

AMENDED IN ASSEMBLY APRIL 5, 2016
AMENDED IN ASSEMBLY MARCH 17, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2794

Introduced by Assembly Member Santiago

February 19, 2016

An act to amend ~~Sections 25150.84, 25189.3, 25205.7, 25205.18, 25205.19, and 25247~~ Section 25205.7 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2794, as amended, Santiago. Hazardous waste: facilities permitting: fees.

Existing law provides a person who applies for, or requests, specified hazardous waste permits, variances, or waste classification determinations with the option of paying a *specified flat fee amount* or entering into a reimbursement agreement to reimburse the Department of Toxic Substances Control for costs incurred in processing the application or response to the request. *Those fee amounts are deposited in the Hazardous Waste Control Account and are available to the department upon appropriation by the Legislature.*

This bill would ~~eliminate the increase those specified flat fee option and would make conforming changes:~~ *amounts.*

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. Section 25205.7 of the Health and Safety Code
2 is amended to read:

3 25205.7. (a) (1) Except as otherwise provided in this section,
4 any person who applies for, or requests, ~~one~~ any of the following
5 shall enter into a written agreement with the department pursuant
6 to which that person shall reimburse the department, pursuant to
7 Article 9.2 (commencing with Section 25206.1), for the costs
8 incurred by the department in processing the application or
9 responding to the request:

10 (A) A new hazardous waste facilities permit, including a
11 standardized permit.

12 (B) A hazardous waste facilities permit for postclosure.

13 (C) A renewal of an existing hazardous waste facilities permit,
14 including a standardized permit or postclosure permit.

15 (D) A class 2 or class 3 modification of an existing hazardous
16 waste facilities permit or grant of interim status, including a
17 standardized permit or grant of interim status or a postclosure
18 permit.

19 (E) A variance.

20 (F) A waste classification determination.

21 (2) Any agreement required pursuant to paragraph (1) may
22 provide for some, or all, of the reimbursement to be made in
23 advance of the processing of the application or the response to the
24 request.

25 (3) Any agreement entered into pursuant to this subdivision
26 may include costs of reviewing and overseeing corrective action
27 as set forth in subdivision (b).

28 (4) This subdivision does not apply to any application or request
29 submitted to the department prior to July 1, 1998. Any person who
30 submitted such an application or request shall pay the applicable
31 fee, if not already paid, for the application or request as required
32 by this chapter as it read prior to January 1, 1998, unless the
33 department and the applicant or requester mutually agree to enter
34 into a reimbursement agreement in lieu of any unpaid portion of
35 the required fee.

36 (b) The department shall recover all the department's costs in
37 reviewing and overseeing any corrective action program described
38 in the application for a standardized permit pursuant to

1 subparagraph (C) of paragraph (2) of subdivision (c) of Section
2 25201.6 or required pursuant to subdivision (b) of Section
3 25200.10, and in reviewing and overseeing any corrective action
4 work undertaken at the facility pursuant to that corrective action
5 program.

6 (c) Any reimbursements received pursuant to this section shall
7 be placed in the Hazardous Waste Control Account for
8 appropriation in accordance with Section 25174.

9 (d) (1) In lieu of entering into a reimbursement agreement
10 with the department pursuant to subdivision (a), any person who
11 applies for a new permit, a permit for postclosure, a renewal of an
12 existing permit, or a class 2 or class 3 permit modification may
13 instead elect to pay a fee as follows:

14 (A) A person submitting a hazardous waste facilities permit
15 application for a land disposal facility shall pay one hundred-four
16 thousand one hundred eighty-seven dollars (~~\$104,187~~) *fifty-three*
17 *thousand nine hundred fifteen dollars (\$153,915)* for a small
18 facility, ~~two hundred twenty-two thousand one hundred~~
19 ~~eighty-three dollars (\$222,183)~~ *three hundred twenty-eight*
20 *thousand two hundred thirty-one dollars (\$328,231)* for a medium
21 facility, and ~~three hundred eighty-one thousand six hundred two~~
22 ~~dollars (\$381,602)~~ *five hundred sixty-three thousand seven hundred*
23 *forty-one dollars (\$563,741)* for a large facility.

24 (B) A person submitting a hazardous waste facilities permit
25 application for any incinerator shall pay ~~sixty-two thousand seven~~
26 ~~hundred sixty-two dollars (\$62,762)~~ *ninety-two thousand seven*
27 *hundred eighteen dollars (\$92,718)* for a small facility, one
28 ~~hundred thirty-three thousand sixty dollars (\$133,060)~~ *ninety-six*
29 *thousand five hundred seventy dollars (\$196,570)* for a medium
30 facility, and ~~two hundred twenty-eight thousand four hundred~~
31 ~~fifty-eight dollars (\$228,458)~~ *three hundred thirty-seven thousand*
32 *five hundred one dollars (\$337,501)* for a large facility.

