

Assembly Bill No. 1245

CHAPTER 628

An act to amend Sections 25123.3, 25160, 25166, 25169, 25205.7, 25250.1, and 25250.13 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 4, 1995. Filed
with Secretary of State October 5, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1245, Frusetta. Hazardous waste facilities: transportation: permits.

(1) Existing law requires hazardous waste facilities, including, but not limited to, storage facilities, to operate under hazardous waste facilities permits issued by the Department of Toxic Substances Control. A "storage facility" is defined as a facility at which the hazardous waste is held pursuant to certain requirements, including if hazardous waste is held in a container or tank for periods greater than 144 hours. For purposes of the statutes regulating used oil, the term "used oil transfer facility" is defined as a transfer facility that stores used oil for periods greater than 144 hours. A used oil transfer facility that holds the oil for more than 24 hours, but less than 144 hours, and does not handle the used oil, except as specified, is required to comply with specified federal regulations.

This bill would revise the storage period to greater than 6 days for hazardous waste storage facilities and would increase that time limit to 10 days for transfer facilities in areas zoned industrial by the local planning authority. The bill would provide for an increase in those time limits with regard to emergency release response.

The bill would authorize the department to adopt regulations which set forth enforceable management standards regarding persons holding hazardous waste at a transfer facility located in a commercial or residential area. The bill would require the Office of Administrative Law to consider these regulations to be necessary for the immediate preservation of the public peace, health and safety, and general welfare, and would allow these regulations to be adopted as emergency regulations.

The bill would revise the storage period for used oil transfer facilities to greater than 6 days, or greater than 10 days for transfer facilities in areas zoned industrial by the local planning agency, and would make conforming changes in the requirements concerning those facilities.

(2) Existing law requires every person who transports hazardous waste to register with the department as a hazardous waste hauler,

except as specified. Existing law requires a transporter of hazardous waste to maintain ability to respond in damages resulting from the operation of that business and requires the ability to respond to be consistent with the highest of specified liability. The department is required to be notified, within 2 working days of being informed of any violation of this requirement. A violation of the provisions regulating hazardous waste is a crime.

This bill would allow a person who is registered as a hazardous waste transporter to voluntarily surrender a registration by submitting the original certificate to the department with a specified letter and removing all inspection certificates of compliance from vehicles.

The bill would delete the requirement that the ability to respond in damages be consistent with the specified limits and would increase to 15 days the time limit when the department is required to transmit a notice of violation of the requirement to maintain an ability to respond in damages. The bill would revise the documentation required to be submitted as proof of compliance with these requirements and would require an insurer or surety who has agreed to provide the department with proof of ability to respond in damages to also provide the department with written or facsimile notice within 24 hours after loss of insurance providing ability to respond in damages.

The bill would authorize the department, for shipments of waste that do not require a manifest pursuant to federal regulations, to establish, by regulation, manifest requirements, as specified, that differ from specified requirements of state law.

(3) Existing law requires the State Board of Equalization to assess a fee for any application for a new hazardous waste facilities permit, a variance, or a permit modification, for deposit into the Hazardous Waste Control Account. A variance from regulation under the hazardous waste control laws granted under the department's regulations is exempt from this fee.

This bill would instead exempt from the fee a variance related to the transportation of hazardous waste.

(4) Since a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

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

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



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

SECTION 1. Section 25123.3 of the Health and Safety Code is amended to read:

25123.3. (a) For purposes of this section, the following terms have the following meaning:

(1) "Liquid hazardous waste" means a hazardous waste that meets the definition of free liquids, as specified in Section 66260.10 of Title 22 of the California Code of Regulations, as that section read on January 1, 1994.

(2) "Transfer facility" means any offsite facility which is related to the transportation of hazardous waste, including, but not limited to, loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(b) "Storage facility" means a hazardous waste facility at which the hazardous waste meets any of the following requirements:

(1) The hazardous waste is held in containers or tanks for greater than 90 days at an onsite facility.

