Statutes

Effective January 2007

January 2007

California Environmental Protection Agency
Integrated Waste Management Board

STATE OF CALIFORNIA

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FOREWORD

This compilation, prepared by the California Integrated Waste Management Board's (CIWMB) Legislative and External Affairs Office, includes the laws relating to integrated waste management. This edition shows all sections as they are in effect as of January 1, 2007.

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EXCERPTS FROM PUBLIC RESOURCES CODE

DIVISION 3. OIL AND GAS

Chapter 1. Oil and Gas Conservation

ARTICLE 9. USED OIL RECYCLING ACT

(Article 9 as added by Stats. 1977, c. 1158)

3460. (a) As used in this article:

(1) "Used oil" has the same meaning as defined in subdivision (a) of Section 25250.1 of the Health and Safety Code.

(2) "Recycle" means to prepare used oil for reuse as a petroleum product by refining, reclaiming, reprocessing, or other means, in order to attain the standards specified by paragraph (3) of subdivision (a) of Section 25250.1 of the Health and Safety Code. "Recycle" does not include the application of used oil to roads for the purpose of dust control or to the ground for the purpose of weed abatement. "Recycle" does not include incineration or burning of used oil as a fuel.

(3) "Board" means the California Integrated Waste Management Board.

(4) "Person" means any individual, private or public corporation, partnership, limited liability company, cooperative, association, estate, municipality, political or jurisdictional subdivision, or government agency or instrumentality.

(b) The amendments made to this section by Chapter 1123 of the Statutes of 1987 do not affect the validity of any existing regulations of the Department of Toxic Substances Control relating to the management of used oil blended or diluted with virgin oil or any partially refined oil product as a hazardous waste, and do not affect the authority of the Department of Toxic Substances Control to prohibit blending or diluting used oil with an uncontaminated product to achieve the standards for recycled oil, as specified in paragraph (3) of subdivision (a) of Section 25250.1 of the Health and Safety Code.

As added by Stats. 1977, c. 1158, and amended by Stats. 1986, c. 871, and Stats. 1987, c. 1123, and the Gov. Reorg. Plan No. 1 of 1991, and SB 2053, Stats 1994, c. 1010, and SB 2035 (Senate Environmental Quality Committee), Stats. 2000, c. 343.

3462. The Legislature finds that almost 100 million gallons of used automotive and industrial oil are generated each year in the state; that used oil is a valuable petroleum resource which can be recycled; and that, in spite of this potential for recycling, significant quantities of used oil are wastefully disposed of or improperly used by means which pollute the water, land and air and endanger the public health and welfare.

As added by Stats. 1977, c. 1158.

3463. It is the intent of the Legislature in enacting this article that used oil shall be collected and recycled to the maximum extent possible, by means which are economically feasible and environmentally sound, in order to conserve irreplaceable petroleum resources, preserve and enhance the quality of natural and human environments, and protect public health and welfare.

As added by Stats. 1977, c. 1158.

3464. REPEALED.

As added by Stats. 1977, c. 1158, and repealed and added by Stats. 1986, c. 871, and repealed by AB 1570 (Sher), Stats. 1989, c. 1226.

3465. The board shall conduct a public education program to inform the public of the needs for and benefits of collecting and recycling used oil in order to conserve resources and preserve the environment. As part of this program, the board shall:

(a) Adopt rules, in accordance with subdivision (a) of Section 3470, requiring any person who sells to a consumer more than 500 gallons of lubricating or other oil annually in containers for use off the premises to inform purchasers by posting at or near the point of purchase the locations of conveniently located collection facilities.

Such rules shall provide that in a county wherein 5 percent more of the population, as determined in accordance with the latest Bureau of the Census information, speak a specific primary language other than English, the signs shall be in such other language, as well as English.

(b) Establish, maintain, and publicize a used oil information center that shall explain local, state, and federal laws and regulations governing used oil and inform holders of quantities of used oil on how and where used oil may be properly disposed.

(c) Encourage the establishment of voluntary used oil collection and recycling programs and provide technical assistance and, whenever possible, financial assistance, to persons organizing such programs.

(d) Encourage the procurement of rerefined automotive and industrial oils for all state and local uses, whenever such rerefined oils are available at prices competitive with those of new oil produced for the same purpose.

As added by Stats. 1977, c. 1158.

3466. (a) The board shall prescribe guidelines for providing safe and conveniently located facilities for the deposit of used oil by persons possessing not more than five gallons at one time at no cost to those persons.

(b) The improper disposal of used oil pursuant to Section 25250.5 of the Health and Safety Code is prohibited and is subject to penalties pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20 of the Health and Safety Code.

As added by Stats. 1977, c. 1158, and repealed and added by Stats. 1986, c. 871.

3467. REPEALED.

As added by Stats. 1977, c. 1158, and amended by Stats. 1981, c. 154, and repealed by Stats. 1986, c. 871.

3468. REPEALED.

As added by Stats. 1977, c. 1158, and repealed by AB 1570 (Sher), Stats. 1989, c. 1226.

3469. The board, and every state officer and employee, shall encourage the purchase of recycled oil products represented as substantially equivalent to products made from new oil in accordance with Section 3471.

As added by Stats. 1977, c. 1158.

3470. (a) All rules and regulations of the board shall be adopted, amended, and repealed in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The board shall coordinate activities and functions with all other state agencies, including, but not limited to, the Department of Toxic Substances Control, the Department of Water Resources, and the State Water Resources Control Board, in order to avoid duplication in reporting and information gathering.

As added by AB 1570 (Sher), Stats. 1989, c. 1226, and the Gov. Reorg. Plan No. 1 of 1991, and AB 2874 (Epple), Stats. 1992, c. 711, and SB 2035 (Senate Environmental Quality Committee), Stats. 2000, c. 343.

3471. REPEALED.

As added by AB 1570 (Sher), Stats. 1989, c. 1226 and amended by AB 2762 (Sher), Stats. 1994, c. 1147.

3472. REPEALED.

As added by Stats. 1977, c. 1158, and amended by Stats. 1981, c. 714, Stats. 1986, c 871, and AB 1570 (Sher), Stats. 1989, c. 1226, and the Gov. Reorg. Plan No. 1 of 1991, and AB 2874 (Epple), Stats. 1992, c. 711, and AB 2762 (Sher), Stats. 1994, c. 1147.

Chapter 1.5. Used Oil Collection Demonstration Program

(Chapter 1.5 as added by SB 1200 (Petris), Stats. 1990, c. 1657)

ARTICLE 1. SHORT TITLES AND DEFINITIONS

(Article 1 as added by SB 1200 (Petris), Stats. 1990, c. 1657)

3475. This chapter shall be known and may be cited as the Used Oil Collection Demonstration Grant Program Act of 1990.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

3476. The definitions in this article govern the construction of this chapter.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

3477. "Administrative costs" means those costs directly associated with regulation of the implementation of a used oil collection project.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

3477.1. "Board" means the California Integrated Waste Management Board.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

3477.5. "Capital outlay" means those costs directly associated with the purchase of equipment necessary to implement a used oil collection project. The costs may include, but are not limited to, the cost of material and labor associated with the installation of that equipment. Capital outlay does not include land acquisition costs.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

3478. "Local agency" means a city, county, or city and county.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

3479. "Used oil collection project" means a project undertaken by a local agency to encourage the collection, recycling, and proper disposal of used oil generated at households. "Used oil collection project" includes, but is not limited to, integration of used oil collection into existing curbside collection programs, retrofitting of solid waste collection equipment to promote curbside collection programs, and a public education and awareness program to promote opportunities for, and to educate the public as to the benefits from, the recycling of used oil.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

ARTICLE 2. GRANTS FOR USED OIL COLLECTION DEMONSTRATION PROJECTS

(Article 2 as added by SB 1200 (Petris), Stats. 1990 c. 1657)

3480. (a) The board shall develop and administer a used oil grant program. The board shall adopt regulations for the administration of this chapter and make grant applications available.

(b) The board shall adopt emergency regulations for the administration of this chapter in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The regulations shall be deemed to be emergency regulations, and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of public peace, health and safety, or general welfare.

As added by SB 1200 (Petris), Stats. 1990, c. 1657, and amended by AB 1100 (Lee), Stats. 1991, c. 586.

3481. The purpose of the used oil collection demonstration grant program is to encourage the establishment of public used oil collection projects and to provide capital outlay and other costs to provide households with the capability of collecting used oil generated in those households and to encourage the collection, recycling, and proper disposal of used oil.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

3482. (a) A local agency shall not use more than 5 percent of any grant for administrative costs.

(b) The board shall not use more than 10 percent of funds made available for the grant program under this chapter for administrative costs.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

3483. The board shall establish criteria for the granting of funds for used oil collection projects conducted by local agencies, including, but not limited to, information relating to proposed project costs and capital outlay.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

3484. (a) Local agencies which have established public used oil curbside collection projects on or before January 1, 1991, are eligible for grants under this article to expand and upgrade those projects. Grant funds shall not be utilized to replace current funding sources.

(b) The grant to any local government shall not exceed seventy-five thousand dollars ($75,000) per grant. Local agencies may pool their grant funds to implement coordinated or complementary used oil collection projects.

As added by SB 1200, (Petris), Stats. 1990, c. 1657.

3485. Grant funds shall be made available on a competitive basis to local agencies if requests for grants exceed available funds.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

3485.5. The following criteria shall be used to evaluate grant applications:

(a) The need for a used oil collection project within a jurisdiction.

(b) The commitment of local agency funds to the used oil collection project.

(c) The commitment of the local agency to continue the used oil collection project after state funding has expired.

(d) The consideration given to a curbside used oil collection program.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

3486. The board shall determine the contents of grant applications and the methods for evaluating the applications.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

3487. The board shall evaluate each grant application for its potential to satisfy the requirements of this chapter and shall award the grant based on the evaluation. The board shall notify the applicant of the approval or denial of the grant application on or before January 1, 1992.

As added by SB 1200 (Petris), Stats. 1990, c. 1657, and amended by AB 1487 (Sher), Stats. 1991, c. 1091.

3488. REPEALED.

As added by SB 1200 (Petris), Stats. 1990, c. 1657, and repealed by SB 111 (Knight), Stats. 2004, c. 193.

3489. A local agency that establishes or otherwise expends grant funds provided pursuant to this chapter shall:

(a) Comply with the requirements in the regulations concerning notification and reporting.

(b) Provide adequate containment capacity for the containers or tanks used to store used oil in the case of a leak or spill.

(c) Provide sufficient security for centers to minimize vandalism and improper disposal of hazardous substances into used oil containers.

As added by SB 1200 (Petris), Stats. 1990, c. 1657, and amended by AB 1100 (Lee), Stats. 1991, c. 586.

3490. Storage containers, such as drums and tanks, used to store used oil shall be in good condition and shall meet any applicable design and construction standards.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

ARTICLE 3. FINANCING

(Article 3 as added by SB 1200 (Petris), Stats. 1990, c. 1657)

3491. There is hereby created in the State Treasury the Used Oil Collection Demonstration Grant Fund. Notwithstanding Section 13340 of the Government Code, the money in the Used Oil Collection Demonstration Grant Fund is continuously appropriated to the board for the purposes of this chapter.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

3492. (a) Notwithstanding Sections 13340 and 16361 of the Government Code, and to the extent permitted by federal law, the sum of one million dollars ($1,000,000) of money in the Federal Trust Fund, created pursuant to Section 16360 of the Government Code, received by the state from federal oil overcharge funds in the Petroleum Violation Escrow Account, is hereby transferred to the Used Oil Collection Demonstration Grant Fund.

(b) No grant shall be made by the board from funds appropriated pursuant to subdivision (a) unless an amount equal to 50 percent of the costs of the project is made available to the applicant from other public or private sources for the project.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

3493. REPEALED.

As added by SB 1200 (Petris), Stats. 1990, c. 1657, and repealed by SB 947 (Senate Judiciary Committee), Stats. 1997, c. 17.

3494. Funds transferred from the Petroleum Violation Escrow Account by this article shall be transferred by the Controller, subject to approval by the Director of Finance as to which court judgment or federal agency order is the proper source of those funds.

As added by SB 1200 (Petris), Stats. 1990, c. 1657.

Chapter 1.692. Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (The Villaraigosa-Keeley Act)

(Chapter 1.692 as added by AB 18 (Villaraigosa and Keeley), Stats. 1999, c. 461)

ARTICLE 1. GENERAL PROVISIONS

(Article 1 as added by AB 18 (Villaraigosa and Keeley), Stats. 1999, c. 461)

5096.306. It is the intent of the Legislature to strongly encourage every state or local government agency receiving the bond funds allocated pursuant to this chapter for an activity to give full and proper consideration to the use of recycled and reusable products whenever possible with regard to carrying out that activity.

As added by AB 18 (Villaraigosa and Keeley), Stats. 1999, c. 461.

ARTICLE 2. SAFE NEIGHBORHOOD PARKS, CLEAN WATER, CLEAN AIR, AND COASTAL PROTECTION (VILLARAIGOSA –KEELEY ACT) PROGRAM

(Article 2 as added by AB 18 (Villaraigosa and Keeley), Stats. 1999, c. 461)

5096.310. The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection (Villaraigosa-Keeley Act) Bond Fund, which is hereby created. Unless otherwise specified and except as provided in subdivision (m), the money in the fund shall be available for appropriation by the Legislature, in the manner set forth in this chapter, only for parks and resources improvement, in accordance with the following schedule:

(a) The sum of five hundred two million seven hundred fifty thousand dollars ($502,750,000) to the department for the following purposes:

(1) To rehabilitate, restore, and improve units of the state park system that will ensure that state park system lands and facilities will remain open and accessible for public use.

(2) To develop, improve, rehabilitate, restore, enhance, and protect facilities and trails at existing units of the state park system that will provide for optimal recreational and educational use, activities, improved access and safety, and the acquisition from a willing seller of inholdings and adjacent lands. Adjacent lands are lands contiguous to, or in the immediate vicinity of, existing state park system lands and that directly benefit an existing state park system unit.

(3) For stewardship of the public investment in the preservation of the critical natural heritage and scenic features, and cultural heritage stewardship projects that will preserve vanishing remnants of California's landscape, and protect and promote a greater understanding of California's past, and the planning necessary to implement those efforts.

(4) For facilities and improvements to enhance volunteer participation in the state park system.

(5) To develop, improve, and expand interpretive facilities at units of the state park system, including educational exhibits and visitor orientation centers.

(6) To rehabilitate and repair aging facilities at winter recreation facilities pursuant to the Sno-Park program, as provided for in Chapter 1.27 (commencing with Section 5091.01), that provide for improved public safety.

(7) For projects that improve air quality related to the state park system, including, but not limited to, the purchase of low-emission or advanced technology vehicles and equipment and clean fuel distribution facilities that will avoid or reduce air emissions at state park facilities.

(b) The sum of eighteen million dollars ($18,000,000) to the department to undertake stewardship projects, including cultural resources stewardship and natural resources stewardship projects, that will restore and protect the natural treasures of the state park system, preserve vanishing remnants of California's landscape, and protect and promote a greater understanding of California's past.

(c) The sum of four million dollars ($4,000,000) to the department for facilities and improvements to enhance volunteer participation in the state park system.

(d) The sum of twenty million dollars ($20,000,000) to the department for grants to local agencies administering units of the state park system under an operating agreement with the department, for the development, improvement, rehabilitation, restoration, enhancement, protection, and interpretation of lands and facilities of, and improved access to, those locally operated units.

(e) The sum of ten million dollars ($10,000,000) to the department for purposes consistent with Section 5079.10, for competitive grants, in accordance with Section 5096.335.

(f) The sum of three hundred eighty-eight million dollars ($388,000,000) to the department for grants, in accordance with Sections 5096.332, 5096.333, and 5096.336, on the basis of population, for the acquisition, development, improvement, rehabilitation, restoration, enhancement, and interpretation of local park and recreational lands and facilities, including renovation of recreational facilities conveyed to local agencies resulting from the downsizing or decommissioning of federal military installations.

(g) The sum of two hundred million dollars ($200,000,000) to the department for grants to cities, counties, and districts for the acquisition, development, rehabilitation, and restoration of park and recreation areas and facilities pursuant to the Roberti-Z'berg-Harris Urban Open-Space and Recreational Program Act (Chapter 3.2 (commencing with Section 5620).

(h) The sum of ten million dollars ($10,000,000) to the department for grants, in accordance with Section 5096.337, for the improvement or acquisition and restoration of riparian habitat, riverine aquatic habitat, and other lands in close proximity to rivers and streams for river and stream trail projects undertaken in accordance with Section 78682.2 of the Water Code, and for purposes of Section 7048 of the Water Code.

(i) The sum of ten million dollars ($10,000,000) to the department for grants, in accordance with Section 5096.337, for the development, improvement, rehabilitation, restoration, enhancement, and interpretation of nonmotorized trails for the

purpose of increasing public access to, and enjoyment of, public areas for increased recreational opportunities. Not less than one million five hundred thousand dollars ($1,500,000) of this amount shall be allocated toward the completion of a project that links existing bicycle and pedestrian trail systems to major urban public transportation systems, to promote increased recreational opportunities and nonmotorized commuter usage in the City of Whittier. Of this amount, no less than two hundred seventy-five thousand dollars ($275,000) shall be allocated to the East Bay Regional Park District toward the completion of the Iron Horse Trail. Of this amount, not less than one million dollars ($1,000,000) shall be allocated to a regional park district for the completion of a bike trial in the City of Concord.

(j) The sum of one hundred million dollars ($100,000,000) to the department for grants to public agencies and nonprofit organizations for park, youth center, and environmental enhancement projects that benefit youth in areas that lack safe neighborhood parks, open space, and natural areas, and that have significant poverty.

(k) The sum of two million five hundred thousand dollars ($2,500,000) to the California Conservation Corps to complete capital outlay and resource conservation projects and administrative costs allocable to the bond funded projects.

(l) The sum of eighty-six million five hundred thousand dollars ($86,500,000) to the department for the following purposes:

(1) The sum of seventy-one million five hundred thousand dollars ($71,500,000) for grants, in accordance with Sections 5096.339 and 5096.340, for urban recreational and cultural centers, including, but not limited to, zoos, museums, aquariums, and facilities for wildlife, environmental, or natural science aquatic education or projects that combine curation of archaeological, paleontological, and historic resources with education and basic and applied research, and that emphasize specimens of California's extinct prehistoric plants and animals.

(2) The sum of fifteen million dollars ($15,000,000) for grants for regional youth soccer and baseball facilities operated by nonprofit organizations. Priority shall be given to those grant projects that utilize existing school facilities or recreation facilities and serve disadvantaged youth.

(m) Notwithstanding Section 13340 of the Government Code, the sum of two hundred sixty-five million five hundred thousand dollars ($265,500,000) is, except as provided in Section 5096.350, hereby continuously appropriated to the Wildlife Conservation Board, without regard to fiscal years, in accordance with Section 5096.350.

(n) The sum of fifty million dollars ($50,000,000) to the California Tahoe Conservancy, in accordance with Section 5096.351.

(o) The sum of two hundred twenty million four hundred thousand dollars ($220,400,000) to the State Coastal Conservancy, in accordance with Section 5096.352.

(p) The sum of thirty-five million dollars ($35,000,000) to the Santa Monica Mountains Conservancy, in accordance with Section 5096.353.

(q) The sum of five million dollars ($5,000,000) to the Coachella Valley Mountains Conservancy, in accordance with Section 5096.354.

(r) The sum of fifteen million dollars ($15,000,000) to the San Joaquin River Conservancy, in accordance with Section 5096.355.

(s) The sum of twelve million five hundred thousand dollars ($12,500,000) to the California Conservation Corps for grants for the certified local community conservation corps program to complete capital outlay and resource conservation projects.

(t) The sum of twenty-five million dollars ($25,000,000) to the Department of Conservation in accordance with Section 5096.356.

(u) The sum of ten million dollars ($10,000,000) to the Department of Forestry and Fire Protection for urban forestry programs in accordance with Section 4799.12. The grants made pursuant to this subdivision shall be for costs associated with the purchase and planting of trees, and up to three years of care which ensures the long-term viability of those trees.

(v) Notwithstanding Section 711 of the Fish and Game Code, the sum of twelve million dollars ($12,000,000) to the Department of Fish and Game for the following purposes:

(1) The sum of five million dollars ($5,000,000) for expenditure in accordance with subdivision (a) of Section 5096.357.

(2) The sum of five million dollars ($5,000,000) for expenditure in accordance with subdivision (b) of Section 5096.357.

(3) The sum of two million dollars ($2,000,000) to remove nonnative vegetation harmful to ecological reserves in San Diego County.

(w) The sum of thirty million dollars ($30,000,000) shall be available for purposes of Chapter 4.5 (commencing with Section 31160) of Division 21. Two hundred fifty thousand dollars ($250,000) shall be allocated to Mount Diablo State Park.

(x) The sum of seven million dollars ($7,000,000) to the California Integrated Waste Management Board for grants to local agencies to assist them in meeting state and federal accessibility standards relating to public playgrounds if the local agency guarantees that 50 percent of the grant funds will be used for the improvement or replacement of playground equipment or facilities through the use of recycled materials and that matching funds in an amount equal to not less than 50 percent of the total amount of those grant funds will be provided through either public or private funds or in-kind contributions. The board may reduce this matching fund requirement to not less than 25 percent if it determines that the 50-percent requirement would impose an extreme financial hardship on the local agency applying for the grant. The board may expend the funds allocated pursuant to this subdivision, upon appropriation by the Legislature, for the purposes specified herein.

(y) The sum of fifteen million dollars ($15,000,000) to a city for rehabilitation, restoration, or enhancement to a city park that is over 1,000 acres that serves an urban area of over

750,000 population in northern California and that provides recreational, cultural, and scientific resources.

(z) (1) The sum of six million two hundred fifty thousand dollars ($6,250,000) to the secretary to administer grants to the Sierra Nevada-Cascade Program, in accordance with Section 5096.347.

(2) The sum of thirty-three million five hundred thousand dollars ($33,500,000) to the secretary to administer a river parkway and restoration program to assist local agencies and other districts to plan, create, and conserve river parkways. The secretary shall make funds available in accordance with Sections 7048 and 78682.2 of the Water Code, and any other applicable authority, for the following purposes:

(A) Twenty-five million dollars ($25,000,000) for the acquisition or restoration of public lands within the Los Angeles River Watershed, the San Gabriel River Watershed, and the San Gabriel Mountains and to provide open space, nonmotorized trails, bike paths, and other low-impact recreational uses and wildlife and habitat restoration and protection. Ten million dollars ($10,000,000) shall be allocated for the Los Angeles River Watershed, and fifteen million dollars ($15,000,000) shall be allocated for the San Gabriel River Watershed and the San Gabriel Mountains and lower Los Angeles River.

(B) Two million five hundred thousand dollars ($2,500,000) for river parkway projects along the Kern River between the mouth of the Kern Canyon and I-5.

(C) One million dollars ($1,000,000) for land acquisition in the Santa Clarita Watershed.

(D) Three million dollars ($3,000,000) for watershed, riparian, and wetlands restoration along the Sacramento River in Yolo, Glenn, and Colusa Counties.

(E) Two million dollars ($2,000,000) for the construction of a visitor center at a state recreation area encompassing a body of water along the American River.

(3) The sum of two million dollars ($2,000,000) to the secretary for resource conservation and urban water recycling that addresses multicounty regional recreational needs, provides habitat restoration, and enjoys joint sponsorship by multiple local agencies and nonprofit organizations in the County of Sonoma.

(4) The sum of one million one hundred thousand dollars ($1,100,000) to the secretary, one hundred thousand dollars ($100,000) of which shall be made available to fund a community center in San Benito County, one hundred thousand dollars ($100,000) of which shall be made available to fund a veterans park in San Benito County, five hundred thousand dollars ($500,000) of which shall be made available to fund a community center in the City of Galt, and four hundred thousand dollars ($400,000) of which shall be made available to fund a community center in the City of Gilroy.

(5) The sum of two million dollars ($2,000,000) to the secretary for Camp Arroyo in Alameda County.

(6) The sum of one million dollars ($1,000,000) to the secretary to construct a rehabilitation center for injured endangered and indigenous wild animals at the Wildhaven Center in the San Bernardino Mountains.

As added by AB 18 (Villaraigosa and Keeley), Stats. 1999, c. 461, and amended by SB 1147 (Leslie), Stats. 1999, c. 638.

Chapter 3.1 Puente Hills Landfill Open-Space Dedication

(Chapter 3.1 as added by AB 2632 (Solis), Stats. 1994, c. 1295, and renumbered by SB 975 (Committee on Judiciary), Stats. 1995, c. 91)

5600. (a) The owner of the disposal site known as the Puente Hills Landfill, located in an unincorporated portion of the County of Los Angeles, shall dedicate as open-space property within the disposal site, pursuant to the terms of condition 14 (a) of Los Angeles County Conditional Use Permit 92-250 (4). This dedication shall include the buffer zone, and "Canyon 6," "Canyon 7," and "Canyon 8" as specified in the conditional use permit.

(b) The owner of the disposal site referred to in subdivision (a) shall enter into an agreement with the Los Angeles County Department of Parks and Recreation for use of the disposal area as a public park when solid waste disposal activities are complete, as referenced in and modified by condition 14 (b) of Los Angeles County Conditional Use Permit 92-250 (4). This agreement shall include the funding for the preparation of a park master plan, and for the full development, operation, and maintenance of the park, in an amount appropriate to the level of development shown on the master plan.

(c) The consultation specified in Part VIII of the monitoring program of Los Angeles Conditional Use Permit 92-250 (4), relating to the Puente Hills Landfill Citizens Advisory Committee, shall include the subject of landscaping of the mitigation berm specified in condition 10 (b), and shall also include any other planning matters that would affect the physical development or future use of the landfill site. The committee shall include members of the Hacienda Heights Improvement Association.

(d) The Joint Powers Authority established pursuant to condition 15 of Los Angeles County Conditional Use Permit 92-250 (4) shall give due consideration to purchasing parcels near the landfill property, specifically those parcels near the Hacienda Heights area.

As added by AB 2632 (Solis), Stats. 1994, c. 1295, and amended by SB 975 (Committee on Judiciary), Stats. 1995, c. 91

DIVISION 12.2. PRODUCTS CONTAINING TOXIC METALS

(Division 12.2 (commencing with Section 15000) as added by AB 3530 (Margolin), Stats. 1990, c. 1631, and repealed and added by AB 1769 (Margolin), Stats. 1993, c. 816, and amended by SB 633 (Sher), Stats. 2001, c. 656)

Chapter 1. General

(Chapter 1 as added by AB 1769 (Margolin), Stats. 1993, c. 816)

15000. This division shall be known, and may be cited, as the Dry Cell Battery Management Act.

As added by AB 1769 (Margolin), Stats. 1993, c. 816.

15001. The Legislature hereby finds and declares as follows:

(a) On the basis of available scientific and medical evidence, exposure to toxic materials, including mercury, cadmium, and lead, is of significant concern to human health and safety and to the environment.

