Code is
13 amended to read:

14 25178. On or before January 1 of each odd-numbered year, the
15 department shall post on its Internet Web site, at a minimum, all
16 of the following:

17 (a) The status of the regulatory and program developments
18 required pursuant to legislative mandates.

19 (b) The status of the hazardous waste facilities permit program
20 that shall include all of the following information:

21 (1) Complete copies of the final hazardous waste facilities permit
22 applications received.

23 (2) A searchable list and map of final hazardous waste facilities
24 permits issued to date.

25 (3) A searchable list and map of final hazardous waste facilities
26 permits yet to be issued.

27 (4) A complete description of the reasons why the final
28 hazardous waste facilities permits yet to be issued have not been
29 issued, ~~including the department's evaluation and findings of each~~
30 ~~of the criteria listed in Section 25200.21 and its regulations as well~~
31 ~~as any other criteria used by the department to evaluate the permit~~
32 ~~application.~~ *issued.*

33 (5) A complete description of the findings supporting each final
34 hazardous waste facility permit granted by the department,
35 including the department's evaluation and findings of each of the
36 criteria listed in Section 25200.21 and its regulations, as well as
37 any other criteria used by the department to evaluate the permit
38 application.

39 (c) The status of the hazardous waste facilities siting program.

40 (d) The status of the hazardous waste abandoned sites program.

1 (e) A searchable list and map of enforcement actions taken by
2 the department pursuant to this chapter and any other actions
3 relating to hazardous waste management. The list and map shall
4 specify whether the violations have been ~~corrected and include~~
5 ~~links to inspection reports, final orders, and enforcement actions~~
6 ~~taken by other agencies.~~ *corrected.*

7 (f) ~~Data and summaries~~ *Summary data* for each permitted site
8 regarding annual quantities and types of hazardous waste generated,
9 transported, treated, stored, and disposed.

10 (g) ~~Statewide data and summaries~~ *Summary data* on annual
11 quantities and types of hazardous waste generated, transported,
12 treated, stored, and disposed.

13 (h) ~~Data and summaries~~ *Summary data* regarding onsite and
14 offsite disposition of hazardous waste.

15 (i) Research activity initiated by the department.

16 (j) Regulatory action by other agencies relating to hazardous
17 waste management.

18 (k) A revised listing of recyclable materials showing any
19 additions or deletions to the list prepared pursuant to Section 25175
20 that have occurred since the last report.

21 (l) Any other data considered pertinent by the department to
22 hazardous waste management.

23 (m) The information specified in subdivision (c) of Section
24 25161, paragraph (4) of subdivision (a) of Section 25197.1,
25 subdivision (c) of Section 25354, and Sections 25334.7 and
26 25356.5.

27 (n) A status report on the cleanup of the McColl Hazardous
28 Waste Disposal Site in Orange County.

29 *SEC. 3. Section 25187 of the Health and Safety Code is*
30 *amended to read:*

31 25187. (a) (1) The department or a unified program agency,
32 in accordance with subdivision (l), may issue an order requiring
33 that the violation be corrected and imposing an administrative
34 penalty, for any violation of this chapter or any permit, rule,
35 regulation, standard, or requirement issued or adopted pursuant to
36 this chapter, whenever the department or Unified Program Agency
37 determines that a person has violated, is in violation of, or
38 threatens, as defined in subdivision (e) of Section 13304 of the
39 Water Code, to violate, this chapter or Chapter 6.8 (commencing
40 with Section 25300), or any permit, rule, regulation, standard, or

1 requirement issued or adopted pursuant to this chapter or Chapter
2 6.8 (commencing with Section 25300).

3 (2) In an order proposing a penalty pursuant to this section, the
4 department or Unified Program Agency shall take into
5 consideration the nature, circumstances, extent, and gravity of the
6 violation, the violator's past and present efforts to prevent, abate,
7 or clean up conditions posing a threat to the public health or safety
8 or the environment, the violator's ability to pay the proposed
9 penalty, and the prophylactic effect that the imposition of the
10 proposed penalty would have on both the violator and the regulated
11 community as a whole.

12 (b) The department or a unified program agency, in accordance
13 with subdivision (l), may issue an order requiring corrective action
14 whenever the department or Unified Program Agency determines
15 that there is or has been a release, as defined in Chapter 6.8
16 (commencing with Section 25300), of hazardous waste or
17 constituents into the environment from a hazardous waste facility.

18 ~~(1) In the case of a release of hazardous waste or constituents~~
19 ~~into the environment from a hazardous waste facility that is~~
20 ~~required to obtain a permit pursuant to Article 9 (commencing~~
21 ~~with Section 25200), the department shall pursue the remedies~~
22 ~~available under this chapter, including the issuance of an order for~~
23 ~~corrective action pursuant to this section, before using the legal~~
24 ~~remedies available pursuant to Chapter 6.8 (commencing with~~
25 ~~Section 25300), except in any of the following circumstances:~~

26 (A) ~~If the person who is responsible for the release voluntarily~~
27 ~~requests in writing that the department issue an order to that person~~
28 ~~to take corrective action pursuant to Chapter 6.8 (commencing~~
29 ~~with Section 25300):~~