33 (C) Except as provided in subparagraph (D), a person
34 submitting a hazardous waste facility permit application for a
35 storage facility, a treatment facility, or a storage and treatment
36 facility shall pay ~~twenty-one thousand three hundred forty dollars~~
37 ~~(\$21,340)~~ *thirty-one thousand five hundred twenty-six dollars*
38 *(\$31,526)* for a small facility, ~~thirty-eight thousand nine hundred~~
39 ~~thirteen dollars (\$38,913)~~ *fifty-seven thousand four hundred*
40 *eighty-six dollars (\$57,486)* for a medium facility, and ~~seventy-five~~

1 ~~thousand three hundred seventeen dollars (\$75,317)~~ *one hundred*
2 *eleven thousand two hundred sixty-six dollars (\$111,266)* for a
3 large facility.

4 (D) A person submitting an application for a standardized
5 permit for a storage facility, a treatment facility, or a storage and
6 treatment facility, as specified in Section 25201.6, shall pay
7 ~~thirty-two thousand fifty-two dollars (\$32,052)~~ *forty-seven*
8 *thousand three hundred fifty dollars (\$47,350)* for a Series A
9 standardized permit, ~~twenty thousand eleven dollars (\$20,011)~~
10 *twenty-nine thousand five hundred sixty-two dollars (\$29,562)* for
11 a Series B standardized permit, and ~~five thousand three hundred~~
12 ~~thirty-two dollars (\$5,332)~~ *seven thousand eight hundred*
13 *seventy-seven dollars (\$7,877)* for a Series C standardized permit.
14 The board shall assess the fees specified in this subparagraph, in
15 accordance with paragraph (2), based upon the classifications
16 specified in subdivision (a) of Section 25201.6.

17 (E) (i) A person submitting a hazardous waste facilities permit
18 application for a transportable treatment unit shall pay ~~sixteen~~
19 ~~thousand three hundred twenty dollars (\$16,320)~~ *twenty-four*
20 *thousand one hundred ten dollars (\$24,110)* for a small unit,
21 ~~thirty-seven thousand six hundred fifty-seven dollars (\$37,657)~~
22 *fifty-five thousand six hundred thirty-one dollars (\$55,631)* for a
23 medium unit, and ~~seventy-five thousand three hundred seventeen~~
24 ~~dollars (\$75,317)~~ *one hundred eleven thousand two hundred*
25 *sixty-six dollars (\$111,266)* for a large unit.

26 (ii) Notwithstanding clause (i), the fee for any application for
27 a new permit, permit modification, or permit renewal for a
28 transportable treatment unit, that was pending before the
29 department as of January 1, 1996, shall be determined according
30 to the type of permit authorizing operation of that unit, as provided
31 by subdivision (d) of Section 25200.2 or the regulations adopted
32 pursuant to subdivision (a) of Section 25200.2. Any standardized
33 permit issued to the operator of a transportable treatment unit after
34 January 1, 1996, that succeeds a full hazardous waste facilities
35 permit issued by the department prior to January 1, 1996, in
36 accordance with subdivision (d) of Section 25200.2 or the
37 regulations adopted pursuant to subdivision (a) of Section 25200.2,
38 shall not be considered to be a new hazardous waste facilities
39 permit.

1 (F) A person submitting a hazardous waste facilities permit
2 application for a postclosure permit shall pay a fee of ~~ten thousand~~
3 ~~forty dollars (\$10,040)~~ *fourteen thousand eight hundred thirty-two*
4 *dollars (\$14,832)* for a small facility, ~~twenty-two thousand five~~
5 ~~hundred ninety-six dollars (\$22,596)~~ *thirty-three thousand three*
6 *hundred eighty-one dollars (\$33,381)* for a medium facility, and
7 ~~thirty-seven thousand six hundred fifty-seven dollars (\$37,657)~~
8 *fifty-five thousand six hundred thirty-one dollars (\$55,631)* for a
9 large facility.

10 (G) A person submitting an application for one or more class
11 2 permit modifications, including a class 2 modification to a
12 standardized permit, shall pay a fee equal to 20 percent of the fee
13 for a new permit for that facility for each unit directly impacted
14 by the modifications, up to a maximum of 40 percent for each
15 application, except that each person who applies for one or more
16 class 2 permit modifications for a land disposal facility or an
17 incinerator shall pay a fee equal to 15 percent of the fee for a new
18 permit for that facility for each unit directly impacted by the
19 modifications, up to a maximum of 30 percent for each application.

