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CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1942

Introduced by Assembly Member Lowenthal

February 11, 2004

An act to amend ~~Section 25200.15~~ *Sections 25123.3, 25200, 25200.15, and 25245* of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1942, as amended, Lowenthal. Hazardous waste facilities permits: *financial assurances*.

(1) Existing law requires hazardous waste facilities to operate under hazardous waste facilities permits issued by the Department of Toxic Substances Control (department). Existing law defines the term "storage facility" for purposes of the hazardous waste control laws as excluding a transfer facility if the hazardous waste is held in containers or tanks for a period of 6 days or less, or for a period of 10 days or less if the transfer facility is located in an area zoned industrial by the local planning authority.

The bill would instead exempt, from the definition of the term "storage facility", a transfer facility where the waste is held in containers or tanks for 10 days or less if the transfer facility is located in an area zoned nonresidential by the local planning authority.

(2) Existing law requires the department to issue a hazardous waste facilities permit for a fixed term, which is prohibited from exceeding 10 years for any land disposal facility, storage facility, incinerator, or other treatment facility.

This bill would authorize the owner or operator of the facility to submit an application for a hazardous waste facilities permit renewal before the fixed term of the permit expires. The bill would provide that if the department does not renew or approve the application before the end of the permit's fixed term, the permit is deemed extended until the renewal application is approved or denied and the owner or operator has exhausted all applicable rights of appeal. The bill would specify related matter with regard to the permit renewal application and the submission of additional information.

(3) Existing law allows the owner or operator of a permitted hazardous waste facility to change facility structures or equipment without modifying the facility's hazardous waste facilities permit, if the change to the structure or equipment is not within a permitted unit, or if the structure or equipment is not actively related to the treatment, storage, or disposal of hazardous waste, or the secondary containment of those hazardous wastes, as specified.

This bill would authorize the owner or operator of a permitted facility to the extent consistent with the Federal Resource Conservation and Recovery Act of 1976 (RCRA) and the regulations adopted pursuant to RCRA, to change the facility structures or equipment ~~as a~~ utilizing the Class 1* permit modification, pursuant to specified in the regulations adopted by the Department of Toxic Substances Control, if the department determines that the change to the structure or equipment is necessary to comply with requirements or the request of a state or federal agency or an air quality management or air pollution control district and if the change will decrease *one or more risks, and will not result in any increased risks* to human health and safety or the environment related to the management of the hazardous wastes in the structure or equipment.

(4) Existing law requires the department to adopt regulations that specify the financial assurances to be provided by the owner or operator of a hazardous waste facility that are necessary to respond adequately to damage claims and to provide for the cost of closure and subsequent maintenance. Existing law requires the financial assurance to be a trust fund, surety bond, letter of credit, insurance, or, if the facility manages hazardous waste that is not regulated under RCRA, any other



equivalent financial arrangement acceptable to the department. A violation of the hazardous waste control law, including a regulation adopted by the department, is a crime.

This bill would instead require, if the facility is required to obtain a permit under RCRA, the financial assurance required would be a trust fund, surety bond, letter of credit, insurance or other mechanism authorized under RCRA, and if the facility is not required to obtain a permit under RCRA, the financial assurance could include any other equivalent financial arrangement acceptable to the department.

Since a violation of the regulations adopted by the department is 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.

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

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

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

3 25123.3. (a) For purposes of this section, the following terms
4 have the following meaning:

5 (1) “Liquid hazardous waste” means a hazardous waste that
6 meets the definition of free liquids, as specified in Section
7 66260.10 of Title 22 of the California Code of Regulations, as that
8 section read on January 1, 1994.

9 (2) “Remediation waste staging” means the temporary
10 accumulation of non-RCRA contaminated soil that is generated
11 and held onsite, and that is accumulated for the purpose of onsite
12 treatment pursuant to a certified, authorized or permitted treatment
13 method, such as a transportable treatment unit, if all of the
14 following requirements are met:

15 (A) The hazardous waste being accumulated does not contain
16 free liquids.

17 (B) The hazardous waste is accumulated on an impermeable
18 surface, such as high density polyethylene (HDPE) of at least 20



1 mills that is supported by a foundation, or high density
2 polyethylene of at least 60 mills that is not supported by a
3 foundation.

4 (C) The generator provides controls for windblown dispersion
5 and precipitation runoff and run-on and complies with any
6 stormwater permit requirements issued by a regional water quality
7 control board.