30 (B) ~~If the person who is responsible for the release is unable to~~
31 ~~pay for the cost of corrective action to address the release. For~~
32 ~~purposes of this subparagraph, the inability of a person to pay for~~
33 ~~the cost of corrective action shall be determined in accordance~~
34 ~~with the policies of the Environmental Protection Agency for the~~
35 ~~implementation of Section 9605 of Title 42 of the United States~~
36 ~~Code.~~

37 (C) ~~If the person responsible for the release is unwilling to~~
38 ~~perform corrective action to address the release. For purposes of~~
39 ~~this subparagraph, the unwillingness of a person to take corrective~~
40 ~~action shall be determined in accordance with the policies of the~~

1 Environmental Protection Agency for the implementation of
2 Section 9605 of Title 42 of the United States Code.

3 ~~(D) If the release is part of a regional or multisite groundwater
4 contamination problem that cannot, in its entirety, be addressed
5 using the legal remedies available pursuant to this chapter and for
6 which other releases that are part of the regional or multisite
7 groundwater contamination problem are being addressed using
8 the legal remedies available pursuant to Chapter 6.8 (commencing
9 with Section 25300).~~

10 ~~(E) If an order for corrective action has already been issued
11 against the person responsible for the release, or the department
12 and the person responsible for the release have, prior to January
13 1, 1996, entered into an agreement to address the required cleanup
14 of the release pursuant to Chapter 6.8 (commencing with Section
15 25300).~~

16 ~~(F) If the hazardous waste facility is owned or operated by the
17 federal government.~~

18 ~~(2)~~

19 ~~(1) The order shall include a requirement that the person take
20 corrective action with respect to the release of hazardous waste or
21 constituents, abate the effects thereof, and take any other necessary
22 remedial action.~~

23 ~~(3)~~

24 ~~(2) If the order requires corrective action at a hazardous waste
25 facility, the order shall require that corrective action be taken
26 beyond the facility boundary, where necessary to protect human
27 health or the environment.~~

28 ~~(4)~~

29 ~~(3) The order shall incorporate, as a condition of the order, any
30 applicable waste discharge requirements issued by the State Water
31 Resources Control Board or a California regional water quality
32 control board, and shall be consistent with all applicable water
33 quality control plans adopted pursuant to Section 13170 of the
34 Water Code and Article 3 (commencing with Section 13240) of
35 Chapter 4 of Division 7 of the Water Code and state policies for
36 water quality control adopted pursuant to Article 3 (commencing
37 with Section 13140) of Chapter 3 of Division 7 of the Water Code
38 existing at the time of the issuance of the order, to the extent that
39 the department or Unified Program Agency determines that those
40 plans and policies are not less stringent than this chapter and~~

1 regulations adopted pursuant to this chapter. The order may include
2 any more stringent requirement that the department or Unified
3 Program Agency determines is necessary or appropriate to protect
4 water quality.

5 ~~(5)~~

6 (4) Persons who are subject to an order pursuant to this
7 subdivision include present and prior owners, lessees, or operators
8 of the property where the hazardous waste is located, present or
9 past generators, storers, treaters, transporters, disposers, and
10 handlers of hazardous waste, and persons who arrange, or have
11 arranged, by contract or other agreement, to store, treat, transport,
12 dispose of, or otherwise handle hazardous waste.

13 ~~(6)~~

14 (5) For purposes of this subdivision, “hazardous waste facility”
15 includes the entire site that is under the control of an owner or
16 operator engaged in the management of hazardous waste.

17 (c) Any order issued pursuant to this section shall be served by
18 personal service or certified mail and shall inform the person so
19 served of the right to a hearing. If the Unified Program Agency
20 issues the order pursuant to this section, the order shall state
21 whether the hearing procedure specified in paragraph (2) of
22 subdivision (f) may be requested by the person receiving the order.

23 (d) Any person served with an order pursuant to this section
24 who has been unable to resolve any violation or deficiency on an
25 informal basis with the department or Unified Program Agency
26 may, within 15 days after service of the order, request a hearing
27 pursuant to subdivision (e) or (f) by filing with the department or
28 Unified Program Agency a notice of defense. The notice shall be
29 filed with the office that issued the order. A notice of defense shall
30 be deemed filed within the 15-day period provided by this
31 subdivision if it is postmarked within that 15-day period. If no
32 notice of defense is filed within the time limits provided by this
33 subdivision, the order shall become final.

34 (e) Any hearing requested on an order issued by the department
35 shall be conducted within 90 days after receipt of the notice of
36 defense by an administrative law judge of the Office of
37 Administrative Hearings of the Department of General Services
38 in accordance with Chapter 4.5 (commencing with Section 11400)
39 of Part 1 of Division 3 of Title 2 of the Government Code, and the

1 department shall have all the authority granted to an agency by
2 those provisions.