(2) (A) Liquid hazardous waste is held at an onsite facility in tanks for any period of time and the quantity of the liquid hazardous waste in any individual tank exceeds 5,000 gallons or the aggregate amount of liquid hazardous waste stored in tanks at the facility exceeds 50,000 gallons.

(B) The quantities of liquid hazardous waste specified in subparagraph (A) shall not include any of the following:

(i) Liquid hazardous waste stored in a portable tank used for a period of not more than 60 calendar days at an onsite facility.

(ii) Liquid hazardous waste accumulated onsite which has been generated from onsite maintenance operations which occur less frequently than annually.

(iii) Liquid hazardous waste which is held, as part of the ongoing treatment of that waste, in a tank which is authorized by the department to perform that treatment for that waste.

(iv) Liquid hazardous waste held in a tank pursuant to subdivision (o) of Section 25200.3 or subdivision (i) of Section 25201.5 if the liquid hazardous waste is held in a tank for not more than 90 days or an additional 90 days upon approval of the department.

(3) The hazardous waste is held in containers or tanks for any period of time at an offsite facility which is not a transfer facility.

(4) (A) Except as provided in subparagraph (C), the hazardous waste is held in containers or tanks at a transfer facility for periods greater than six days, or greater than 10 days for transfer facilities in areas zoned industrial by the local planning authority.

(B) The department may adopt regulations which set forth enforceable management standards that protect human health and the environment and which apply to persons holding hazardous



waste at a transfer facility located in a commercial or residential area pursuant to subparagraph (A). Any regulations adopted pursuant to this subparagraph shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare, and may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(C) The department may extend the period of time specified in subparagraph (A) for hazardous waste which is generated as a result of an emergency release and which is collected and temporarily stored by emergency rescue personnel, as defined in Section 25501, or by a response action contractor, as defined in Section 25364.6, upon the request of emergency rescue personnel or the response action contractor. Notwithstanding any other provision of law, a transfer facility that holds hazardous waste for periods greater than six days, or greater than 10 days for transfer facilities in areas zoned industrial by the local planning authority, pursuant to this subparagraph, shall not be classified as a storage facility.

(5) The liquid hazardous waste is held at an onsite facility in any individual container of less than 5,000 gallons for any period of time, and the aggregate amount of liquid hazardous waste stored in those containers, exclusive of tanks, at the facility exceeds 50,000 gallons. For purposes of this paragraph, this quantity does not include liquid hazardous waste being accumulated at an initial accumulation point pursuant to subdivision (d).

(6) The hazardous waste is held at any facility for any period of time in a manner other than in a container or tank.

(7) (A) Except as provided in subparagraph (B), the hazardous waste is held at a transfer facility for any period of time and handling occurs.

(B) Notwithstanding subparagraph (A), a transfer facility is not a storage facility if the hazardous waste is held in containers or tanks at a transfer facility for a period of six days or less, or 10 days or less for transfer facilities in areas zoned industrial by the local planning authority, and no handling occurs, other than the transfer of packages or containerized hazardous waste from one vehicle to another.

(c) The time period for calculating the 90-day period for purposes of paragraph (1) of subdivision (b) begins when the facility has accumulated 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste. However, if the facility generates more than 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste during any calendar month, the time period begins when any amount of hazardous waste first begins to accumulate in that month.



(d) Notwithstanding paragraph (1) of subdivision (b), a generator of hazardous waste that accumulates waste onsite is not a storage facility if all of the following requirements are met:

(1) The generator accumulates a maximum of 55 gallons of hazardous waste, one quart of acutely hazardous waste, or one quart of extremely hazardous waste at an initial accumulation point which is at or near the area where the waste is generated and which is under the control of the operator of the process generating the waste.

(2) The generator accumulates the waste in containers other than tanks.

(3) The generator does not hold the hazardous waste onsite for more than one year from the initial date of accumulation, or 90 days from the date the quantity limitation specified in paragraph (1) of this subdivision is reached, whichever occurs first.

(4) The generator labels any container used for the accumulation of hazardous waste with the initial date of accumulation and with the words “hazardous waste” or other words that identify the contents of the container.