8 (D) The generator has the accumulation site inspected weekly
9 and after storms to ensure that the controls for windblown
10 dispersion and precipitation runoff and run-on are functioning
11 properly.

12 (E) The staging area is certified by a registered engineer for
13 compliance with the standards specified in subparagraphs (A) to
14 (D), inclusive.

15 (3) “Transfer facility” means any offsite facility that is related
16 to the transportation of hazardous waste, including, but not limited
17 to, loading docks, parking areas, storage areas, and other similar
18 areas where shipments of hazardous waste are held during the
19 normal course of transportation.

20 (b) “Storage facility” means a hazardous waste facility at
21 which the hazardous waste meets any of the following
22 requirements:

23 (1) The hazardous waste is held for greater than 90 days at an
24 onsite facility. The department may establish criteria and
25 procedures to extend that 90-day period, consistent with the
26 federal act, and to prescribe the manner in which the hazardous
27 waste may be held if not otherwise prescribed by statute.

28 (2) The hazardous waste is held for any period of time at an
29 offsite facility which is not a transfer facility.

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

34 (B) The department may adopt regulations which set forth
35 enforceable management standards that protect human health and
36 the environment and which apply to persons holding hazardous
37 waste at a transfer facility located in a commercial or residential
38 area pursuant to subparagraph (A). Any regulations adopted
39 pursuant to this subparagraph shall be considered by the Office of
40 Administrative Law to be necessary for the immediate



1 preservation of the public peace, health and safety, and general
2 welfare, and may be adopted as emergency regulations in
3 accordance with Chapter 3.5 (commencing with Section 11340) of
4 Part 1 of Division 3 of Title 2 of the Government Code.

5 (C) (i) The department may extend the period of time
6 specified in subparagraph (A) for hazardous waste that is
7 generated as a result of an emergency release and that is collected
8 and temporarily stored by emergency rescue personnel, as defined
9 in Section 25501, or by a response action contractor upon the
10 request of emergency rescue personnel or the response action
11 contractor.

12 (ii) Notwithstanding any other provision of law, a transfer
13 facility that holds hazardous waste for periods greater than six
14 days, or greater than 10 days for transfer facilities in areas zoned
15 industrial by the local planning authority, pursuant to this
16 subparagraph shall not be classified as a storage facility.

17 (iii) For purposes of this subparagraph, “response action
18 contractor” means any person who enters into a contract with the
19 department to take removal or remedial action pursuant to Chapter
20 6.8 (commencing with Section 25300) in response to a release or
21 threatened release, including any subcontractors of the response
22 action contractor.

23 (4) (A) Except as provided in subparagraph (B), the hazardous
24 waste is held onsite for any period of time, unless the hazardous
25 waste is held in a container, tank, drip pad, or containment building
26 pursuant to regulations adopted by the department.

27 (B) Notwithstanding subparagraph (A), a generator that
28 accumulates hazardous waste generated and held onsite for 90
29 days or less for offsite transportation is not a storage facility if all
30 of the following requirements are met:

31 (i) The waste is non-RCRA contaminated soil.

32 (ii) The hazardous waste being accumulated does not contain
33 free liquids.

34 (iii) The hazardous waste is accumulated on an impermeable
35 surface, such as high density polyethylene (HDPE) of at least 20
36 mills that is supported by a foundation, or high density
37 polyethylene of at least 60 mills that is not supported by a
38 foundation.

39 (iv) The generator provides controls for windblown dispersion
40 and precipitation runoff and run-on and complies with any



1 stormwater permit requirements issued by a regional water quality
2 control board.

3 (v) The generator has the accumulation site inspected weekly
4 and after storms to ensure that the controls for windblown
5 dispersion and precipitation runoff and run-on are functioning
6 properly.

7 (vi) The generator, after final offsite transportation, inspects
8 the accumulation site for contamination and remediates as
9 necessary.

10 (vii) The site is certified by a registered engineer for
11 compliance with the standards specified in clauses (i) to (vi),
12 inclusive.

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

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

18 (B) Notwithstanding subparagraph (A), and to the extent
19 consistent with the federal act, a transfer facility is not a storage
20 facility if the hazardous waste is held in containers or tanks at a
21 transfer facility for a period of ~~six days or less, or~~ 10 days or less
22 for transfer facilities in areas zoned ~~industrial~~ *nonresidential* by
23 the local planning authority, and no handling occurs, other than the
24 transfer of packages or containerized hazardous waste from one
25 vehicle to another.