(b) The presence of toxic metals in certain dry cell batteries is of special concern, in light of the substantial quantity of used dry cell and rechargeable batteries that are discarded annually, and the potential health and environmental consequences associated with that disposal.

(c) It is in the public interest to reduce or eliminate the quantity and toxicity of metals in dry cell batteries, to recycle or properly dispose of rechargeable batteries which contain toxic metals, and to educate the public concerning he collection, recycling, and proper disposal of those batteries.

(d) Manufacturers and dealers of rechargeable batteries should be encouraged to promote the recycling and proper disposal of used rechargeable batteries through retail displays and collection programs.

(e) The use of uniform labeling requirements for rechargeable batteries, rechargeable consumer products, and product packaging will assist in battery collection and recycling, and thus benefit human health and safety and the environment.

As added by AB 1769 (Margolin), Stats. 1993, c. 816.

Chapter 2. Definitions

(Chapter 2 as added by AB 1769 (Margolin), Stats. 1993, c. 816.)

15002. The definitions in this chapter govern the construction of this division.

As added by AB 1769 (Margolin), Stats. 1993, c. 816.

15003. "Battery pack" means any combination of dry cell batteries containing one or more rechargeable batteries that is usually assembled for a particular application and commonly has wire leads, terminals, and dielectric housing.

As added by AB 1769 (Margolin), Stats. 1993, c. 816.

15004. "Board" means the California Integrated Waste Management Board.

As added by AB 1769 (Margolin), Stats. 1993, c. 816.

15005. "Dry cell battery" means any type of enclosed device or sealed container consisting of one or more voltaic or galvanic cells, electrically connected to produce electric energy, composed of lead, lithium, manganese, mercury, mercuric oxide, silver oxide, cadmium, zinc, copper, or other metals, or any combination thereof, of any shape, including, but not limited to, button, coin, cylindrical, or rectangular, and of a liquid starved or gel electrolyte, that is designed for commercial industrial, medical, institutional, or household use, including any alkaline, manganese, lithium, mercuric oxide, silver oxide, zinc-air, or zinc-carbon battery, or any rechargeable battery.

As added by AB 1769 (Margolin), Stats. 1993, c. 816.

15006. "Easily removable," with respect to a rechargeable battery or battery pack, means that the rechargeable battery or battery pack is either detachable or readily removable from a consumer product by a consumer with the use of common household tools at the end of the life of the product, the rechargeable battery or battery pack.

As added by AB 1769 (Margolin), Stats. 1993, c. 816.

15007. "Manufacturer" means any person who manufactures dry cell batteries, rechargeable batteries or battery packs, or rechargeable consumer products.

As added by AB 1769 (Margolin), Stats. 1993, c. 816.

15008. "Mercuric oxide button cell battery" means a battery which contains mercuric oxide electrodes, resembles buttons in size and shape, and is used in consumer products such as hearing aids.

As added by AB 1787 (Bowen), Stats. 1993, c. 817.

l5009. "Mercuric oxide battery" means a battery containing mercuric oxide electrodes, except that mercuric oxide button cells are excluded from this definition.

As added by AB 1787 (Bowen), Stats. 1993, c. 817.

150l0. (a) "Rechargeable battery" means any dry cell battery containing an electrode composed of cadmium or lead, or any combination thereof, of any shape that is designed for reuse, and is capable of being recharged after repeated uses.

(b) "Rechargeable battery" does not include either of the following:

(1) Any dry cell battery that is used as the principal power source for transportation, including, but not limited to, automobiles, motorcycles, or boats.

(2) Any battery that is used only as a backup power source for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily.

As added by AB 1769 (Margolin), Stats. 1993, c. 816.

15011. "Rechargeable consumer product" means any product, including any laptop computer or cordless electric tool or appliance, which, when sold at retail, contains, or is sold with, a rechargeable battery as its primary power supply, and that is commonly used for personal or household purposes. A rechargeable consumer product does not include remanufactured products.

As added by AB 1769 (Margolin), Stats. 1993, c. 816.

15012. "Remanufactured product" means a rechargeable consumer product manufactured prior to July 1, 1994, which has been returned to the manufacturer for refurbishment and either returned to the consumer or resold.

As added by AB 1769 (Margolin), Stats. 1993, c. 816.

Chapter 3. Removal and Labeling Requirements

(Chapter 3 as added by AB 1769 (Margolin), Stats. 1993, c. 816)

15013. (a) On and after January 1, 1995, no person shall sell or offer for sale in this state any rechargeable

consumer product unless the product meets all of the following requirements:

(1) The rechargeable battery is easily removable from the rechargeable consumer product or is contained in a battery pack that is easily removable from the product.

(2) The rechargeable consumer product and the rechargeable battery are labeled in accordance with subdivision (b).

(3) The rechargeable battery, battery pack, or rechargeable consumer product, if the product has a nonremovable rechargeable battery, has a brand name affixed to it.

(4) The instruction manual for the rechargeable consumer product includes information regarding the proper recycling or disposal of the used rechargeable battery.

(b) On and after July 1, 1994, each rechargeable battery, consumer product package containing a rechargeable battery or battery pack, and the package for each such item, which is sold or offered for sale in this state, shall meet all of the following requirements:

(1) Be labeled in a conspicuous manner that is visible to consumers.

(2) Include the chemical name or the standard abbreviation for the chemical composition of the battery or battery pack.

(3) Contain the following statement:

(A) On each easily removable battery or easily removable battery pack: "Nickel-cadmium battery. Must be recycled or disposed of properly." Or "sealed lead battery. Must be recycled or disposed of properly."

(B) On each rechargeable consumer product, granted an exemption pursuant to Section 15014, without an easily removable battery or battery pack: "Contains nickel-cadmium

battery. Battery must be recycled or disposed of properly." Or "contains sealed lead battery. Battery must be recycled or disposed of properly."

(C) On the packaging of each rechargeable consumer product, rechargeable battery, or battery pack, unless the specified label is clearly visible through the packaging: "Contains nickel-cadmium battery. Battery must be recycled or disposed of properly." Or "contains sealed lead battery. Battery must be recycled or disposed of properly."

(4) The label and messages specified in paragraphs (1), (2), and (3) shall use contrasting colors to differentiate the label message and background to enhance readability.

(5) No political subdivision of this state may enact or enforce any environmental labeling requirement for a rechargeable battery or battery pack, or a rechargeable consumer product, that is not identical to the labeling requirements contained in this subdivision or any regulations adopted by the board pursuant to this subdivision.

(c) The board may adopt regulations that require substantially similar labeling requirements for rechargeable batteries with chemistries that are different from those covered by subdivision (a) and the battery packs and products containing those batteries. Any regulations shall be adopted, amended, or repealed in accordance with Chapter 3.5 (commencing with Section 11340) of Part l of Division 3 of Title 2 of the Government Code.

(d) Any violation of this section is a misdemeanor.

As added by AB 1769 (Margolin), Stats. 1993, c. 816.

15014. (a) Any manufacturer of, or any manufacturer trade organization with respect to, any rechargeable battery or rechargeable consumer product may submit an application to the board for an exemption from the requirements of paragraph (1) of subdivision (a) of Section 51013 in accordance with the procedures prescribed in subdivision (b). Within 60 days of receipt of an application for an exemption, the board shall either approve or deny the request. The exemption shall be issued for a period that is determined to be appropriate by the board, but shall not exceed two years.

(b) The application for an exemption shall include both of the following:

(1) A statement of the specified basis for the exemption.

(2) The name, business address, and telephone number of the applicant.

(c) The board shall grant the exemption if the board finds that the manufacturer has been unable to commence manufacture of the rechargeable consumer product in compliance with this chapter and with an equivalent level of product performance without causing either of the following:

(1) Danger to human health and safety or to the environment.

(2) Violation of requirements for approvals from governmental agencies or the Underwriters Laboratories or a similar widely recognized private standard-setting organization.

(d) The board may, by regulation, establish an application fee in an amount sufficient to offset the cost of processing requests for exemptions.

(e) A manufacturer or manufacturer trade organization granted an exemption may apply for an extension of the exemption in accordance with the requirements and procedures in subdivisions (b) and (c). However, in considering an extension of any exemption, the board shall evaluate whether other rechargeable consumer product manufacturers have developed technology or methods that permit access to the rechargeable battery in the same or similar type application. The board may grant up to three extensions of not more than two years each after the date of the original exemption.

As added by AB 1769 (Margolin), Stats. 1993, c. 816.

15016. Any action solely to increase the recycling of rechargeable batteries or battery packs by any person or entity that affects the types or quantities being recycled, or the cost and structure of any return program, pursuant to this chapter is not a violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part of Division 7 of the Business and Professions Code) or the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code).

As added by AB 1769 (Margolin), Stats. 1993, c. 816.

15018. For purposes of carrying out the collection, storage, transportation, and recycling of used rechargeable batteries or consumer products containing used rechargeable batteries, persons involved in returning used rechargeable batteries or consumer products containing used rechargeable batteries to a facility for recycling or proper disposal shall be subject to Section 2520l or 25216.1 of the Health and Safety Code or any successor section.

As added by AB 1769 (Margolin), Stats. 1993, c. 816.

Chapter 4. Mercury in Batteries

(Chapter 4 as added by AB 1787 (Bowen), Stats. 1993, c. 817)

15020. No person shall sell any dry cell battery manufactured on and after January 1, 1994, for household use in which the mercury content, by weight, exceeds the following limits:

(a) In an alkaline battery, 0.025 percent.

(b) In a carbon-zinc battery, 0.0 percent intentionally introduced mercury, as distinguished from mercury which may be incidentally present in other materials.

As added by AB 1787 (Bowen), Stats. 1993, c. 817.

15021. On and after January 1, 1994, no person shall manufacture or sell any mercuric oxide button cell battery of any type or for any use.

As added by AB 1787 (Bowen), Stats. 1993, c. 817.

15022. No person shall sell any alkaline manganese battery manufactured on or after January 1, 1996, if the battery contains any intentionally introduced mercury, as distinguished from mercury which may be incidentally present in other materials. However, the mercury content in alkaline manganese button cell batteries shall not exceed 25 milligrams of mercury per button cell.

As added by AB 1787 (Bowen), Stats. 1993, c. 817.

15023. No person shall sell any zinc-carbon battery manufactured on or after January 1, 1994, if the battery contains any intentionally introduced mercury, asdistinguished from mercury which may be incidentally present in other materials.

As added by AB 1787 (Bowen), Stats. 1993, c. 817.

15024. Any violation of this chapter is a misdemeanor.

As added by AB 1787 (Bowen), Stats. 1993, c. 817.

Chapter 5. Consumer Products Containing Mercury

(Chapter 5 as added by SB 633 (Sher), Stats. 2001, c. 656)

15025. For purposes of this article, the following terms have the following meanings:

(a) "Mercury-added novelty" means a mercury-added product intended mainly for personal or household enjoyment or adornment. A "mercury-added novelty" includes, but is not limited to, any item intended for use as a practical joke, figurine, adornment, toy, game, card, ornament, yard statue or figure, candle, jewelry, holiday decoration, and item of apparel, including footwear. "Mercury-added novelty" does not include a product that contains no mercury other than in a mercury-added button cell battery.

(b) "Mercury fever thermometer" means a mercury-added product that is used for measuring body temperature. Mercury fever thermometer does not include a digital thermometer that uses mercury-added button cell batteries.

(c) "School" means any school used for the purpose of the education of more than 12 children in kindergarten or any of grades 1 to 12, inclusive.

As added by SB 633 (Sher), Stats. 2001, c. 656, and amended by SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

15026. (a) On and after July 1, 2002, no person, other than a person licensed pursuant to Article 9 (commencing with Section 4140) of Chapter 9 of Division 2 of the Business and Professions Code, may sell at retail, or otherwise supply, a mercury fever thermometer to a consumer or patient in this state. A mercury fever thermometer may be sold at retail, or otherwise supplied to a consumer or patient only upon the prescription of a physician, dentist, veterinarian, or podiatrist. A mercury fever thermometer sold at retail shall be accompanied by clear written instructions concerning careful handling to avoid breakage and proper cleanup should breakage occur.

(b) A violation of subdivision (a) is a violation of the requirements of Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code and the California State Board of Pharmacy shall enforce the requirements of subdivision (a) in accordance with Chapter 9.

As added by SB 633 (Sher), Stats. 2001, c. 656.

15027. (a) On and after January 1, 2003, no person shall manufacture, offer for final sale or use, or distribute for promotional purposes in this state, a mercury-added novelty, if the manufacturer, seller, or distributor knows, or has reason to know, that the product contains mercury. A person who manufactures or distributes any mercury-added novelty shall notify each retailer regarding the requirements of this section and how to dispose of the remaining inventory in accordance with Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(b) A violation of subdivision (a) is a violation of Article 2 (commencing with Section 108550) of Chapter 5 of Part 3 of Division 104 of the Health and Safety Code and, for purposes of that article, "mercury-added novelties" shall be deemed to be toys. The State Department of Health Services may take action against mercury-added novelties in the same manner as it is authorized to take action against toys, except that a violation of subdivision (a) is a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000) for each violation, or by imprisonment in the county jail for a period not to exceed one year, or by both that fine and imprisonment.

As added by SB 633 (Sher), Stats. 2001, c. 656.

15028. No school in this state shall purchase, for use in the classroom, elemental mercury, mercury compounds, or mercury-added laboratory measurement devices, chemicals, and related materials, except measuring devices used in school

laboratories for which the school district determines no adequate substitute exists.

As added by SB 633 (Sher), Stats. 2001, c. 656.

15029. No person may sell or offer for sale in this state a vehicle manufactured on or after January 1, 2005, that contains a mercury-containing motor vehicle light switch, as defined in Section 25214.5 of the Health and Safety Code, mounted on the hood or trunk.

As added by SB 633 (Sher), Stats. 2001, c. 656.

DIVISION 12.3. RECYCLED CONCRETE

(Division 12.3 as added by AB 574 (Wolk), Stats. 2005, c. 693)

16000. The Legislature finds and declares all of the following:

(a) Facilitating the recycling of natural resources is in the best interest of the state.

(b) This division is intended to encourage the use of recycled concrete as provided in this division.

As added by AB 574 (Wolk), Stats. 2005, c. 693.

16001. For the purposes of this division, "recycled concrete" means reclaimed concrete material used in concrete mixtures in accordance with the "Greenbook Standard Specifications for Public Works" 2003 edition, or the most current revision of those requirements. "Recycled concrete" includes mix designs or aggregate gradations that are in accordance with specifications of the American Concrete Institute (ACI), the American Society of Testing and Materials (ASTM), the International Building Code (IBC), the International Residential Code (IRC), the Uniform Building Code (UBC), or Caltrans Standard Specifications. However, reclaimed concrete material that is in compliance with ASTM-94 specifications is exempt from this division.

As added by AB 574 (Wolk), Stats. 2005, c. 693.

16002. (a) Recycled concrete materials may be used if a user has been fully informed that the concrete may contain recycled concrete materials.

(b) For the purposes of this section, "fully informed" means informed of the potential use of recycled materials in a concrete product prior to or at the time of ordering, either orally or in writing, and informed by the delivery receipt as to the recycled ingredients at delivery acceptance.

As added by AB 574 (Wolk), Stats. 2005, c. 693.

16003. No recycled concrete shall be offered, provided, or sold to the Department of Transportation or the Department of General Services for any use, including, but not limited to, any project under its affiliation, contract authority, or oversight responsibility unless specifically requested and approved by the department.

As added by AB 574 (Wolk), Stats. 2005, c. 693.

16004. Nothing in this division shall supersede the requirements of the Uniform Building Code or other provisions of law.

As added by AB 574 (Wolk), Stats. 2005, c. 693.

DIVISION 13. ENVIRONMENTAL QUALITY

(Division 13 added by Stats. 1970, c. 1433)

Chapter 2.6. General

(Chapter 2.6 as added by Stats. 1972, c. 1154)

21081.6. (a) When making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a

responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

As added by AB 3180 (Cortese), Stats. 1988, c. 1232, and amended by AB 375 (Allen), Stats. 1992, c. 1070, and AB 1888 (Sher), Stats. 1993, c. 1130, and SB 749 (Thompson), Stats. 1994, c. 1230, and AB 314 (Sher), Stats. 1994, c. 1294.

21082.1. (a) Any draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration prepared pursuant to the requirements of this division shall be prepared directly by, or under contract to, a public agency.

(b) This section is not intended to prohibit, and shall not be construed as prohibiting, any person from submitting information or other comments to the public agency responsible for preparing an environmental impact report, draft environmental impact report, negative declaration, or mitigated negative declaration. The information or other comments may be submitted in any format, shall be considered by the public agency, and may be included, in whole or in part, in any report or declaration.

(c) The lead agency shall do all of the following:

(1) Independently review and analyze any report or declaration required by this division.

(2) Circulate draft documents that reflect its independent judgment.

(3) As part of the adoption of a negative declaration or a mitigated negative declaration, or certification of an environmental impact report, find that the report or declaration reflects the independent judgment of the lead agency.

(4) Submit a sufficient number of copies of the draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration, and a copy of the report or declaration in an electronic form as required by the guidelines adopted pursuant to Section 21083, to the State Clearinghouse for review and comment by state agencies, if any of the following apply:

(A) A state agency is any of the following:

(i) The lead agency.

(ii) A responsible agency.

(iii) A trustee agency.

(B) A state agency otherwise has jurisdiction by law with respect to the project.

(C) The proposed project is of sufficient statewide, regional, or area wide environmental significance as determined pursuant to the guidelines certified and adopted pursuant to Section 21083.

As added by Stats. 1976, c. 1312, and amended by AB 710 (Hannigan), Stats. 1981, c. 480, and AB 1642 (Sher), Stats. 1991, c. 905, and AB 3041 (Assembly Natural Resources Committee), Stats. 2002, c. 1052.

21092.5. (a) At least 10 days prior to certifying an environmental impact report, the lead agency shall provide a written proposed response to a public agency on comments made by that agency which conform with the requirements of this division. Proposed responses shall conform with the legal standards established for responses to comments on draft environmental impact reports. Copies of responses or the environmental document in which they are contained, prepared in conformance with other requirements of this division and the guidelines adopted pursuant to Section 21083, may be used to meet the requirements imposed by this section.

(b) The lead agency shall notify any public agency which comments on a negative declaration, of the public hearing or hearings, if any, on the project for which the negative declaration was prepared. If notice to the commenting public agency is provided pursuant to Section 21092, the notice shall satisfy the requirement of this subdivision.

(c) Nothing in this section requires the lead agency to respond to comments not received within the comment periods specified in this division, to reopen comment periods, or to delay acting on a negative declaration or environmental impact report.

As added by AB 1642 (Sher), Stats. 1991, c. 905.

Chapter 3. State Agencies, Boards and Commissions

21151.1. (a) Notwithstanding paragraph (6) of subdivision (b) of Section 21080, or Section 21080.5 or 21084, or any other provision of law, except as provided in this section, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report or, if appropriate, a modification, addendum, or supplement to an existing environmental impact report, for a project involving any of the following:

(1) (A) The burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, if the project is either of the following:

(i) The construction of a new facility.

(ii) The expansion of an existing facility that burns hazardous waste that would increase its permitted capacity by more than 10 percent.

(B) This paragraph does not apply to a project exclusively burning hazardous waste, for which a final determination under Section 21080.1 has been made prior to July 14, 1989.

(2) The initial issuance of a hazardous waste facilities permit to a land disposal facility, as defined in subdivision (d) of Section 25199.1 of the Health and Safety Code.

(3) The initial issuance of a hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code to an offsite large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of the Health and Safety Code.

(4) A base reuse plan as defined in Section 21083.8.1. The Legislature hereby finds that no reimbursement is required pursuant to Section 6 of Article XIII B of the California Constitution for an environmental impact report for a base reuse plan if an environmental impact report is otherwise

required for that base reuse plan pursuant to any other provision of this division.

(b) For purposes of clause (ii) of subparagraph (A) of paragraph (1) of subdivision (a), the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(1) The facility capacity authorized in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in a state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(2) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or a state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(c) For purposes of paragraphs (2) and (3) of subdivision (a), the initial issuance of a hazardous waste facilities permit does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(d) Paragraph (1) of subdivision (a) does not apply to a project that does any of the following:

(1) Exclusively burns digester gas produced from manure or any other solid or semisolid animal waste.

(2) Exclusively burns methane gas produced from a disposal site, as defined in Section 40122, that is used only for the disposal of solid waste, as defined in Section 40191.

(3) Exclusively burns forest, agricultural, wood, or other biomass wastes.

(4) Exclusively burns hazardous waste in an incineration unit that is transportable and that is either at a site for not longer than three years or is part of a remedial or removal action. For purposes of this paragraph, "transportable" means any equipment that performs a "treatment" as defined in Section 66216 of Title 22 of the California Code of Regulations, and that is transported on a vehicle as defined in Section 66230 of Title 22 of the California Code of Regulations, as those sections read on June 1, 1991.

(5) Exclusively burns refinery waste in a flare on the site of generation.

(6) Exclusively burns in a flare methane gas produced at a municipal sewage treatment plant.

(7) Exclusively burns hazardous waste, or exclusively burns hazardous waste as a supplemental fuel, as part of a research, development, or demonstration project that, consistent with federal regulations implementing the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been determined to be innovative and experimental by the Department of Toxic Substances Control and that is limited in type and quantity of waste to that necessary to determine the efficacy and performance capabilities of the technology or process. However, a facility that operated as a research, development, or demonstration project and for which an application is thereafter submitted for a hazardous waste facility permit for operation other than as a research, development, or demonstration project shall be considered a new facility for the burning of hazardous waste and shall be subject to subdivision (a) of Section 21151.1.

(8) Exclusively burns soils contaminated only with petroleum fuels or the vapors from these soils.

(9) Exclusively treats less than 3,000 pounds of hazardous waste per day in a thermal processing unit operated in the absence of open flame, and submits a worst-case health risk assessment of the technology to the Department of Toxic Substances Control for review and distribution to the interested public. This assessment shall be prepared in accordance with guidelines set forth in the Air Toxics Assessment Manual of the California Air Pollution Control Officers Association.

(10) Exclusively burns less than 1,200 pounds per day of medical waste, as defined in Section 117690 of the Health and Safety Code, on hospital sites.

(11) Exclusively burns chemicals and fuels as part of firefighter training.

(12) Exclusively conducts open burns of explosives subject to the requirements of the air pollution control district or air quality management district and in compliance with OSHA and Cal-OSHA regulations.

(13) Exclusively conducts onsite burning of less than 3,000 pounds per day of fumes directly from a manufacturing or commercial process.

(14) Exclusively conducts onsite burning of hazardous waste in an industrial furnace that recovers hydrogen chloride from the flue gas if the hydrogen chloride is subsequently sold, distributed in commerce, or used in a manufacturing process at the site where the hydrogen chloride is recovered, and the burning is in compliance with the requirements of the air pollution control district or air quality management district and the Department of Toxic Substances Control.

(e) Paragraph (1) of subdivision (a) does not apply to a project for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction under Chapter 6 (commencing with Section 25500) of Division 15.

(f) Paragraphs (2) and (3) of subdivision (a) do not apply if the facility only manages hazardous waste that is identified or listed pursuant to Section 25140 or 25141 of the Health and Safety Code on or after January 1, 1992, but not before that date, or only conducts activities that are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992, but not before that date.

(g) This section does not exempt a project from any other requirement of this division.

(h) For purposes of this section, offsite facility means a facility that serves more than one generator of hazardous waste.

As added by AB 3989 (Sher), Stats. 1986, c. 1134, and amended by AB 2423 (Sher), Stats. 1987, c. 171, and AB 58 (Roybal-Allard), Stats. 1989, c. 141, and Gov. Reorg. Plan No. 1 of 1991, and AB 1613 (Lempert), Stats. 1991, c. 719, and AB 3172 (Lempert), Stats. 1992,c. 1343, and AB 1937 (Campbell), Stats. 1993, c. 973, and AB 901 (Polanco), Stats. 1994, c. 1104, and SB 1497 (Senate Health and Human Services Committee), Stats. 1996, c. 1023, and SB 1852 (Senate JudiciaryCommittee), Stats. 2006, c. 538.

Chapter 4. Local Agencies

21151.8. (a) An environmental impact report or negative declaration may not be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste. The notification by the school district, as the lead agency, shall include a list of the locations for which information is sought.

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).

(B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii) or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(4) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to paragraph (2) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with this section as to the area of responsibility of any agency that does not respond within 30 days.

(b) If a school district, as a lead agency, has carried out the consultation required by paragraph (2) of subdivision (a), the environmental impact report or the negative declaration shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility or other pollution source specified in paragraph (2) of subdivision (a).

(c) As used in this section and Section 21151.4, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(6) "Administering agency" means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

As added by SB 2262 (Torres), Stats. 1990, c. 1602, and amended by AB 928(Archie-Hudson), Stats. 1991, c. 1183, and SB 352 (Escutia), Stats. 2003, c. 668.

Chapter 8.3. State Vehicle Fleet

(Chapter 8.3 as added by SB 1170 (Sher), Stats. 2001, c. 912)

25722. (a) On or before January 31, 2003, the commission, the Department of General Services, and the State Air Resources Board, in consultation with any other state agency that the commission , the department, and the state board deem necessary, shall develop and adopt fuel-efficiency specifications governing the purchase by the state of motor vehicles and replacement tires that, on an annual basis, will reduce petroleum consumption of the state vehicle fleet to the maximum extent practicable and cost-effective.

(b) In developing the specifications, the commission and the department shall jointly conduct a study to examine state vehicle purchasing patterns, including the purchase of after market tires, and to analyze the costs and benefits of reducing the energy consumption of the state vehicle fleet by no less than 10 percent on or before January 1, 2005.

(c) The study shall include an analysis of all of the following topics:

(1) Use of alternative fuels.

(2) Use of fuel-efficient vehicles.

(3) Costs and benefits of decreasing the size of the state vehicle fleet.

(4) Reduction in vehicle trips and increase in use of alternative means of transportation.

(5) Improved vehicle maintenance.

(6) Costs and benefits of using fuel-efficient tires relative to using retreaded tires, as described in the Retreaded Tire Program (Chapter 7 (commencing with Section 42400) of Part 3 of Division 30 of the Public Resources Code).

(7) The costs and benefits of purchasing high fuel efficiency gasoline vehicles, including hybrid electric vehicles, instead of flexible fuel vehicles.

(d) On or before January 31, 2003, and annually thereafter, the commission, the Department of General Services, and the State Air Resources Board, in consultation with any other state agency that the commission, the department, and the state board deem necessary, shall develop and adopt air pollution emission specifications governing the purchase by the state of passenger cars and light-duty trucks that meet or exceed California's Ultra-Low Emission Vehicle (ULEV) standards for exhaust emissions (13 Cal. Code Regs. 1960.1).

(e) If the study described in subdivision (b) determines that lower cost measures exist that deliver petroleum reductions equivalent to applicable federal requirements governing the state purchase of passenger cars and light-duty trucks, the state shall pursue a waiver from those federal requirements.