(5) Within three days of reaching any applicable quantity limitation specified in paragraph (1), the generator labels the container holding the accumulated hazardous waste with the date the quantity limitation was reached and either transports the waste offsite or holds the waste onsite and complies with the regulations adopted by the department establishing requirements for personnel training, preparedness and prevention, and contingency plans and emergency procedures applicable to storage facilities.

(6) The generator complies with regulations adopted by the department pertaining to the use and management of containers and any other regulations adopted by the department to implement this subdivision.

(7) The generator does not otherwise meet the definition of a storage facility.

SEC. 2. Section 25160 of the Health and Safety Code is amended to read:

25160. (a) For purposes of this chapter, “manifest” means a shipping document originated and signed by a generator of hazardous waste which contains all of the information required by the department and which complies with all applicable federal and state regulations.

(b) (1) Any person generating hazardous waste which is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, shall complete a manifest prior to the time the waste is transported or offered for transportation, and shall designate on that manifest the facility to which the waste is to be shipped for the handling, treatment, storage, disposal, or combination thereof. The manifest shall be completed, as required by the department. The generator



shall provide the manifest to the person who will transport the hazardous waste, who is the driver, if the hazardous waste will be transported by vehicle, or the person designated by the railroad corporation or vessel operator, if the hazardous waste will be transported by rail or vessel. The generator shall use the standard California Uniform Hazardous Waste Manifest supplied by the department for all shipments of hazardous waste for which a manifest is required, except as provided in paragraph (2). A manifest shall only be used for the purposes specified in this chapter, including, but not limited to, identifying materials which the person completing the manifest reasonably believes are hazardous waste. Within 30 days after transporting hazardous waste, or submitting hazardous waste for transport, each generator of that hazardous waste shall submit to the department a legible copy of each manifest used. The copy submitted to the department shall contain the signatures of the generator and the transporter.

(2) Any person generating hazardous waste which is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, outside of the state, shall complete, whether or not the waste is determined to be hazardous by the importing country or state, a standard California Uniform Hazardous Waste Manifest, or the generator shall complete, in its own form of manifest, the manifest required by the receiving state and shall submit a copy of that manifest to the department within 30 days of the transport, or submission for transport, of the hazardous waste.

(3) Within 30 days after transporting hazardous waste, or submitting hazardous waste, for transport out of state, each generator of that hazardous waste shall submit to the department a legible copy of each manifest used. The copy submitted to the department shall contain the signatures of the generator, all transporters, excepting intermediate rail transporters, and the out-of-state facility operator. If within 35 days after the initial shipment, or for exports by water to foreign countries, 60 days after the initial shipment, the generator has not received a copy of the manifest signed by all transporters and the facility operator, the generator shall contact the owner or operator of the designated facility to determine the status of the hazardous waste and to request that the owner or operator immediately provide a signed copy of the manifest to the generator. If within 45 days after the initial shipment or, for exports by water to foreign countries, 90 days after the initial shipment, the generator has not received a copy of the signed manifest from the facility owner or operator, the generator shall submit an exception report to the department.

(4) For shipments of waste that do not require a manifest pursuant to Title 40 of the Code of Federal Regulations, the department, by regulation, may establish manifest requirements that differ from the requirements of this subdivision. The requirements for an alternative



form of manifest shall ensure that the hazardous waste is transported by a registered hazardous waste transporter, the hazardous waste is tracked, and human health and the environment are protected.

(c) (1) The department shall determine the form and manner in which a manifest shall be completed and the information that the manifest shall contain. The form of each manifest and the information requested on each manifest shall be the same for all hazardous wastes, regardless of whether the hazardous wastes are also regulated pursuant to the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.), or by regulations adopted by the United States Department of Transportation. However, the form of the manifest and the information required shall be consistent with federal regulations.

(2) Pursuant to federal regulations, the department may require information on the manifest in addition to the information required by federal regulations, including, but not limited to, the number of the vehicle which will transport the hazardous waste, as specified in the certificate of compliance issued pursuant to Section 25168.3.