3 (f) Except as provided in subparagraph (B) of paragraph (2), a
4 person requesting a hearing on an order issued by a unified program
5 agency may select the hearing process specified in either paragraph
6 (1) or (2) in the notice of defense filed with the Unified Program
7 Agency pursuant to subdivision (d). Within 90 days of receipt of
8 the notice of defense by the Unified Program Agency, the hearing
9 shall be conducted using one of the following procedures:

10 (1) An administrative law judge of the Office of Administrative
11 Hearings of the Department of General Services shall conduct the
12 hearing in accordance with Chapter 4.5 (commencing with Section
13 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

14 (2) (A) A hearing officer designated by the Unified Program
15 Agency shall conduct the hearing in accordance with Chapter 4.5
16 (commencing with Section 11400) of Part 1 of Division 3 of Title
17 2 of the Government Code, and the Unified Program Agency shall
18 have all the authority granted to an agency by those provisions.
19 When a hearing is conducted by a unified program agency pursuant
20 to this paragraph, the Unified Program Agency shall, within 60
21 days of the hearing, issue a decision.

22 (B) A person requesting a hearing on an order issued by a unified
23 program agency may select the hearing process specified in this
24 paragraph in a notice of defense filed pursuant to subdivision (d)
25 only if the Unified Program Agency has, as of the date the order
26 is issued pursuant to subdivision (c), selected a designated hearing
27 officer and established a program for conducting a hearing in
28 accordance with this paragraph.

29 (g) The hearing decision issued pursuant to subdivision (f) shall
30 be effective and final upon issuance. Copies of the decision shall
31 be served by personal service or by certified mail upon the party
32 served with the order and upon other persons who appeared at the
33 hearing and requested a copy.

34 (h) Any provision of an order issued under this section, except
35 the imposition of an administrative penalty, shall take effect upon
36 issuance by the department or Unified Program Agency if the
37 department or Unified Program Agency finds that the violation or
38 violations of law associated with that provision may pose an
39 imminent and substantial endangerment to the public health or
40 safety or the environment, and a request for a hearing shall not

1 stay the effect of that provision of the order pending a hearing
2 decision. However, if the department or Unified Program Agency
3 determines that any or all provisions of the order are so related
4 that the public health or safety or the environment can be protected
5 only by immediate compliance with the order as a whole, then the
6 order as a whole, except the imposition of an administrative
7 penalty, shall take effect upon issuance by the department or
8 Unified Program Agency. A request for a hearing shall not stay
9 the effect of the order as a whole pending a hearing decision.

10 (i) A decision issued pursuant to this section may be reviewed
11 by the court pursuant to Section 11523 of the Government Code.
12 In all proceedings pursuant to this section, the court shall uphold
13 the decision of the department or Unified Program Agency if the
14 decision is based upon substantial evidence in the whole record.
15 The filing of a petition for writ of mandate shall not stay any action
16 required pursuant to this chapter or the accrual of any penalties
17 assessed pursuant to this chapter. This subdivision does not prohibit
18 the court from granting any appropriate relief within its jurisdiction.

19 (j) (1) All administrative penalties collected from actions
20 brought by the department pursuant to this section shall be placed
21 in a separate subaccount in the Toxic Substances Control Account
22 and shall be available only for transfer to the Site Remediation
23 Account or the Expedited Site Remediation Trust Fund and for
24 expenditure by the department upon appropriation by the
25 Legislature.

26 (2) The administrative penalties collected from an action brought
27 by the department pursuant to Sections 25214.3, 25214.22.1,
28 25215.7, in accordance with this section, shall be deposited in the
29 Toxic Substances Control Account, for expenditure by the
30 department for implementation and enforcement activities, upon
31 appropriation by the Legislature, pursuant to Section 25173.6.

32 (k) All administrative penalties collected from an action brought
33 by a unified program agency pursuant to this section shall be paid
34 to the Unified Program Agency that imposed the penalty, and shall
35 be deposited into a special account that shall be expended to fund
36 the activities of the Unified Program Agency in enforcing this
37 chapter pursuant to Section 25180.

38 (l) The authority granted under this section to a unified program
39 agency is limited to both of the following:

1 (1) The issuance of orders to impose penalties and to correct
2 violations of the requirements of this chapter and its implementing
3 regulations, only when the violations are violations of requirements
4 applicable to hazardous waste generators and persons operating
5 pursuant to a permit-by-rule, conditional authorization, or
6 conditional exemption, when the violations occur at a unified
7 program facility within the jurisdiction of the CUPA.

8 (2) The issuance of orders to require corrective action when
9 there has been a release of hazardous waste or constituents only
10 when the Unified Program Agency is authorized to do so pursuant
11 to Section 25404.1.

12 (m) The CUPA shall annually submit a summary report to the
13 department on the status of orders issued by the unified program
14 agencies under this section and Section 25187.1.

15 (n) The CUPA shall consult with the district attorney for the
16 county on the development of policies to be followed in exercising
17 the authority delegated pursuant to this section and Section
18 25187.1, as they relate to the authority of unified program agencies
19 to issue orders.

20 (o) The CUPA shall arrange to have appropriate legal
21 representation in administrative hearings that are conducted by an
22 administrative law judge of the Office of Administrative Hearings
23 of the Department of General Services, and when a decision issued
24 pursuant to this section is appealed to the superior court.