20 (H) A person submitting an application for one or more class
21 3 permit modifications, including a class 3 modification to a
22 standardized permit, shall pay a fee equal to 40 percent of the fee
23 for a new permit for that facility for each unit directly impacted
24 by the modifications, up to a maximum of 80 percent for each
25 application, except that a person who applies for one or more class
26 3 permit modifications for a land disposal facility or an incinerator
27 shall pay a fee equal to 30 percent of the fee for a new permit for
28 that facility for each unit directly impacted by the modifications,
29 up to a maximum of 60 percent for each application.

30 (I) A person who submits an application for renewal of any
31 existing permit shall pay an amount equal to the fee that would
32 have been assessed had the person requested the same changes in
33 a modification application, but not less than one-half the fee
34 required for a new permit.

35 (J) A person who submits a single application for a facility that
36 falls within more than one fee category shall pay only the higher
37 fee.

38 (2) The fees required by paragraph (1) shall be assessed by the
39 board upon application to the department. For a facility operating
40 pursuant to a grant of interim status, the submittal of the application

1 shall be the submittal of the Part B application in accordance with
2 regulations adopted by the department. The fee shall be
3 nonrefundable, even if the application is withdrawn or denied. The
4 department shall provide the board with any information that is
5 necessary to assess fees pursuant to this section. The fee shall be
6 collected in accordance with Part 22 (commencing with Section
7 43001) of Division 2 of the Revenue and Taxation Code, and
8 deposited into the Hazardous Waste Control Account.

9 (3) The amounts stated in this subdivision are the base rates
10 for the ~~1997~~ 2016 calendar year. Thereafter, the fees shall be
11 adjusted annually by the board to reflect increases or decreases in
12 the cost of living, during the prior fiscal year, as measured by the
13 Consumer Price Index issued by the Department of Industrial
14 Relations, or a successor agency.

15 (4) Except as provided in paragraph (5), for purposes of this
16 section, and notwithstanding Section 25205.1, any facility or unit
17 is “small” if it manages 0.5 tons (1,000 pounds) or less of
18 hazardous waste during any one month of the state’s current fiscal
19 year, “medium” if it manages more than 0.5 tons (1,000 pounds),
20 but less than 1,000 tons, of hazardous waste during any one month
21 of the state’s current fiscal year, and “large” if it manages 1,000
22 or more tons of hazardous waste during any one month of the
23 state’s current fiscal year.

24 (5) For purposes of subparagraph (F) of paragraph (1) of this
25 subdivision and paragraph (8) of subdivision (c) of Section
26 25205.4, any facility or unit is “small” if 0.5 tons (1,000 pounds)
27 or less of hazardous waste remain after closure, “medium” if more
28 than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous
29 waste remain after closure, and “large” if 1,000 or more tons of
30 hazardous waste remain after closure.

31 (6) The amounts stated in this subdivision are in addition to
32 any amounts required to reimburse the department for the corrective
33 action review and oversight costs required to be recovered pursuant
34 to subdivision (b).

35 (e) Subdivision (a) does not apply to any variance granted
36 pursuant to Article 4 (commencing with Section 66263.40) of
37 Chapter 13 of Division 4.5 of Title 22 of the California Code of
38 Regulations.

39 (f) Subdivisions (a) and (d) do not apply to a permit
40 modification resulting from a revision of a facility’s or operator’s

1 closure plan if the facility is exempted from fees pursuant to
2 subdivision (e) of Section 25205.3, or if the operator is subject to
3 paragraph (2) or (3) of subdivision (d) of Section 25205.2.

4 (g) (1) Except as provided in paragraphs (3) and (4),
5 subdivisions (a) and (d) do not apply to any permit or variance to
6 operate a research, development, and demonstration facility, if the
7 duration of the permit or variance is not longer than one year,
8 unless the permit or variance is renewed pursuant to the regulations
9 adopted by the department.

10 (2) For purposes of this section, a “research, development, and
11 demonstration facility” is a facility which proposes to utilize an
12 innovative and experimental hazardous waste treatment technology
13 or process for which regulations prescribing permit standards have
14 not been adopted.

15 (3) The exemption provided by this subdivision does not apply
16 to a facility which operates as a medium or large multiuser offsite
17 commercial hazardous waste facility and which does not otherwise
18 possess a hazardous waste facilities permit pursuant to Section
19 25200.

20 (4) The fee exemption authorized pursuant to paragraph (1)
21 shall be effective for a total duration of not more than two years.

22 (h) Subdivisions (a) and (d) do not apply to any of the
23 following:

24 (1) Any variance issued to a public agency to transport wastes
25 for purposes of operating a household hazardous waste collection
26 facility, or to transport waste from a household hazardous waste
27 collection facility, which receives household hazardous waste or
28 hazardous waste from conditionally exempted small quantity
29 generators pursuant to Article 10.8 (commencing with Section
30 25218).