26 (c) The time period for calculating the 90-day period for
27 purposes of paragraph (1) of subdivision (b), or the 180-day or
28 270-day period for purposes of subdivision (h), begins when the
29 facility has accumulated 100 kilograms of hazardous waste or one
30 kilogram of extremely hazardous waste or acutely hazardous
31 waste. However, if the facility generates more than 100 kilograms
32 of hazardous waste or one kilogram of extremely hazardous waste
33 or acutely hazardous waste during any calendar month, the time
34 period begins when any amount of hazardous waste first begins to
35 accumulate in that month.

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

39 (1) The generator accumulates a maximum of 55 gallons of
40 hazardous waste, one quart of acutely hazardous waste, or one



1 quart of extremely hazardous waste at an initial accumulation
2 point that is at or near the area where the waste is generated and
3 that is under the control of the operator of the process generating
4 the waste.

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

7 (3) The generator does not hold the hazardous waste onsite
8 without a hazardous waste facilities permit or other grant of
9 authorization for a period of time longer than the shorter of the
10 following time periods:

11 (A) One year from the initial date of accumulation.

12 (B) Ninety days, or if subdivision (h) is applicable, 180 or 270
13 days, from the date that the quantity limitation specified in
14 paragraph (1) is reached.

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

19 (5) Within three days of reaching any applicable quantity
20 limitation specified in paragraph (1), the generator labels the
21 container holding the accumulated hazardous waste with the date
22 the quantity limitation was reached and either transports the waste
23 offsite or holds the waste onsite and complies with either the
24 regulations adopted by the department establishing requirements
25 for generators subject to the time limit specified in paragraph (1)
26 of subdivision (b) or the requirements specified in paragraph (1)
27 of subdivision (h), whichever requirements are applicable.

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

32 (e) (1) Notwithstanding paragraphs (1) and (4) of subdivision
33 (b), hazardous waste held for remediation waste staging shall not
34 be considered to be held at a hazardous waste storage facility if the
35 total accumulation period is one year or less from the date of the
36 initial placing of hazardous waste by the generator at the staging
37 site for onsite remediation, except that the department may grant
38 one six-month extension, upon a showing of reasonable cause by
39 the generator.



1 (2) (A) The generator shall submit a notification of plans to
2 store and treat hazardous waste onsite pursuant to paragraph (2) of
3 subdivision (a), in person or by certified mail, with return receipt
4 requested, to the department and to one of the following:

5 (i) The CUPA, if the generator is under the jurisdiction of a
6 CUPA.

7 (ii) If the generator is not under the jurisdiction of a CUPA, the
8 notification shall be submitted to the ~~officer~~ or agency authorized,
9 pursuant to subdivision (f) of Section 25404.3, to implement and
10 enforce the requirements of this chapter listed in paragraph (1) of
11 subdivision (c) of Section 25404.

12 (B) If, after the notification pursuant to subparagraph (A), or
13 during the initial year or the six-month extension granted by the
14 department, the generator determines that treatment cannot be
15 accomplished for all, or part of, the hazardous waste accumulated
16 in a remediation waste staging area, the generator shall
17 immediately notify the department and the appropriate local
18 agency, pursuant to subparagraph (A), that the treatment has been
19 discontinued. The generator shall then handle and dispose of the
20 hazardous waste in accordance with paragraph (4) of subdivision
21 (b).

22 (C) A generator shall not hold hazardous waste for remediation
23 waste staging unless the generator can show, through laboratory
24 testing, bench scale testing, or other documentation, that soil held
25 for remediation waste staging is potentially treatable. Any fines
26 and penalties imposed for a violation of this subparagraph may be
27 imposed beginning with the 91st day that the hazardous waste was
28 initially accumulated.

29 (3) Once an onsite treatment operation is completed on
30 hazardous waste held pursuant to paragraph (1), the generator shall
31 inspect the staging area for contamination and remediate as
32 necessary.

33 (f) Notwithstanding any other provision of this chapter,
34 remediation waste staging and the holding of non-RCRA
35 contaminated soil for offsite transportation in accordance with
36 paragraph (4) of subdivision (b) shall not be considered to be
37 disposal or land disposal of hazardous waste.