(d) (1) Any person who transports hazardous waste in a vehicle shall have a manifest in his or her possession while transporting the hazardous waste. The manifest shall be shown upon demand to any representative of the department, any officer of the California Highway Patrol, any local health officer, or any local public officer designated by the director. If the hazardous waste is transported by rail or vessel, the railroad corporation or vessel operator shall comply with Subchapter C (commencing with Section 171.1) of Chapter 1 of Subtitle B of Title 49 of the Code of Federal Regulations and shall also enter on the shipping papers any information concerning the hazardous waste which the department may require.

(2) Any person who transports any waste, as defined by Section 25124, and who is provided with a manifest for that waste shall, while transporting that waste, comply with all requirements of this chapter, and the regulations adopted pursuant thereto, concerning the transportation of hazardous waste.

(3) Any person who transports hazardous waste shall transfer a copy of the manifest to the facility operator at the time of delivery, or to the person who will subsequently transport the hazardous waste in a vehicle. Any person who transports hazardous waste and then transfers custody of that hazardous waste to a person who will subsequently transport that waste by rail or vessel shall transfer a copy of the manifest to the person designated by the railroad corporation or vessel operator, as specified by Subchapter C (commencing with Section 171.1) of Chapter 1 of Subtitle B of Title 49 of the Code of Federal Regulations.

(4) Any person transporting hazardous waste by motor vehicle, rail, or water shall certify to the department, at the time of initial registration and at the time of renewal of that registration pursuant



to this article, that the transporter is familiar with the requirements of this section, the department regulations, and federal laws and regulations governing the use of manifests.

(e) (1) Any facility operator in the state who receives hazardous waste for handling, treatment, storage, disposal, or any combination thereof, which was transported with a manifest pursuant to this section, shall submit a copy of the manifest to the department within 30 days after receiving the hazardous waste. The copy submitted to the department shall contain the signatures of the generator, all transporters, excepting intermediate rail transporters, and the facility operator. In instances where the generator or transporter is not required by the generator's state or federal law to sign the manifest, the facility operator shall require the generator and all transporters, excepting intermediate rail transporters, to sign the manifest before accepting the waste at any facility in this state.

(2) Any treatment, storage, or disposal facility receiving hazardous waste generated outside this state, may only accept the waste for treatment, storage, disposal, or any combination thereof, if the waste is accompanied by a completed standard California Uniform Hazardous Waste Manifest.

SEC. 3. Section 25166 of the Health and Safety Code is amended to read:

25166. (a) Each person who carries on, or engages in, the business of transporting hazardous waste or who handles hazardous waste as a part of, or incidental to, any business, for a calendar year or any portion thereof shall pay a registration fee to the department of two hundred dollars (\$200) if the registered hazardous waste transporter has fewer than 10 vehicles and five hundred dollars (\$500) if the registered hazardous waste transporter has 10 or more vehicles.

(b) A person who is registered as a hazardous waste transporter may voluntarily surrender a registration by doing both of the following:

(1) Submitting the original certificate to the department with a letter signed and dated by the registered hazardous waste transporter indicating that the transporter no longer wishes to transport hazardous waste.

(2) Removing all certificates of compliance that have been affixed to vehicles inspected by the Department of the California Highway Patrol.

(c) A person whose registration has expired for a period of more than 90 days shall be considered an applicant for an original registration when the person applies for registration.

SEC. 4. Section 25169 of the Health and Safety Code is amended to read:

25169. (a) Every transporter of hazardous waste shall maintain ability to respond in damages resulting from the operation of that



business. The ability to respond in damages includes the ability to respond to public liability, as provided in subdivision (c). For purposes of this section only, “public liability” means liability for bodily injury, including injury to the body, sickness, or disease to any person, and death resulting from any such injury, sickness, or disease; for property damage, including damage to, or loss of use of, tangible property; and for environmental restoration, including restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release, or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This liability includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage or potential for damage to human health, the natural environment, fish, shellfish, and wildlife.