25 (p) The department may adopt regulations to implement this
26 section and paragraph (2) of subdivision (a) of Section 25187.1 as
27 they relate to the authority of unified program agencies to issue
28 orders. The regulations shall include, but not be limited to, all of
29 the following requirements:

30 (1) Provisions to ensure coordinated and consistent application
31 of this section and Section 25187.1 when both the department and
32 the Unified Program Agency have or will be issuing orders under
33 one or both of these sections at the same facility.

34 (2) Provisions to ensure that the enforcement authority granted
35 to the unified program agencies will be exercised consistently
36 throughout the state.

37 (3) Minimum training requirements for staff of the Unified
38 Program Agency relative to this section and Section 25187.1.

39 (4) Procedures to be followed by the department to rescind the
40 authority granted to a unified program agency under this section

1 and Section 25187.1, if the department finds that the Unified
2 Program Agency is not exercising that authority in a manner
3 consistent with this chapter and Chapter 6.11 (commencing with
4 Section 25404) and the regulations adopted pursuant thereto.

5 (q) Except for an enforcement action taken pursuant to this
6 chapter or Chapter 6.8 (commencing with Section 25300), this
7 section does not otherwise affect the authority of a local agency
8 to take any action under any other provision of law.

9 ~~SEC. 3. Section 25196.7 is added to the Health and Safety
10 Code, to read:~~

11 ~~25196.7. As part of an enforcement action alleging a release
12 of hazardous waste in violation of this chapter taken by the
13 department, the department shall contract with an independent
14 third party to conduct any required testing to verify that the alleged
15 violation of this chapter has been abated and the site has been
16 remediated.~~

17 ~~SEC. 4. Section 25187.2 of the Health and Safety Code is
18 amended to read:~~

19 ~~25187.2. If a removal or remedial action order issued pursuant
20 to Section 25187 to a potentially responsible party requires a person
21 is required to take corrective action with respect to hazardous
22 waste, that person shall pay for oversight of the removal or
23 remedial corrective action. This section does not prohibit the
24 department or unified program agency from assessing any other
25 penalty or recovering any costs for oversight of a removal or
26 remedial action, pursuant to any other provision. Nothing in this
27 section limits the due process requirements of Section 25187.~~

28 ~~SEC. 4.~~

29 ~~SEC. 5. Article 8.8 (commencing with Section 25199.20) is
30 added to Chapter 6.5 of Division 20 of the Health and Safety Code,
31 to read:~~

32

33 ~~Article 8.8. Bureau of Internal Affairs-DTSC Community
34 Oversight Committee~~

35

36 ~~25199.20. (a) The Legislature finds and declares that there
37 exists a need for a Bureau of Internal Affairs with appropriately
38 trained personnel, who will perform their duties with honesty and
39 credibility and without conflicts of interest to oversee the
40 department.~~

- 1 (b) For the purposes of this article, “bureau” means the Bureau
2 of Internal Affairs established pursuant to subdivision (c).
- 3 (c) There is hereby established an independent Bureau of
4 Internal Affairs within the department to do all of the following:
- 5 (1) Determine when allegations of misconduct within the
6 department warrant an internal affairs investigation.
- 7 (2) Conduct complete, objective, and independent investigations
8 of alleged departmental misconduct.
- 9 (3) Complete all investigations in a timely and thorough manner.
- 10 (4) Report any and all findings to the department and to the
11 DTSC Citizen Oversight Committee established pursuant to Section
12 25199.21.
- 13 (d) To meet the objectives of this section, all of the following
14 shall occur:
- 15 (1) Before hiring or training any staff member who is selected
16 to conduct internal affairs investigations, the California
17 Environmental Protection Agency shall conduct a complete and
18 thorough background check of the staff member. Each staff
19 member shall satisfactorily pass the background check required
20 by this paragraph before his or her appointment to conduct internal
21 investigations pursuant to this section. A person who has been a
22 subject of a sustained, serious disciplinary action, including, but
23 not limited to, termination, suspension, or demotion, shall not pass
24 the background check.
- 25 (2) All internal affairs allegations or complaints, whether
26 investigated or not, shall be logged and numbered sequentially on
27 an annual basis. The log shall specify, but not be limited to, the
28 following information:
- 29 (A) The sequential number of the allegation or complaint.
- 30 (B) The date of receipt of the allegation or complaint.
- 31 (C) The location of the facility to which the allegation or
32 complaint pertains.
- 33 (D) The disposition of all actions taken, including any final
34 actions taken.
- 35 (3) The log established pursuant to paragraph (2) shall be made
36 available to the DTSC Citizen Oversight Committee and posted
37 on the department’s Internet Web site.
- 38 (4) The department shall not direct or influence, or attempt to
39 direct or influence, the investigation or the operations of the bureau.