31 (2) A permanent household hazardous waste collection facility.

32 (3) Any variance issued to a public agency to conduct a
33 collection program for agricultural wastes.

34 (i) Notwithstanding subdivisions (a) and (b), the department
35 shall not assess any fees or seek any reimbursement for the
36 department’s costs in reviewing and overseeing any preliminary
37 site assessment in conjunction with a hazardous waste facilities
38 permit application.

39 (j) The changes made in this section by Chapter 870 of the
40 Statutes of 1997 do not require amendment of, or otherwise affect,

1 any agreement entered into prior to July 1, 1998, pursuant to which
2 any person has agreed to reimburse the department for the costs
3 incurred by the department in processing applications, responding
4 to requests, or otherwise providing other services pursuant to this
5 chapter.

6 ~~SECTION 1. Section 25150.84 of the Health and Safety Code~~
7 ~~is amended to read:~~

8 ~~25150.84. (a) The department is authorized to collect an annual~~
9 ~~fee from all metal shredding facilities that are subject to the~~
10 ~~requirements of this chapter or to the alternative management~~
11 ~~standards adopted pursuant to Section 25150.82. The department~~
12 ~~shall establish and adopt regulations necessary to administer this~~
13 ~~fee and to establish a fee schedule that is set at a rate sufficient to~~
14 ~~reimburse the department's costs to implement this chapter as~~
15 ~~applicable to metal shredder facilities. The fee schedule established~~
16 ~~by the department may be updated periodically as necessary and~~
17 ~~shall provide for the assessment of no more than the reasonable~~
18 ~~and necessary costs of the department to implement this chapter,~~
19 ~~as applicable to metal shredder facilities.~~

20 ~~(b) The Controller shall establish a separate subaccount in the~~
21 ~~Hazardous Waste Control Account. The fees collected pursuant~~
22 ~~to this section shall be deposited into the subaccount and be~~
23 ~~available for expenditure by the department upon appropriation~~
24 ~~by the Legislature.~~

25 ~~(c) A regulation adopted pursuant to this section may be adopted~~
26 ~~as an emergency regulation in accordance with Chapter 3.5~~
27 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
28 ~~2 of the Government Code, and for the purposes of that chapter,~~
29 ~~including Section 11349.6 of the Government Code, the adoption~~
30 ~~of these regulations is an emergency and shall be considered by~~
31 ~~the Office of Administrative Law as necessary for the immediate~~
32 ~~preservation of the public peace, health, safety, and general welfare.~~
33 ~~Notwithstanding Chapter 3.5 (commencing with Section 11340)~~
34 ~~of Part 1 of Division 3 of Title 2 of the Government Code, an~~
35 ~~emergency regulation adopted by the department pursuant to this~~
36 ~~section shall be filed with, but not be repealed by, the Office of~~
37 ~~Administrative Law and shall remain in effect for a period of two~~
38 ~~years or until revised by the department, whichever occurs sooner.~~

39 ~~(d) (1) A metal shredding facility paying an annual fee in~~
40 ~~accordance with this section shall be exempt from the following~~

1 fees as the fees pertain to metal shredding activities and the
2 generation, handling, management, transportation, and disposal
3 of metal shredder waste:

4 (A) A fee imposed pursuant to subdivision (a) of Section
5 25205.7.

6 (B) A disposal fee imposed pursuant to Section 25174.1.

7 (C) A facility fee imposed pursuant to Section 25205.2.

8 (D) A generator fee imposed pursuant to Section 25205.5.

9 (E) A transportable treatment unit fee imposed pursuant to
10 Section 25205.14.

11 (2) A metal shredding facility is not exempt from the fees listed
12 in paragraph (1) for any other hazardous waste the metal shredding
13 facility generates and handles.

14 SEC. 2. Section 25189.3 of the Health and Safety Code is
15 amended to read:

16 25189.3. (a) For purposes of this section, the term “permit”
17 means a hazardous waste facilities permit, interim status
18 authorization, or standardized permit.

19 (b) The department shall suspend the permit of any facility for
20 nonpayment of any facility fee assessed pursuant to Section
21 25205.2 or activity fee assessed pursuant to Section 25205.7, if
22 the operator of the facility is subject to the fee, and if the State
23 Board of Equalization has certified in writing to all of the
24 following:

25 (1) The facility’s operator is delinquent in the payment of the
26 fee for one or more reporting periods.

27 (2) The State Board of Equalization has notified the facility’s
28 operator of the delinquency.