As added by SB 1170 (Sher), Stats. 2001, c. 912.

25723. On or before January 31, 2003, the commission, in consultation with any other state agency that the commission deems necessary, shall develop and adopt recommendations for consideration by the Governor and the Legislature of a California State Fuel-Efficient Tire Program. The commission shall make recommendations on all of the following items:

(a) Establishing a test procedure for measuring tire fuel efficiency.

(b) Development of a data base of fuel efficiency of existing tires in order to establish an accurate baseline of tire efficiency.

(c) A rating system for tires that provides consumers with information on the fuel efficiency of individual tire models.

(d) A consumer-friendly system to disseminate tire fuel-efficiency information as broadly as possible. The commission shall consider labeling, Web site listing, printed fuel economy guide booklets, and mandatory requirements for tire retailers to provide fuel-efficiency information.

(e) A study to determine the safety implications, if any, of different policies to promote fuel efficient replacement tires in the consumer market.

(f) A mandatory fuel-efficiency standard for all after market tires sold in California.

(g) Consumer incentive programs that would offer a rebate to purchasers of replacement tires that are more fuel efficient than the average replacement tire.

As added by SB 1170 (Sher), Stats. 2001, c. 912.

Chapter 8.5. Climate Change Inventory And Information

(Chapter 8.2 as added by SB 1771 (Sher), Stats. 2000, c. 1018)

25730. The commission, in consultation with the State Air Resources Board, the Department of Forestry and Fire Protection, the Department of Transportation, the State Water Resources Control Board, the California Integrated Waste Management Board, and other state agencies with jurisdiction over matters affecting climate change, shall do all of the following:

(a) On or before January 1, 2002, update the inventory of greenhouse gas emissions from all sources located in the state, as identified in the commission's 1998 report entitled, "Appendix A: Historical and Forecasted Greenhouse Gas Emissions Inventories for California." Information on natural sources of greenhouse gas emissions shall be included to the extent that information is available. The inventory shall include information that compares emissions from similar inventories prepared for the United States and other states or countries, and shall include information on relevant current and previous energy and air quality policies, activities, and greenhouse gas emissions reductions and trends since 1990, to the extent that information is available.

(b) Acquire and develop data and information on global climate change, and provide state, regional, and local agencies, utilities, business, industry, and other energy and economic sectors with information on the costs, technical feasibility, and demonstrated effectiveness of methods for reducing or mitigating the production of greenhouse gases from in-state sources, including net reductions through the management of natural forest reservoirs. The commission, in consultation with the State Air Resources Board, shall provide a variety of forums for the exchange of that information among interested parties, and shall provide other state agencies with information on cost-effective and technologically feasible methods that can be used to reduce or mitigate the emissions of greenhouse gases.

(c) Update its inventory every five years using current scientific methods, and report on the updated inventory to the Governor and the Legislature.

(d) Conduct at least one public workshop prior to finalizing each updated inventory. The commission shall post its report and inventory on the commission's web page on the Internet.

(e) Convene an interagency task force consisting of state agencies with jurisdiction over matters affecting climate change to ensure policy coordination at the state level for those activities.

(f) Establish a climate change advisory committee, to the extent that the commission determines that it can do so within existing resources. This advisory committee shall make recommendations to the commission on the most equitable and efficient ways to implement international and national climate change requirements based on cost, technical feasibility, and relevant information on current energy and air quality policies and activities and on greenhouse gas emissions reductions and trends since 1990. The commission shall designate one of its commissioners as chair, and shall include on the advisory committee members who represent business, including major industrial and energy sectors, utilities, forestry, agriculture, local government, and environmental groups. The meetings of the advisory committee shall be open to the public, and shall provide an opportunity for the public to be heard on matters considered by the advisory committee.

As added by SB 1771 (Sher), Stats. 2000, c. 1018.

25731. (a) This chapter shall remain in effect until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

(b) It is the intent of the Legislature to transfer the functions performed by the commission pursuant to this chapter to the State Air Resources Board in order to consolidate, streamline, and unify the inventory of air emissions under a single agency in state government.

As added by AB 1803 (Assembly Budget Committee), Stats. 2006, c. 77.

Chapter 8.7. Replacement Tire Efficiency Program

(Chapter 8.7 as added by AB 844 (Nation), Stats. 2003, c. 645)

25770. For the purposes of this chapter, the following terms have the following meanings:

(a) "Board" means the California Integrated Waste Management Board established pursuant to Division 30 (commencing with Section 40000).

(b) "Consumer information requirement" means point-of-sale information or signs that are conspicuously displayed, readily accessible, and written in a manner that can be easily understood by the consumer. "Consumer information requirement" does not include mandatory labeling, imprinting, or other marking, on an individual tire by the tire manufacturer or the tire retailer.

(c) "Cost effective" means the cost savings to the consumer resulting from a replacement tire subject to an energy efficiency standard that equals or exceeds the additional cost to the consumer resulting from the standard, taking into account the expected fuel cost savings over the expected life of the replacement tire.

(d) "Replacement tire" means a tire sold in the state that is designed to replace a tire sold with a new passenger car or light-duty truck. "Replacement tire" does not include any of the following tires:

(1) A tire or group of tires with the same SKU, plant, and year, for which the volume of tires produced or imported is less than 15,000 annually.

(2) A deep tread, winter-type snow tire, a space-saver tire, or a temporary use spare tire.

(3) A tire with a nominal rim diameter of 12 inches or less.

(4) A motorcycle tire.

(5) A tire manufactured specifically for use in an off-road motorized recreational vehicle.

As added by AB 844 (Nation), Stats. 2003, c. 645.

25771. On or before July 1, 2006, the commission shall develop and adopt all of the following:

(a) A database of the energy efficiency of a representative sample of replacement tires sold in the state, based on test procedures adopted by the commission.

(b) Based on the data collected pursuant to subdivision (a), a rating system for the energy efficiency of replacement tires sold in the state, that will enable consumers to make more informed decisions when purchasing tires for their vehicles.

(c) Based on the test procedures adopted pursuant to subdivision (a) and the rating system established pursuant to subdivision (b), requirements for tire manufacturers to report to the commission the energy efficiency of replacement tires sold in the state.

As added by AB 844 (Nation), Stats. 2003, c. 645.

25772. On or before July 1, 2007, the commission, in consultation with the board, shall, after appropriate notice and workshops, adopt and, on or before July 1, 2008, implement, a tire energy efficiency program of statewide applicability for replacement tires, designed to ensure that replacement tires sold in the state are at least as energy efficient, on average, as tires sold in the state as original equipment on new passenger cars and light-duty trucks.

As added by AB 844 (Nation), Stats. 2003, c. 645.

25773. (a) The program described in Section 25772 shall include all of the following:

(1) The development and adoption of minimum energy efficiency standards for replacement tires, except to the extent that the commission determines that it is unable to do so in a manner that complies with subparagraphs (A) to (E), inclusive. Energy efficiency standards adopted pursuant to this paragraph shall meet all of the following conditions:

(A) Be technically feasible and cost effective.

(B) Not adversely affect tire safety.

(C) Not adversely affect the average tire life of replacement tires.

(D) Not adversely affect state efforts to manage scrap tires pursuant to Chapter 17 (commencing with Section 42860) of Part 3 of Division 30.

(2) The development and adoption of consumer information requirements for replacement tires for which standards have been adopted pursuant to paragraph (1).

(b) The energy efficiency standards established pursuant to paragraph (1) of subdivision (a) shall be based on the results of laboratory testing and, to the extent it is available and deemed appropriate by the commission, an onroad fleet testing program developed by tire manufacturers in consultation with the commission and the board, conducted by tire manufacturers, and submitted to the commission on or before January 1, 2006.

(c) If the commission finds that tires used to equip an authorized emergency vehicle, as defined in Section 165 of the Vehicle Code, are unable to meet the standards established pursuant to paragraph (1) of subdivision (a), the commission shall authorize an operator of an authorized emergency vehicle fleet to purchase for those vehicles tires that do not meet those standards.

(d) The commission, in consultation with the board, shall review and revise the program, including any standards adopted pursuant to the program, as necessary, but not less than once every three years. The commission may not revise the program or standards in a way that reduces the average efficiency of replacement tires.

As added by AB 844 (Nation), Stats. 2003, c. 645.

DIVISION 23. SANTA MONICA MOUNTAINS CONSERVANCY

Chapter 3. Establishment and Functions of the Santa Monica Mountains Conservancy

(Chapter 3 as added by Stats.1979, c. 1087)

33204.4. (a) The Legislature finds and declares all of the following:

(1) The boundary of the Rim of the Valley Trail Corridor should be determined exclusively upon the best scientific and resource-based information regarding trail, recreational, and environmental resources in the area.

(2) Landowners, local government entities, members of the public, and other affected parties should be afforded maximum participation in the process by which the Rim of the Valley Trail Corridor is delineated.

(b) (1) Notwithstanding the requirements of Section 33015.5, if the conservancy determines, based on relevant scientific information and land use planning studies, and after holding at least one public hearing in the area that would be affected by a revision of the boundaries of the Rim of the Valley Trail Corridor, that a boundary revision in the vicinity of Placerita Canyon State Park east of State Route 14, including Whitney Canyon and its adjacent watersheds, is necessary, the executive director shall prepare and file with the Secretary of State, the Assembly Committee on Natural Resources and the Senate Committee on Natural Resources and Wildlife, a revised map showing the changes in the boundaries of the Rim of the Valley Trail Corridor.

(2) A revised map prepared pursuant to paragraph (1) shall be supported by relevant scientific information and be in accordance with the purposes and objectives of Section 33204.3.

(c) Nothing in this section shall be interpreted to affect any portion of Elsmere Canyon. In addition, nothing in this

section shall be interpreted to have any effect on the decisions whether or not to permit Elsmere Canyon as a solid waste facility, as identified in the final Los Angeles County Countywide Siting Element, prepared and approved pursuant to Division 30 (commencing with Section 40000).

(d) Notwithstanding Section 33201, nothing in this section shall affect the jurisdiction of the State Coastal Conservancy.

As added by AB 339 (Runner), Stats. 1999, c. 377.

DIVISION 30. WASTE MANAGEMENT

(Division 30 added by AB 939 (Sher), Stats. 1989, c. 1095. Note: Pursuant to Sec. 3 of SB 1322 (Bergeson), Stats. 1989, c. 1096, the provisions of Divison 30 as added by AB 939 (Sher), Stats. 1989, c. 1095, are integrated with this division)

PART 1. INTEGRATED WASTE MANAGEMENT

(Part 1 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096)

Chapter 1. General Provisions

(Chapter 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. FINDINGS AND DECLARATIONS

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

40000. (a) In 1988, Californians disposed of over 38 million tons of solid waste, an amount that is expected to grow if existing solid waste policies are continued. This amounts to more than 1,500 pounds of waste per person living in the state, more than any other state in the country and over twice the per-capita rate of most other industrialized countries.

(b) Over 90 percent of California's solid waste currently is disposed of in landfills, some of which pose a threat to groundwater, air quality, and public health.

(c) While California will exhaust most of its remaining landfill space by the mid-1990s, there presently is no coherent state policy to ensure that the state's solid waste is managed in an effective and environmentally sound manner for the remainder of the 20th century and beyond.

(d) The amount of solid waste generated in the state coupled with diminishing landfill space and potential adverse environmental impacts from landfilling constitutes an urgent need for state and local agencies to enact and implement an aggressive new integrated waste management program.

(e) The reduction, recycling, or reuse of solid waste generated in the state will, in addition to preserving landfill capacity in California, serve to conserve water, energy, and other natural resources within this state, and to protect the state's environment.

As added AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 626 (Sher), Stats. 1996, c. 1038, and AB 3082 (Assembly Judiciary Committee), Stats. 2004, c. 183.

40001. (a) The Legislature declares that the responsibility for solid waste management is a shared responsibility between the state and local governments. The state shall exercise its legal authority in a manner that ensures an effective and coordinated approach to the safe management of all solid waste generated within the state and shall oversee the design and implementation of local integrated waste management plans.

(b) The Legislature further declares that it is the policy of the state to assist local governments in minimizing duplication of effort, and in minimizing the costs incurred, in implementing this division through the development of regional cooperative efforts and other mechanisms which comply with this division.

(c) The Legislature further declares that market development is the key to successful and cost-effective implementation of the 25-percent and 50-percent diversion requirements required pursuant to Section 41780, and that the state must take a leadership role, pursuant to Chapter 1 (commencing with Section 42000) of Part 3, in encouraging the expansion of markets for recycled products by working cooperatively with the public, private, and nonprofit sectors.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and SB 1066 (Sher), Stats. 1997, c. 672.

40002. As an essential part of the state's comprehensive program for solid waste management, and for the preservation of health and safety, and the well-being of the public, the Legislature declares that it is in the public interest for the state, as sovereign, to authorize and require local agencies, as subdivisions of the state, to make adequate provision for solid waste handling, both within their respective jurisdictions and in response to regional needs consistent with the policies, standards, and requirements of this division and all regulations adopted pursuant to this division. The provisions of this division which authorize and require local agencies to provide adequate solid waste handling and services, and the actions of local agencies taken pursuant thereto, are intended to implement this state policy.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40003. Nothing in this division abrogates, limits, or otherwise affects the duties of the Department of Conservation under the California Beverage Container Recycling and Litter Reduction Act, Division 12.1 (commencing with Section 14500).

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 2. GENERAL PROVISIONS

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

40050. This division shall be known and may be cited as the California Integrated Waste Management Act of 1989.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40051. In implementing this division, the board and local agencies shall do both of the following:

(a) Promote the following waste management practices in order of priority:

(1) Source reduction.

(2) Recycling and composting.

(3) Environmentally safe transformation and environmentally safe land disposal, at the discretion of the city or county.

(b) Maximize the use of all feasible source reduction, recycling, and composting options in order to reduce the amount of solid waste that must be disposed of by transformation and land disposal. For wastes that cannot feasibly be reduced at their source, recycled, or composted, the local agency may use environmentally safe transformation or environmentally safe land disposal, or both of those practices.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40052. The purpose of this division is to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient and cost-effective manner to conserve water, energy and other natural resources, to protect the environment, to improve regulation of existing solid waste landfills, to ensure that new solid waste landfills are environmentally sound, to improve permitting procedures for solid waste management facilities, and to specify the responsibilities of local governments to develop and implement integrated waste management programs.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820, Stats. 1990, c. 145, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 1220 (Eastin), Stats. 1993, c. 656.

40053. This division, or any rules or regulations adopted pursuant thereto, is not a limitation on the power of a city, county, or district to impose and enforce reasonable land use conditions or restrictions on solid waste management facilities in order to prevent or mitigate potential nuisances, if the conditions or restrictions do not conflict with or impose lesser requirements than the policies, standards, and requirements of this division and all regulations adopted pursuant to this division.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40054. This division, or any rules or regulations adopted pursuant thereto, is not a limitation on the power of the Attorney General, on the request of the board, the state water board, a regional water board, or upon his or her own motion, to bring an action in the name of the people of the State of California to enjoin any health hazard, pollution, or nuisance.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40055. (a) This division, or any rules or regulations adopted pursuant thereto, is not a limitation on the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer, including, but not limited to, the exercise by the state water board or the regional water boards of any of their powers and duties pursuant to Division 7 (commencing with Section 13000) of the Water Code, the exercise by the Department of Toxic Substances Control of any of its powers and duties pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, and the exercise by the State Air Resources Board or any air pollution control district or air quality management district of any of its powers and duties pursuant to Division 26 (commencing with Section 39000) of the Health and Safety Code.

(b) The exercise of authority under this division, including, but not limited to, the adoption of regulations, plans, permits, or standards or the taking of any enforcement actions shall not duplicate or be in conflict with any determination relating to water quality control made by the state water board or regional water boards, including requirements in regulations adopted by or under the authority of the state water board.

(c) Any plans, permits, standards, or corrective action taken under this division shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170, and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7, of the Water Code and the state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code existing at the time of the action or proposed action.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by the Gov. Reorg. Plan No. 1 of 1991, and AB 1220 (Eastin), Stats. 1993, c. 656, and AB 3358 (Ackerman), Stats. 1996, c. 1041.

40056. This division, or any rules or regulations adopted pursuant thereto, is not a limitation on the right of any person to commence and maintain at any time any appropriate action for relief against a nuisance as defined in the Civil Code.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40057. Each county, city, district, or other local governmental agency which provides solid waste handling services shall provide for those services, including, but not limited to, source reduction, recycling, composting activities, and the collection, transfer, and disposal of solid waste within or without the territory subject to its solid waste handling jurisdiction.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40058. The solid waste handling services shall be provided for by one or any combination of the following:

(a) The furnishing of the services by the local agency itself.

(b) The furnishing of the services by another local agency.

(c) The furnishing of the services by a solid waste enterprise.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40059. (a) Notwithstanding any other provision of law, each county, city, district, or other local governmental agency may determine all of the following:

(1) Aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services,

charges and fees, and nature, location, and extent of providing solid waste handling services.

(2) Whether the services are to be provided by means of nonexclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding, or if, in the opinion of its governing body, the public health, safety, and well-being so require, by partially exclusive or wholly exclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding. The authority to provide solid waste handling services may be granted under terms and conditions prescribed by the governing body of the local governmental agency by resolution or ordinance.

(b) Nothing in this division modifies or abrogates in any manner either of the following:

(1) Any franchise previously granted or extended by any county or other local governmental agency.

(2) Any contract, license, or any permit to collect solid waste previously granted or extended by a city, county, or a city and county.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355.

40059.1. (a) The Legislature hereby finds and declares both of the following:

(1) In 1989, the Legislature enacted this division as the California Integrated Waste Management Act of 1989. One of the key provisions of this division is that each local agency has the responsibility for diverting 50 percent of all solid waste generated within the local agency by January 1, 2000.

(2) The public policy objective of the Legislature in enacting this section is to ensure that those local agencies that require an indemnity obligation retain their responsibility for implementing the diversion requirements of this division.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Indemnity obligation" means any indemnity obligation directly or indirectly related to the failure of a local agency to meet the solid waste diversion requirements imposed by Chapter 6 (commencing with Section 41780) of Part 2, that is expressly assumed by, or imposed upon, the solid waste enterprise, whether pursuant to ordinance, contract, franchise, license, permit, or other entitlement or right, for the benefit of the local agency.

(2) "Local agency" means any county, city, city and county, district, regional agency as defined in Section 40181, or other local government agency.

(c) Any provision, term, condition, or requirement contained in any ordinance, contract, franchise, license, permit, or other entitlement or right adopted, entered into, issued, or granted, as the case may be, by a local agency for solid waste collection and handling, including the recycling, processing, or composting of solid waste, or in any request for bids or proposals in connection with any such contract or franchise, that authorizes or requires the imposition of an indemnity obligation, shall, notwithstanding any such provision, term, condition, or requirement, be subject to all of the following restrictions:

(1) An indemnity obligation shall not be enforceable if the board imposed penalty is based solely upon the failure of the local agency to establish and maintain a source reduction and recycling element pursuant to Chapter 2 (commencing with Section 41000) of Part 2, Chapter 3 (commencing with Section 41300) of Part 2, or Section 41750.1, as the case may be.

(2) Any board imposed penalty based upon a local agency's failure to meet the solid waste diversion requirements imposed by Chapter 6 (commencing with Section 41780) of Part 2, resulting in whole or in part from the solid waste enterprise's breach of contract or noncompliance with any other authorization, shall be apportioned in accordance with the percentage of fault of the local agency and the solid waste enterprise.

(3) For purposes of this section, a solid waste enterprise is not liable for the indemnity obligation to the extent that the solid waste enterprise's breach or noncompliance resulted from the action or failure to act of the local agency.

(4) No payment required or imposed pursuant to an indemnity obligation, whether required or imposed by ordinance, contract, franchise, license, permit, or other entitlement or right, may exceed that portion of any penalty assessed by the board against the local agency that was caused by the solid waste enterprise's breach or noncompliance of an express obligation or requirement.

(5) No indemnity obligation shall be enforceable against a solid waste enterprise until the local agency has affirmatively sought, in good faith, all administrative relief available pursuant to Chapter 6 (commencing with Section 41780) and Chapter 7 (commencing with Section 41800) of Part 2, unless the local agency demonstrates good cause, based on substantial evidence in the record, for not pursuing that administrative relief. The solid waste enterprise shall cooperate, in good faith, with the local agency seeking that administrative relief and shall provide in writing to the local agency all known defenses to the imposition of penalties.

(d) Nothing in this section shall be construed to preclude either party from seeking any other remedy under law or equity.

(e) The provisions of this section are not subject to waiver, and any attempted waiver shall be null and void as against public policy.

(f) This section is not intended to do any of the following:

(1) Add to or expand the authority of local agencies to determine aspects of solid waste collection and handling pursuant to Section 40059.

(2) Alter the authority of business entities to collect or process materials that are not solid waste.

(3) Affect any contract right existing on the effective date of this section.

As added by SB 1340 (Polanco), Stats. 1998, c. 987.

40060. (a) Notwithstanding any other provision of law, a regional water board shall not issue a waste discharge permit for a new landfill, or a lateral expansion of an existing landfill,

which is used for the disposal of nonhazardous solid waste if the land has been primarily used at any time for the mining or excavation of gravel or sand.

(b) A regional water board, in a public meeting, may grant a variance from subdivision (a) if the applicant demonstrates and the regional water quality control board determines that the discharges to a new facility or expansion of an existing facility during its operation and postclosure period will not pollute or threaten to pollute the waters of the state. In deciding whether to grant a variance, the regional water board shall consider, among other factors, site characteristics, including permeability and transmissivity of the underlying soils and depth to groundwater. For the purpose of this section, "groundwater" means the uppermost aquifer usable for beneficial purposes.

(c) Nothing in this section precludes any local jurisdiction from exercising any power which it has pursuant to any other provision of law.

(d) The following definitions govern the construction of this section:

(1) "Landfill used for the disposal of nonhazardous solid waste" means a disposal site regulated by a regional water board as a Class III landfill pursuant to Sections 2533 and 2541 of Title 23 of the California Code of Regulations.

(2) "Lateral expansion" means a new or expanded waste management unit which is not authorized on January 1, 1989, under existing waste discharge requirements issued pursuant to Division 7 (commencing with Section 13000) of the Water Code and an existing solid waste facility permit issued pursuant to this title. For purposes of subdivision (f), "lateral expansion" does not include a new or expanded waste management unit for which waste discharge requirements were issued by a regional water board before January 1, 1989, but were subject to review after that date pursuant to Section 13320 of the Water Code.

(e) The regional water board may hold a single hearing for purposes of granting a variance pursuant to subdivision (b) and establishing waste discharge requirements.

(f) Notwithstanding subdivision (b), a regional water board shall not grant a variance from subdivision (a) if the variance is for a new landfill, or a lateral expansion of an existing landfill, located within the boundaries of the Main San Gabriel Groundwater Basin. For purposes of this subdivision, the boundaries of the Main San Gabriel Groundwater Basin are the boundaries described in Exhibit A of the judgment in Upper San Gabriel Valley Municipal Water District v. City of Alhambra, et al., Case Number 924128 of the Superior Court for the County of Los Angeles.

As added by SB 937 (Bergeson), Stats. 1990, c. 35.

40061. (a) Notwithstanding Section 40059, every local agency which does not directly charge residential households a fee for the collection, transportation, and disposal of solid waste and every local agency which directly charges residential customers a fee which represents less than 90 percent of the average cost of collecting, transporting, and disposing of residential solid waste shall, at least once every three months, arrange to inform all residential households of all of the following:

(1) The average monthly volume of solid waste produced by each residential household.

(2) The total estimated monthly cost to the local agency to collect, transport, and dispose of all solid waste produced by residential households.

(3) The average monthly cost to the local agency to collect, transport, and dispose of solid waste produced by each residential household.

(b) For the purposes of this section, "residential household" means those single and multifamily residential units which are not charged a periodic fee for the collection, transportation, and disposal of solid waste or which are assessed a periodic fee which represents less than 90 percent of the local agency's total cost of providing these services.

(c) The notification provided under subdivision (a) may, not more than twice in any calendar year, be made by publication in a newspaper of general circulation in the county in which the local agency is located.

(d) Unless notification is made by publication, when possible, the notification provided under subdivision (a) shall be distributed by each local agency to residential households in a manner that results in no distribution costs to the local agency in excess of distribution costs otherwise incurred for other purposes.

As added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 719 (Wright), Stats. 1991, c. 1085.

40062. (a) Upon the request of any person furnishing any report, notice, application, plan, or other document required by this division, including any research or survey information requested by the board for the purpose of implementing its programs, neither the board nor an enforcement agency, in accordance with subdivisions (c) and (d), shall make available for inspection by the public any portion of the report, notice, application, plan, or other document that contains a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that has been identified pursuant to subdivision (b).

(b) Any person furnishing information, as described in subdivision (a), to the board or an enforcement agency pursuant to this division shall, at the time of submission, identify all information which the person believes is a trade secret. Any information not identified by the person as a trade secret shall be made available to the public, unless exempted from disclosure by another provision of law.

(c) (1) With regard to information that has been identified as a trade secret pursuant to subdivision (b), the board, upon its own initiative, or upon receipt of a request for public information pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, shall determine whether any or all of the information has been properly identified as a trade secret. If the board determines that the information is not a trade secret, the board shall notify the person who furnished the information by certified mail.

(2) The person who furnished the information shall have 30 days from the date of receipt of the notice required by paragraph (1) to provide the board with a complete justification and statement of the grounds on which the trade secret privilege is claimed. The justification and statement shall be submitted to the board by certified mail.

(3) The board shall determine whether the information is protected as a trade secret within 15 days from the date of receipt of the justification and statement or, if no justification and statement is filed, within 45 days from the date of the notice required by paragraph (1). The board shall notify the person who furnished the information and any party who has requested the information pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code of that determination by certified mail. If the board has determined that the information is not protected as a trade secret, this final notice shall also specify a date, not sooner than 15 days from the date of the date of mailing of the final notice, when the information shall be available to the public.

(d) Except as provided in subdivision (c), the board or an enforcement agency may release information submitted and designated as a trade secret only to the following public agencies under the following conditions:

(1) To other public agencies in connection with the responsibilities of the board or an enforcement agency under this division or for use in making reports.

(2) To the state or any state agency in judicial review for enforcement proceedings involving the person furnishing the information.

(e) For the purpose of implementing this section, the disclosure of information shall be consistent with Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2696 (Wright), Stats. 1992, c. 301, and AB 3358 (Ackerman), Stats. 1996, c. 1041.

40063. At the request of a county with a population of less than 250,000, the board and the state water board may meet with the county to prioritize, through development and joint adoption of a five-year plan, state environmental concerns with regard to solid waste management in relation to the fiscal and staffing constraints on the county.

As added by AB 626 (Sher), Stats. 1996, c. 1038.