(b) The department shall, within 15 working days of being informed of any violation of subdivision (a), transmit a notice of violation to the transporter suspected of the violation. If the transporter so notified does not present proof of compliance with subdivision (a) to the department’s satisfaction within 30 days of transmittal of the notice, the department shall immediately, notwithstanding Section 25186, suspend the transporter’s registration. If proof of compliance is not submitted within 60 days, the registration shall immediately be revoked, notwithstanding Section 25186. A transporter whose registration is revoked pursuant to this subdivision may apply again for registration upon furnishing proof of compliance with subdivision (a).

(c) The ability to respond to public liability means having a policy of insurance coverage issued by an insurer or a surety bond issued by a surety, which meets both of the following requirements:

(1) The policy or bond has the liability limits specified for carriers of hazardous wastes by the Department of Transportation in Part 387 (commencing with Section 387.1) of Subchapter B of Chapter 111 of Title 49 of the Code of Federal Regulations, except that coverage shall be in the amount of one million two hundred thousand dollars (\$1,200,000) for waste petroleum in bulk shipments, and six hundred thousand dollars (\$600,000) for vehicles under 10,000 pounds gross vehicle weight rating.

(2) The policy’s or bond’s terms conform to Form MCS-90 or MCS-82, respectively, as defined and set forth in Sections 387.7 to 387.15, inclusive, of Title 49 of the Code of Federal Regulations, or a written decision, order, or authorization to self-insure that complies with paragraph (3) of subsection (d) of Section 387.7 of Title 49 of the Code of Federal Regulations, adopted pursuant to Section 30 of the Motor Carrier Act of 1980 (49 U.S.C. Sec. 10927).

(d) As proof of compliance with subdivision (a), an insurer or surety which provides the insurance coverage or surety bond required by this section shall agree to provide the department with



proof of the transporter's ability to respond in damages. An insurer or surety may demonstrate the ability of the transporter to respond to public liability by submitting a completed certificate of insurance on a form provided by the department or a Form MCS-90 or MCS-82, as specified in Section 387.15 of Title 49 of the Code of Federal Regulations, to the department.

(e) An insurer or surety who has agreed to provide the department with proof of ability to respond in damages, as required by subdivision (d), shall also provide the department with a written or facsimile notice within 24 hours after loss of insurance providing ability to respond in damages, as required by subdivision (d).

SEC. 5. Section 25205.7 of the Health and Safety Code is amended to read:

25205.7. (a) The board shall assess a fee for any application for a new hazardous waste facilities permit, a variance, or a permit modification issued by the department pursuant to this chapter or the regulations adopted pursuant to this chapter. The fee shall be nonrefundable, even if the application is withdrawn or the permit, variance, or modification is denied. The department shall provide the board with any information which is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account. A person who submits a single application for a facility that falls within more than one fee category shall pay only the higher fee.

(b) (1) The amounts stated in this section shall be base rates for the 1989–90 fiscal year for all facilities, other than those operating pursuant to a standardized permit, as specified in Section 25201.6. For all facilities operating pursuant to a standardized permit, the amounts stated in this section shall be the base rates for the 1993–94 fiscal year. Thereafter the fees shall be adjusted annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index for the United States, as reported by the Department of Labor or a successor agency of the United States government.

(2) The board shall pay a refund of the portion of the fee that was paid for the 1993–94 fiscal year, in excess of the amounts specified in this section, to an owner or operator of a facility operating pursuant to a standardized permit pursuant to Section 25201.6 who paid fees in excess of the amounts specified in this section for that fiscal year.

(3) The fee shall be assessed upon application to the department. For a facility operating pursuant to a grant of interim status, the submittal of the application shall be the submittal of the Part B application in accordance with regulations adopted by the department. A person who submits an application for renewal of any existing permit shall pay an amount equal to the fee that would have been assessed had the person requested the same changes in a



modification application, but not less than one-half the fee required for a new permit.