1 ~~(e) Consistent with the purposes of this section, the investigators~~
2 ~~within the bureau shall conduct investigations and inquiries in a~~
3 ~~manner that provides a complete and thorough presentation of the~~
4 ~~facts regarding the allegation or complaint. All extenuating and~~
5 ~~mitigating facts shall be explored and reported. All reports prepared~~
6 ~~by the investigator shall provide a complete recitation of the facts.~~

7 ~~(f) An uncorroborated or anonymous allegation shall not be the~~
8 ~~sole basis for disciplinary action by the department, but may be a~~
9 ~~basis for an investigation.~~

10 ~~(g) All reports shall be submitted in a standard format, beginning~~
11 ~~with a statement of the allegation or complaint, provide all relevant~~
12 ~~facts, and include the investigator's signature certifying that the~~
13 ~~investigator has complied with applicable provisions.~~

14 ~~(h) In addition to its duties specified in subdivision (c), the~~
15 ~~bureau shall also do all of the following:~~

16 ~~(1) Upon request by the Governor, the Senate Committee on~~
17 ~~Rules, or the Speaker of the Assembly, the bureau shall review~~
18 ~~the policies, practices, and procedures of the department. The~~
19 ~~bureau may recommend that the Governor, the Senate Committee~~
20 ~~on Rules, or the Speaker of the Assembly request a review of a~~
21 ~~specific departmental policy, practice, or procedure that raises a~~
22 ~~significant issue relevant to the effectiveness of the department.~~
23 ~~When exigent circumstances of unsafe or life-threatening~~
24 ~~conditions arise, the bureau may, by whatever means is most~~
25 ~~expeditious, notify the Governor, the Senate Committee on Rules,~~
26 ~~or the Speaker of the Assembly.~~

27 ~~(2) Upon completion of a review, the bureau shall prepare a~~
28 ~~complete written report that shall be made public. A copy of the~~
29 ~~report shall be posted on the department's Internet Web site.~~

30 ~~(3) The bureau shall, during the course of the review, identify~~
31 ~~areas of full and partial compliance or noncompliance with~~
32 ~~departmental policies and procedures, specify deficiencies in the~~
33 ~~completion of documentation of processes, and recommend~~
34 ~~corrective actions, including, but not limited to, additional training,~~
35 ~~additional policies, or changes in policies, as well as any other~~
36 ~~findings or recommendations that the bureau deems appropriate.~~

37 ~~(4) (A) The bureau shall issue regular reports, no less than~~
38 ~~annually, to the Governor, the Legislature, and to the DTSC Citizen~~
39 ~~Oversight Committee established pursuant to Section 25199.21~~

1 summarizing its recommendations concerning its investigations
2 into allegations of departmental misconduct.

3 ~~(B) The report submitted to the Legislature pursuant to~~
4 ~~subparagraph (A) shall be submitted in compliance with Section~~
5 ~~9795 of the Government Code.~~

6 ~~(C) (i) The report required pursuant to this paragraph shall~~
7 ~~include, but not be limited to, all of the following:~~

8 ~~(I) Data on the number, type, and disposition of complaints~~
9 ~~made against the department.~~

10 ~~(II) A synopsis of each matter reviewed by the bureau.~~

11 ~~(III) A summary of the bureau's recommendations regarding~~
12 ~~the disposition in the case and the level of discipline imposed, and~~
13 ~~the degree to which the department agrees with the bureau's~~
14 ~~recommendations regarding the disposition and level of discipline.~~

15 ~~(IV) The extent to which any discipline was modified after~~
16 ~~imposition.~~

17 ~~(i) The report shall be posted on the department's Internet Web~~
18 ~~site and otherwise made available to the public upon its release to~~
19 ~~the Governor, the Legislature, and DTSC Citizen Oversight~~
20 ~~Committee.~~

21 ~~(iii) The Secretary for Environmental Protection shall appoint~~
22 ~~the director of the bureau who shall oversee and administer the~~
23 ~~bureau.~~

24 ~~25199.21.~~

25 ~~25199.20.~~ (a) There is hereby established in the department,
26 the DTSC-Citizen *Community* Oversight Committee composed of
27 13 members representing California residents affected by hazardous
28 waste. The committee members shall not include representatives
29 from the department or an entity regulated by the department
30 pursuant to this chapter.

31 (b) Members of the committees shall be appointed as follows:

32 (1) Five members appointed by the ~~Governor~~. *Secretary for*
33 *Environmental Protection*.

34 (2) Four members appointed by the Senate Committee on Rules.

35 (3) Four members appointed by the Speaker of the Assembly.

36 (c) ~~Members~~ *Each member* of the committee shall serve at the
37 pleasure of ~~their~~ *his or her* appointing authority.

38 (d) *Beginning March 1, 2015, the committee shall meet at least*
39 *three times during that year, then quarterly beginning in the 2016*
40 *calendar year.*

1 ~~(d)~~

2 (e) The committee shall do ~~all~~ *both* of the following:

3 ~~(1) Receive allegations of departmental misconduct from~~
4 ~~members of the public.~~

5 ~~(2) Refer allegation of misconduct to the Criminal Investigation~~
6 ~~Division of the California Environmental Protection Agency or~~
7 ~~the bureau, as appropriate.~~

8 ~~(3)~~

9 (1) Make recommendations for changes in policies, procedures,
10 and standards of the department to increase public participation
11 in, and the transparency of, the department's ~~decisionmaking~~
12 ~~process.~~ *decisionmaking, including providing input to the director*
13 *on ways to improve the department's permitting of hazardous*
14 *waste facilities and enforcement actions, particularly with regards*
15 *to public participation and in communities identified pursuant to*
16 *Section 39711 that are burdened by multiple sources of pollution.*

17 ~~(4)~~

18 (2) Serve as a resource and liaison for communities and residents
19 in communication with the ~~department.~~ *department, including*
20 *reviewing the department's current efforts and providing input to*
21 *the director on ways to improve the department's outreach to, and*
22 *communication with, communities and stakeholders, to increase*
23 *public participation in, and the transparency of, the department's*
24 *permitting process.*

25 ~~(5) Review and make public any reports received from the~~
26 ~~bureau.~~

27 ~~(e) The department shall not direct or influence, or attempt to~~
28 ~~direct or influence, the operation of the committee.~~

29 (f) The department shall provide the committee with appropriate
30 per diem compensation consistent with Section 19822.5 of the
31 Government Code.