29 (3) The operator has exhausted the administrative rights of
30 appeal provided by Chapter 3 (commencing with Section 43151)
31 of Part 22 of Division 2 of the Revenue and Taxation Code, and
32 the State Board of Equalization has determined that the operator
33 is liable for the fee, or that the operator has failed to assert those
34 rights.

35 (e) (1) The department shall suspend the permit of any facility
36 for nonpayment of a penalty assessed upon the owner or operator
37 for failure to comply with this chapter or the regulations adopted
38 pursuant to this chapter, if the penalty has been imposed by a trial
39 court judge or by an administrative hearing officer, if the person
40 has agreed to pay the penalty pursuant to a written agreement

1 resolving a lawsuit or an administrative order, or if the penalty has
2 become final due to the person's failure to respond to the lawsuit
3 or order.

4 (2) ~~The department may suspend a permit pursuant to this
5 subdivision only if the owner or operator is delinquent in the
6 payment of the penalty and the department has notified the owner
7 or operator of the delinquency pursuant to subdivision (d).~~

8 (d) ~~Before suspending a permit pursuant to this section, the
9 department shall notify the owner or operator of its intent to do
10 so, and shall allow the owner or operator a minimum of 30 days
11 in which to cure the delinquency.~~

12 (e) ~~The department may deny a new permit or refuse to renew
13 a permit on the same grounds for which the department is required
14 to suspend a permit under this section, subject to the same
15 requirements and conditions.~~

16 (f) (1) ~~The department shall reinstate a permit that is suspended
17 pursuant to this section upon payment of the amount due if the
18 permit has not otherwise been revoked or suspended pursuant to
19 any other provision of this chapter or regulation. Until the
20 department reinstates a permit suspended pursuant to this section,
21 if the facility stores, treats, disposes of, or recycles hazardous
22 wastes, the facility shall be in violation of this chapter. If the
23 operator of the facility subsequently pays the amount due, the
24 period of time for which the operator shall have been in violation
25 of this chapter shall be from the date of the activity that is in
26 violation until the day after the owner or operator submits the
27 payment to the department.~~

28 (2) ~~Except as otherwise provided in this section, the department
29 is not required to take any other statutory or regulatory procedures
30 governing the suspension of the permit before suspending a permit
31 in compliance with the procedures of this section.~~

32 (g) (1) ~~A suspension under this section shall be stayed while
33 an authorized appeal of the fee or penalty is pending before a court
34 or an administrative agency.~~

35 (2) ~~For purposes of this subdivision, "an authorized appeal"
36 means any appeal allowed pursuant to an applicable regulation or
37 statute.~~

38 (h) ~~The department may suspend a permit under this section
39 based on a failure to pay the required fee or penalty that~~

1 commenced prior to January 1, 2002, if the failure to pay has been
2 ongoing for at least 30 days following that date.

3 ~~(i) Notwithstanding Section 43651 of the Revenue and Taxation
4 Code, the suspension of a permit pursuant to this section, the reason
5 for the suspension, and any documentation supporting the
6 suspension, shall be a matter of public record.~~

7 ~~(j) (1) This section does not authorize the department to
8 suspend a permit held by a government agency if the agency does
9 not dispute the payment but nonetheless is unable to process the
10 payment in a timely manner.~~

11 ~~(2) This section does not apply to a site owned or operated by
12 a federal agency if the department has entered into an agreement
13 with that federal agency regarding the remediation of that site.~~

14 ~~(k) This section does not limit or supersede Section 25186.~~

15 ~~SEC. 3. Section 25205.7 of the Health and Safety Code is
16 amended to read:~~

17 ~~25205.7. (a) (1) Except as otherwise provided in this section,
18 any person who applies for, or requests, any of the following shall
19 enter into a written agreement with the department pursuant to
20 which that person shall reimburse the department, pursuant to
21 Article 9.2 (commencing with Section 25206.1), for the costs
22 incurred by the department in processing the application or
23 responding to the request:~~

24 ~~(A) A new hazardous waste facilities permit, including a
25 standardized permit.~~

26 ~~(B) A hazardous waste facilities permit for postclosure.~~

27 ~~(C) A renewal of an existing hazardous waste facilities permit,
28 including a standardized permit or postclosure permit.~~

29 ~~(D) A class 2 or class 3 modification of an existing hazardous
30 waste facilities permit or grant of interim status, including a
31 standardized permit or grant of interim status or a postclosure
32 permit.~~

33 ~~(E) A variance.~~

34 ~~(F) A waste classification determination.~~

35 ~~(2) Any agreement required pursuant to paragraph (1) may
36 provide for some, or all, of the reimbursement to be made in
37 advance of the processing of the application or the response to the
38 request.~~