Chapter 2. Definitions

(Chapter 2 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096)

40100. Unless the context otherwise requires, the definitions in this article govern the construction of this division.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40105. "Authorized recycling agent" means a person that a local governing body or private commercial entity authorizes or contracts with to collect its recyclable waste material. An authorized recycling agency may be a municipal collection service, private refuse hauler, private recycling enterprise, or private nonprofit corporation or association.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40106. (a) "Biomass conversion" means the controlled combustion, when separated from other solid waste and used for producing electricity or heat, of the following materials:

(1) Agricultural crop residues.

(2) Bark, lawn, yard, and garden clippings.

(3) Leaves, silvicultural residue, and tree and brush pruning.

(4) Wood, wood chips, and wood waste.

(5) Nonrecyclable pulp or nonrecyclable paper materials.

(b) "Biomass conversion" does not include the controlled combustion of recyclable pulp or recyclable paper materials, or materials that contain sewage sludge, industrial sludge, medical waste, hazardous waste, or either high-level or low-level radioactive waste.

(c) For purposes of this section, "nonrecyclable pulp or nonrecyclable paper materials" means either of the following, as determined by the board:

(1) Paper products or fibrous materials that cannot be technically, feasibly, or legally recycled because of the manner in which the product or material has been manufactured, treated, coated, or constructed.

(2) Paper products or fibrous materials that have become soiled or contaminated and as a result cannot be technically, feasibly, or legally recycled.

As added by AB 688 (Sher), Stats. 1994, c. 1227, and amended by AB 514 (Thompson), Stats. 1999, c. 439.

40110. "Board" means the California Integrated Waste Management Board.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed and added by SB 1761 (Vuich), Stats. 1990, c. 586.

40115. "City" or "county" includes city and county.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

40116. "Compost" means the product resulting from the controlled biological decomposition of organic wastes that are source separated from the municipal solid waste stream, or which are separated at a centralized facility. "Compost" includes vegetable, yard, and wood wastes which are not hazardous waste.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

40117. "Gasification" means a technology that uses a noncombustion thermal process to convert solid waste to a clean burning fuel for the purpose of generating electricity, and that, at minimum, meets all of the following criteria:

(a) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

(b) The technology produces no discharges of air contaminants or emissions, including greenhouse gases, as

defined in subdivision (g) of Section 42801.1 of the Health and Safety Code.

(c) The technology produces no discharges to surface or groundwaters of the state.

(d) The technology produces no hazardous waste.

(e) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner or operator of the facility certifies that those materials will be recycled or composted.

(f) The facility where the technology is used is in compliance with all applicable laws, regulations, and ordinances.

(g) The facility certifies to the board that any local agency sending solid waste to the facility is in compliance with this division and has reduced, recycled, or composted solid waste to the maximum extent feasible, and the board makes a finding that the local agency has diverted at least 30 percent of all solid waste through source reduction, recycling, and composting.

As added by AB 2770 (Matthews), Stats. 2002, c. 740.

40120. "Designated recycling collection location" means the place where an authorized recycling agent has contracted with either the local governing body or a private entity to pick up recyclable material segregated from other waste material. "Designated recycling collection location" includes, but is not limited to, the curbside of a residential neighborhood or the service alley of a commercial enterprise.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40120.1. "Disposal" has the same meaning as "solid waste disposal" as defined in Section 40192.

As added by AB 440 (Sher), Stats. 1993, c. 1169, and repealed and added by AB 3358 (Ackerman), Stats. 1996, c. 1041.

40121. "Disposal facility" or "facility" means any facility or location where disposal of solid waste occurs.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

40122. "Disposal site" or "site" includes the place, location, tract of land, area, or premises in use, intended to be used, or which has been used, for the landfill disposal of solid wastes. "Disposal site" includes solid waste landfill, as defined in Section 40195.1.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed and added by SB 1761 (Vuich), Stats. 1990, c. 586, and amended by AB 3358 (Ackerman), Stats. 1996, c. 1041.

40123. "Disposal site owner" means the person who holds title to the property used as a disposal site after January 1, 1977.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40124. "Diversion" means activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division, including Article 1 (commencing with Section 41780) of Chapter 6.

As added by AB 1647 (Bustamante), Stats. 1996, c. 978.

40130. "Enforcement agency" means the local agency designated pursuant to Article 1 (commencing with Section 43200) of Chapter 2 of Part 4 for the purpose of carrying out this division, or the board if no designation of a local agency has been approved by the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40131. "Enforcement program" means the regulations and procedures adopted by the board pursuant to Chapter 2 (commencing with Section 43200) of Part 4.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40131.5. "Federal act" means the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

As added by AB 337 (Statham), Stats. 1993, c. 922.

40135. "Fund" means the Integrated Waste Management Fund, which is hereby created in the State Treasury. Any reference in this division or any other provision of law to the Solid Waste Management Fund shall mean the Integrated Waste Management Fund.

As added by SB 937 (Bergeson), Stats. 1990, c. 35, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

40135.1. "Account" means the Integrated Waste Management Account created in the fund pursuant to Section 48001.

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

40140. "Hazard" includes any condition, practice, or procedure which is or may be dangerous, harmful, or perilous to employees, property, neighbors, or the general public.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40141. (a) "Hazardous waste" means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may do either of the following:

(1) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) Pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(b) Unless expressly provided otherwise, "hazardous waste" includes extremely hazardous waste and acutely hazardous waste.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40148. "Large state facility" means those campuses of the California State University and the California Community Colleges, prisons within the Department of Corrections, facilities of the State Department of Transportation, and facilities of other state agencies, that the board determines, are primary campuses, prisons, or facilities.

As added by AB 75 (Strom-Martin), Stats. 1999, c. 764.

40150. "Local governing body" means the legislative body of the city, county, or special district which has authority to provide solid waste handling services.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40151. "Nondisposal facility" means any solid waste facility required to obtain a permit pursuant to Article 1 (commencing with Section 44001) of Chapter 3 Part 4, except a disposal facility or a transformation facility.

As added by AB 3001 (Cortese), Stats. 1992, c. 1291.

40160. "Operator" means the person to whom the approval to operate a disposal site, transfer or processing station, or collection system is granted.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355.

40170. "Person" includes an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by SB 469 (Beverly), Stats. 1994, c. 1200.

40171. "Pollution" means the condition caused by the presence in or on a body of water, soil, or air of any solid waste or substance derived therefrom in such quantity, of such nature and duration, or under such condition that the quality, appearance, or usefulness of the water, soil, land, or air is significantly degraded or adversely altered.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40172. "Processing" means the reduction, separation, recovery, conversion, or recycling of solid waste.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

40180. "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. "Recycling" does not include transformation, as defined in Section 40201.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed and added by SB 1761 (Vuich), Stats. 1990, c. 586.

40181. "Regional planning agency" means an agency formed pursuant to Chapter 5 (commencing with Section 6500) of

Division 7 of Title 1 of the Government Code and Article 3 (commencing with Section 40970) of Chapter 1 of Part 2.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292.

40182. "Regional water board" means a California regional water quality control board.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40183. (a) "Rural city" means either of the following:

(1) A city that has a geographic area of less than three square miles, has a current waste disposal rate of less than 100 cubic yards per day, or 60 tons per day, and is located in a rural area.

(2) A city that has a population density of less than 1,500 people per square mile, has a current waste disposal rate of less than 100 cubic yards per day, or 60 tons per day, and is located in a rural area.

(b) Nothing in this section shall affect any reduction granted to a rural city or rural county by the board pursuant to Section 41787 prior to September 1, 1994.

As added by AB 688 (Sher), Stats. 1994, c. 1227, and amended by SB 515 (Chesbro), Stats. 1999, c. 600, and SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

40184. (a) "Rural county" means any county that has a population of 200,000 or less and is located in a rural area.

(b) For the purposes of this section, Section 40183, and subdivision (d) of Section 40973, "rural area" means those counties and cities located in agricultural or mountainous areas of the state and located outside the Department of Finance's Primary Metropolitan Statistical Areas.

(c) Nothing in this section shall affect any reduction granted to a rural city or rural county by the board pursuant to Section 41787 prior to September 1, 1994.

As added by AB 688 (Sher), Stats. 1994, c. 1227, and amended by SB 515 (Chesbro), Stats. 1999, c. 600.

40190. "Segregated from other waste material" means any of the following:

(a) The placement of recyclable materials in separate containers.

(b) The binding of recyclable material separately from the other waste material.

(c) The physical separation of recyclable material from other waste material.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

40190.5. "Sharps waste" means waste generated by a household that includes a hypodermic needle, syringe, or lancet.

As added by SB 1362 (Figueroa), Stats. 2004, c. 157.

40191. (a) Except as provided in subdivision (b), "solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes.

(b) "Solid waste" does not include any of the following wastes:

(1) Hazardous waste, as defined in Section 40141.

(2) Radioactive waste regulated pursuant to the Radiation Control Law (Chapter 8 (commencing with Section

114960) of Part 9 of Division 104 of the Health and Safety Code).

(3) Medical waste regulated pursuant to the Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a solid waste landfill, as defined in Section 40195.1. Medical waste that has been treated and deemed to be solid waste shall be regulated pursuant to this division.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 1641 (Mojonnier), Stats. 1990, c. 1614, and AB 961 (Alpert), Stats. 1992, c. 54, and SB 1497 (Senate Health and Human Services Committee), Stats. 1996 c. 1023, and AB 3358 (Ackerman), Stats. 1996, c. 1041.

40192. (a) Except as provided in subdivisions (b) and (c), "solid waste disposal" or "disposal" means the final deposition of solid wastes onto land, into the atmosphere, or into the waters of the state.

(b) Except as provided in Part 2 (commencing with Section 40900), for purposes of Part 2 (commencing with Section 40900), "disposal" means the management of solid waste through landfill disposal or transformation at a permitted solid waste facility.

(c) For purposes of Chapters 16 (commencing with Section 42800) and 19 (commencing with Section 42950) of Part 3, Part 4 (commencing with Section 43000), Part 5 (commencing with Section 45000), Part 6 (commencing with Section 45030), and Chapter 2 (commencing with Section 47900) of Part 7, "solid waste disposal" or "disposal" means the final deposition of solid wastes onto land.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by AB 3358 (Ackerman), Stats. 1996, c. 1041.

40193. "Solid waste enterprise" means any individual, partnership, joint venture, unincorporated private organization, or private corporation, which is regularly engaged in the business of providing solid waste handling services.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40194. "Solid waste facility" includes a solid waste transfer or processing station, a composting facility, a gasification facility, a transformation facility, and a disposal facility.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 2770 (Matthews), Stats 2002, c. 740.

40195. "Solid waste handling" or "handling" means the collection, transportation, storage, transfer, or processing of solid wastes.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40195.1. (a) "Solid waste landfill" means a disposal facility that accepts solid waste for land disposal, but does not include a facility which receives only wastes generated by the facility owner or operator in the extraction, beneficiation, or processing of ores and minerals, or a cemetery which disposes onsite only the grass clippings, floral wastes, or soil resulting from activities on the grounds of that cemetery.

(b) For the purposes of Article 3 (commencing with Section 43500) and Article 4 (commencing with Section 43600) of Chapter 2 of Part 4, "solid waste landfill" does not include a facility which receives only nonhazardous wood waste derived from timber production or wood product manufacturing. For the purposes of the fee imposed by Section 48000, facilities which receive only nonhazardous wood waste derived from timber production or wood product manufacturing shall, notwithstanding Section 48000, pay a quarterly fee to the state board on all solid waste disposed at each disposal site, which does not exceed the amount of the fee due and payable to the state board by those facilities during the 1992 calendar year.

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

40196. "Source reduction" means any action which causes a net reduction in the generation of solid waste. "Source reduction" includes, but is not limited to, reducing the use of nonrecyclable materials, replacing disposable materials and products with reusable materials and products, reducing packaging, reducing the amount of yard wastes generated, establishing garbage rate structures with incentives to reduce the amount of wastes that generators produce, and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials. "Source reduction" does not include steps taken after the material becomes solid waste or actions which would impact air or water resources in lieu of land, including, but not limited to, transformation.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

40196.3. "State agency" means every state office, department, division, board, commission, or other agency of the state, including the California Community Colleges and the California State University. The Regents of the University of California are encouraged to implement this division.

As added by AB 75 (Strom-Martin), Stats. 1999, c. 764.

40196.5. "State board" means the State Board of Equalization.

As added by AB 1820 (Sher), Stats. 1990, c. 145.

40197. "State water board" means the State Water Resources Control Board.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40200. (a) "Transfer or processing station" or "station" includes those facilities utilized to receive solid wastes, temporarily store, separate, convert, or otherwise process the materials in the solid wastes, or to transfer the solid wastes directly from smaller to larger vehicles for transport, and those facilities utilized for transformation.

(b) "Transfer or processing station" or "station" does not include any of the following:

(1) A facility, whose principal function is to receive, store, separate, convert, or otherwise process in accordance with state minimum standards, manure.

(2) A facility, whose principal function is to receive, store, convert, or otherwise process wastes which have already been separated for reuse and are not intended for disposal.

(3) The operations premises of a duly licensed solid waste handling operator who receives, stores, transfers, or otherwise processes wastes as an activity incidental to the conduct of a refuse collection and disposal business in accordance with regulations adopted pursuant to Section 43309.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed and added by SB 1761 (Vuich), Stats. 1990, c. 586.

40201. "Transformation" means incineration, pyrolysis, distillation, or biological conversion other than composting. "Transformation" does not include composting, gasification, or biomass conversion.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by AB 688 (Sher), Stats. 1994, c. 1227, and AB 2770 (Matthews), Stats 2002, c. 740.

Chapter 3. Integrated Waste Management Board

(Chapter 3 as added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355)

ARTICLE 1. MEMBERSHIP, TERMS, AND REMOVAL

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

40400. There is in the California Environmental Protection Agency the California Integrated Waste Management Board. Any reference in any law or regulation to the State Solid Waste Management Board or the California Waste Management Board shall hereafter apply to the California Integrated Waste Management Board.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by the Gov. Reorg. Plan No. 1 of 1991.

40401. The board shall consist of the following members:

(a) One member appointed by the Governor who has private sector experience in the solid waste industry.

(b) One member appointed by the Governor who has served as an elected or appointed official of a nonprofit environmental protection organization whose principal purpose is to promote recycling and the protection of air and water quality.

(c) Two members appointed by the Governor who shall represent the public.

(d) One member appointed by the Senate Committee on Rules who shall represent the public.

(e) One member appointed by the Speaker of the Assembly who shall represent the public.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40402. Except the member appointed pursuant to subdivision (a) of Section 40401, no person shall be a member of the board if that person has received more than 10 percent of his or her income in the two years before the appointment to the board, directly or indirectly, from a person or entity subject to regulation by the board. For the purposes of this section, "income" does not include the salary or expenses received by a member of a city council or a county supervisor in carrying out their official duties.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

40403. (a) Except as provided under subdivision (b), no board member may derive any income directly or indirectly, except income from a vested retirement plan, from a person or from an entity subject to regulation by the board or from any organization which actively participates in matters before the board.

(b) No board member appointed pursuant to subdivision (a) of Section 40401 may derive any earned income directly or indirectly from a person or from an entity subject to regulation by the board or from any organization which actively participates in matters before the board. For purposes of this subdivision, "earned income" means wages, salaries, professional fees, directors fees, and other amounts received as compensation for personal services actually rendered, but does not include any amount received as a pension or annuity, dividends, interest, or any other return on a security including proceeds from the sale of a security.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 3992 (Sher), Stats. 1990, c. 1355.

40404. (a) The members of the board shall represent the state at large and not any particular area of the state and shall serve full time.

(b) Except as provided in Section 40406 for specified members of the board the appointments to the board which are made by the Governor shall be subject to confirmation by the Senate in accordance with Article 2 (commencing with Section 1770) of Chapter 4 of Division 4 of Title 1 of the Government Code.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1220 (Eastin), Stats. 1993, c. 656.

40405. The chairperson of the board shall be elected by a majority of the board members. The member appointed pursuant to subdivision (a) or (b) of Section 40401 shall not serve as chairperson.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40406. (a) Except as provided for the initial board in subdivision (b), each member of the board shall be appointed for a term of four years. A vacancy shall be filled by the appointing power for the unexpired portion of the term in which it occurs.

(b) The terms of the initial members of the board are as follows:

(1) The term of the initial member appointed pursuant to subdivision (a) of Section 4040l ends on January l, 1992.

(2) The term of the initial member appointed pursuant to subdivision (b) of Section 4040l ends on January 1, 1993.

(3) The term of one of the initial members appointed pursuant to subdivision (c) of Section 40401 ends on January 1, 1996.

(4) The term of one of the initial members appointed pursuant to subdivision (c) of Section 40401 ends on January 1, 1997.

(5) The term of the initial member appointed pursuant to subdivision (d) of Section 40401 ends on January 1, 1995.

(6) The term of the initial members appointed pursuant to subdivision (e) of Section 40401 ends on January 1, 1994.

(c) Notwithstanding subdivision (b) of Section 40404, the initial members appointed by the Governor pursuant to subdivision (c) of Section 40401 are not subject to confirmation by the Senate.

(d) The Governor shall appoint the initial members appointed pursuant to subdivisions (a) and (b) of Section 40401 and transmit the appointment on or before July 1, 1990. The Senate shall confirm or refuse to confirm the appointments made pursuant to subdivision (a) or (b), or both, on or before a date which is 90 days after receipt of the notice of appointment.

(e) If the Senate refuses or fails to confirm the appointments pursuant to subdivision (d), the Governor, on or before a date which is within 20 days after that refusal or failure, shall appoint another person and transmit the appointment and the Senate shall confirm or refuse to confirm that appointment on or before a date which is 90 days after receipt of the notice of appointment.

(f) If the Senate takes no action to confirm or refuse to confirm an appointment pursuant to subdivision (d) or (e) on or before January 1, 1991, that appointment is deemed confirmed.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 1220 (Eastin), Stats. 1993, c. 656.

40407. The board shall elect a vice chairperson from its members.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40408. The annual salary of the members of the board is provided for by Chapter 6 (commencing at Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code. Each member of the board shall also receive necessary traveling and other expenses incurred in the performance of his or her official duties out of appropriations made for the support of the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40409. REPEALED.

As added by AB 1756 (Assembly Budget Committee), Stats. 2003, c. 228, and repealed by AB 296 (Oropeza), Stats. 2003, c. 757.

40410. (a) Each member of the board shall have one vote. Except as provided in Section 40500, the affirmative vote of at least four members shall be required for the transaction of any business of the board.

(b) A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board, and four members of the board shall at all times constitute a quorum.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1515 (Sher), Stats. 1991, c. 717.

40411. (a) No member of the board shall participate in any board action or attempt to influence any decision or recommendation by any employee of or consultant to the board which involves himself or herself or which involves any entity with which the member is connected as a director, officer, consultant, or full- or part-time employee, or in which the member has a direct personal financial interest within the meaning of Section 87100 of the Government Code.

(b) No board member shall participate in any proceeding before any agency as a consultant or in any other capacity on behalf of any solid waste handler or any organization which actively participates in matters before the board.

(c) For a period of 12 months after leaving office, a former board member shall not act as agent or attorney for, or otherwise represent, any other person before the board by making any formal or informal appearance or by making any oral or written communication to the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40412. (a) For the purposes of this section, "ex parte communication" means any oral or written communication concerning matters, other than purely procedural matters, under the board's jurisdiction which are subject to a rollcall vote pursuant to Section 40510.

(b) No board member or any person, excepting a staff member of the board acting in his or her official capacity, who intends to influence the decision of a board member on a matter before the board, shall conduct an ex parte communication, except as follows:

(1) If an ex parte communication occurs, the board member shall notify the interested party that a full disclosure of the ex parte communication shall be entered in the board's record.

(2) Communications cease to be ex parte communications when either of the following occurs:

(A) The board member or the person who engaged in the communication with the board member fully discloses the communication and requests in writing that it be placed in the board's official record of the proceeding.

(B) When two or more board members receive substantially the same written communication, or are party to the same oral communication, from the same party on the same matter, and a single board member fully discloses the communication on behalf of the other board member or members who received the communication and requests in writing that it be placed in the board's official record of the proceeding.

(c) Notwithstanding Section 11425.10 of the Government Code, the ex parte communications provisions of the Administrative Procedure Act (Article 7 (commencing

with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) do not apply to proceedings of the board to which this section applies.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 1515 (Sher), Stats. 1991, c. 717, and SB 523 (Kopp), Stats 1995, c. 938.

40413. Any person who violates Section 40411 or 40412 is punishable by a fine of not more than fifty thousand dollars ($50,000) or by imprisonment for not more than one year in the county jail or in the state prison, or by both that fine and imprisonment.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

40414. Upon request of any person or on his or her own initiative, the Attorney General may file a complaint in the superior court for the county in which the board has its principal office alleging that a board member has knowingly violated Section 40403, 40411, or 40412 and the facts upon which the allegation is based and asking that the member be removed from office. Further proceedings shall be in accordance, as near as may be, with rules governing civil actions. If, after trial, the court finds that the board member has knowingly violated any of those sections, it shall pronounce judgment that the member be removed from office.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 2. STAFF

(Article 2 added by AB 939 (Sher), Stats. 1989, c. 1095)

40430. The board shall appoint an executive director who may be exempt from civil service laws. The board may delegate any power, duty, purpose, function, and jurisdiction to the executive director which the board determines to be appropriate. The board shall prescribe the duties and fix the salary of the executive director. The executive director shall perform and discharge the powers, duties, purposes, functions, and jurisdiction vested in the board and delegated to the executive director by the board. The executive director may redelegate any of the powers, duties, purposes, functions, and jurisdiction which are delegated to him or her by the board to his or her subordinates.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1515 (Sher), Stats. 1991, c. 717, and AB 440 (Sher), Stats. 1993, c. 1169.

40431. The board may appoint legal counsel, clerical and secretarial employees, technical personnel, and other staff, and acquire facilities, that it finds necessary for the performance of its functions. The staff of the board shall be subject to the relevant system and procedures of the state civil service. The State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code) applies to those personnel.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40432. The Attorney General shall represent the board and the state in litigation concerning affairs of the board, unless the Attorney General represents another state agency that is a party to the action. In that case, the Attorney General may represent the board with the written consent of the board and the other state agency, the board may contract for the services of private counsel, subject to Section 11040 of the Government Code, or the legal counsel of the board may represent the board. Sections 11041, 11042, and 11043 of the Government Code are not applicable to the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 1628 (Sher), Stats. 2002, c. 396.

40433. The Governor shall appoint one adviser for each member of the board upon the recommendation of the board member.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 1756 (Assembly Budget Committee), Stats. 2003, c. 228, and AB 296 (Oropeza), Stats. 2003, c. 757.

40434. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 1515 (Sher), Stats. 1991, c. 717.

ARTICLE 3. POWERS AND DUTIES

(Article 3 added by AB 939 (Sher), Stats. 1989, c. 1095)

40500. The board may appoint a committee of not less than three members of the board to carry on investigations, inquiries, or hearings which the board may undertake or hold. Every order made by a committee pursuant to an inquiry, investigation, or hearing, when approved or confirmed by the board and ordered filed in its office, shall be the order of the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

40501. The board may hold any hearings and conduct any investigations in any part of the state necessary to carry out its powers and duties. The board shall have the same powers as are conferred upon heads of departments of the state by Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40502. (a) The board shall adopt rules and regulations, as necessary, to carry out this division in conformity with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall make available to any person, upon request, copies of proposed regulations.

(b) (1) The board shall adopt regulations regarding city, county, and regional agency source reduction and recycling elements and nondisposal facility elements, required to be submitted to the board pursuant to Section 41791.5, which shall be deemed to be emergency regulations and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of public peace, health and safety, or general welfare. These emergency regulations shall not alter the deadlines for the submission of countywide and

regional agency integrated waste management plans specified in Section 41791.

(2) Prior to adopting the emergency regulations required pursuant to paragraph (1), the board shall do all of the following:

(A) Make available to any person, upon request, a copy of the proposed regulations at least 30 days prior to adoption.

(B) Hold at least two public hearings in different parts of the state in order to receive public comment on the regulations.

(C) Publish notice in the California Regulatory Notice Register of the proposed adoption of the emergency regulations, the identity of a contact person at the board from whom copies of the proposed regulations may be obtained, and the dates, times, and locations of the public hearings that are required pursuant to subparagraph (B).

(c) Any emergency regulations adopted by the board pursuant to paragraph (1) of subdivision (b) shall be filed with the office of Administrative Law at the earliest feasible date, but not later than December 31, 1993. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any emergency regulations adopted pursuant to paragraph (1) of subdivision (b) shall remain in effect for not more than three years from the date of adoption.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 440 (Sher), Stats. 1993, c. 1169.

40503. The board shall maintain its headquarters in the County of Sacramento, and may establish regional offices in any part of the state that the board deems necessary.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40504. The board shall hold meetings at least monthly at the times and places determined by the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40505. In order to carry out its powers and duties under this chapter, the board may enter into any contracts that the board determines to be necessary.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40506. The board may accept grants, gifts and donations for the purposes specified in this division.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40506.1. (a) Notwithstanding any other provision of law, the board may sell any of its loans made pursuant to this division on the secondary market and may pool its loans. All proceeds shall be deposited into the same accounts into which the loan repayments from each loan would have been deposited, and the use of the proceeds shall be limited to the authorized uses of these accounts.

(b) The board shall not sell its loans pursuant to this section if the loan sale results in more than a 25-percent discount of the principal amount, excluding any expenses or reserves required as a condition of the loan sale.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733, and amended by AB 3601 (Isenberg), Stats. 1994, c. 146.

40507. (a) On or before March 1 of each year, the board shall file an annual report with the Legislature highlighting significant programs or actions undertaken by the board to implement programs pursuant to this division during the prior calendar year. The report shall include, but is not limited to, the information described in subdivision (b).

(b) Commencing January 1, 1997, the board shall file annual progress reports with the Legislature covering the activities and actions undertaken by the board in the prior fiscal year. The board shall prepare, and may electronically file with the Legislature, the progress reports throughout the calendar year, as determined by the board, on the following programs:

(1) The local enforcement agency program.

(2) The research and development program.

(3) The public education program.

(4) The market development program.

(5) The used oil program.

(6) The planning and local assistance program.

(7) The site cleanup program.

(c) The progress report shall specifically include, but is not limited to, all of the following information:

(1) Pursuant to paragraph (1) of subdivision (b), the status of the certification and evaluation of local enforcement agencies pursuant to Chapter 2 (commencing with Section 43200) of Part 4.

(2) Pursuant to paragraph (2) of subdivision (b), all of the following information:

(A) The results of the research and development programs established pursuant to Chapter 13 (commencing with Section 42650) of Part 3.

(B) A report on information and activities associated with the establishment of the Plastics Recycling Information Clearinghouse, pursuant to Section 42520.

(C) A report on the progress in implementing the monitoring and control program for the subsurface migration of landfill gas established pursuant to Section 43030, including recommendations, as needed, to improve the program.

(D) A report on the comparative costs and benefits of the recycling or conversion processes for waste tires funded pursuant to Chapter 17 (commencing with Section 42860) of Part 3.