32 ~~25199.23. Any information exempted from public disclosure~~
33 ~~pursuant to the California Public Records Act (Chapter 3.5~~
34 ~~(commencing with Section 6250) of Division 7 of Title 1 of the~~
35 ~~Government Code) or any other law shall not be disclosed to the~~
36 ~~public in a report or other document required by this article to be~~
37 ~~made public.~~

38 ~~25199.21. This article shall remain in effect only until January~~
39 ~~1, 2020, and as of that date is repealed, unless a later enacted~~

1 *statute, that is enacted before January 1, 2020, deletes or extends*
2 *that date.*

3 ~~SEC. 5.~~

4 *SEC. 6.* Section 25200 of the Health and Safety Code is
5 amended to read:

6 25200. (a) The department shall issue hazardous waste
7 facilities permits to use and operate one or more hazardous waste
8 management units at a facility that in the judgment of the
9 department meet the building standards published in the State
10 Building Standards Code relating to hazardous waste facilities and
11 the other standards and requirements adopted pursuant to this
12 chapter. The department shall impose conditions on each hazardous
13 waste facilities permit specifying the types of hazardous wastes
14 that may be accepted for transfer, storage, treatment, or disposal.
15 The department may impose any other conditions on a hazardous
16 waste facilities permit that are consistent with the intent of this
17 chapter.

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

25 (c) (1) (A) A hazardous waste facilities permit issued by the
26 department shall be for a fixed term, which shall not exceed 10
27 years for any land disposal facility, storage facility, incinerator,
28 or other treatment facility.

29 (B) The owner or operator of a facility intending to extend the
30 term of the facility's permit shall submit complete Part A and Part
31 B applications for a permit renewal at least two years prior to the
32 expiration date of the permit. Any other relevant information shall
33 be submitted as and when requested by the department.

34 (C) To the extent not inconsistent with the federal act, for an
35 owner or operator in compliance with subparagraph (B), the permit
36 is deemed extended until the renewal application is approved or
37 denied and all applicable rights of appeal have been exhausted.

38 (D) (i) The department shall issue a final permit decision for
39 permit renewal for a facility within 36 months following the
40 expiration of the permit's fixed term. An application for permit

1 renewal is deemed denied if ~~the department fails to issue~~ a final
2 permit decision *has not been issued* within 36 months following
3 the expiration of the permit's fixed term.

4 (ii) Notwithstanding clause (i), for a facility with a permit that
5 expired on or before January 1, 2015, and for which an application
6 for permit renewal had been submitted before January 1, 2015, the
7 department shall issue a final permit decision for the application
8 on or before January 1, 2018. An application for permit renewal
9 is deemed denied if ~~the department fails to issue~~ a final permit
10 decision *has not been issued* on or before January 1, 2018.

11 (iii) This subparagraph does not apply to applications for
12 postclosure permits.

13 (E) This section does not limit or restrict the department's
14 authority to impose any additional or different conditions on an
15 extended permit that are necessary to protect human health and
16 the environment.

17 (F) In adopting new conditions for an extended permit, the
18 department shall follow the applicable permit modification
19 procedures specified in this chapter and the regulations adopted
20 pursuant to this chapter.

21 (G) When prioritizing pending renewal applications for
22 processing and in determining the need for any new conditions on
23 an extended permit, the department shall consider any input
24 received from the public.

25 (2) The department shall review each hazardous waste facilities
26 permit for a land disposal facility five years after the date of
27 issuance or reissuance, and shall modify the permit, as necessary,
28 to ensure that the facility continues to comply with the currently
29 applicable requirements of this chapter and the regulations adopted
30 pursuant to this chapter.

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

34 (d) (1) When reviewing an application for a permit renewal,
35 the department shall consider improvements in the state of control
36 and measurement technology as well as changes in applicable
37 regulations.

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

1 (e) A permit issued pursuant to the federal act by the
2 Environmental Protection Agency in the state for which no state
3 hazardous waste facilities permit has been issued shall be deemed
4 to be a state permit enforceable by the department until a state
5 permit is issued. In addition to complying with the terms and
6 conditions specified in a federal permit deemed to be a state permit
7 pursuant to this section, an owner or operator who holds that permit
8 shall comply with the requirements of this chapter and the
9 regulations adopted by the department to implement this chapter.