1 ~~(3) Any agreement entered into pursuant to this subdivision~~
2 ~~may include costs of reviewing and overseeing corrective action~~
3 ~~as set forth in subdivision (b).~~

4 ~~(4) This subdivision does not apply to any application or request~~
5 ~~submitted to the department prior to July 1, 1998. Any person who~~
6 ~~submitted such an application or request shall pay the applicable~~
7 ~~fee, if not already paid, for the application or request as required~~
8 ~~by this chapter as it read prior to January 1, 1998, unless the~~
9 ~~department and the applicant or requester mutually agree to enter~~
10 ~~into a reimbursement agreement in lieu of any unpaid portion of~~
11 ~~the required fee.~~

12 ~~(b) The department shall recover all the department's costs in~~
13 ~~reviewing and overseeing any corrective action program described~~
14 ~~in the application for a standardized permit pursuant to~~
15 ~~subparagraph (C) of paragraph (2) of subdivision (c) of Section~~
16 ~~25201.6 or required pursuant to subdivision (b) of Section~~
17 ~~25200.10, and in reviewing and overseeing any corrective action~~
18 ~~work undertaken at the facility pursuant to that corrective action~~
19 ~~program.~~

20 ~~(c) Any reimbursements received pursuant to this section shall~~
21 ~~be placed in the Hazardous Waste Control Account for~~
22 ~~appropriation in accordance with Section 25174.~~

23 ~~(d) Subdivision (a) does not apply to any variance granted~~
24 ~~pursuant to Article 4 (commencing with Section 66263.40) of~~
25 ~~Chapter 13 of Division 4.5 of Title 22 of the California Code of~~
26 ~~Regulations.~~

27 ~~(e) Subdivision (a) does not apply to a permit modification~~
28 ~~resulting from a revision of a facility's or operator's closure plan~~
29 ~~if the facility is exempted from fees pursuant to subdivision (c) of~~
30 ~~Section 25205.3, or if the operator is subject to paragraph (2) or~~
31 ~~(3) of subdivision (d) of Section 25205.2.~~

32 ~~(f) (1) Except as provided in paragraphs (3) and (4), subdivision~~
33 ~~(a) does not apply to any permit or variance to operate a research,~~
34 ~~development, and demonstration facility, if the duration of the~~
35 ~~permit or variance is not longer than one year, unless the permit~~
36 ~~or variance is renewed pursuant to the regulations adopted by the~~
37 ~~department.~~

38 ~~(2) For purposes of this section, a "research, development, and~~
39 ~~demonstration facility" is a facility which proposes to utilize an~~
40 ~~innovative and experimental hazardous waste treatment technology~~

1 or process for which regulations prescribing permit standards have
2 not been adopted.

3 ~~(3) The exemption provided by this subdivision does not apply~~
4 ~~to a facility which operates as a medium or large multiuser offsite~~
5 ~~commercial hazardous waste facility and which does not otherwise~~
6 ~~possess a hazardous waste facilities permit pursuant to Section~~
7 ~~25200.~~

8 ~~(4) The fee exemption authorized pursuant to paragraph (1)~~
9 ~~shall be effective for a total duration of not more than two years.~~

10 ~~(g) Subdivision (a) does not apply to any of the following:~~

11 ~~(1) Any variance issued to a public agency to transport wastes~~
12 ~~for purposes of operating a household hazardous waste collection~~
13 ~~facility, or to transport waste from a household hazardous waste~~
14 ~~collection facility, which receives household hazardous waste or~~
15 ~~hazardous waste from conditionally exempted small quantity~~
16 ~~generators pursuant to Article 10.8 (commencing with Section~~
17 ~~25218).~~

18 ~~(2) A permanent household hazardous waste collection facility.~~

19 ~~(3) Any variance issued to a public agency to conduct a~~
20 ~~collection program for agricultural wastes.~~

21 ~~(h) Notwithstanding subdivisions (a) and (b), the department~~
22 ~~shall not assess any fees or seek any reimbursement for the~~
23 ~~department's costs in reviewing and overseeing any preliminary~~
24 ~~site assessment in conjunction with a hazardous waste facilities~~
25 ~~permit application.~~

26 ~~(i) The changes made in this section by Chapter 870 of the~~
27 ~~Statutes of 1997 do not require amendment of, or otherwise affect,~~
28 ~~any agreement entered into prior to July 1, 1998, pursuant to which~~
29 ~~any person has agreed to reimburse the department for the costs~~
30 ~~incurred by the department in processing applications, responding~~
31 ~~to requests, or otherwise providing other services pursuant to this~~
32 ~~chapter.~~