(3) Pursuant to paragraph (3) of subdivision (b), all of the following information:

(A) A review of actions taken by the board to educate and inform individuals and public and private sector entities who generate solid waste on the importance of source reduction, recycling, and composting of solid waste, and recommendations for administrative or legislative actions which will inform and educate these parties.

(B) A report on the effectiveness of the public information program required to be implemented pursuant to Chapter 12 (commencing with Section 42600) of Part 3, including recommendations on administrative and legislative changes to improve the program.

(C) A report on the status and effectiveness of school district source reduction and recycling programs implemented pursuant to Chapter 12.5 (commencing with Section 42620) of

Part 3, including recommendations on administrative and legislative changes to improve the program's effectiveness.

(D) A report on the effectiveness of the integrated waste management educational program and teacher training plan implemented pursuant to Part 4 (commencing with Section 71300) of Division 34, including recommendations on administrative and legislative changes which will improve the program.

(E) A summary of available and wanted materials, a profile of the participants, and the amount of waste diverted from disposal sites as a result of the California Materials Exchange Program established pursuant to subdivision (a) of Section 42600.

(4) Pursuant to paragraph (4) of subdivision (b), all of the following information:

(A) A review of market development strategies undertaken by the board pursuant to this division to ensure that markets exist for materials diverted from solid waste facilities, including recommendations for administrative and legislative actions which will promote expansion of those markets. The recommendations shall include, but not be limited to, all of the following:

(i) Recommendations for actions to develop more direct liaisons with private manufacturing industries in the state to promote increased utilization of recycled feedstock in manufacturing processes.

(ii) Recommendations for actions which can be taken to assist local governments in the inclusion of recycling activities in county overall economic development plans.

(iii) Recommendations for actions to utilize available financial resources for expansion of recycling industry capacity.

(iv) Recommendations to improve state, local, and private industry product and material procurement practices.

(B) Development and implementation of a program to assist local agencies in the identification of markets for materials that are diverted from disposal facilities through source reduction, recycling, and composting pursuant to Section 40913.

(C) A report on the Recycling Market Development Zone Loan Program conducted pursuant to Article 3 (commencing with Section 42010) of Chapter 1 of Part 3.

(D) A report on implementation of the Compost Market Program pursuant to Chapter 5 (commencing with Section 42230) of Part 3.

(E) A report on the progress in developing and implementing the comprehensive Market Development Plan, pursuant to Article 2 of Chapter 1 (commencing with Section 42005) of Part 3.

(F) The number of retreaded tires purchased by the Department of General Services during the prior fiscal year pursuant to Section 42414.

(G) The results of the study performed in consultation with the Department of General Services pursuant to Section 42415 to determine if tire retreads, procured by the Department of General Services, have met all quality and performance criteria of a new tire, including any recommendations to expand, revise, or curtail the program.

(H) The number of recycled lead-acid batteries purchased during the prior fiscal year by the Department of General Services pursuant to Section 42443.

(I) A list of established price preferences for recycled paper products for the prior fiscal year pursuant to paragraph (1) of subdivision (c) of Section 12162 of the Public Contract Code.

(J) A report on the implementation of the white office paper recovery program pursuant to Chapter 10 (commencing with Section 42560) of Part 3.

(5) Pursuant to paragraph (5) of subdivision (b), both of the following information:

(A) A report on the annual audit of the used oil recycling program established pursuant to Chapter 4 (commencing with Section 48600) of Part 7.

(B) A summary of industrial and lubricating oil sales and recycling rates, the results of programs funded pursuant to Chapter 4 (commencing with Section 48600) of Part 7, recommendations, if any, for statutory changes to the program, including changes in the amounts of the payment required by Section 48650 and the recycling incentive, and plans for present and future programs to be conducted over the next two years.

(6) Pursuant to paragraph (6) of subdivision (b), all of the following information:

(A) The development by the board of the model countywide or regional siting element and model countywide or regional agency integrated waste management plan pursuant to Section 40912, including its effectiveness in assisting local agencies.

(B) The adoption by the board of a program to provide assistance to cities, counties, or regional agencies in the development and implementation of source reduction programs pursuant to subdivision (c) of Section 40912.

(C) The development by the board of model programs and materials to assist rural counties and cities in preparing city and county source reduction and recycling elements pursuant to Section 41787.3.

(D) A report on the number of tires that are recycled or otherwise diverted from disposal in landfills or stockpiles.

(E) A report on the development and implementation of recommendations, with proposed implementing regulations, for providing technical assistance to counties and cities that meet criteria specified in Section 41782, so that those counties and cities will be able to meet the objectives of this division. The recommendations shall, among other things, address both of the following matters:

(i) Assistance in developing methods of raising revenue at the local level to fund rural integrated waste management programs.

(ii) Assistance in developing alternative methods of source reduction, recycling, and composting of solid waste suitable for rural local governments.

(F) A report on the status and implementation of the "Buy Recycled" program established pursuant to subdivision

(d) of Section 42600, including the waste collection and recycling programs established pursuant to Sections 12164.5 and 12165 of the Public Contract Code.

(7) Pursuant to paragraph (7) of subdivision (b), a description of sites cleaned up under the Solid Waste Disposal and Codisposal Site Cleanup Program established pursuant to Article 2.5 (commencing with Section 48020) of Chapter 2 of Part 7, a description of remaining sites where there is no responsible party or the responsible party is unable or unwilling to pay for cleanup, and recommendations for any needed legislative changes.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 1515 (Sher), Stats. 1991, c. 717, and SB 2061 (Leslie), Stats. 1992, c. 1035, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 54 (Sher), Stats. 1993, c. 663, and repealed and added by AB 626 (Sher), Stats. 1996, c. 1038, and amended by SB 600 (Senate Judiciary Committee), Stats. 2003, c. 62, and AB 1548 (Pavley), Stats. 2003, c. 665, and SB 1108 (Senate Judiciary Committee), Stats. 2005, c. 22.

40507.1. (a) As part of the annual report required to be submitted by the board to the Legislature pursuant to Section 40507 on or before March 1, 2003, the board shall include a report on new and emerging conversion technologies, including, but not limited to, noncombustion thermal technologies, including gasification and pyrolysis, chemical technologies such as acid hydrolysis or distillation, and biological technologies, other than composting, such as enzyme hydrolysis. The board shall only evaluate those conversion technologies that provide demonstrated environmental benefits over the transformation and disposal of solid waste.

(b) The report required by subdivision (a) shall contain all of the following:

(1) Specific and discrete definitions and descriptions of each conversion technology evaluated.

(2) A description and evaluation of the life-cycle environmental and public health impacts of each conversion technology in comparison to those environmental and public health impacts from the transformation and disposal of solid waste.

(3) A description and evaluation of the technical performance characteristics, feedstocks, emissions, and residues used by each conversion technology and identification of the cleanest, least polluting conversion technologies.

(4) A description and evaluation of the impacts on the recycling and composting markets as a result of each conversion technology.

(c) The board shall require that the report be subject to an external scientific peer review process conducted pursuant to Section 57004 of the Health and Safety Code.

(d) The board shall consult with the State Energy Resources Conservation and Development Commission and other state, federal, or international governmental agencies in preparing the report required by this section.

As added by AB 2770 (Matthews), Stats. 2002, c. 740.

40508. The board is designated as the state solid waste management agency for all purposes stated in the Federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.) and any other federal act heretofore or hereafter enacted affecting solid waste.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40509. The board may render technical assistance and make recommendations concerning potential solid waste disposal sites upon the request of the board of supervisors of any county. The board may request any state agency to assist the board in rendering technical assistance and making recommendations pursuant to this section.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40510. The board shall use a rollcall vote for all official board decisions, including, but not limited to, approval, denial, or amendment of integrated waste management plans, exemptions, time extensions, approval, denial, and amendment of any permits issued pursuant to a vote of the board and other appropriate decisions. The rollcall votes shall be included in the minutes of the board's meetings.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

40511. (a) Notwithstanding Section 7550.5 of the Government Code, on or before December 1, 2000, the board, in consultation with the Department of Conservation, shall prepare and submit to the Legislature a report that identifies any duplication or overlap between the following programs authorized under this division and Division 12.1 (commencing with Section 14500) administered and funded by the two agencies:

(1) Public information and education programs.

(2) Local government review and assistance programs.

(3) Recycled materials market development programs.

(b) The report shall include, but not be limited to, suggested legislation, budget actions, or administrative actions that could be taken to eliminate duplication or overlap between the two agencies and programs.

As added by SB 332 (Sher), Stats. 1999, c. 815.

ARTICLE 4. DISPOSAL COST FEES (REPEALED)

(Article 4, as added by AB 939 (Sher), Stats. 1989, c. 1095, repealed by AB 1515 (Sher), Stats. 1991, c. 717)

40600. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 1515 (Sher), Stats. 1991, c. 717.

Chapter 4. Local Government Technical Advisory Committee (REPEALED)

(Chapter 4 as added by SB 487 (Bergeson), Stats. 1991, c. 1106, and amended by SB 1894 (Leslie), Stats. 1994, c. 625. Repealed by its own terms as of January 1, 1999)

PART 2. INTEGRATED WASTE MANAGEMENT PLANS

(Part 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

Chapter 1. Plan Preparation

(Chapter 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. LEGISLATIVE FINDINGS

(Article 1 as added by AB 939 (Sher), Stats. 1989 c. 1095)

40900. (a) The Legislature finds that integrated waste management plans prepared and adopted by local agencies shall conform, to the maximum extent possible to the policies and goal established under Article 1 (commencing with Section 40050) of Chapter 1 of Part 1.

(b) The Legislature finds that decisions involving the establishment or expansion of solid waste facilities should be guided by an effective planning process, including meaningful public and private solid waste industry participation.

(c) The Legislature declares that it is the policy of the state and the intent of the Legislature that each state, regional, and local agency concerned with the solid waste facility planning and siting process involve the public through public hearings and informative meetings and that, at those hearings, and other public forums, the public be granted the opportunity to respond to clearly defined alternative objectives, policies and actions.

(d) The Legislature further declares that it is the policy of the state and the intent of the Legislature to foster and encourage private solid waste enterprises. In furtherance of that policy, it is the intent of the Legislature that each state, regional, and local agency concerned with the solid waste facility planning and siting process involve the private solid waste industry.

As added by AB 939 (Sher) , Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 3992 (Sher), Stats. 1990, c. 1355.

40900.1. The Legislature hereby further finds and declares all of the following:

(a) It is important to encourage state agencies to plan and implement programs that will reduce the amount of solid waste going to disposal facilities through source reduction, recycling, and composting.

(b) Local agencies, other than a host jurisdiction, and federal agencies should be encouraged to plan and implement programs that will reduce the amount of solid waste going to disposal facilities through source reduction, recycling, and composting.

(c) Each state agency shall, to the extent feasible and within existing budgetary constraints, develop and implement source reduction, recycling, and composting programs that will reduce the amount of solid waste going to disposal facilities. Those programs shall be consistent with Executive Order W-7-91, which ordered state agencies to establish recycling programs, reduce paper waste, purchase recycled products, and implement measures that minimize the generation of waste.

(d) Local, state, and federal agencies generating solid waste that is sent to a host jurisdiction for disposal should be encouraged to provide the host jurisdiction with information on the amount of solid waste and regarding any solid waste source reduction, recycling, or composting programs that have been implemented by the agency, to assist the host jurisdiction in developing and implementing the planning requirements of this division.

As added by SB 1066 (Sher), Stats. 1997, c., 672.

40901. (a) The following shall apply with regard to the preparation, revision, and implementation of source reduction and recycling elements pursuant to this part:

(1) To determine solid waste amounts in the base year and in the first locally adopted source reduction and recycling element, cities, counties, and regional agencies shall quantify all solid waste generated. For the purposes of this requirement, solid waste generated is equal to existing disposal plus existing diversion, unless modification to these amounts is required pursuant to Section 41801.5.

(2) To determine solid waste amounts in subsequent elements, and for the purposes of determining whether the diversion requirements of Section 41780 have been met, cities, counties, and regional agencies shall report the amounts of solid waste disposed of at permitted disposal facilities. For these purposes, cities, counties, and regional agencies are not required to quantify the amounts of solid waste which have been diverted from disposal through recycling or composting, except for diversion which results from recycling and composting programs which are operated or funded by cities, counties, or regional agencies.

(3) For revisions of the documents specified in Sections 41032, 41033, 41050, 41070, 41072, 41200, 41260, 41350, 41352, 41370, 41372, 41400, 41402, and 41460, cities, counties, and regional agencies shall follow the procedures identified in paragraph (2).

(b) Cities and counties which choose to form a regional agency shall not be required to revise source reduction and recycling elements which were complete at the time of the formation of the regional agency. Any revisions which are needed to reflect program and other changes caused by the formation of a regional agency shall be reflected in the revised source reduction and recycling element submitted by the regional agency at the time of the five-year revision.

As added by AB 2494 (Sher), Stats. 1992, c. 1292.

ARTICLE 1.5. BOARD ASSISTANCE IN LOCAL PLANNING

(Article 1.5. as added by AB 2494 (Sher), Stats. 1992, c. 1292)

40910. The board shall establish, on or before January 1, 1994, an office of local government assistance. The office shall, to the maximum extent feasible, utilizing existing resources, assist local agencies in the preparation, modification, and implementation of integrated waste management plans.

As added by AB 2494 (Sher), Stats. 1992, c. 1292

40911. In adopting or amending regulations pursuant to this part, the board shall take into account all of the following:

(a) The shared responsibility that exists between the board and local agencies for activities such as the development of markets for materials diverted from disposal facilities, public education and information, and source reduction.

(b) The importance of promoting regional cooperation among local agencies and cooperation among local agencies and the board in achieving the objectives of this division, to the extent that this cooperation will result in more cost-effective and efficient implementation of this division.

(c) The need for local agencies to receive assistance from the board in preparing and implementing integrated waste management plans and the elements of those plans.

As added by AB 2494 (Sher), Stats. 1992, c. 1292.

40912. (a) The board shall develop a model countywide or regional siting element and a model countywide or regional agency integrated waste management plan that will establish prototypes of the content and format that counties or regional agencies may use in meeting the requirements of this part.

(b) On or before July 1, 2001, the board shall develop a model revised source reduction and recycling element that will establish prototypes of the content and format of that element that cities, counties, regional agencies, or a city and county may use in meeting the requirements of this part.

(c) The board shall adopt a program to provide assistance to cities, counties, regional agencies, or a city and county in the development and implementation of source reduction programs. The program shall include, but not be limited to, the following:

(1) The development of model source reduction programs and strategies that may be used at the local and regional level.

(2) Ongoing analysis of public and private sector source reduction programs that may be provided to cities, counties, regional agencies, and a city and county in order to assist them in complying with Article 3 (commencing with Section 41050) of Chapter 2 and Article 3 (commencing with Section 41350) of Chapter 3.

(3) Assistance to cities, counties, regional agencies, and a city and county in the development of source reduction programs for commercial and industrial generators of solid waste that include the development of source reduction strategies designed for specific types of commercial and industrial generators.

(d) The board shall, to the maximum extent feasible, utilizing existing resources, provide local jurisdictions and private businesses with information, tools, and mathematical models to assist with meeting or exceeding the 50-percent diversion requirement pursuant to Section 41780. The board shall act as a solid waste information clearinghouse.

(e) (1) On or before April 1, 2003, and using existing resources, the board shall provide local jurisdictions and private businesses with information and models to assist with consideration of environmental justice concerns when complying with Section 41701.

(2) For the purposes of this subdivision, "environmental justice" has the meaning defined in subdivision (e) of Section 65040.12 of the Government Code.

As added by AB 2494 (Sher), Stats. 1992, c. 1292, and amended by SB 2202 (Senate Environmental Quality Committee), Stats. 2000, c. 740, and SB 1542 (Escutia), Stats 2002, c. 1003.

40913. (a) On or before January 1, 1994, the board shall develop and implement a program to assist local agencies in the identification of markets for materials that are diverted from disposal facilities through source reduction, recycling, and composting.

(b) The program shall provide information to local agencies on individual purchasers of diverted materials and on potential and actual local, regional, and statewide marketing opportunities for materials that are diverted from disposal facilities. The program also shall provide local agencies with information on programs implemented by the board and by other agencies of state government to assist in the development, maintenance, and enhancement of markets for materials that are diverted from disposal facilities.

As added by AB 2494 (Sher), Stats. 1992, c. 1292.

40914. REPEALED.

As added by AB 2494 (Sher), Stats. 1992, c. 1292, and repealed by AB 688 (Sher), Stats. 1994, c. 1227.

ARTICLE 2. LOCAL TASK FORCES

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

40950. (a) On or before March 1, 1990, and every five years thereafter, each county, which is not a city and county, shall convene a task force to assist in coordinating the development of city source reduction and recycling elements prepared pursuant to Chapter 2 (commencing with Section 41000), the county source reduction and recycling element prepared pursuant to Chapter 3 (commencing with Section 41300), and to assist in the preparation of the countywide siting element prepared pursuant to Chapter 4 (commencing with Section 41700).

(b) The membership of the task force shall be determined by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, except in those counties which have only two cities, in which case the membership of the task force is subject to approval of the city which contains the majority of the population of the incorporated area of the county. The task force may include representatives of the solid waste industry, environmental organizations, the general public, special districts, and affected governmental agencies.

(c) To ensure a coordinated and cost-effective regional recycling system, the task force shall do all of the following:

(1) Identify solid waste management issues of countywide or regional concern.

(2) Determine the need for solid waste collection and transfer systems, processing facilities, and marketing strategies

that can serve more than one local jurisdiction within the region.

(3) Facilitate the development of multijurisdictional arrangements for the marketing of recyclable materials.

(4) To the extent possible, facilitate resolution of conflicts and inconsistencies between or among city and county source reduction and recycling elements.

(d) The task force shall develop goals, policies, and procedures which are consistent with guidelines and regulations adopted by the board, to guide the development of the siting element of the countywide integrated waste management plan.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 2494 (Sher), Stats. 1992, c. 1292.

ARTICLE 3. REGIONAL AGENCIES

(Article 3 as added by AB 2494 (Sher), Stats. 1992, c. 1292)

40970. It is the intent of the Legislature in enacting this article to authorize cities and counties to form regional agencies to implement this part in order to reduce the cost of reporting and tracking of disposal and diversion programs by individual cities and counties and to increase the diversion of solid waste from disposal facilities. It is further the intent of the Legislature that this part be binding upon, and enforceable against, the individual cities and counties which are member agencies of the regional agency. It is not the intent of the Legislature in enacting this article to diminish the responsibility of individual cities and counties to implement source reduction, recycling, and composting programs as required by this part.

As added by AB 2494 (Sher), Stats. 1992, c. 1292.

40971. A city or county may form a regional agency with another city or county for the purpose of complying with this part. Formation of the regional agency is voluntary and, except as provided under Section 40975, shall be subject to the terms and conditions set out in the agreement pursuant to which the regional agency is formed.

As added by AB 2494 (Sher), Stats. 1992, c. 1292.

40972. This part is binding upon, and enforceable against, the individual cities and counties which are member agencies of the regional agency. However, an agreement adopted pursuant to this article may apportion responsibilities for the implementation of this part among the cities and counties which are member agencies of the regional agency. Nothing in this section is intended to prohibit a city or county which is a member agency of a regional agency from preparing and submitting to the board for review and approval a source reduction and recycling element or household hazardous waste element.

As added by AB 2494 (Sher), Stats. 1992, c. 1292.

40973. (a) The regional agency, and not the cities or counties that are member agencies of the regional agency, may be responsible for compliance with Article 1 (commencing with Section 41780) of Chapter 6 if specified in the agreement pursuant to which the regional agency is formed.

(b) Notwithstanding Section 41782, except as provided in subdivision (c), if a regional agency has been specified in the regional agency formation agreement as the responsible party for compliance with Article 1 (commencing with Section 41780) of Chapter 6 of Part 1, neither the regional agency nor any member jurisdiction of the regional agency shall be eligible for a reduction of the diversion requirements of Section 41780.

(c) The regional agency may be eligible for a reduction of diversion and planning requirements if all member jurisdictions of a regional agency are rural cities or rural counties, as defined, respectively, in Sections 40183 and 40184.

(d) The regional agency may be eligible for a reduction of planning requirements if all member jurisdictions of a regional agency are cities located in both a rural area and a rural county, as defined in Section 40184, and an unincorporated portion of a county.

(e) (1) If, pursuant to subdivision (a), a regional agency is specified in the regional agency formation agreement as the responsible party for compliance with Article 1 (commencing with Section 41780) of Chapter 6, the regional agency shall not be comprised of more than two counties and all of the cities within those two counties, except as otherwise authorized by the board.

(2) The board may authorize the formation of a regional agency that exceeds two counties and all of the cities within those two counties, for purposes of compliance with Article 1 (commencing with Section 41780) of Chapter 6, if the board finds that the formation of the regional agency will not adversely affect compliance with this part.

As added by AB 2494 (Sher), Stats. 1992, c. 1292, and amended by AB 440 (Sher), Stats. 1993, c. 1169, and AB 688 (Sher), Stats 1994,c. 1227, and SB 515 (Chesbro), Stats. 1999, c. 600.

40974. (a) Notwithstanding Section 40972, each city or county that is a member agency of a regional agency is liable for any civil penalties that may be imposed by the board pursuant to Section 41813 or 41850. However, an agreement that establishes a regional agency may apportion any civil penalties between or among the cities or counties that are member agencies of the regional agency. The total amount of civil penalties that may be imposed against the regional agency is equivalent to that amount that is the sum of the penalties that may be imposed against each city or county that is a member agency of the regional agency.

(b) (1) An agreement may provide that a city or county is subject to the portion of a penalty imposed upon a regional agency pursuant to Section 41850 that is in proportion to the city's or county's responsibility for failure to implement a source reduction and recycling element or household hazardous waste element, as determined by the regional agency.

(2) If an agreement provides for apportioning a penalty pursuant to paragraph (1), the regional agency shall provide

the city or county with a written notice regarding the city's or county's responsibility, including the basis for determining the city's or county's proportional responsibility, and an opportunity for a hearing before the regional agency's governing body, before assessing the city or county a proportion of the penalty imposed by the board.

(3) This subdivision does not affect the authority of the board to impose a penalty pursuant to other provisions of this division.

As added by AB 2494 (Sher), Stats. 1992, c. 1292, and amended by AB 1482 (Richman), Stats. 2002, c. 359.

40975. (a) Any agreement forming a regional agency shall be submitted to the board for review and approval at the time the regional agency integrated waste management plan is submitted to the board for review and approval.

(b) Any agreement forming a regional agency shall, at minimum, contain all of the following provisions:

(1) A listing of the cities and counties which are member agencies of the regional agency, and a description of the regional agency, including the name and address of the regional agency.

(2) Consistent with Section 40974, a description of the method by which any civil penalties imposed by the board pursuant to Sections 41813 and 41850 will be allocated among the cities or counties which are member agencies of the regional agency.

(3) A contingency plan which shows how each city or county which is a member agency of the regional agency will comply with the requirements of this part, including, but not limited to, Article 1 (commencing with Section 41780) of Chapter 6, in the event that the regional agency is abolished.

(4) A description of the duties and responsibilities of each city or county which is a member agency of the regional agency which demonstrates that the city or county will comply with Article 1 (commencing with Section 41780) of Chapter 6.

(5) A description of source reduction, recycling, and composting programs to be implemented by the regional agency. Those programs shall be at least as comprehensive and effective in meeting the requirements of Article 1 (commencing with Section 41780) of Chapter 6 as those which each city or county which is a member agency of the regional agency has proposed in its source reduction and recycling element.

(6) Any other additional element as determined to be needed by the cities or counties which are member agencies of the regional agency.

As added by AB 2494 (Sher), Stats. 1992, c. 1292.

40976. A city, county, or regional agency may enter into a memorandum of understanding with another city, county, regional agency, agency formed under a joint exercise of powers agreement, or district established to manage solid waste for the purpose of preparing and implementing source reduction and recycling elements, household hazardous waste elements, or a countywide or regional agency integrated waste management plan.

As added by AB 440 (Sher), Stats. 1993, c. 1169.

40977. A regional agency may authorize one district, as defined in subdivision (a) of Section 41821.2, to be included as a member of the regional agency.

As added by SB 2202 (Senate Environmental Quality Committee), Stats. 2000, c. 740.

Chapter 2. City Source Reduction and Recycling Elements

(Chapter 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. REQUIREMENTS

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41000. (a) On or before July 1, 1992, each city shall prepare, adopt, and, excepting a city and county, submit to the county in which the city is located a source reduction and recycling element which includes all of the components specified in this chapter and which complies with the requirements specified in Chapter 6 (commencing with Section 41780).

(b) Notwithstanding subdivision (a), if a city determines that it is unable to comply with the deadline established under subdivision (a) and unable to comply with Division 13 (commencing with Section 21000), to the extent that division requires the preparation and certification of an environmental impact report for the element, the city shall do all of the following:

(1) On or before July 1, 1992, the city shall adopt a resolution stating the reasons it is unable to comply with the deadline established under subdivision (a) and to complete and certify the environmental impact report for the element. The resolution shall also state a date when the city will comply with the deadline established under subdivision (a) and complete and certify the environmental impact report for the element.

(2) On or before July 1, 1992, the city shall submit its draft source reduction and recycling element and a copy of the resolution adopted pursuant to paragraph (1) to the county within which the city is located.

(3) Upon completion and certification of the environmental impact report for the source reduction and recycling element, or December 1, 1992, whichever is sooner, the city shall submit its final source reduction and recycling element to the county.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 2092 (Sher), Stats. 1992, c. 105.

41001. The city source reduction and recycling element shall include a program for management of solid waste generated within the city, consistent with the waste management hierarchy provided in Section 40051.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41002. The city source reduction and recycling element shall place primary emphasis on implementation of all feasible source reduction, recycling, and composting programs while identifying the amount of landfill and transformation capacity

that will be needed for solid waste which cannot be reduced at the source, recycled, or composted.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41003. Each city source reduction and recycling element shall include, but is not limited to, all of the following components for solid waste generated in the jurisdiction of the plan:

(a) A waste characterization component.
(b) A source reduction component.
(c) A recycling component.
(d) A composting component.
(e) A solid waste facility capacity component.
(f) An education and public information component.
(g) A funding component.
(h) A special waste component.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2707 (LaFollette), Stats. 1990, c. 1406.

ARTICLE 2. WASTE CHARACTERIZATION COMPONENT

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41030. (a) For the initial source reduction and recycling element of a countywide integrated waste management plan which is required to be submitted to the board pursuant to Section 41791, the city waste characterization component shall identify the constituent materials which comprise the solid waste generated within the city. The information shall be representative of the solid waste generated within, and disposed of by, the city and shall reflect seasonal variations. The constituent materials shall be identified by volume, percentage in weight or its volumetric equivalent, material type, and source of generation, which includes residential, commercial, industrial, governmental, or other sources. Future revisions of waste characterization studies shall identify the constituent materials which comprise the solid waste disposed of at permitted disposal facilities.

(b) In adopting or revising regulations implementing subdivision (a), the board shall do all of the following:

(1) Permit the use of studies or data developed on a county or regional basis and adapted to the conditions which exist in a city preparing its waste characterization component.