38 (g) A generator who holds hazardous waste for remediation
39 waste staging pursuant to paragraph (2) of subdivision (a) or who
40 holds hazardous waste onsite for offsite transportation pursuant to



1 paragraph (4) of subdivision (b) shall maintain records onsite that
2 demonstrate compliance with this section related to storing
3 hazardous waste for remediation waste staging or related to
4 holding hazardous waste onsite for offsite transportation, as
5 applicable. The records maintained pursuant to this subdivision
6 shall be available for review by any public agency authorized
7 pursuant to Section 25180 or 25185.

8 (h) (1) Notwithstanding paragraph (1) of subdivision (b), a
9 generator of less than 1,000 kilograms of hazardous waste in any
10 calendar month who accumulates hazardous waste onsite for 180
11 days or less, or 270 days or less if the generator transports the
12 generator's own waste, or offers the generator's waste for
13 transportation, over a distance of 200 miles or more, for offsite
14 treatment, storage, or disposal, is not a storage facility if all of the
15 following apply:

16 (A) The quantity of hazardous waste accumulated onsite never
17 exceeds 6,000 kilograms.

18 (B) The generator complies with the requirements of
19 subdivisions (d), (e), and (f) of Section 262.34 of Title 40 of the
20 Code of Federal Regulations.

21 (C) The generator does not hold acutely hazardous waste or
22 extremely hazardous waste in an amount greater than one kilogram
23 for a time period longer than that specified in paragraph (1) of
24 subdivision (b).

25 (2) A generator meeting the requirements of paragraph (1) who
26 does not receive a copy of the manifest with the handwritten
27 signature of the owner or operator of the facility to which the
28 generator's waste is submitted, within 60 days from the date that
29 the hazardous waste was accepted by the initial transporter, shall
30 submit to the department a legible copy of the manifest, with some
31 indication that the generator has not received confirmation of
32 delivery.

33 *SEC. 2. Section 25200 of the Health and Safety Code is*
34 *amended to read:*

35 25200. (a) The department shall issue hazardous waste
36 facilities permits to use and operate one or more hazardous waste
37 management units at a facility ~~which~~ *that* in the judgment of the
38 department meet the building standards published in the State
39 Building Standards Code relating to hazardous waste facilities and
40 the other standards and requirements adopted pursuant to this



1 chapter. The department shall impose conditions on each
2 hazardous waste facilities permit specifying the types of hazardous
3 wastes ~~which that~~ may be accepted for transfer, storage, treatment,
4 or disposal. The department may impose any other conditions on
5 a hazardous waste facilities permit that are consistent with the
6 intent of this chapter.

7 (b) The department may impose, as a condition of a hazardous
8 waste facilities permit, a requirement that the owner or operator of
9 a hazardous waste facility ~~which that~~ receives hazardous waste
10 from more than one producer comply with any order of the director
11 ~~which that~~ prohibits the facility operator from refusing to accept
12 a hazardous waste based on geographical origin ~~which that~~ is
13 authorized to be accepted and may be accepted by the facility
14 without extraordinary hazard.

15 (c) (1) (A) Any hazardous waste facilities permit issued by the
16 department shall be for a fixed term, which shall not exceed 10
17 years for any land disposal facility, storage facility, incinerator, or
18 other treatment facility. ~~The~~

19 (B) *Before the fixed term of a permit expires, the owner or*
20 *operator of a facility intending to extend the term of the facility's*
21 *permit shall submit a complete Part A application for a permit*
22 *renewal. At any time following the submittal of the Part A*
23 *application, the owner or operator of a facility shall submit a*
24 *complete Part B application, or any portion thereof, as well as any*
25 *other relevant information, as and when requested by the*
26 *department. When a complete Part A renewal application, and any*
27 *other requested information, has been submitted before the end of*
28 *the permit's fixed term, the permit is deemed extended until the*
29 *renewal application is approved or denied and the owner or*
30 *operator has exhausted all applicable rights of appeal.*

31 (C) *For purposes of subparagraph (B) the department shall*
32 *deem a permit renewal application to be complete if it indicates an*
33 *intention to renew and describes any proposed modifications in*
34 *sufficient detail to allow the department and the public to prioritize*
35 *the relative importance of the permit renewal application. The*
36 *department may require an applicant to submit any additional*
37 *information it deems necessary at the time the initial permit*
38 *renewal application is submitted or when the department*
39 *commences its full processing and review of the renewal*
40 *application.*



1 (2) *The* department shall review each hazardous waste facilities
2 permit for a land disposal facility five years after the date of
3 issuance or reissuance, and shall modify the permit, as necessary,
4 to assure that the facility continues to comply with the currently
5 applicable requirements of this chapter and the regulations
6 adopted pursuant to this chapter. ~~This~~