(c) A person submitting a hazardous waste facilities permit application for a land disposal facility shall pay eighty-three thousand dollars (\$83,000) for a small facility, one hundred seventy-seven thousand dollars (\$177,000) for a medium facility, and three hundred four thousand dollars (\$304,000) for a large facility.

(d) A person submitting a hazardous waste facilities permit application for any incinerator shall pay fifty thousand dollars (\$50,000) for a small facility, one hundred six thousand dollars (\$106,000) for a medium facility, and one hundred eighty-two thousand dollars (\$182,000) for a large facility.

(e) (1) Except as provided in paragraphs (2) and (3), a person submitting a hazardous waste facility permit application for a storage facility, a treatment facility, or a storage and treatment facility shall pay seventeen thousand dollars (\$17,000) for a small facility, thirty-one thousand dollars (\$31,000) for a medium facility, and sixty thousand dollars (\$60,000) for a large facility.

(2) A person submitting an application for a standardized permit for a storage facility, a treatment facility, or a storage and treatment facility, as specified in Section 25201.6, shall pay thirty thousand fifty-one dollars (\$30,051) for a Series A standardized permit, eighteen thousand seven hundred sixty-two dollars (\$18,762) for a Series B standardized permit, and five thousand dollars (\$5,000) for a Series C standardized permit. The board shall assess these fees based upon the classifications specified in subdivision (a) of Section 25201.6.

(3) In addition to the fees specified in paragraph (2), the board shall assess a fee equal to the department's costs in reviewing and overseeing any corrective action program described in the application for a standardized permit pursuant to subparagraph (C) of paragraph (2) of subdivision (c) of Section 25201.6, and in reviewing and overseeing any corrective action work undertaken at the facility pursuant to that corrective action program.

(f) A person submitting a hazardous waste facilities permit application for a transportable treatment unit shall pay thirteen thousand dollars (\$13,000) for a small unit, thirty thousand dollars (\$30,000) for a medium unit, and sixty thousand dollars (\$60,000) for a large unit.

(g) (1) (A) A person submitting a request for a variance shall pay three thousand dollars (\$3,000) for a variance from any hazardous waste storage requirements imposed by this chapter, three hundred dollars (\$300) for a variance issued pursuant to Section 25179.8, three hundred dollars (\$300) for a variance to allow the use of a test method or analytical method which is an alternative to the methods prescribed by regulation for use in classifying a waste,



eight hundred dollars (\$800) for a variance from the requirements for hazardous waste haulers imposed by this chapter.

(B) A person submitting a request for a variance not listed in subparagraph (A) shall pay eight thousand dollars (\$8,000), unless the applicant is a small business and the department determines in its discretion that payment of this fee would cause financial or other unreasonable hardship to the applicant. If that finding is made, the department may assess the applicant up to 50 percent of the standard fee. For the purposes of this subparagraph, “small business” means a business which is independently owned and operated, has 25 employees or less, and has a gross annual income which does not exceed two million dollars (\$2,000,000).

(C) If the variance application requests a variance from more than one specific statute or regulation, a separate fee may be assessed for each statute or regulation from which the variance is requested.

(2) If the variance contains no significant changes from a variance previously issued to the same owner or operator, the fee shall be 25 percent of the amount otherwise provided for by this section. A change is a significant change if, had it been made to a permit, it would have been a class 2 or class 3 modification, as specified in subdivision (h).

(3) Any variance granted pursuant to Article 4 (commencing with Section 66263.40) of Chapter 13 of Division 4.5 of Title 22 of the California Code of Regulations is not subject to a fee under this section.

(h) (1) A person who applies for one or more class 1 permit modifications shall pay a fee of five hundred dollars (\$500) for each unit directly impacted by the modification, up to a maximum of one thousand five hundred dollars (\$1,500) for each application.

(2) A person who applies for one or more class 2 permit modifications shall pay a fee equal to 20 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 40 percent for each application, except that each person who applies for one or more class 2 permit modifications for a land disposal facility or an incinerator shall pay a fee equal to 15 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 30 percent for each application.