33 ~~SEC. 4. Section 25205.18 of the Health and Safety Code is~~
34 ~~amended to read:~~

35 ~~25205.18. (a) If a facility has a permit or an interim status~~
36 ~~document that sets forth the facility's allowable capacity for~~
37 ~~treatment or storage, the facility's size for purposes of the annual~~
38 ~~facility fee shall be based upon that capacity, except as provided~~
39 ~~in subdivision (d).~~

1 ~~(b) If a facility's allowable capacity changes or is initially~~
2 ~~established as a result of a permit modification, or a submission~~
3 ~~of a certification pursuant to subdivision (d), the fee that is due for~~
4 ~~the reporting period in which the change occurs shall be the higher~~
5 ~~fee.~~

6 ~~(e) (1) The department may require the facility to submit an~~
7 ~~application to modify its permit to provide for an allowable~~
8 ~~capacity.~~

9 ~~(2) Subdivision (a) of Section 25205.7 does not apply to an~~
10 ~~application for modification required by the department pursuant~~
11 ~~to this subdivision.~~

12 ~~(d) A facility may reduce its allowable capacity below the~~
13 ~~amounts specified in subdivision (a) or (c) by submitting a~~
14 ~~certification signed by the owner or operator in which the owner~~
15 ~~or operator pledges that the facility will not handle hazardous waste~~
16 ~~at a capacity above the amount specified in the certification. In~~
17 ~~that case, the facility's size for purposes of the annual facility fee~~
18 ~~shall be based upon the capacity specified in the certification, until~~
19 ~~the certification is withdrawn. Exceeding the capacity limits~~
20 ~~specified in a certification that has not been withdrawn shall be a~~
21 ~~violation of the hazardous waste control law and may subject a~~
22 ~~facility or its operator to a penalty and corrective action as provided~~
23 ~~in this chapter.~~

24 ~~(e) This section shall have no bearing on the imposition of the~~
25 ~~annual postclosure facility fee.~~

26 ~~SEC. 5. Section 25205.19 of the Health and Safety Code is~~
27 ~~amended to read:~~

28 ~~25205.19. (a) If a facility has a permit or an interim status~~
29 ~~document that sets forth the facility's type, pursuant to Section~~
30 ~~25205.1, as either treatment, storage, or disposal, the facility's~~
31 ~~type for purposes of the annual facility fee shall be rebuttably~~
32 ~~presumed to be what is set forth in that permit or document.~~

33 ~~(b) If the facility's type changes as a result of a permit or interim~~
34 ~~status modification, any change in the annual facility fee shall be~~
35 ~~effective the reporting period following the one in which the~~
36 ~~modification becomes effective.~~

37 ~~(e) (1) If the facility's permit or interim status document does~~
38 ~~not set forth its type, the department may require the facility to~~
39 ~~submit an application to modify the permit or interim status~~
40 ~~document to provide for a facility type.~~

1 ~~(2) Subdivision (a) of Section 25205.7 does not apply to an~~
2 ~~application for modification pursuant to this subdivision.~~

3 ~~(d) A permit or interim status document may set forth more~~
4 ~~than one facility type or size. In accordance with subdivision (d)~~
5 ~~of Section 25205.4, the facility shall be subject only to the highest~~
6 ~~applicable fee.~~

7 ~~SEC. 6. Section 25247 of the Health and Safety Code is~~
8 ~~amended to read:~~

9 ~~25247. (a) The department shall review each plan submitted~~
10 ~~pursuant to Section 25246 and shall approve the plan if it finds~~
11 ~~that the plan complies with the regulations adopted by the~~
12 ~~department and complies with all other applicable state and federal~~
13 ~~regulations.~~

14 ~~(b) The department shall not approve the plan until at least one~~
15 ~~of the following occurs:~~

16 ~~(1) The plan has been approved pursuant to Section 13227 of~~
17 ~~the Water Code.~~

18 ~~(2) Sixty days expire after the owner or operator of an interim~~
19 ~~status facility submits the plan to the department. If the department~~
20 ~~denies approval of a plan for an interim status facility, this 60-day~~
21 ~~period shall not begin until the owner or operator resubmits the~~
22 ~~plan to the department.~~

23 ~~(3) The director finds that immediate approval of the plan is~~
24 ~~necessary to protect public health, safety, or the environment.~~

25 ~~(e) Any action taken by the department pursuant to this section~~
26 ~~is subject to Section 25204.5.~~

27 ~~(d) (1) To the extent consistent with the federal act, the~~
28 ~~department shall impose the requirements of a hazardous waste~~
29 ~~facility postclosure plan on the owner or operator of a facility~~
30 ~~through the issuance of an enforcement order, entering into an~~
31 ~~enforceable agreement, or issuing a postclosure permit.~~