(2) Permit the use of preexisting data or studies, including those data and studies prepared by local governments with similar waste characteristics.

(3) Require only that amount of seasonal sampling, and waste characterization only of those categories of waste, necessary to achieve the diversion requirements of paragraph (1) of subdivision (a) of Section 41780.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 2494 (Sher), Stats. 1992, c. 1292.

41031. Any waste characterization component prepared by a city pursuant to Section 41030, and any other information submitted by a city to the board on the quantities of solid waste generated, diverted, and disposed of, shall include data which is as accurate as possible, on the quantities of solid waste generated, diverted, and disposed of, to enable the board, to the maximum extent possible, to accurately measure the diversion requirements established under paragraph (1) of subdivision (a) of Section 41780.

As added by AB 1820 (Sher), Stats. 1990, c. 145.

41032. For the first revision, and any subsequent revision, of a source reduction and recycling element of a countywide integrated waste management plan which is required to be submitted to the board pursuant to Section 41770, the city waste characterization component shall identify the constituent materials which comprise the solid waste disposed of by the city. The information shall be statistically representative of the solid waste disposed of by the city and shall reflect seasonal variations. The constituent materials shall be identified, to the extent practicable, by volume, percentage in weight, or its volumetric equivalent, material type, and source of generation, which includes residential, commercial, industrial, governmental, or other sources.

As added by AB 1820 (Sher), Stats. 1990, c. 145, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 2494 (Sher), Stats. 1992, c. 1292.

41033. Any waste characterization component prepared by a city pursuant to Section 41032, and any other information submitted by a city to the board on the quantities of solid waste disposed of by the city, shall include data which is as accurate as possible, on the quantities of solid waste generated, diverted, and disposed of, to enable the board, to the maximum extent possible, to accurately measure the diversion requirements of paragraph (2) of subdivision (a) of Section 41780.

As added by AB 1820 (Sher), Stats. 1990, c. 145, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 2494, (Sher), Stats. 1992, c. 1292.

ARTICLE 3. SOURCE REDUCTION COMPONENT

(Article 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41050. The city source reduction component shall include a program and implementation schedule which shows the methods by which the city will, in combination with the recycling and composting components, reduce a sufficient amount of solid waste disposed of by the city to comply with the diversion requirements of Section 41780.

As added by AB 939, (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292.

41051. The city source reduction component shall describe the types of materials which will be reduced under the programs in Section 41050.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41052. The city source reduction component shall describe the methods the city will use to determine the categories of solid wastes to be diverted from disposal at a landfill disposal through source reduction.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494, (Sher), Stats. 1992, c. 1292.

41053. The city source reduction component shall describe new facilities, and of expansion of existing facilities, which will be needed to implement the source reduction component.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

41054. The city source reduction component shall evaluate and identify rate structures and fees to reduce the amount of wastes that generators produce, and other source reduction strategies, including, but not limited to, programs and economic incentives to reduce the use of nonrecyclable materials, replace disposable materials and products with reusable materials and products, reduce packaging, and increase the efficiency of the use of paper, cardboard, glass, metal, and other materials.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

ARTICLE 4. RECYCLING COMPONENT

(Article 4 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41070. The city recycling component shall include a program and implementation schedule which shows the methods by which the city will, in combination with the source reduction and composting components, reduce a sufficient amount of solid waste disposed of by the city to comply with the diversion requirements of Section 41780.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292.

41071. The city recycling component shall describe the types of materials which will be recycled under the programs in Section 41070.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41072. The city recycling component shall describe the methods the city will use to determine the categories of solid wastes to be diverted from disposal at a disposal facility through recycling.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292.

41073. The city recycling component shall describe new facilities, and of expansion of existing facilities, which will be needed to implement the recycling component.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41074. The city recycling component shall describe methods which will be used to increase the markets for recycled materials, including, but not limited to, an evaluation of the feasibility of procurement preferences for the purchase of recycled products. Each city may grant a price preference to encourage the purchase of recycled products. The amount of the price preference shall be determined by the city.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41075. The city recycling component shall evaluate industrial, commercial, residential, governmental, and other curbside, mobile, dropoff, and buy-back recycling programs, manual and automated material recovery facilities, zoning and building code changes which encourage recycling of materials, and rate structures which encourage recycling of materials.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 5. COMPOSTING COMPONENT

(Article 5 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41200. The city composting component shall include a program and implementation schedule which shows the methods by which the city will, in combination with the source reduction and recycling components, reduce a sufficient amount of solid waste disposed of by the city to comply with the diversion requirements of Section 41780.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292.

41201. The city composting component shall describe the types of materials which will be composted under the programs in Section 41200.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41202. The city composting component shall describe the methods the city will use to determine the categories of solid wastes to be diverted from disposal at a disposal facility through composting.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292.

41203. The city composting component shall describe any new facilities, and expansion of existing facilities, which will be needed to implement the composting component.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41204. The city composting component shall describe the methods which will be used to increase the markets for composted materials, including, but not limited to, an evaluation of the feasibility of procurement preferences for the purchase of composted products. Each city may grant a price preference to encourage the purchase of composted products. The amount of the price preference shall be determined by the city.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

ARTICLE 6. EDUCATION AND PUBLIC INFORMATION COMPONENT

(Article 6 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41220. The city education and public information component shall describe to the board how the city will increase public awareness of, and participation in, recycling, source reduction, and composting programs.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 7. FUNDING COMPONENT

(Article 7 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41230. The city funding component shall identify and specifically describe projected costs, revenues, and revenue

sources the city will use to implement all components of the city source reduction and recycling element.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

ARTICLE 8. SPECIAL WASTE COMPONENT

(Article 8 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41250. The city special waste component shall describe existing waste handling and disposal practices for special wastes, including, but not limited to, asbestos and sewage sludge which is not hazardous waste. The component shall identify current and proposed programs to ensure the proper handling, reuse, and long-term disposal of special wastes. The component shall address the disposition of sewage sludge generated in the jurisdiction of the city.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

ARTICLE 9. FACILITY CAPACITY COMPONENT

(Article 9 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41260. The city solid waste facility capacity component shall include, but is not limited to, a projection of the amount of disposal capacity which will be needed to accommodate the solid waste generated within the city preparing the element for a 15-year period, reduced by all of the following:

(a) Implementation of source reduction, recycling, and composting programs required by this part or through implementation of other waste diversion programs.

(b) Any permitted processing, destruction, disposing, or transformation capacity which will be available during the 15-year planning period.

(c) All disposal or transformation capacity which has been secured through an agreement with another city or county or through an agreement with a solid waste enterprise.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

Chapter 3. County Source Reduction and Recycling Elements

(Chapter 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. REQUIREMENTS

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41300. (a) On or before July 1, 1992, each county shall prepare and adopt for the unincorporated area a county source reduction and recycling element which includes all of the components specified in this chapter and which complies with the requirements specified in Chapter 6 (commencing with Section 41780).

(b) Notwithstanding subdivision (a), if a county determines that it is unable to comply with the deadline established under subdivision (a) and unable to comply with Division 13 (commencing with Section 21000), to the extent that division requires the preparation and certification of an environmental impact report for the element, the county shall do all of the following:

(1) On or before July 1, 1992, the county shall adopt a resolution stating the reasons it is unable to comply with the deadline established under subdivision (a) and to complete and certify the environmental impact report for the element. The resolution shall also state a date when the county will comply with the deadline established under subdivision (a) and complete and certify the environmental impact report for the element.

(2) On or before July 1, 1992, the county shall submit a copy of the resolution adopted pursuant to paragraph (1) to the board.

(3) Upon completion and certification of the environmental impact report for the source reduction and recycling element, or December 1, 1992, whichever is sooner, the county shall adopt its source reduction and recycling element.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 2092 (Sher), Stats. 1992, c. 105.

41301. The county source reduction and recycling element shall set forth a program for management of solid waste generated with the unincorporated area of the county, consistent with the waste management hierarchy provided in Section 40051.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41302. The county source reduction and recycling element shall place primary emphasis on implementation of all feasible source reduction, recycling, and composting programs while identifying the amount of landfill and transformation capacity that will be needed for solid waste which cannot be reduced at the source, recycled, or composted.

As added by AB 939, (Sher), Stats. 1989, c. 1095.

41303. Each county source reduction and recycling element shall include, but is not limited to, all of the following components for solid waste generated in the jurisdiction of the plan:

(a) A waste characterization component.
(b) A source reduction component.
(c) A recycling component.
(d) A composting component.
(e) A solid waste facility capacity component.
(f) An education and public information component.
(g) A funding component.
(h) A special waste component.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2707 (LaFollette), Stats. 1990, c. 1406.

ARTICLE 2. WASTE CHARACTERIZATION COMPONENT

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41330. (a) For the initial source reduction and recycling element of a countywide integrated waste management plan which is required to be submitted to the board pursuant to Section 41791, the county waste characterization component shall identify the constituent

materials which comprise the solid waste generated within the unincorporated area of the county. The information shall be representative of the solid waste generated and disposed of within that area and shall reflect seasonal variations. The constituent materials shall be identified by volume, percentage in weight or its volumetric equivalent, material type, and source of generation which includes residential, commercial, industrial, governmental, or other sources. Future revisions of waste characterization studies shall identify the constituent materials which comprise the solid waste disposed of at permitted disposal facilities.

(b) In adopting or revising regulations implementing subdivision (a), the board shall do all of the following:

(1) Permit the use of studies or data developed on a regional basis and adapted to the conditions which exist in a county preparing its waste characterization component.

(2) Permit the use of preexisting data or studies, including those data and studies prepared by local governments with similar waste characteristics.

(3) Require only that amount of seasonal sampling, and waste characterization only of those categories of waste, necessary to achieve the diversion requirements of paragraph (1) of subdivision (a) of Section 41780.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 2494 (Sher), Stats. 1992, c. 1292.

41331. Any waste characterization component prepared by a county pursuant to Section 41330, and any other information submitted by a county to the board on the quantities of solid waste generated, diverted, and disposed of, shall include data which is as accurate as possible, on the quantities of solid waste generated, diverted, and disposed of, to enable the board, to the maximum extent possible, to accurately measure the diversion requirements established under paragraph (1) of subdivision (a) of Section 41780.

As added by AB 1820 (Sher), Stats. 1990, c. 145.

41332. For the first revision, and any subsequent revision, of a source reduction and recycling element of a countywide integrated waste management plan which is required to be submitted to the board pursuant to Section 41770, the county waste characterization component shall identify the constituent materials which comprise the solid waste disposed of within the unincorporated area of the county. The information shall be statistically representative of the solid waste disposed of within that area and shall reflect seasonal variations. The constituent materials shall, to the extent practicable, be identified by volume, percentage in weight, or its volumetric equivalent, material type, and source of generation, which includes residential, commercial, industrial, governmental, or other sources.

As added by AB 1820 (Sher), Stats. 1990, c. 145, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 2494 (Sher), Stats. 1992, c. 1292.

41333. Any waste characterization component prepared by a county pursuant to Section 41332, and any other information submitted by a county to the board on the quantities of solid waste disposed of, shall include data which is as accurate as practicable, on the quantities of solid waste generated, diverted, and disposed of, to enable the board, to the maximum extent possible, to accurately measure the diversion requirements of paragraph (2) of subdivision (a) of Section 41780.

As added by AB 1820 (Sher), Stats. 1990, c. 145, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 2494 (Sher), Stats. 1992, c. 1292.

41341. REPEALED.

As added by AB 1196 (Tanner), Stats. 1989, c. 908, and repealed by SB 937 (Bergeson), Stats. 1990, c. 35, and AB 2596 (Tanner), Stats. 1990, c. 231.

ARTICLE 3. SOURCE REDUCTION COMPONENT

(Article 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41350. The county source reduction component shall include a program and implementation schedule which shows the methods by which the county will, in combination with the recycling and composting components, reduce a sufficient amount of solid waste disposed of within the unincorporated area of the county to comply with the diversion requirements of Section 41780.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 2494 (Sher), Stats. 1992, c. 1292.

41351. The county source reduction component shall describe the types of materials which will be reduced under the programs in Section 41350.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41352. The county source reduction component shall describe the methods that the county will use to determine the categories of solid wastes to be diverted from disposal at a disposal facility through source reduction.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 2494 (Sher), Stats. 1992, c. 1292.

41353. The county source reduction component shall describe new facilities, and of expansion of existing facilities, which will be needed to implement the source reduction component.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

41354. The county source reduction component shall evaluate and identify rate structures and fees to reduce the amount of wastes that generators produce, and other source reduction strategies, including, but not limited to, programs and economic incentives to reduce the use of nonrecyclable materials, replace disposable materials and products with reusable materials and products, reduce packaging, and

increase the efficiency of the use of paper, cardboard, glass, metal, and other materials.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

41360. REPEALED.

As added by AB 1196 (Tanner), Stats. 1989, c. 908, and repealed by SB 937 (Vuich), Stats. 1990, c. 35.

ARTICLE 4. RECYCLING COMPONENT

(Article 4 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41370. The county recycling component shall include a program and implementation schedule which shows the methods by which the county will, in combination with the source reduction and composting components, reduce a sufficient amount of solid waste disposed of within the unincorporated area of the county to comply with the diversion requirements of Section 41780.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 2494 (Sher), Stats. 1992, c. 1292.

41371. The county recycling component shall describe the types of materials which will be recycled under the programs in Section 41370.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41372. The county recycling component shall describe the methods that the county will use to determine the categories of solid wastes to be diverted from disposal at a disposal facility through recycling.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 2494 (Sher), Stats. 1992, c. 1292.

41373. The county recycling component shall describe new facilities, and expansion of existing facilities, which will be needed to implement the recycling component.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41374. The county recycling component shall describe methods which will be used to increase markets for recycled materials, including, but not limited to, an evaluation of the feasibility of procurement preferences for the purchase of recycled products. Each county may grant a price preference to encourage the purchase of recycled products. The amount of the price preference shall be determined by the county.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41375. The county recycling component shall evaluate industrial, commercial, residential, governmental, and other curbside, mobile, dropoff, and buy-back recycling programs, manual and automated material recovery facilities, zoning, and building code changes which encourage recycling of materials, and rate structures which encourage recycling of materials.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 5. COMPOSTING COMPONENT

(Article 5 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41400. The county composting component shall include a program and implementation schedule which shows the methods by which the county will, in combination with the source reduction and recycling components, reduce a sufficient amount of solid waste disposed of within the unincorporated area of the county to comply with the diversion requirements of Section 41780.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 2494 (Sher), Stats. 1992, c. 1292.

41401. The county composting component shall describe the types of materials which will be composted under the programs in Section 41400.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41402. The county composting component shall describe the methods that the county will use to determine the categories of solid wastes to be diverted from disposal at a disposal facility through composting.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 2494 (Sher), Stats. 1992, c. 1292.

41403. The county composting component shall describe new facilities, and expansion of existing facilities, which will be needed to implement the composting component.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41404. The county composting component shall describe methods which will be used to increase the markets for composted materials, including, but not limited to, an evaluation of the feasibility of procurement preferences for the purchase of recycled products. Each county may grant a price preference to encourage the purchase of composted products. The amount of the price preference shall be determined by the county.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 6. EDUCATION AND PUBLIC INFORMATION COMPONENT

(Article 6 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41420. The county education and public information component shall describe to the board how the county will educate and inform its citizens about the source reduction, recycling, and composting programs.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355.

ARTICLE 7. FUNDING COMPONENT

(Article 7 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41430. The county funding component shall identify and specifically describe projected costs, revenues, and revenue sources the county will use to implement all

components of the county source reduction and recycling element.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

ARTICLE 8. SPECIAL WASTE COMPONENT

(Article 8 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41450. The county special waste component shall describe existing waste handling and disposal practices for special wastes, including, but not limited to, asbestos and sewage sludge which is not hazardous waste. The component shall identify current and proposed programs to ensure the proper handling, reuse, and long-term disposal of special wastes. The component shall address the disposition of sewage sludge generated in the jurisdiction of the county.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

ARTICLE 9. FACILITY CAPACITY COMPONENT

(Article 9 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41460. The county solid waste facility capacity component shall include, but is not limited to, a projection of the amount of disposal capacity which will be needed to accommodate the solid waste generated within the unincorporated area of the county preparing the element for a 15-year period, reduced by all of the following:

(a) Implementation of source reduction, recycling, and composting programs required by this part or through implementation of other waste diversion programs.

(b) Any permitted disposal or transformation capacity which will be available during the 15-year planning period.

(c) All disposal or transformation capacity which has been secured through an agreement with another city, county, or through an agreement with a solid waste enterprise.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 10. HOUSEHOLD HAZARDOUS WASTE COMPONENT (REPEALED)

(Article 10, as added by AB 939 (Sher), Stats. 1989. c. 1095, and repealed by AB 2707 (LaFollette), Stats. 1990, c. 1406)

Chapter 3.5. Household Hazardous Waste Elements

(Chapter 3.5 as added by AB 2707 (LaFollette), Stats. 1990, c. 1406)

ARTICLE 1. CITY HOUSEHOLD HAZARDOUS WASTE ELEMENTS

(Article 1 as added by AB 2707 (LaFollette), Stats. 1990, c. 1406)

41500. (a) On or before July 1, 1992, each city shall prepare, adopt, and submit to the county in which the city is located a household hazardous waste element which identifies a program for the safe collection, recycling, treatment, and disposal of hazardous wastes, as defined in Section 25117 of the Health and Safety Code, which are generated by households in the city and which should be separated from the solid waste stream.

In preparing a city household hazardous waste element pursuant to this section, a city may use components of a city hazardous waste plan prepared pursuant to subdivision (c) of Section 25135.7 of the Health and Safety Code if the city hazardous waste plan meets the requirements of this article and Section 41802.

(b) Notwithstanding subdivision (a), if a city determines that it is unable to comply with the deadline established under subdivision (a) and unable to comply with Division 13 (commencing with Section 21000), to the extent that division requires the preparation and certification of an environmental impact report for the element, the city shall do all of the following:

(1) On or before July 1, 1992, the city shall adopt a resolution stating the reasons it is unable to comply with the deadline established under subdivision (a) and to complete and certify the environmental impact report for the household hazardous waste element. The resolution shall also state a date when the city will comply with the deadline established under subdivision (a) and complete and certify the environmental impact report for the household hazardous waste element.

(2) On or before July 1, 1992, the city shall submit its draft household hazardous waste element and a copy of the resolution adopted pursuant to paragraph (1) to the county within which the city is located.

(3) Upon completion and certification of the environmental impact report for the household hazardous waste element, or December 1, 1992, whichever is sooner, the city shall submit its final household hazardous waste element to the county.

As added by AB 2707 (LaFollette), Stats. 1990, c. 1406, and amended by AB 2092 (Sher), Stats. 1992, c. 105.

41502. A city household hazardous waste element may include a program for the safe collection, treatment, and disposal of sharps waste generated by households. The program may include any of the following:

(a) The designation of authorized collection locations, including, but not limited to, household hazardous waste collection facilities, designated hospitals and clinics, and fire stations.

(b) Efforts to inform and encourage the public to return sharps waste to designated collection locations.

(c) Efforts to inform and encourage the public to subscribe to mail-back programs authorized by the United States Postal Service.

(d) An estimate of the expenditures required for the safe collection, treatment, and disposal of sharps waste, and consideration of the feasibility of offering low-cost mail-back programs for senior and low-income households.

As added by SB 1362 (Figueroa), Stats. 2004, c. 157.

ARTICLE 2. COUNTY HOUSEHOLD HAZARDOUS WASTE ELEMENTS

(Article 2 as added by AB 2707 (LaFollette), Stats. 1990, c. 1406)

41510. (a) On or before July 1, 1992, each county shall prepare a household hazardous waste element which identifies

a program for the safe collection, recycling, treatment, and disposal of hazardous wastes, as defined in Section 25117 of the Health and Safety Code, which are generated by households in the unincorporated area of the county and which should be separated from the solid waste stream. In preparing a county household hazardous waste element pursuant to this section, a county may use components of a county hazardous waste management plan prepared pursuant to Section 25135.1 of the Health and Safety Code, if that plan meets the requirements of this article and of Section 41802.

(b) Notwithstanding subdivision (a), if a county determines that it is unable to comply with the deadline established under subdivision (a) and unable to comply with Division 13 (commencing with Section 21000), to the extent that division requires the preparation and certification of an environmental impact report for the element, the county shall do all of the following:

(1) On or before July 1, 1992, the county shall adopt a resolution stating the reasons it is unable to comply with the deadline established under subdivision (a) and to complete and certify the environmental impact report for the household hazardous waste element. The resolution shall also state a date when the county will comply with the deadline established under subdivision (a) and complete and certify the environmental impact report for the household hazardous waste element.

(2) On or before July 1, 1992, the county shall submit its draft household hazardous waste element and a copy of the resolution adopted pursuant to paragraph (1) to the board.

(3) Upon completion and certification of the environmental impact report for the household hazardous waste element, or December 1, 1992, whichever is sooner, the county shall adopt its household hazardous waste element.

As added by AB 2707 (LaFollette), Stats. 1990, c. 1406, and amended by AB 2092 (Sher), Stats. 1992, c. 105.

41512. A county household hazardous waste element may include a program for the safe collection, treatment, and disposal of sharps waste generated by households. The program may include any of the following:

(a) The designation of authorized collection locations, including, but not limited to, household hazardous waste collection facilities, designated hospitals and clinics, and fire stations.

(b) Efforts to inform and encourage the public to return sharps waste to designated collection locations.

(c) Efforts to inform and encourage the public to subscribe to mail-back programs authorized by the United States Postal Service.

(d) An estimate of the expenditures required for the safe collection, treatment, and disposal of sharps waste, and consideration of the feasibility of offering low-cost mail-back programs for senior and low-income households.

As added by SB 1362 (Figueroa), Stats. 2004, c. 157.

ARTICLE 3. EDUCATIONAL INFORMATION

(Article 3 as added by SB 352 (Wright), Stats. 1995, c. 424)

41515. If a city, county, or regional agency conducts an aerosol can recycling program, a requirement to educate the public on the safe collection and recycling or disposal of aerosol cans shall be incorporated into the household hazardous waste element prepared by the city, county, or regional agency when that element is revised.

As added by SB 352 (Wright), Stats. 1995, c. 424.

ARTICLE 4. COVERED ELECTRONIC WASTE

(As added by SB 20 (Sher), Statutes of 2003, c. 526)

41516. (a) For purposes of this article, "covered electronic waste" has the same meaning as defined in subdivision (g) of Section 42463.

(b) On and after January 1, 2004, when a county or regional agency revises the countywide or regional integrated waste management plan and its elements pursuant to Section 41770, the city household hazardous waste element and county household hazardous waste element in the plan shall identify those actions the city, county, or regional agency is taking to promote the collection, consolidation, recovery, and recycling of covered electronic waste.

As added by SB 20 (Sher), Stats. 2003, c. 526.

Chapter 4. Countywide Siting Elements

(Chapter 4 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. ELEMENT PREPARATION

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41700. Each county shall prepare a countywide siting element which provides a description of the areas to be used for development of adequate transformation or disposal capacity concurrent and consistent with the development and implementation of the county and city source reduction and recycling elements adopted pursuant to this part.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41701. Each countywide siting element and revision thereto shall include, but is not limited to, all of the following:

(a) A statement of goals and policies for the environmentally safe transformation or disposal of solid waste that cannot be reduced, recycled, or composted.

(b) An estimate of the total transformation or disposal capacity in cubic yards that will be needed for a 15-year period to safely handle solid wastes generated with the county that cannot be reduced, recycled, or composted.

(c) The remaining combined capacity of existing solid waste transformation or disposal facilities existing at the time of the preparation of the siting element, or revision thereto, in cubic yards and years.

(d) The identification of an area or areas for the location of new solid waste transformation or disposal facilities, or the expansion of existing facilities, that are consistent with the applicable city or county general plan, if the county determines

that existing capacity will be exhausted within 15 years or additional capacity is desired.

(e) For countywide elements submitted or revised on or after January 1, 2003, a description of the actions taken by the city or county to solicit public participation by the affected communities, including, but not limited to, minority and low-income populations.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and SB 1542 (Escutia), Stats. 2002, c. 1003.

41702. An area is consistent with the city or county general plan if all of the following requirements are met:

(a) The city or county adopted a general plan which complies with the requirements of Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(b) The area reserved for a new solid waste facility or the expansion of an existing solid waste facility is located in, or coextensive with, a land use area designated or authorized for solid waste facilities in the applicable city or county general plan.

(c) The land use authorized in the applicable city or county general plan adjacent to or near the area reserved for the establishment of new solid waste transformation or disposal of solid waste or expansion of existing facilities is compatible with the establishment or expansion of the solid waste facility.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41703. If the county determines that existing capacity will be exhausted within 15 years or additional capacity is desired and that there is no area available for the location of a new solid waste transformation or disposal facility or the expansion of an existing solid waste transformation or disposal facility which is consistent with any applicable city or county general plan, the siting element shall include a specific strategy for the transformation or disposal of solid waste in excess of remaining capacity.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41704. Except as provided in subdivision (a) of Section 41710, any area or areas identified for the location of a new solid waste transformation or disposal facility shall be located in, coextensive with, or adjacent to, a land use area authorized for a solid waste transformation or disposal facility in the applicable city or county general plan.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 2. TENTATIVE RESERVATIONS

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41710. (a) A county may tentatively reserve an area or areas for the location of a new solid waste transformation or disposal facility or the expansion of an existing transformation or disposal facility even though that reservation of the area or areas is not consistent with the applicable city or county general plan. A reserved area in a countywide siting element is tentative until it is made consistent with the applicable city or county general plan.

(b) If a county has tentatively identified a site expansion or a potential site for a new solid waste transformation or disposal facility in its countywide siting element, that tentative site identification may be deemed a tentative area for the purposes of Sections 41711 and 41712.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41711. An area tentatively reserved for the establishment or expansion of a solid waste transformation or disposal facility shall be removed from the countywide siting element if a city or county fails or has failed to make the finding that the area is consistent with the general plan or has made a finding that the area should not be used for the location of a solid waste transformation or disposal facility.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41712. The removal of a tentatively reserved area from the countywide siting element, pursuant to Section 41711, shall be accomplished by either one of the following methods:

(a) The county shall remove the area at the time of the next revision of the siting element.

(b) The local agency having jurisdiction over the area shall request the county to remove the designation at the time of the next revision of the siting element.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 3. GENERAL PLAN CONSISTENCY

(Article 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41720. The countywide siting element submitted to the board, shall include a resolution from each affected city or the county stating that any areas identified for the location of a new or expanded solid waste transformation or disposal facility pursuant to Section 41701 is consistent with the applicable general plan.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 4. LOCAL AGENCY APPROVAL

(Article 4 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41721. The countywide siting element shall be approved by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county except in those counties which have only two cities, in which case the element is subject to approval of the city which contains the majority of the population of the incorporated area of the county. Each city shall act upon the countywide siting element within 90 days after receipt of the siting element. If a city fails to act upon the siting element within 90 days after receiving the siting element, the city shall be deemed to have approved the siting element as submitted.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3001 (Cortese), Stats. 1992, c. 1291.