(3) A person who applies for one or more class 3 permit modifications shall pay a fee equal to 40 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 80 percent for each application, except that a person who applies for one or more class 3 permit modifications for a land disposal facility shall pay a fee equal to 30 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 60 percent for each modification.



(4) No facility which is exempted from fees imposed by this article pursuant to subdivision (e) of Section 25205.3, nor any operator who is subject to paragraph (2) or (3) of subdivision (d) of Section 25205.2, shall be subject to any fee pursuant to this section for a permit modification resulting from a revision of the facility's or operator's closure plan.

(i) (1) Permits for postclosure shall be required for hazardous waste facilities if hazardous wastes remain after closure which will not be subject to the requirements of any other hazardous waste facilities permit issued by the department at the time of postclosure permit approval.

(2) A person submitting a hazardous waste facilities permit application for a postclosure permit shall pay a fee of eight thousand dollars (\$8,000) for a small facility, eighteen thousand dollars (\$18,000) for a medium facility, and thirty thousand dollars (\$30,000) for a large facility.

(3) For purposes of this subdivision and paragraph (8) of subdivision (c) of Section 25205.4, and notwithstanding subdivision (j), any facility or unit is "small" if 0.5 tons (1,000 pounds) or less of hazardous waste remain after closure, "medium" if more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste remain after closure, and "large" if 1,000 or more tons of hazardous waste remain after closure.

(j) For purposes of this section, and notwithstanding Section 25205.1, any facility or unit is "small" if it manages 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the state's current fiscal year, "medium" if it manages more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the state's current fiscal year, and "large" if it manages 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year.

(k) (1) The fees assessed pursuant to this section do not apply to any permit or variance to operate a research, development, and demonstration facility, if the duration of the permit or variance is not longer than one year, unless the permit or variance is renewed pursuant to the regulations adopted by the department.

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

(l) The fees assessed pursuant to this section do not apply to any of the following:

(1) Any variance issued to a public agency to transport wastes for purposes of operating a household hazardous waste collection facility, or to transport waste from a household hazardous waste collection facility, which receives household hazardous waste or hazardous



waste from conditionally exempted small quantity generators pursuant to Article 10.8 (commencing with Section 25218).

(2) A permanent household hazardous waste collection facility.

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

(m) Except as provided in paragraph (3) of subdivision (e), the department shall not assess any fees for the department's costs in reviewing and overseeing a corrective action taken in conjunction with a hazardous waste facility permit application.

(n) The fees assessed pursuant to subdivision (h) do not apply to any government agency for hazardous wastes which result when the government agency, or its contractor, investigates, removes, or remedies a release of hazardous waste caused by another person.

(o) Any person producing or transporting extremely hazardous waste shall pay a fee of two hundred dollars (\$200) per calendar year, in addition to any other fee imposed by this section. The fee shall be collected annually.

SEC. 6. Section 25250.1 of the Health and Safety Code is amended to read:

25250.1. (a) As used in this article, the following terms have the following meaning:

(1) (A) "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of use or as a consequence of extended storage, or spillage, has been contaminated with physical or chemical impurities. Examples of used oil are spent lubricating fluids which have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; industrial oils, including compressor, turbine, and bearing oil; hydraulic oil; metal-working oil; refrigeration oil; and railroad drainings.

(B) "Used oil" does not include any of the following:

(i) Oil which has a flashpoint below 100° F or which has been mixed with hazardous waste, other than minimal amounts of vehicle fuel.

(ii) Wastewater, the discharge of which is subject to regulation under either Section 307(b) or 402 of the Clean Water Act, including wastewaters at facilities which have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil. For purposes of this subparagraph, "de minimis quantities of used oil" are small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations, or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception shall not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases or to used oil recovered from wastewaters.



(iii) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(iv) Oil which contains polychlorinated biphenyls (PCBs) at a concentration of 5 ppm or greater.

(v) Oil containing more than 1000 ppm total halogens. That oil shall be presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D (commencing with Section 261.30) of Part 261 of Title 40 of the Code of Federal Regulations. Persons may rebut that presumption by demonstrating that the used oil does not contain hazardous waste.