7 (3) *This* subdivision does not prohibit the department from
8 reviewing ~~and~~, modifying *or revoking* a permit at any time during
9 its term. ~~When~~

10 (d) (1) *When* reviewing any application for a permit renewal,
11 the department shall consider improvements in the state of control
12 and measurement technology as well as changes in applicable
13 regulations. ~~Each~~

14 (2) *Each* permit issued *or renewed* under this section shall
15 contain the terms and conditions ~~which~~ *that* the department
16 determines necessary to protect human health and the
17 environment.

18 ~~(d)~~

19 (e) ~~On the date the department is granted final authorization by~~
20 ~~the Environmental Protection Agency pursuant to Section 6926 of~~
21 ~~Title 42 of the United States Code, any~~ *Any* permit issued pursuant
22 to the federal act by the Environmental Protection Agency in the
23 state for which no state hazardous waste facilities permit has been
24 issued shall be deemed to be a state permit enforceable by the
25 department until a state permit is issued. In addition to complying
26 with the terms and conditions specified in a federal permit deemed
27 to be a state permit pursuant to this section, an owner or operator
28 who holds that permit shall comply with the requirements of this
29 chapter and the regulations adopted by the department to
30 implement this chapter.

31 *SEC. 3.* Section 25200.15 of the Health and Safety Code is
32 amended to read:

33 25200.15. (a) The owner or operator of a facility that has a
34 hazardous waste facilities permit issued pursuant to Section 25200
35 may change facility structures or equipment without modifying
36 the facility's hazardous waste facilities permit, if any of the
37 following apply:

38 (1) The change to the structure or equipment is not within a
39 permitted unit.



1 (2) Both of the following apply to the change to the structures
2 or equipment:

3 (A) The change to the structure or equipment is within the
4 boundary of a permitted unit, and the structure or equipment is
5 certified by the owner or operator not to be actively related to the
6 treatment, storage, or disposal of hazardous waste, or the
7 secondary containment of those hazardous wastes.

8 (B) The department, within 30 days from the date of receipt of
9 notice from the owner or operator, does not determine any of the
10 following:

11 (i) The change is related to the treatment, storage, or disposal
12 of hazardous waste or the secondary containment of those
13 hazardous wastes.

14 (ii) The change may otherwise significantly increase risks to
15 human health and safety or the environment related to the
16 management of the hazardous wastes.

17 (iii) The regulations adopted pursuant to the federal act require
18 a permit modification for the change.

19 (b) (1) ~~The~~ *To the extent consistent with the federal act, and the*
20 *regulations adopted pursuant to the federal act, the owner or*
21 *operator of a facility that has a hazardous waste facilities permit*
22 *issued pursuant to Section 25200 or 25201.6 may change the*
23 *facility structure or equipment as a utilizing the Class 1* permit*
24 *modification, pursuant to specified in the regulations adopted by*
25 *the department, if the department determines that both of the*
26 *following apply:*

27 (A) The change to the structure or equipment is necessary to
28 comply with requirements or the request of a state or federal
29 agency or an air quality management or air pollution control
30 district.

31 (B) The change to the structure or equipment will decrease *one*
32 *or more risks, and will not result in any increased risks* to human
33 health and safety or the environment related to the management of
34 the hazardous wastes in the structure or equipment.

35 (2) A change to a facility structure or equipment that is
36 authorized by this subdivision may not result in an increase in the
37 permitted capacity of a hazardous waste management unit affected
38 by the change.

39 (C) *The owner or operator has submitted sufficient information*
40 *for the department to make the determinations required by*



1 *subparagraphs (A) and (B) and to comply with the requirements*
2 *of Division 13 (commencing with Section 21000) of the Public*
3 *Resources Code, the California Environmental Quality Act.*

4 ~~(3) For purposes of this section, a “Class 1* permit~~
5 ~~modification” means a change to a facility structure or equipment~~
6 ~~that is classified as a Class 1* modification pursuant to Chapter 20~~

7 *(3) This subdivision does not apply to changes for which no*
8 *permit modification is required pursuant to subdivision (a) and the*
9 *regulations adopted to implement that subdivision.*

10 *(4) This subdivision does not apply to changes classified as*
11 *Class 1 or Class 1* under the department’s regulations pursuant*
12 *to Chapter 20 (commencing with Section 66270.10) of Division*
13 *4.5 of Title 22 of the California Code of Regulations.*