41721.5. (a) Any amendments to the countywide siting element shall be approved by the county and by a majority of

the cities within the county which contain a majority of the population of the incorporated area of the county except in those counties which have only two cities, in which case the amendment is subject to approval of the city which contains the majority of the population of the incorporated area of the county.

(b) Any person or public agency proposing the development of a solid waste disposal or transformation facility may initiate an amendment to the countywide siting element by submitting a site identification and description to the county board of supervisors.

(c) The county shall submit the site identification and description to the cities within the county within 20 days after the site identification and description is submitted to the county board of supervisors. Each city shall act upon the proposed amendment within 90 days after receipt of the proposed amendment. If a city fails to act upon the proposed amendment within 90 days after receiving the amendment, the city shall be deemed to have approved the proposed amendment as submitted.

(d) If the county or a city disapproves the proposed amendment, the county or city shall mail notice of its decision by first-class mail to the person or public agency proposing the amendment within 10 days of the disapproval, stating its reasons for the disapproval.

(e) No county or city shall disapprove a proposed amendment unless it determines, based on substantial evidence in the record, that the amendment would cause one or more significant adverse impacts within its boundaries from the proposed project.

(f) Within 45 days after the date of disapproval by the county or a city of a proposed amendment, or a decision by the board not to concur in the issuance, modification, or revision of a solid waste facilities permit pursuant to Section 44009, any person may file with the superior court a writ of mandate for review of the disapproval or the decision. The evidence before the court shall consist of the record before the county or city which disapproved the proposed amendment or the record before the board in its determination not to concur in issuance, modification, or revision of the solid waste facilities permit. Section 1094.5 of the Code of Civil Procedure shall govern the proceedings conducted pursuant to this subdivision.

As added by AB 3001 (Cortese), Stats. 1992, c. 1291.

Chapter 4.5. Nondisposal Facility Elements

(Chapter 4.5 as added by AB 3001 (Cortese), Stats. 1992, c. 1291)

ARTICLE 1. CITY NONDISPOSAL FACILITY ELEMENTS

(Article 1 as added by AB 3001 (Cortese), Stats. 1992, c. 1291, and amended by AB 54 (Sher), Stats. 1993, c. 663)

41730. Except as provided in Section 41750.1, each city shall prepare, adopt, and, except for a city and county, transmit to the county in which the city is located a nondisposal facility element that includes all of the information required by this chapter and that is consistent with the implementation of a city source reduction and recycling element adopted pursuant to this part. The nondisposal facility element and any amendments to the element may be appended to the city's source reduction and recycling element when that element is included in the countywide integrated waste management plan, prepared pursuant to Section 41750. The nondisposal facility element and any amendments to the element shall not be subject to the approval of the county and the majority of cities with the majority of the population in the incorporated area.

As added by AB 3001 (Cortese), Stats. 1992, c. 1291, and amended by AB 54 (Sher), Stats. 1993, c. 663, and SB 515 (Chesbro), Stats. 1999, c. 600.

ARTICLE 2. COUNTY NONDISPOSAL FACILITY ELEMENT

(Article 2 as added by AB 3001 (Cortese), Stats. 1992, c. 1291, and amended by AB 54 (Sher), Stats. 1993, c. 663.

41731. Except as provided in Section 41750.1, each county shall prepare, adopt, and, except for a city and county, transmit to the cities located in the county a nondisposal facility element that includes all of the information required by this chapter and that is consistent with the implementation of a county source reduction and recycling element adopted pursuant to this part. The nondisposal facility element and any amendments to the element may be appended to the county's source reduction and recycling element when that element is included in the countywide integrated waste management plan prepared pursuant to Section 41750. The nondisposal facility element and any amendments to the element shall not be subject to the approval of the majority of cities with the majority of the population in the incorporated area.

As added by AB 3001 (Cortese), Stats. 1992, c. 1291, and amended by AB 54 (Sher), Stats. 1993, c. 663. and SB 515 (Chesbro), Stats. 1999, c. 600.

ARTICLE 3. REQUIREMENTS

(Article 3 as added by AB 3001 (Cortese), Stats. 1992, c. 1291)

41732. (a) City, county, and regional agency nondisposal facility elements prepared pursuant to Section 41730, 41731, or 41750.1, as the case may be, shall include a description of any new solid waste facilities and the expansion of existing solid waste facilities that will be needed to implement the jurisdiction's source reduction and recycling element and to thereby meet the diversion requirements of Section 41780. The nondisposal facility element may include the identification of specific locations or general areas for new solid waste facilities that will be needed to implement the jurisdiction's source reduction and recycling element.

(b) In complying with the requirements of subdivision (a), the jurisdiction shall utilize the pertinent information that is available to it at the time that the nondisposal facility element is prepared.

As added by AB 3001 (Cortese), Stats. 1992, c. 1291, and amended by AB 54 (Sher), Stats. 93, c. 663, and AB 3082 (Assembly Judiciary Committee), Stats. 2004, c. 183.

41733. Nondisposal facility elements prepared pursuant to this chapter shall include all solid waste facilities and solid waste facility expansions, except disposal facilities and transformation facilities, which will recover for reuse or recycling at least 5 percent of the total volume of material

received by the facility. Transfer stations which recover less than 5 percent of the volume of materials received for reuse or recycling shall be included in the element. However, the portions of the element describing these facilities shall not be subject to board approval.

As added by AB 3001 (Cortese), Stats. 1992, c. 1291.

41734. (a) (1) Prior to adopting or amending a nondisposal facility element, the city, county, or regional agency shall submit the element or amendment to the task force created pursuant to Section 40950 for review and comment.

(2) Prior to adopting or amending a regional agency nondisposal facility element, if the jurisdiction of the regional agency extends beyond the boundaries of a single county, the regional agency shall submit the element or amendment for review and comment to each task force created pursuant to Section 40950 of each county within the jurisdiction of the regional agency.

(b) Comments by the task force shall include an assessment of the regional impacts of potential diversion facilities and shall be submitted to the city, county, or regional agency and to the board within 90 days of the date of receipt of the nondisposal facility element for review and comment.

As added by AB 3001 (Cortese), Stats. 1992, c. 1291, and amended by AB 54 (Sher), Stats. 1993, c. 663.

41735. (a) Notwithstanding Division 13 (commencing with Section 21000), the adoption or amendment of a nondisposal facility element shall not be subject to environmental review.

(b) Local agencies may impose a fee on project proponents to fund their necessary and actual costs of preparing and approving amendments to nondisposal facility elements.

As added by AB 3001 (Cortese), Stats. 1992, c. 1291.

41736. It is not the intent of the Legislature to require cities and counties to revise their source reduction and recycling elements to comply with the requirements of this chapter. At the time of the five-year revision of the source reduction and recycling element, each city, county, and city and county shall incorporate the nondisposal facility element and any amendments thereto into the revised source reduction and recycling element.

As added by AB 3001 (Cortese), Stats. 1992, c. 1291.

Chapter 5. Countywide Integrated Waste Management Plans

(Chapter 5 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. PLAN PREPARATION

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41750. Each county and city and county shall prepare and submit to the board in accordance with the schedule set forth in Chapter 6 (commencing with Section 41780), a countywide integrated waste management plan, which includes all of the following:

(a) All city source reduction and recycling elements prepared pursuant to Chapter 2 (commencing with Section 41000) and submitted to the county.

(b) The county's source reduction and recycling element for the unincorporated area of the county prepared pursuant to Chapter 3 (commencing with Section 41300).

(c) All city household hazardous waste elements which were prepared pursuant to Article 1 (commencing with Section 41500) of Chapter 3.5 and submitted to the county.

(d) The county household hazardous waste element for the unincorporated area of the county prepared pursuant to Article 2 (commencing with Section 41510) of Chapter 3.5.

(e) The countywide siting element prepared pursuant to Chapter 4 (commencing with Section 41700).

(f) All city nondisposal facility elements prepared pursuant to Chapter 4.5 (commencing with Section 41730) and submitted to the county.

(g) The county nondisposal facility element for the unincorporated area of the county prepared pursuant to Chapter 4.5 (commencing with Section 41730).

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2707 (LaFollette), Stats. 1990, c. 1406, and AB 3001 (Cortese), Stats. 1992, c. 1291.

41750.1 Notwithstanding the requirements of Section 41750 for the preparation and submittal of countywide integrated waste management plans, the following requirements shall apply to the submittal of integrated waste management plans where a regional agency has been formed:

(a) For a regional agency composed of jurisdictions that do not extend beyond the boundaries of a single county, the countywide integrated waste management plan shall include all of the following:

(1) The source reduction and recycling elements for the cities and the county which are member agencies of the regional agency or the source reduction and recycling element for the regional agency.

(2) The source reduction and recycling elements for all cities which are not member agencies of the regional agency, and the source reduction and recycling element for the unincorporated area if the county is not a member agency of the regional agency.

(3) The household hazardous waste elements for the cities and the county which are member agencies of the regional agency or the household hazardous waste element for the regional agency.

(4) The household hazardous waste elements for all cities which are not a member agency of the regional agency, and the household hazardous waste element for the unincorporated area if the county is not a member agency of the regional agency.

(5) The countywide siting element.

(6) The nondisposal facility elements for the cities and the county which are member agencies of the regional agency or the nondisposal facility element for the regional agency.

(7) The nondisposal facility elements for all cities which are not member agencies of the regional agency, and the

nondisposal facility element for the unincorporated area if the county is not a member agency of the regional agency.

(b) For a regional agency composed of two or more counties and all cities within those counties, an integrated waste management plan shall include all of the following:

(1) The source reduction and recycling elements for the cities and counties which are member agencies of the regional agency or the source reduction and recycling element for the regional agency.

(2) The household hazardous waste elements for the cities and counties which are member agencies of the regional agency or the household hazardous waste element for the regional agency.

(3) The countywide siting elements for the counties within the jurisdiction of the regional agency or a siting element for the regional agency.

(4) The nondisposal facility elements for the cities and counties which are member agencies of the regional agency or the nondisposal facility element for the regional agency.

(c) For a regional agency composed of more than one county, but which does not encompass all of the cities within those counties, the integrated waste management plan shall include the source reduction and recycling element and the household hazardous waste element for the regional agency.

As added by AB 2494 (Sher), Stats. 1992, c. 1292, and amended by AB 54 (Sher), Stats. 1993, c. 663.

41751. The countywide integrated waste management plan shall include a summary of significant waste management problems facing the county or city and county. The plan shall provide an overview of the specific steps that will be taken by local agencies, acting independently and in concert, to achieve the purposes of this division. The plan shall contain a statement of the goals and objectives set forth by the countywide task force created pursuant to Chapter 1 (commencing with Section 40900).

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 2. PLAN APPROVAL

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 3001 (Cortese), Stats. 1992, c. 1291, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 1107 (Cortese), Stats. 1993, c. 146, and AB 54 (Sher), Stats. 1993, c. 663)

41760. The countywide integrated waste management plan and any amendments thereto, with the exception of any source reduction and recycling element, household hazardous waste element, or nondisposal facility element, prepared by a city or county, shall be approved by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated areas of the county, except in those counties which have only two cities, in which case the plan is subject to the approval of the city which contains a majority of the population of the incorporated areas of the county. Each city shall act upon the plan and any proposed amendment within 90 days after receipt of the amendment. If a city fails to act upon the plan or the proposed amendment within 90 days after receiving the plan or the amendment, the city shall be deemed to have approved the plan or the amendment as submitted.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 3001 (Cortese), Stats. 1992, c. 1291, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 1107 (Cortese), Stats. 1993, c. 146, and AB 54 (Sher), Stats. 1993, c. 663.

ARTICLE 3. PLAN REVISION

(Article 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41770. (a) Each countywide or regional agency integrated waste management plan, and the elements thereof, shall be reviewed, revised, if necessary, and submitted to the board every five years in accordance with the schedule set forth under Chapter 7 (commencing with Section 41800).

(b) Any revisions to a countywide or regional agency integrated waste management plan, and the elements thereof, shall use a waste disposal characterization method that the board shall develop for the use of the city, county, city and county, or regional agency. The city, county, city and county, or regional agency shall conduct waste disposal characterization studies, as prescribed by the board, if it fails to meet the diversion requirements of Section 41780, at the time of the five-year revision of the source reduction and recycling element.

(c) The board may review and revise its regulations governing the contents of revised source reduction and recycling elements to reduce duplications in one or more components of these revised elements.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and SB 2202 (Senate Environmental Quality Committee), Stats. 2000, c. 740.

41770.5. REPEALED.

As added by AB 440 (Sher), Stats. 1993, c. 1169, and repealed by AB 626 (Sher), Stats. 1996, c. 1038.

Chapter 6. Planning Requirements

(Chapter 6 as added by AB 939 (Sher), Stats. 1989, c. 1095 and amended by AB 1820 (Sher), Stats. 1990, c. 145)

ARTICLE 1. WASTE DIVERSION

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41780. (a) Each city or county source reduction and recycling element shall include an implementation schedule that shows both of the following:

(1) For the initial element, the city or county shall divert 25 percent of all solid waste from landfill disposal or transformation by January 1, 1995, through source reduction, recycling, and composting activities.

(2) Except as provided in Sections 41783, 41784, and 41785, for the first and each subsequent revision of the element, the city or county shall divert 50 percent of all solid waste on and after January 1, 2000, through source reduction, recycling, and composting activities.

(b) Nothing in this part prohibits a city or county from

implementing source reduction, recycling, and composting activities designed to exceed these requirements.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 1647 (Bustamante), Stats. 1996, c. 978, and SB 2202 (Senate Environmental Quality Committee), Stats. 2000, c. 740, and SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

41780.1. (a) Notwithstanding any other requirement of this part, for the purposes of determining the amount of solid waste that a regional agency is required to divert from disposal or transformation through source reduction, recycling, and composting to meet the diversion requirements of Section 41780, the regional agency shall use the solid waste disposal projections in the source reduction and recycling elements of the regional agency's member agencies. The method prescribed in Section 41780.2 shall be used to determine the maximum amount of disposal allowable to meet the diversion requirements of Section 41780.

(b) Notwithstanding any other requirement of this part, for the purposes of determining the amount of solid waste that a city or county is required to divert from disposal or transformation through source reduction, recycling, and composting to meet the diversion requirements of Section 41780, the city or county shall use the solid waste disposal projections in the source reduction and recycling elements of the city or county. The method prescribed in Section 41780.2 shall be used to determine the maximum amount of disposal allowable to meet the diversion requirements of Section 41780.

(c) To determine achievement of the diversion requirements of Section 41780 in 1995 and in the year 2000, projections of disposal amounts from the source reduction and recycling elements shall be adjusted to reflect annual increases or decreases in population and other factors affecting the waste stream, as determined by the board. By January 1, 1994, the board shall study the factors which affect the generation and disposal of solid waste and shall develop a standard methodology and guidelines to be used by cities, counties, and regional agencies in adjusting disposal projections as required by this section.

(d) The amount of additional diversion required to be achieved by a regional agency to meet the diversion requirements of Section 41780 shall be equal to the sum of the diversion requirements of its member agencies. To determine the maximum amount of disposal allowable for the regional agency to meet the diversion requirements of Section 41780, the maximum amount of disposal allowable for each member agency shall be added together to yield the agency disposable maximum.

As added by AB 2494 (Sher), Stats. 1992, c. 1292, and amended by AB 1647 (Bustamante), Stats. 1996, c. 978.

41780.2. (a) Each city, county, or member agency of a regional agency shall determine the amount of reduction in solid waste disposal and the amount of additional diversion required from the base-year amounts by using the methods set forth in this section.

(b) The city, county, or member agency of a regional agency shall multiply the total amount of base-year solid waste generation, as adjusted using the methods described in subdivision (c) of Section 41780.1, by 0.75 to determine the maximum amount of total disposal allowable in 1995 to meet the diversion requirements of Section 41780.

(c) The city, county, or member agency of a regional agency shall multiply the total amount of base-year solid waste generation, as adjusted using the methods described in subdivision (c) of Section 41780.1, by 0.50 to determine the maximum amount of total disposal allowable in the year 2000 to meet the diversion requirements of Section 41780.

(d) The city, county, or member agency of a regional agency shall multiply the total amount of base-year solid waste generation, as adjusted using the methods described in subdivision (c) of Section 41780.1, by 0.25 to determine the minimum amount of total diversion needed in the year 1995 to meet the diversion requirements of Section 41780.

(e) The city, county, or member agency of a regional agency shall multiply the total amount of base-year solid waste generation, as adjusted using the methods described in subdivision (c) of Section 41780.1, by 0.50 to determine the minimum amount of total diversion needed in the year 2000 to meet the diversion requirements of Section 41780.

(f) The city, county, or member agency of a regional agency shall subtract the total amount of base-year existing diversion from the minimum total diversion required as determined in subdivision (d) or (e) to determine the amount of additional diversion needed to meet the diversion requirements of Section 41780. This amount of additional diversion shall be equal to the minimum amount of additional reduction in disposal amounts which is needed to comply with Section 41780.

As added by AB 2494 (Sher), Stats. 1992, c. 1292, and amended by AB 440 (Sher), Stats. 1993, c. 1169, and AB 3601 (Isenberg) Stats. 1994, c. 146.

41781. (a) Except as provided in Sections 41781.1, and 41781.2, for the purpose of determining the base rate of solid waste from which diversion requirements shall be calculated, "solid waste" includes only the following:

(1) The amount of solid waste generated within a local agency's jurisdiction, the types and quantities of which were disposed of at a permitted disposal facility as of January 1, 1990. Nothing in this section requires local agencies to perform waste characterization in addition to the waste characterization requirements established under Sections 41030, 41031, 41330, 41331, and 41332.

(2) The amount of solid waste diverted from a disposal facility or transformation facility through source reduction, recycling, or composting.

(b) For the purposes of this section, "solid waste" does not include any solid waste which would not normally be disposed of at a disposal facility.

(c) For the purposes of this chapter, the amount of solid waste from which the required reductions are measured shall be the amount of solid waste existing on January 1, 1990, with future adjustments for increases or decreases in the quantity of

waste caused only by changes in population or changes in the number or size of governmental, industrial, or commercial operations in the jurisdiction.

As added by AB 1820 (Sher), Stats. 1990, c. 145, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 1520 (Sher), Stats. 1991, c. 718, and AB 2494 (Sher), Stats. 1992, c. 1292.

41781.1. (a) Prior to determining that the diversion of sludge may be counted toward the diversion requirements established under Section 41780, but within 180 days of receiving such a request, the board shall do both of the following:

(1) Make a finding at a public hearing, based upon substantial evidence, that the sludge has been adequately analyzed and will not pose a threat to public health or the environment for the reuse which is proposed.

(A) Except as provided in subparagraph (B), prior to making the finding required to be made pursuant to this paragraph, the board shall consult with each of the following agencies, and obtain their concurrence in the finding, to the extent of each agency's jurisdiction over the sludge or its intended reuse:

(i) The state water board and the regional water boards.

(ii) The State Department of Health Services.

(iii) The State Air Resources Board and air pollution control districts and air quality management districts.

(iv) The Department of Toxic Substances Control.

(B) If, prior to the board making the finding required to be made pursuant to this paragraph, an agency specified in subparagraph (A) issues a permit, waste discharge requirements, or imposes other conditions for the reuse of sludge, the agency shall have been deemed to have concurred in that finding.

(2) Establish, or ensure that one or more of the agencies specified in subparagraph (A) of paragraph (1) establishes, ongoing monitoring requirements which ensure that the proposed sludge reuse does not pose a threat to health and safety or the environment.

(b) It is not the intent of this section to require the board, or the agencies listed in subparagraph (A) of paragraph (1) of subdivision (a), to impose additional requirements or approval procedures for sludge or sludge reuse applications, apart from the requirements and approval procedures already imposed by state and federal law. It is the intent of this section to require that the board determine that each sludge diversion, for which diversion credit is sought, meets all applicable requirements of state and federal law, and thereby provides for maximum protection of the public health and safety and the environment.

As added by AB 1520 (Sher), Stats. 1991, c. 718, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

41781.2. (a) (1) It is the intent of the Legislature in enacting this section not to require cities, counties, and regional agencies to revise source reduction and recycling elements prior to their submittal to the board for review and approval, except as the elements would otherwise be required to be revised by the board pursuant to this part. Pursuant to Sections 41801.5 and 41811.5, compliance with this section shall be determined by the board when source reduction and recycling elements are submitted to the board pursuant to Section 41791.5. However, any city or county may choose to revise its source reduction and recycling element or any of its components prior to board review of the source reduction and recycling element for the purpose of complying with this section.

(2) It is further the intent of the Legislature in enacting this section to ensure that compliance with the diversion requirements of Section 41780 shall be accurately determined based upon a correlation between solid waste which was disposed of at permitted disposal facilities and diversion claims which are subsequently made for that solid waste.

(b) For the purposes of this section, the following terms have the following meaning:

(1) "Action by a city, county, regional, or local governing body" means franchise or contract conditions, rate or fee schedules, zoning or land use decisions, disposal facility permit conditions, or activities by a waste hauler, recycler, or disposal facility operator acting on behalf of a city, county, regional agency, or local governing body, or other action by the local governing body if the local government action is specifically related to the claimed diversion.

(2) "Scrap metal" includes ferrous metals, nonferrous metals, aluminum scrap, other metals, and auto bodies, but does not include aluminum cans, steel cans, or bimetal cans.

(3) "Inert solids" includes rock, concrete, brick, sand, soil, fines, asphalt, and unsorted construction and demolition waste.

(4) "Agricultural wastes" includes solid wastes of plant and animal origin, which result from the production and processing of farm or agricultural products, including manures, orchard and vineyard prunings, and crop residues, which are removed from the site of generation for solid waste management. Agriculture refers to SIC Codes 011 to 0291, inclusive.

(c) For purposes of determining the base amount of solid waste from which the diversion requirements of this article shall be calculated, "solid waste" does not include the diversion of agricultural wastes; inert solids, including inert solids used for structural fill; discarded, white-coated, major appliances, and scrap metals; unless all of the following criteria are met:

(1) The city, county, or regional agency demonstrates that the material was diverted from a permitted disposal facility through an action by the city, county, or regional agency which specifically resulted in the diversion.

(2) The city, county, or regional agency demonstrates that, prior to January 1, 1990, the solid waste which is claimed to have been diverted was disposed of at a permitted disposal facility in the quantity being claimed as diversion. If historical disposal data is not available, that demonstration may be based upon information available to the city, county, or regional agency which substantiates a reasonable estimate of disposal

quantities which is as accurate as is feasible in the absence of historical disposal data.

(3) The city, county, or regional agency is implementing, and will continue to implement, source reduction, recycling, and composting programs, as described in its source reduction and recycling element.

(d) If a city, county, or regional agency source reduction and recycling element submitted pursuant to this chapter includes the diversion of any of the wastes specified in subdivision (c) for years preceding the year commencing January 1, 1990, that diversion shall not apply to the diversion requirements of Section 41780, unless the criteria in subdivision (c) are met.

(e) If a city, county, or regional agency source reduction and recycling element submitted pursuant to this chapter does not contain information sufficient for the city, county, or regional agency to demonstrate to the board whether the criteria in subdivision (c) have been met, the city, county, or regional agency may provide additional information following board review of the source reduction and recycling element pursuant to Section 41791.5. In providing the additional information, Sections 41801.5 and 41811.5 shall apply.

(f) In demonstrating whether the requirements of paragraph (1) of subdivision (c) have been met, the city, county, or regional agency shall submit information to the board on local government programs which are specifically related to the claimed diversion.

(g) Notwithstanding any other provision of law, for purposes of determining the base amount of solid waste from which the diversion requirements of this article shall be calculated for a city, county, or regional agency which includes biomass conversion in its source reduction and recycling element pursuant to Section 41783.1, the base amount shall include those materials disposed of in the base year at biomass conversion facilities.

As added by AB 2494 (Sher), Stats. 1992, c. 1292, and amended by AB 440 (Sher), Stats. 1993, c. 1169, and AB 688 (Sher), Stats. 1994, c. 1227.

41781.3. (a) The use of solid waste for beneficial reuse in the construction and operation of a solid waste landfill, including use of alternative daily cover, which reduces or eliminates the amount of solid waste being disposed pursuant to Section 40124, shall constitute diversion through recycling and shall not be considered disposal for the purposes of this division.

(b) Prior to December 31, 1997, pursuant to the board's authority to adopt rules and regulations pursuant to Section 40502, the board shall, by regulation, establish conditions for the use of alternative daily cover that are consistent with this division. In adopting the regulations, the board shall consider, but is not limited to, all of the following criteria:

(1) Those conditions established in past policies adopted by the board affecting the use of alternative daily cover.

(2) Those conditions necessary to provide for the continued economic development, economic viability, and employment opportunities provided by the composting industry in the state.

(3) Those performance standards and limitations on maximum functional thickness necessary to ensure protection of public health and safety consistent with state minimum standards.

(c) Until the adoption of additional regulations, the use of alternative daily cover shall be governed by the conditions established by the board in its existing regulations set forth in paragraph (3) of subdivision (b) of, and paragraph (3) of subdivision (c) of, Section 18813 of Title 14 of the California Code of Regulations, as those sections read on the effective date of this section, and by the conditions established in the board's policy adopted on January 25, 1995.

(d) In adopting rules and regulations pursuant to this section, Section 40124, and this division, including, but not limited to, Part 2 (commencing with Section 40900), the board shall provide guidance to local enforcement agencies on any conditions and restrictions on the utilization of alternative daily cover so as to ensure proper enforcement of those rules and regulations.

As added by AB 1647 (Bustamante), Stats. 1996, c. 978.

41782. (a) The board may make adjustments to the amounts reported pursuant to subdivisions (a) and (c) of Section 41821.5, if the city, county, or regional agency demonstrates, and the board concurs, based on substantial evidence in the record, that achievement of the diversion requirements of Section 41780 is not feasible due to either of the following circumstances:

(1) A medical waste treatment facility, as defined in subdivision (a) of Section 25025 of the Health and Safety Code, accepts untreated medical waste, which was generated outside of the jurisdiction, for purposes of treatment, and the medical waste, when treated, becomes solid waste.

(2) (A) A regional diversion facility within the jurisdiction accepts material generated outside the jurisdiction and the conversion or processing of that material results in the production of residual solid waste that cannot feasibly be diverted. Any adjustment provided pursuant to this paragraph shall apply only to that portion of the residual solid waste produced as a consequence of processing material that is not subject to the reporting requirements of subdivisions (a) and (c) of Section 41821.5 and that cannot feasibly be allocated to the originating jurisdiction.

(B) For purposes of granting the reduction specified in subparagraph (A) and for the purpose of calculating compliance with the diversion requirements of Section 41780, "regional diversion facility" means a facility which meets all of the following criteria:

(1) The facility accepts material for recycling from both within and without the jurisdiction of the city or county within which it is located.

(2) All material accepted by the facility has been source-separated for the purpose of being processed prior to its arrival at the facility.

