

Assembly Bill No. 2877

CHAPTER 175

An act to amend Section 25150.6 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor July 15, 2004. Filed with Secretary of State July 16, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2877, Aghazarian. Hazardous waste: regulation.

(1) Existing law establishes various standards for management and control of hazardous waste. Existing law authorizes the Department of Toxic Substances Control to exempt, by regulations that may be adopted until January 1, 2003, a hazardous waste management activity from certain statutory requirements related to hazardous waste management if specific conditions for exemption are met. Lead-painted wood debris is one of the types of hazardous waste that may be exempted by the regulations from those statutory requirements.

This bill would recast that exemption to, instead apply to lead-based painted debris.

This bill would extend until January 1, 2008, the authorization for the department to adopt regulations for exemptions.

Because a violation of the regulations authorized by this bill would be a crime, the bill would impose a state-mandated local program.

(2) 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 25150.6 of the Health and Safety Code is amended to read:

25150.6. (a) Except as provided in subdivisions (e) and (f), the department, by regulation, may exempt a hazardous waste management activity from one or more of the requirements of this chapter, if the department does all of the following:

(1) Prepares an analysis of the hazardous waste management activity to which the exemption will apply pursuant to subdivision (b). The



department shall first prepare the analysis as a preliminary analysis and make it available to the public at the same time that the department gives notice, pursuant to Section 11346.4 of the Government Code, that it proposes to adopt a regulation exempting the hazardous waste management activity from one or more of the requirements of this chapter. The department shall include, in the notice, a reference that the department has prepared a preliminary analysis and a statement concerning where a copy of the preliminary analysis can be obtained. The information in the preliminary analysis shall be updated and the department shall make the analysis available to the public as a final analysis not less than 10 working days prior to the date that the regulation is adopted.

(2) Demonstrates that one of the conclusions required by subdivision (c) is valid.

(3) Imposes, as may be necessary, conditions and limitations on the exemption that ensure that the exempted activity will not pose a significant potential hazard to human health or safety or to the environment.

(b) Before the department gives notice of a proposal to adopt a regulation exempting a hazardous waste management activity from one or more of the requirements of this chapter pursuant to subdivision (a), and before the department adopts the regulation, the department shall evaluate the hazardous waste management activity and prepare, as required by paragraph (1) of subdivision (a), an analysis that addresses all of the following aspects of the activity, to the extent that the requirement or requirements from which the activity will be exempted can affect these aspects of the activity:

(1) The types of hazardous waste streams and the estimated amounts of hazardous waste that are managed as part of the activity and the hazards to human health or safety or to the environment posed by reasonably foreseeable mismanagement of those hazardous wastes and their hazardous constituents. The estimate of the amounts of hazardous waste that are managed as part of the activity shall be based upon information reasonably available to the department.

(2) The complexity of the activity, and the amount and complexity of operator training, equipment installation and maintenance, and monitoring that are required to ensure that the activity is conducted in a manner that safely and effectively manages the particular hazardous waste stream.

(3) The chemical or physical hazards that are associated with the activity and the degree to which those hazards are similar to, or differ from, the chemical or physical hazards that are associated with the



production processes that are carried out in the facilities that produce the hazardous waste that is managed as part of the activity.

(4) The types of accidents that might reasonably be foreseen to occur during the management of particular types of hazardous waste streams as part of the activity, the likely consequences of those accidents, and the actual reasonably available accident history associated with the activity.

(5) The types of locations at which the activity may be carried out, an estimate of the number of these locations, and the types of hazards that may be posed by proximity to the land uses described in subdivision (b) of Section 25232. The estimate of the number of locations at which the activity may be carried out shall be based upon information reasonably available to the department.

(c) The department shall not give notice proposing the adoption of, and the department may not adopt, a regulation pursuant to subdivision (a) unless it first demonstrates, using the information developed in the analysis prepared pursuant to subdivision (b), that one of the following is valid:

(1) The requirement from which the activity is exempted is not significant or important in either of the following:

(A) Preventing or mitigating potential hazards to human health or safety or to the environment posed by the activity.

(B) Ensuring that the activity is conducted in compliance with other applicable requirements of this chapter and the regulations adopted pursuant to this chapter.

(2) A requirement is imposed and enforced by another public agency that provides protection of human health and safety and the environment that is as effective as, and equivalent to, the protection provided by the requirement, or requirements, from which the activity is being exempted.

(3) Conditions or limitations imposed on the exemption will provide protection of human health and safety and the environment equivalent to the requirement, or requirements, from which the activity is exempted.

(4) Conditions or limitations imposed on the exemption accomplish the same regulatory purpose as the requirement, or requirements, from which the activity is being exempted but at less cost or greater administrative convenience and without increasing potential risks to human health or safety or to the environment.

(d) A regulation adopted pursuant to this section shall not be deemed to meet the standard of necessity, pursuant to Section 11349.1 of the Government Code, unless the department has complied with subdivisions (b) and (c).



(e) The department shall not exempt a hazardous waste management activity from a requirement of this chapter or the regulations adopted by the department if the requirement is also a requirement for that activity under the federal act.

(f) (1) On and after January 1, 2002, the department may, by regulation, exempt a hazardous waste management activity from one or more of the requirements of this chapter pursuant to this section only if the regulations govern the management of one of the hazardous wastes listed in subparagraphs (A) to (E), inclusive, of paragraph (2), the regulations identify the hazardous waste as a universal waste, and the regulations amend the standards for universal waste management set forth in Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(2) The regulations that the department may adopt pursuant to paragraph (1) shall govern only the following types of hazardous waste:

(A) Electronic hazardous wastes, as the department may describe in the regulations adopted pursuant to this subdivision.

(B) Hazardous waste batteries.

(C) Hazardous wastes containing mercury.

(D) Hazardous waste lamps.

(E) Lead-based painted debris that is a hazardous waste.

(g) The authority of the department to adopt regulations pursuant to this section shall remain in effect only until January 1, 2008, unless a later enacted statute, which is enacted before January 1, 2008, deletes or extends that date. This subdivision does not invalidate any regulation adopted pursuant to this section prior to the expiration of the department's authority.

SEC. 2. 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.