14 *(5) The owner or operator of a facility applying for a “Class 1**
15 *permit modification” pursuant to this subdivision shall enter into*
16 *a written agreement with the department pursuant to which that*
17 *person shall reimburse the department, pursuant to Article 9.2*
18 *(commencing with Section 25206.1), for the costs incurred by the*
19 *department in processing the application (commencing with*
20 *Section 66270.10) of Division 4.5 of Title 22 of the California*
21 *Code of Regulations.*

22 *(c) Any determination made pursuant to this section, including,*
23 *but not limited to, any determination by the department regarding*
24 *the classification of a permit modification, may be appealed by the*
25 *owner or operator in the manner provided for appeal of a permit*
26 *determination pursuant to the regulations adopted by the*
27 *department.*

28 *SEC. 4. Section 25245 of the Health and Safety Code is*
29 *amended to read:*

30 *25245. (a) The department shall adopt, and revise when*
31 *appropriate, standards and regulations which shall do both of the*
32 *following:*

33 *(1) Specify the financial assurances to be provided by the*
34 *owner or operator of a hazardous waste facility that are necessary*
35 *to respond adequately to damage claims arising out of the*
36 *operation of that type of facility and to provide for the cost of*
37 *closure and subsequent maintenance of the facility, including, but*
38 *not limited to, the monitoring of groundwater and other aspects of*
39 *the environment after closure. ~~The~~ If the facility is required to*
40 *obtain a permit under the federal act, the financial assurance shall*



1 be a trust fund, surety bond, letter of credit, insurance, or, ~~for~~
2 ~~facilities which manage solely non-RCRA hazardous waste,~~ any
3 other *mechanism authorized under the federal act and the*
4 *regulations adopted pursuant to the federal act. If the facility is not*
5 *required to obtain a permit under the federal act, the financial*
6 *assurance may include any other equivalent financial arrangement*
7 acceptable to the department.

8 (2) Provide that every hazardous waste facility can be closed
9 and maintained for at least 30 years subsequent to its closure in a
10 manner that protects human health and the environment and
11 minimizes or eliminates the escape of hazardous waste
12 constituents, leachate, contaminated rainfall, and waste
13 decomposition products to ground and surface waters and to the
14 atmosphere.

15 (b) In adopting regulations pursuant to subdivision (a), to carry
16 out the purposes of this chapter, the department may specify policy
17 or other contractual terms, conditions, or defenses which are
18 necessary or are unacceptable in establishing evidence of financial
19 responsibility.

20 (1) If an owner or operator is in bankruptcy, reorganization, or
21 other arrangement pursuant to Title 11 of the United States Code,
22 or where, with reasonable diligence, jurisdiction in any state or
23 federal court cannot be obtained over an owner or operator likely
24 to be solvent at the time of judgment, any claim arising from
25 conduct for which this section requires evidence of financial
26 responsibility may be asserted directly against the guarantor who
27 provided the evidence of financial responsibility.

28 (2) The total liability of any guarantor is limited to the
29 aggregate amount which the guarantor has provided as evidence
30 of financial responsibility to the owner or operator under this
31 chapter.

32 (3) This subdivision does not limit any other state or federal
33 statutory, contractual, or common law liability of a guarantor to the
34 owner or operator, including, but not limited to, the liability of the
35 guarantor for bad faith in either negotiating or in failing to
36 negotiate the settlement of any claim.

37 (4) This subdivision does not diminish the liability of any
38 person under Section 107 or 111 of the Comprehensive
39 Environmental Response, Compensation, and Liability Act of
40 1980 (42 U.S.C. Secs. 9607 and 9611).



1 (5) For purposes of this subdivision, “guarantor” means any
2 person, other than the owner or operator, who provides evidence
3 of financial responsibility for an owner or operator under this
4 section.

5 *SEC. 5. No reimbursement is required by this act pursuant to*
6 *Section 6 of Article XIII B of the California Constitution because*
7 *the only costs that may be incurred by a local agency or school*
8 *district will be incurred because this act creates a new crime or*
9 *infraction, eliminates a crime or infraction, or changes the penalty*
10 *for a crime or infraction, within the meaning of Section 17556 of*
11 *the Government Code, or changes the definition of a crime within*
12 *the meaning of Section 6 of Article XIII B of the California*
13 *Constitution.*