(2) “Board” means the California Integrated Waste Management Board.

(3) (A) “Recycled oil” means any oil, produced from used oil, which has been prepared for reuse and which achieves minimum standards of purity, in liquid form, as established by the department. This subdivision does not apply to oil which is to be disposed or used in a manner constituting disposal. The following standards of purity are in effect for recycled oil unless the department, by regulation, establishes more stringent standards, and are the only allowed exceptions to the criteria adopted pursuant to Section 25141:

(i) Flashpoint: minimum standards set by the American Society for Testing and Materials for the recycled products. However, recycled oil to be burned for energy recovery shall have a minimum flashpoint of 100° F.

(ii) Total lead: 50 mg/kg or less.

(iii) Total arsenic: 5 mg/kg or less.

(iv) Total chromium: 10 mg/kg or less.

(v) Total cadmium: 2 mg/kg or less.

(vi) Total halogens: 3000 mg/kg or less. However, recycled oil shall be demonstrated by testing to contain not more than 1000 mg/kg total halogens listed in Appendix VIII of Part 261 (commencing with Section 261.1) of Title 40 of the Code of Federal Regulations.

(vii) Total polychlorinated biphenyls (PCBs): 2 mg/kg or less.

(B) Compliance with the specifications of subparagraph (A) shall not be met by blending or diluting used oil with crude or virgin oil and shall be determined in accordance with the procedures for identification and listing of hazardous waste adopted in regulations by the department. Persons authorized by the department to recycle oil shall maintain records of volumes and characteristics of incoming used oil and outgoing recycled oil and documentation concerning the recycling technology utilized to demonstrate to the satisfaction of the department or other enforcement agencies that the recycling has been achieved in compliance with this subdivision.

(4) “Used oil recycling facility” means a facility which reprocesses or re-refines used oil.



(5) “Used oil storage facility” means a storage facility, as defined in subdivision (b) of Section 25123.3, which stores used oil.

(6) “Used oil transfer facility” means a transfer facility, as defined in subdivision (a) of Section 25123.3, that either stores used oil for periods greater than six days, or greater than 10 days for transfer facilities in areas zoned industrial by the local planning agency, or that transfers used oil from one container to another.

(b) (1) Unless otherwise specified, used oil which meets all of the following conditions is not subject to regulation by the department:

(A) The used oil meets the standards set forth in paragraph (3) of subdivision (a).

(B) The used oil is not hazardous pursuant to the criteria adopted pursuant to Section 25141 of constituents other than those listed in paragraph (3) of subdivision (a).

(C) The used oil is not mixed with any waste listed as a hazardous waste in Part 261 (commencing with Section 261.1) of Chapter 1 of Title 40 of the Code of Federal Regulations.

(2) Used oil recycling facilities that are the first to claim that the used oil meets the requirements specified in paragraph (1) shall maintain an operating log and copies of certification forms as specified in Section 25250.19. Any person who generates used oil, and who claims that the oil is exempt from regulation pursuant to this subdivision, shall notify the department and the certified unified program agency, in writing, of that claim and shall comply with the testing and recordkeeping requirements of Section 25250.19 prior to its reuse. In any action to enforce this article, the burden is on the generator, transporter, or recycling facility, whichever first claimed that the used oil meets the standards and criteria, and on the user of the used oil to prove that the oil meets those standards and criteria.

SEC. 7. Section 25250.13 of the Health and Safety Code is amended to read:

25250.13. Notwithstanding any provision of this chapter, a transfer facility that accepts used oil and holds the oil for more than 24 hours, but less than six days, or 10 days for transfer facilities in areas zoned industrial by the local planning agency, and does not handle the used oil, other than the transfer of packaged or containerized used oil from one vehicle to another, shall comply with the requirements for used oil transfer facilities that are specified in Subpart E (commencing with Section 279.40) of Part 279 of Title 40 of the Code of Federal Regulations.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government



Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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