10 ~~SEC. 6. Section 25200.1 of the Health and Safety Code is~~
11 ~~amended to read:~~

12 ~~25200.1. (a) Notwithstanding Section 25200, the department~~
13 ~~shall not issue a hazardous waste facility permit to a facility which~~
14 ~~commences operation on or after January 1, 1987, unless the~~
15 ~~department determines that the facility operator is in compliance~~
16 ~~with regulations adopted by the department pursuant to this chapter~~
17 ~~requiring that the operator provide financial assurance that the~~
18 ~~operator can respond adequately to damage claims arising out of~~
19 ~~the operation of the facility or the facility is exempt from these~~
20 ~~financial assurance requirements pursuant to this chapter or the~~
21 ~~regulations adopted by the department to implement this chapter.~~

22 ~~(b) (1) On or before January 1, 2016, the department shall adopt~~
23 ~~regulations requiring a financial bond or other security with respect~~
24 ~~to the nature and scope of the activity authorized and with respect~~
25 ~~to any potential risk or injury to human health or the environment~~
26 ~~from a person or entity that applies for a hazardous waste facilities~~
27 ~~permit pursuant to this article.~~

28 ~~(2) The department shall determine the manner in which, and~~
29 ~~the condition under which, any security that is deposited pursuant~~
30 ~~to regulations adopted pursuant to this subdivision may be forfeited~~
31 ~~or returned, in whole or in part.~~

32 ~~(3) Regulations adopted pursuant to this subdivision do not~~
33 ~~apply to governmental entities.~~

34 ~~SEC. 7. Section 25200.20 is added to the Health and Safety~~
35 ~~Code, to read:~~

36 ~~25200.20. Interim status granted for a facility pursuant to~~
37 ~~Section 25200.5 on or after January 1, 2015, shall terminate five~~
38 ~~years from the date the interim status is granted or on the date the~~
39 ~~department takes final action on the application for a hazardous~~
40 ~~waste facilities permit, whichever is earlier.~~

1 ~~SEC. 8.~~

2 *SEC. 7.* Section 25200.21 is added to the Health and Safety
3 Code, to read:

4 25200.21. On or before January 1, ~~2016~~, 2017, the department
5 shall adopt regulations establishing additional criteria that the
6 department shall use to determine whether to issue a new permit
7 or a renewal of a permit pursuant to this article. These criteria shall
8 include, but are not limited to, all of the following:

9 (a) Number and types of past violations that will result in a
10 denial.

11 (b) The vulnerability of, and existing health risks to, nearby
12 populations. Vulnerability shall be assessed using the
13 CalEnviroScreen tool, local and regional health risk assessments,
14 the region's federal Clean Air Act attainment status, and other
15 indicators of community vulnerability, cumulative impact, and
16 potential risks to health and well-being.

17 (c) Minimum setback distances from sensitive receptors, such
18 as schools, childcare facilities, residences, hospitals, elder care
19 facilities, and other sensitive locations.

20 ~~(d) Certification, supported by substantial evidence, by the~~
21 ~~owner or operator that the facility sought to be permitted uses the~~
22 ~~least hazardous materials, production formulations, and production~~
23 ~~processes reasonably available, when appropriate.~~

24 ~~(e) Certification by substantial evidence by the owner or operator~~
25 ~~that it has employed all technically feasible, economically~~
26 ~~practicable source reduction, as defined in Section 25244.14, when~~
27 ~~appropriate.~~

28 ~~(f)~~

29 (d) Evidence of financial responsibility, qualifications of
30 ownership, and continuity of ownership and operation.

31 ~~(g)~~

32 (e) Provision of financial assurances pursuant to Section
33 25200.1.

34 ~~(h)~~

35 (f) Training of personnel in the safety culture and plans,
36 emergency plans, and maintenance of operations.

37 ~~(i) Consistent compliance with established standards.~~

38 ~~SEC. 9.~~

39 *SEC. 8.* Section 25200.22 is added to the Health and Safety
40 Code, to read:

1 25200.22. The department shall provide a public notice and
2 comment period before the preparation and adoption of a draft
3 permit. The department shall consider and respond to all public
4 comments received before preparing a draft permit.

5 *SEC. 9. Section 25205.5 is added to the Health and Safety*
6 *Code, to read:*

7 25205.5. *On or before July 1, 2017, the department shall*
8 *develop and implement programmatic reforms designed to improve*
9 *the protectiveness, timeliness, legal defensibility, and enforceability*
10 *of the department's permitting program, including strengthening*
11 *environmental justice safeguards, and enhancing enforcement of*
12 *public health protections, and public participation and outreach*
13 *activities. In accomplishing these reforms, the department shall*
14 *do all of the following:*

15 (a) *Establish transparent standards and procedures for*
16 *permitting decisions, including those that are applicable to permit*
17 *revocation and denial.*

18 (b) *Establish terms and conditions on permits to better protect*
19 *public health and the environment, including in imminent and*
20 *substantial endangerment situations.*

21 (c) *Employ consistent procedures for reviewing permit*
22 *applications, integrating public input into those procedures, and*
23 *making timely permit decisions.*

24 (d) *Enhance public involvement using procedures that provide*
25 *for early identification and integration of public concerns into*
26 *permitting decisions, including concerns of communities identified*
27 *pursuant to Section 39711.*

28 *SEC. 10. Section 25246.1 is added to the Health and Safety*
29 *Code, to read:*