32 ~~(A) A hazardous waste facility postclosure plan imposed or~~
33 ~~modified pursuant to an enforcement order, a permit, or an~~
34 ~~enforceable agreement shall be approved in compliance with the~~
35 ~~California Environmental Quality Act (Division 13 (commencing~~
36 ~~with Section 21000) of the Public Resources Code).~~

37 ~~(B) Before the department initially approves or significantly~~
38 ~~modifies a hazardous waste facility postclosure plan pursuant to~~
39 ~~this subdivision, the department shall provide a meaningful~~
40 ~~opportunity for public involvement, which, at a minimum, shall~~

1 include public notice and an opportunity for public comment on
2 the proposed action.

3 (C) For the purposes of subparagraph (B), a “significant
4 modification” is a modification that the department determines
5 would constitute a class 3 permit modification if the change were
6 being proposed to a hazardous waste facilities permit. In
7 determining whether the proposed modification would constitute
8 a class 3 modification, the department shall consider the similarity
9 of the modification to class 3 modifications codified in Appendix
10 I of Chapter 20 (commencing with Section 66270.1) of Division
11 4.5 of Title 22 of the California Code of Regulations. In
12 determining whether the proposed modification would constitute
13 a class 3 modification, the department shall also consider whether
14 there is significant public concern about the proposed modification;
15 and whether the proposed change is so substantial or complex in
16 nature that the modification requires the more extensive procedures
17 of a class 3 permit modification.

18 (2) This subdivision does not limit or delay the authority of the
19 department to order any action necessary at a facility to protect
20 public health or safety.

21 (3) If the department imposes a hazardous waste facility
22 postclosure plan in the form of an enforcement order or enforceable
23 agreement, in lieu of issuing or renewing a postclosure permit, the
24 owner or operator who submits the plan for approval shall, at the
25 time the plan is submitted, enter into a cost reimbursement
26 agreement pursuant to subdivision (a) of Section 25205.7 and upon
27 commencement of the postclosure period shall pay the fee required
28 by paragraph (9) of subdivision (c) of Section 25205.4. For
29 purposes of this paragraph and paragraph (9) of subdivision (c) of
30 Section 25205.4, the commencement of the postclosure period
31 shall be the effective date of the postclosure permit, enforcement
32 order, or enforceable agreement.

33 (4) In addition to any other remedy available under state law to
34 enforce a postclosure plan imposed in the form of an enforcement
35 order or enforcement agreement, the department may take any of
36 the following actions:

37 (A) File an action to enjoin a threatened or continuing violation
38 of a requirement of the enforcement order or agreement.

1 ~~(B) Require compliance with requirements for corrective action~~
2 ~~or other emergency response measures that the department deems~~
3 ~~necessary to protect human health and the environment.~~

4 ~~(C) Assess or file an action to recover civil penalties and fines~~
5 ~~for a violation of a requirement of an enforcement order or~~
6 ~~agreement.~~

7 ~~(e) Subdivision (d) does not apply to a postclosure plan for~~
8 ~~which a final or draft permit has been issued by the department on~~
9 ~~or before December 31, 2003, unless the department and the facility~~
10 ~~mutually agree to replace the permit with an enforcement order or~~
11 ~~enforceable agreement pursuant to the provisions of subdivision~~
12 ~~(d).~~

13 ~~(f) (1) Except as provided in paragraphs (2) and (3), the~~
14 ~~department may only impose postclosure plan requirements through~~
15 ~~an enforcement order or an enforceable agreement pursuant to~~
16 ~~subdivision (d) until January 1, 2009.~~

17 ~~(2) This subdivision does not apply to an enforcement order or~~
18 ~~enforceable agreement issued prior to January 1, 2009, or an order~~
19 ~~or agreement for which a public notice is issued on or before~~
20 ~~January 1, 2009.~~

21 ~~(3) This subdivision does not apply to the modification on or~~
22 ~~after January 1, 2009, of an enforcement order or enforceable~~
23 ~~agreement that meets the conditions in paragraph (2).~~

24 ~~(g) If the department determines that a postclosure permit is~~
25 ~~necessary to enforce a postclosure plan, the department may, at~~
26 ~~any time, rescind and replace an enforcement order or an~~
27 ~~enforceable agreement issued pursuant to this section by issuing~~
28 ~~a postclosure permit for the hazardous waste facility, in accordance~~
29 ~~with the procedures specified in the department's regulations for~~
30 ~~the issuance of postclosure permits.~~

31 ~~(h) Nothing in this section may be construed to limit or delay~~
32 ~~the authority of the department to order any action necessary at a~~
33 ~~facility to protect public health or safety, or the environment.~~