30 25246.1. (a) *After the department has identified a release or*
31 *releases of a hazardous waste or a hazardous waste constituent*
32 *into the environment from a hazardous waste facility or when the*
33 *department determines that corrective action is necessary, the*
34 *department shall request an owner or operator of a hazardous*
35 *waste facility to submit to the department for review and approval*
36 *a written cost estimate to cover activities associated with corrective*
37 *action based on available data, history of releases, and site*
38 *activities.*

1 ***(b) The corrective action cost estimate shall be based on, and***
2 ***be no less stringent than, the ASTM International (ASTM) Standard***
3 ***E2150-13.***

4 ***(c) (1) The owner or operator of a hazardous waste facility***
5 ***shall submit the corrective action cost estimate to the department***
6 ***within 60 days from the department's request.***

7 ***(2) If the department determines the corrective action cost***
8 ***estimate is substantially incomplete or includes substantially***
9 ***unsatisfactory information, the department shall provide a notice***
10 ***of deficiency to the owner or operator of the facility within 60 days***
11 ***of receipt of the corrective action cost estimate.***

12 ***(3) The owner or operator of the facility shall submit a revised***
13 ***corrective action cost estimate based on the information provided***
14 ***in the notice of deficiency within 30 days.***

15 ***(4) The department shall approve or deny the revised corrective***
16 ***action cost estimate within 30 days.***

17 ***(5) If the corrective action cost estimate does not address the***
18 ***information provided in the notice of deficiency, as determined by***
19 ***the department, the department shall deny the revised corrective***
20 ***action cost estimate and shall, within 60 days, develop its own***
21 ***corrective action cost estimate that will be the approved estimate***
22 ***for the facility.***

23 ***(d) The owner or operator of a facility, within 90 days of the***
24 ***approval of a corrective action cost estimate, shall fund the***
25 ***approved corrective action cost estimate or shall enter into a***
26 ***schedule of compliance for assurances of financial responsibility***
27 ***for completing the corrective action.***

28 ***(e) If the department determines that the timing or content of a***
29 ***submission of a cost estimate and financial assurance documents***
30 ***are not consistent with the degree and duration of risk posed by***
31 ***the release or releases to be addressed by the corrective action***
32 ***activities, the department shall adjust the level of financial***
33 ***assurance or timing of document submission required by this***
34 ***section as may be necessary to protect human health and the***
35 ***environment.***

36 ***(f) If the owner or operator of a hazardous waste facility is***
37 ***required to submit a financial assurance mechanism for corrective***
38 ***action, the financial assurance shall be in the form of a trust fund,***
39 ***surety bond, letter of credit, insurance, or any other mechanism***

1 authorized under the federal act and the regulations adopted by
2 the department for financial assurance mechanisms.

3 (g) The department may adopt, and revise, when appropriate,
4 standards and regulations to implement this section. Additionally,
5 the department may adopt emergency regulations in accordance
6 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
7 Division 3 of Title 2 of the Government Code, to implement this
8 section. The adoption of these regulations shall be declared an
9 emergency and necessary for the immediate preservation of the
10 public peace, health and safety, or general welfare for purposes
11 of Sections 11346.1 and 11349.6 of the Government Code.

12 SEC. 11. Section 25360 of the Health and Safety Code is
13 amended to read:

14 25360. (a) Any costs incurred by the department or regional
15 board in carrying out or overseeing a removal action, a remedial
16 action, or a corrective action under this chapter or Chapter 6.5
17 (commencing with Section 25100) shall be recoverable pursuant
18 to state or federal law by the Attorney General, upon the request
19 of the department or regional board, from the liable person or
20 persons. The amount of any response action costs that may be
21 recovered pursuant to this section shall include interest on any
22 amount paid. ~~The interest on amounts paid from the state account~~
23 ~~or the Site Remediation Account shall be calculated at the rate of~~
24 ~~return earned on investment in the Surplus Money Investment~~
25 ~~Fund pursuant to Section 16475 of the Government Code.~~

26 (b) A person who is liable for costs incurred at a site shall have
27 the liability reduced by any reimbursements that were paid by that
28 person for that site pursuant to Section 25343.

29 (c) The amount of cost determined pursuant to this section shall
30 be recoverable at the discretion of the department, either in a
31 separate action or by way of intervention as of right in an action
32 for contribution or indemnity. Nothing in this section deprives a
33 party of any defense that the party may have.

34 (d) Money recovered by the Attorney General pursuant to this
35 section shall be deposited in the state account.

36 SEC. 12. Section 25360.1 of the Health and Safety Code is
37 amended to read:

38 25360.1. Any monetary obligation to the department pursuant
39 to Chapter 6.5 (commencing with Section 25100) or this chapter
40 shall be subject to interest from the date of the demand at the same

1 ~~rate of return earned on investment in the Surplus Money~~
2 ~~Investment Fund pursuant to Section 16475 of the Government~~
3 ~~Code, accrue interest at the same rate as the modified adjusted~~
4 ~~rate per annum established pursuant to Section 6591.5 of the~~
5 ~~Revenue and Taxation Code, except the department may waive~~
6 ~~the interest if the obligation is satisfied within 60 days from the~~
7 ~~date of invoice.~~

O