(3) The residual solid waste generated by the facility is a byproduct of the recycling that takes place at the facility.

(4) The facility is not a solid waste facility or solid waste handling operation pursuant to Section 43020.

(5) The facility contributes to regional efforts to divert solid waste from disposal.

(b) If the board makes an adjustment pursuant to subdivision (a), the annual report required pursuant to Section 41821 by the jurisdiction, within which a medical waste treatment facility or regional diversion facility described in subdivision (a) is located, shall include all of the following information:

(1) The total amount of residual solid waste produced at the facility.

(2) The waste types and amounts in the residual solid waste that cannot feasibly be diverted.

(3) The factors that continue to prevent the waste types from being feasibly diverted.

(4) Any changes since the petition for adjustment was granted or since the last annual report.

(5) The additional efforts undertaken by the jurisdiction to divert the waste produced at the facility.

(c) Based upon the information submitted pursuant to subdivision (b), if the board finds, as part of the biennial review pursuant to Section 41825, that the residual solid waste that previously could not be diverted can now be diverted, the board shall rescind the adjustment commensurate with the amount of diversion of the residual tonnages.

(d) It is not the intent of the Legislature to exempt any solid waste facility or handling operation from periodic tracking and the reporting of disposal tonnages in accordance with the regulations adopted by the board pursuant to subdivisions (a) and (c) of Section 41821.5, or from the permitting requirements pursuant to Section 43020.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, AB 2494 (Sher), Stats. 1992, c. 1292, and repealed and added by AB 688 (Sher), Stats. 1994, c. 1227, and amended by AB 1932 (Sweeney), Stats. 1995, c. 665.

41783. For any city, county, or regional agency source reduction and recycling element submitted to the board after January 1, 1995, the 50 percent diversion requirement specified in paragraph (2) of subdivision (a) of Section 41780 may include not more than 10 percent through transformation, as defined in Section 40201, if all of the following conditions are met:

(a) The transformation project is in compliance with Sections 21151.1 and 44150 of this code and Section 42315 of the Health and Safety Code.

(b) The transformation project uses front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent feasible.

(c) The ash or other residue generated from the transformation project is routinely tested at least once quarterly, or on a more frequent basis as determined by the agency responsible for regulating the testing and disposal of the ash or residue, and, notwithstanding Section 25143.5 of the Health and Safety Code, if hazardous wastes are present the ash or residue is sent to a class 1 hazardous waste disposal facility.

(d) The board holds a public hearing in the city, county, or regional agency jurisdiction within which the transformation project is proposed, and, after the public hearing, the board makes both of the following findings, based upon substantial evidence on the record:

(1) The city, county, or regional agency is, and will continue to be effectively implementing all feasible source reduction, recycling, and composting measures.

(2) The transformation project will not adversely affect public health and safety or the environment.

(e) The transformation facility is permitted and operational on or before January 1, 1995.

(f) The city, county, or regional agency does not include biomass conversion, as authorized pursuant to Section 41783, in its source reduction and recycling element.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, AB 54 (Sher), Stats. 1993, c. 663, and AB 688 (Sher), Stats 1994, c. 1227.

41783.1 (a) For any city, county, or regional agency source reduction and recycling element submitted to the board after January 1, 1995, the 50 percent diversion requirement specified in paragraph (2) of subdivision (a) of Section 41780 may include not more than 10 percent through biomass conversion if all of the following conditions are met:

(1) The biomass conversion project exclusively processes biomass.

(2) The biomass conversion project is in compliance with all applicable air quality laws, rules, and regulations.

(3) The ash or other residue from the biomass conversion project is regularly tested to determine if it is hazardous waste and, if it is determined to be hazardous waste, the ash or other residue is sent to a class 1 hazardous waste disposal facility.

(4) The board determines, at a public hearing, based upon substantial evidence in the record, that the city, county, or regional agency is, and will continue to be, effectively implementing all feasible source reduction, recycling, and composting measures.

(5) The city, county, or regional agency does not include transformation, as authorized pursuant to Section 41783, in its source reduction and recycling element.

As added by AB 688 (Sher), Stats. 1994, c. 1227.

41784. If the board determines that a city or county source reduction and recycling element submitted after January 1, 1995, will not achieve the 50 percent requirement established under Section 41780, and the city or county chooses not to use a transformation project to achieve the 50 percent requirement, the board shall not require the city or county to achieve the 50 percent diversion requirement through transformation, or impose any penalty on the city or county to compel the city or county to achieve the 50 percent requirement through transformation.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41785. (a) On and after January 1, 1995, and upon the request of a city or county, the board may establish an alternative source reduction, recycling, and composting requirement to the 50-percent requirement established under Section 41780, not to exceed three years unless another alternative requirement is granted by the board, if the board holds a public hearing and makes both of the following findings based upon substantial evidence on the record:

(1) The city or county and has made a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its board approved source reduction and recycling element and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the board and the city or county has been unable to meet the 50-percent diversion requirement despite implementing those measures.

(2) The alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the city or county, may reasonably and feasibly achieve.

(b) In making the decision whether to grant an alternative requirement pursuant to subdivision (a) and in determining the amount of the alternative requirement, the board shall consider circumstances in the city or county that support the request for an alternative requirement, such as waste disposal patterns within the city or county and the types of residential and nonresidential waste disposed by the city or county. The city or county may provide the board with any additional information that the city or county determines to be necessary to demonstrate to the board the need for the alternative requirement.

(c) If a city or county that requests an alternative source reduction and recycling requirement to the 50-percent requirement has not previously requested an extension pursuant to Section 41820, the city or county shall provide information to the board that explains why it has not requested an extension.

(d) A city or county that has previously been granted an alternative source reduction, recycling, and composting requirement may request another alternative source reduction, recycling, and composting requirement. A city or county that requests such another alternative requirement shall provide information to the board that demonstrates that the circumstances that supported the previous alternative source reduction, recycling, and composting requirement continue to exist or shall provide information to the board that describes changes in those previous circumstances that support another alternative source reduction, recycling, and composting requirement. The board shall review the original circumstances that supported the city or county's request, as well as any new information provided by the city or county that describes the current circumstances, to determine whether to grant another alternative requirement. The board may approve another alternative requirement if the board holds a public hearing and makes both of the following findings based upon substantial evidence in the record:

(1) The city or county has made a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its board approved source reduction and recycling element and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the board.

(2) The alternative source reduction, recycling, and composting requirement represents the greatest diversion amount the city or county may reasonably and feasibly achieve.

(e) If the board establishes a new alternative requirement or rescinds the existing alternative requirement, the board shall do so at a public hearing. If the board establishes an alternative requirement, it shall make both of the following findings based upon substantial evidence in the record:

(1) The city or county has made a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its board approved source reduction and recycling element and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the board and that the alternative diversion requirement is no longer appropriate.

(2) The new requirement represents the greatest amount of diversion that the city or county may reasonably and feasibly achieve.

(f) (1) No single alternative requirement may be granted for a period that exceeds three years and, if after the granting of the original alternative requirement, another alternative requirement is granted, the combined period that the original and the new alternative requirement is in force and effect shall not exceed a total of five years.

(2) Any alternative requirement that is granted prior to January 1, 2000, shall become effective on January 1, 2000. The board shall require any city or county granted an alternative requirement prior to January 1, 2000, to comply with this section after the date that the alternative requirement is granted.

(3) No alternative requirement shall be granted for any period after January 1, 2006, and no alternative requirement shall be effective after January 1, 2006.

(4) No city or county shall be granted an alternative requirement if the city or county has failed to meet, on or before July 1, 1998, the applicable requirements of Chapter 2 (commencing with Section 41000), Chapter 3 (commencing with Section 41300), Chapter 3.5 (commencing with Section 41500), and Chapter 4.5 (commencing with Section 41730).

(g) (1) When considering a request for an alternative source reduction, recycling, and composting requirement, the board may make specific recommendations for the implementation of alternative programs.

(2) Nothing in this section precludes the board from disapproving any request for an alternative requirement.

(3) If the board disapproves a request for an alternative requirement, the board shall specify its reasons for disapproval.

(h) If the board grants an alternative source reduction, recycling, and composting requirement, the city or county may request technical assistance from the board to assist it in meeting the alternative source reduction, recycling, and composting requirement. If requested by the city or county, the board shall assist with identifying model policies and programs implemented by other jurisdictions of similar size, geography, and demographic mix.

(i) A city or county that is granted an alternative requirement pursuant to this section shall continue to implement source reduction, recycling, and composting programs, and shall report the status of those programs in the report required pursuant to Section 41821.

(j) This section shall remain in effect until January 1, 2006, and as of that date is repealed.

As added by AB 939 (Sher)., Stats. 1989, c. 1095, and amended by SB 1066 (Sher), Stats. 1997, c. 672.

41786. (a) Notwithstanding Section 41780, the board may reduce the diversion requirements specified in Section 41780 for any city or county which, on or before January 1, 1990, disposed of 75 percent or more of its solid waste, collected by the jurisdiction or its authorized agents or contractors, by transformation if either of the following conditions exist:

(1) The attainment of the 25 percent or 50 percent diversion requirement specified in Section 41780 will result in substantial impairment of the obligations of one or more contracts in existence on January 1, 1990, for the city or county to furnish solid waste for fuel. A substantial impairment of obligations includes, but is not limited to, instances where a city has entered into a contract or franchise for 20 or more years with a joint powers authority for the operation of a transformation facility, and meeting the diversion requirements of Section 41780 may increase the city's costs by 15 percent or more.

(2) The attainment of the 25 percent or 50 percent diversion requirement specified in Section 41780 will substantially interfere with the repayment of debt incurred to finance or refinance the transformation project, if the refinancing is done for the purpose of reducing debt service and not for the expansion of the transformation project.

(b) If the board reduces the diversion requirements for a city or county pursuant to subdivision (a), the board shall establish new diversion requirements which require the maximum feasible amount of source reduction, recycling, and composting but which will not result in the conditions described in paragraphs (1) and (2) of subdivision (a).

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 260 (Epple), Stats. 1992, c. 736.

ARTICLE 1.5. RURAL ASSISTANCE

(Article 1.5 as added by AB 688 (Sher), Stats 1994, c. 1227)

41787. (a) (1) The board may reduce the diversion requirements of Section 41780 for a rural city if the rural city demonstrates, and the board concurs, based on substantial evidence in the record, that achievement of the diversion requirements is not feasible due to both of the following conditions:

(A) The small geographic size or low population density of the rural city.

(B) The small quantity of solid waste generated within the rural city.

(2) The board may reduce the diversion requirements of Section 41780 for the unincorporated area of a rural county if the rural county demonstrates, and the board concurs, based on substantial evidence in the record, that achievement of the diversion requirements is not feasible due to both of the following conditions:

(A) The large geographic size or low population density of the rural county.

(B) The small quantity of solid waste generated within the rural county.

(3) The board may grant a reduction in diversion requirements pursuant to this subdivision only if the rural city or the rural county demonstrates to the board, and the board concurs, based on substantial evidence in the record, that it has, at a minimum, implemented all of the following programs:

(A) A source reduction and recycling program designed to handle the predominant classes and types of solid waste generated within the rural city or rural county.

(B) A public sector diversion and procurement program.

(C) A public information and education program.

(b) If, as part of the review performed pursuant to Section 41825, the board finds that a rural city or a rural county, which previously qualified for a reduction in diversion requirements pursuant to subdivision (a), is no longer eligible for that reduction, the board shall issue an order requiring the rural city or rural county to comply with the diversion requirements of Section 41780.

As added by AB 688 (Sher), Stats. 1994, c. 1227.

41787.1. (a) Rural cities and rural counties may join to form rural regional agencies pursuant to Article 3 (commencing with Section 40970) of Chapter 1.

(b) A rural regional agency, and not the rural cities or rural counties which are member jurisdictions of the rural regional agency, may be responsible for compliance with Article 1 (commencing with Section 41780) of Chapter 6 if specified in the agreement pursuant to which the rural regional agency is formed.

(c) (1) The board may reduce the diversion requirements of Section 41780 for a rural regional agency, if the rural regional agency demonstrates, and the board concurs, based on substantial evidence in the record, that achievement of the diversion requirements is not feasible because adverse market or economic conditions beyond the control of the rural regional agency prevent it from meeting the requirements of Section 41780.

(2) Before a rural regional agency may be granted a reduction in diversion requirements pursuant to paragraph (1),

it shall demonstrate that, at a minimum, it has established all of the following regionwide programs:

(A) A source reduction and recycling program or programs designed to handle the predominant classes and types of solid waste generated within the rural regional agency.

(B) A regional diversion and procurement program or programs.

(C) A regional public information and education program or programs.

(d) (1) Notwithstanding Section 40974, any civil penalty imposed on a rural regional agency by the board pursuant to Section 41813 or 41850 shall be imposed only on a member rural city or county that is in violation of this division as a city or county irrespective of its membership in the rural regional agency. If a rural regional agency elects to apportion penalties pursuant to this subdivision, the member jurisdiction to that rural regional agency shall, as a condition of the agreement establishing the rural regional agency, be required to account on an individual jurisdictional basis for their compliance with the diversion requirements of Section 41780, as prescribed by Section 41780.2.

(2) In determining whether to impose a penalty on a member of a rural regional agency pursuant to this subdivision, the board may consider all of the following:

(A) The relevant circumstances that resulted in the agency's failure to achieve the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780, and whether the member contributed to the circumstances that resulted in the failure to achieve the diversion requirements.

(B) Whether the agency's joint powers agreement specifies that all liability for fines and penalties rests with the member, with no liability assigned to the agency.

(C) Whether the imposition of penalties on members and not on the agency would provide for flexibility that would allow the agency to resolve the problem that is preventing the members from meeting the diversion requirements.

(D) Limiting penalties to a maximum of ten thousand dollars ($10,000) per day if a member's failure does not cause other members or the agency to fail to implement programs in the agency's source reduction and recycling element.

As added by AB 688 (Sher), Stats. 1994, c. 1227, and amended by AB 242, Stats. 1996, c. 21.

41787.2. (a) A rural city or a rural county, which has received, or is eligible for, a reduction in diversion requirements pursuant to Section 41787, may become a member of a rural regional agency for the purpose of complying with the diversion requirements of Section 41780, in which case the region's maximum disposal tonnage allowable shall be calculated as follows:

(1) Determining the regional maximum disposal tonnage allowable, excluding members with reduced diversion requirements.

(2) Determining the maximum disposal tonnage allowable for those members authorized to meet reduced diversion requirements.

(3) Adding the calculated maximum disposal tonnages determined pursuant to paragraphs (1) and (2) to determine the regional maximum disposal tonnage allowable.

(b) (1) A rural regional agency may not assume responsibility for compliance with diversion requirements upon formation pursuant to subdivision (b) of Section 41787.1, and for compliance with Article 1 (commencing with Section 41780), if the rural regional agency is comprised of more than two rural counties, unless authorized by the board pursuant to paragraph (2).

(2) The board may authorize the assumption of responsibility for compliance with diversion requirements by a rural regional agency upon formation, which is comprised of more than two rural counties, if the board finds that the rural regional agency's assumption of responsibility will not adversely affect compliance with this part.

As added by AB 688 (Sher), Stats. 1994, c. 1227.

41787.3. The board, in consultation with rural cities and rural counties, shall develop model programs and materials to assist rural cities and rural counties in complying with the requirements of Chapter 2 (commencing with Section 41000) and Chapter 3 (commencing with Section 41300). Those model programs and materials shall be designed to assist rural cities and rural counties in achieving the purposes of this division in a manner which minimizes, to the maximum extent feasible, the costs imposed on rural cities and rural counties to comply with this division.

As added by AB 688 (Sher), Stats. 1994, c. 1227.

41787.4. Notwithstanding Section 41820, the board may grant a two-year time extension from the diversion requirements of Section 41780 to a rural city, rural county, or rural regional agency if all of the following conditions are met:

(a) The board adopts written findings, based on substantial evidence in the record, that adverse market or economic conditions beyond the control of the rural city, rural county, or rural regional agency prevent the rural city, rural county, or rural regional agency from meeting the diversion requirements.

(b) The rural city, rural county, or rural regional agency submits a plan of correction that demonstrates how it will meet the diversion requirements before the time extension expires, which includes the source reduction, recycling, and composting programs it will implement and states how those programs will be funded.

(c) The rural city, rural county, or rural regional agency demonstrates that it is achieving the maximum feasible amount of source reduction, recycling, or composting of solid waste within its jurisdiction.

As added by AB 688 (Sher), Stats. 1994, c. 1227.

41787.5. Unless in conflict with the express provisions of this article, all other provisions of this division, as appropriate, shall apply to rural cities, rural counties, and rural regional agencies to the same extent that those provisions apply to nonrural cities, counties, and regional agencies.

As added by AB 688 (Sher), Stats. 1994, c. 1227.

ARTICLE 2. BOARD REVIEW

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41790. In order to coordinate solid waste management activities throughout the state and to ensure that Article 2 (commencing with Section 40050) of Chapter 1 of Part 1 is implemented, the board shall review each county and city source reduction and recycling element and each countywide integrated waste management plan adopted pursuant to this part to determine if it complies with Article 2 (commencing with Section 40050) of Chapter 1 of Part 1.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41791. (a) If any city or county has less than eight years of remaining disposal site capacity, the countywide integrated waste management plan shall be submitted to the board within 12 months after the Office of Administrative Law formally approves regulations for the preparation of countywide siting elements and countywide integrated waste management plans pursuant to Section 11349.3 of the Government Code.

(b) If any city or county has eight or more years of remaining disposal capacity, the countywide integrated waste management plan shall be submitted to the board within 18 months after the Office of Administrative Law formally approves regulations for the preparation of countywide siting elements and countywide integrated waste management plans pursuant to Section 11349.3 of the Government Code.

(c) A regional agency integrated waste management plan shall be submitted to the board within 18 months after the Office of Administrative Law formally approves regulations for the preparation of countywide siting elements and countywide integrated waste management plans pursuant to Section 11349.3 of the Government Code.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2092 (Sher), Stats. 1992, c. 105, and AB 2494 (Sher), Stats. 1992, c. 1292.

41791.1. In reviewing, commenting upon, and approving or disapproving integrated waste management plans and the elements thereof, the board shall take into account both of the following:

(a) The shared responsibility which exists under law between the board and local agencies for activities such as the development of markets for materials diverted from disposal facilities, public education and information, and source reduction.

(b) The importance of promoting regional cooperation among local agencies, and cooperation between local agencies and the board in achieving the objectives of this division, to the extent that cooperation will result in more cost-effective and efficient implementation of this division.

As added by AB 2494 (Sher), Stats. 1992, c. 1292.

41791.2. In reviewing, commenting upon, and approving or disapproving integrated waste management plans and the elements thereof, the board shall assist local agencies, to the extent that local agencies request this assistance within the same region, in developing regional cooperative approaches to source reduction, public information and education, and market development, if the approaches result in more efficient and cost-effective implementation of this division.

As added by AB 2494 (Sher), Stats. 1992, c. 1292.

41791.5 (a)(1) Notwithstanding Section 41791, and except as provided in subdivision (b), each city, county, and regional agency shall submit its source reduction and recycling element and its nondisposal facility element to the board in accordance with the following schedule:

(A) For any jurisdiction with less than eight years of remaining disposal site capacity, the source reduction and recycling element and the nondisposal facility element shall be submitted on or before April 30, 1994.

(B) For any jurisdiction with eight or more years, but less than 15 years, of remaining disposal site capacity, the source reduction and recycling element and the nondisposal facility element shall be submitted on or before August 31, 1994.

(C) For any jurisdiction with 15 or more years of remaining disposal site capacity, the source reduction and recycling element and the nondisposal facility element shall be submitted on or before December 31, 1994.

(2) For purposes of this section, "remaining disposal site capacity" means capacity remaining as of January 1, 1990. For each jurisdiction, disposal site capacity shall be deemed to be the countywide permitted disposal site capacity.

(3) Notwithstanding Section 41791, a county or regional agency that has adopted a countywide or regional agency integrated waste management plan may submit the plan and its elements to the board for review and approval pursuant to the schedule set forth in paragraph (1).

(b) A city which is incorporated after January 1, 1990, shall submit a source reduction and recycling element, a household hazardous waste element, and a nondisposal facility element to the board for approval within 18 months from the date that the city was incorporated or within 18 months of the effective date of this section, whichever is later.

As added by AB 440 (Sher), Stats. 1993, c. 1169, and amended by AB 2938 (Aguiar), Stats. 1994, c. 1150.

41792. It is the intent of the Legislature, in enacting this part, that cities and counties shall commence efforts to implement source reduction, recycling, or composting activities immediately upon enactment of this part, in order to achieve the deadlines specified under this chapter.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41793. Each county or city shall hold at least one public hearing before approving its source reduction and recycling element, household hazardous waste element, and the countywide integrated waste management plan.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2707 (LaFollette), Stats. 1990, c. 1406.

41794. Any city may submit its city source reduction and recycling element or nondisposal facility element to the board for review before the dates in the schedule in Section 41791.5.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 3001 (Cortese), Stats. 1992, c. 1291, and AB 440 (Sher), Stats. 1993, c. 1169.

Chapter 7. Approval of Local Planning

(Chapter 7 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. BOARD APPROVAL

(As added by AB 939 (Sher), Stats. 1989, c. 1095)

41800. (a) Except as provided in subdivision (b), within 120 days from the date of receipt of a countywide or regional integrated waste management plan which the board has determined to be complete or any element of the plan which the board has determined to be complete, the board shall determine whether the plan or element is in compliance with Article 2 (commencing with Section 40050) of Chapter 1 of Part 1, Chapter 2 (commencing with Section 41000), and Chapter 5 (commencing with Section 41750), and, based upon that determination, the board shall approve, conditionally approve, or disapprove the plan or element.

(b) (1) Within 120 days from the date of receipt of a city, county, or regional agency nondisposal facility element, which the board has determined to be complete, and within 60 days from the date of receipt of an amendment to a city, county, or regional agency nondisposal facility element, the board shall determine whether the element, which the board has determined to be complete, or amendment is in compliance with Chapter 4.5 (commencing with Section 41730) and Article 1 (commencing with Section 41780) of Chapter 6, and, based upon that determination, the board shall approve, conditionally approve, or disapprove the element or amendment within that time period.

(2) In reviewing the element or amendment, the board shall:

(A) Not consider the estimated capacity of the facility or facilities in the element or amendment unless the board determines that this information is needed to determine whether the element or amendment meets the requirements of Article 1 (commencing with Section 41780) of Chapter 6.

(B) Recognize that individual facilities represent portions of local plans or programs that are designed to achieve the diversion requirements of Section 41780 and therefore may not arbitrarily require new or expanded diversion at proposed facilities.

(C) Not disapprove an element or amendment that includes a transfer station or other facility solely because the facility does not contribute towards the jurisdiction's efforts to comply with Section 41780.

(c) If the board does not act to approve, conditionally approve, or disapprove an element which the board has determined to be complete within 120 days, or an amendment which the board has determined to be complete within 60 days, the board shall be deemed to have approved the element or amendment.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3001 (Cortese), Stats. 1992, c. 1291, and AB 688 (Sher), Stats. 1994, c. 1227.

41801. Before approving or conditionally approving a countywide or regional integrated waste management plan, or any element of the plan, pursuant to Section 41800, the board shall adopt written findings, based on substantial evidence in the record, that implementing the plan or element will achieve the requirements established pursuant to this part, including the diversion requirements of Section 41780.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 688 (Sher), Stats. 1994, c. 1227.

41801.5. (a) If an element submitted to the board for final review includes the diversion of any solid wastes specified in subdivision (c) of Section 41781.2 for years preceding the year commencing January 1, 1990, and the board is unable to determine whether the requirements of Section 41781.2 have been met, the board shall notify the city, county, or regional agency that the diversion is excluded for purposes of calculating compliance with Section 41780. The board shall notify the city, county, or regional agency of the exclusion within 60 days from the date of receipt of the element for final review. If an element has been submitted to the board for final review prior to January 1, 1993, the board shall notify the submitting city, county, or regional agency of the exclusion on or before March 1, 1993.

(b) The notice shall be based upon a summary review undertaken solely for the purpose of determining whether the source reduction and recycling element includes any diversion of wastes excluded by Section 41781.2, and whether the element contains information sufficient for the board to determine whether the requirements of that section have been met. The summary review and notice shall be undertaken by the board concurrent with the board's review and approval, conditional approval, or disapproval of source reduction and recycling elements pursuant to Section 41800.

(c) The board shall approve or conditionally approve the source reduction and recycling element, if wastes have been excluded pursuant to Section 41781.2, if the board finds, pursuant to Section 41801, that, notwithstanding that exclusion, the element will achieve the requirements established pursuant to this part, including the diversion requirements of Section 41780.

(d) If the source reduction and recycling element is approved or conditionally approved pursuant to this section, the city, county, or regional agency shall revise the element to reflect the excluded wastes and shall submit any such revisions to the board pursuant to Section 41822.

As added by AB 2494 (Sher), Stats. 1992, c. 1292, and amended by AB 688 (Sher), Stats. 1994, c. 1227.

41802. (a) Within 120 days from the date of receipt of a household hazardous waste element, the board shall approve or disapprove the element.

(b) The board shall not disapprove a household hazardous waste element if the local agency preparing the element demonstrates to the board that, in implementing the household hazardous waste element, the local agency will comply with all of the following requirements:

(1) The local agency will use feasible methods to properly reduce, collect, recycle, treat, and dispose of household hazardous waste generated within its jurisdiction.

(2) The local agency will devote reasonable expenditures to the safe reduction, collection, recycling, treatment, and disposal of household hazardous waste, relative to the other expenditures required by this division, and relative to the expenditures for household hazardous waste programs which were awarded grants of funds pursuant to Section 46401 as it read on January 1, 1993.

(3) The local agency will make all reasonable efforts to inform the public of, and to encourage public participation in, the household hazardous waste program.

(4) Regardless of the number of household hazardous waste collection events held each year by a local agency, or the actual number of households served, the collection program is available for use by all households within the jurisdiction of the local agency, and provides a safe alternative for all residents within the jurisdiction of the local agency to properly and safely dispose of household hazardous waste.

(c) (1) In determining whether a local agency meets the conditions for approval of a household hazardous waste element set forth in subdivision (b), the board shall consider the geographic size and population of the city or county and the quantity of household hazardous waste generated within the jurisdiction of the city or county.

(2) The board may provide an exemption from the requirements of subdivision (b) if a city, county, or a regional agency demonstrates, and the board concurs, that compliance with those requirements is not feasible due to the small geographic size of the city, county, or regional agency and the small quantity of solid waste generated within the city, county, or regional agency. The board may establish alternative, but less comprehensive, requirements for those cities, counties, or regional agencies to ensure compliance with this division.

As added by AB 2707 (LaFollette), Stats. 1990, c. 1406, and amended by AB 1220 (Eastin), Stats. 1993, c. 656, and AB 626 (Sher), Stats. 1996, c. 1038.

ARTICLE 2. DEFICIENCIES

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41810. (a) If the board conditionally approves a countywide or regional integrated waste management plan, or any element of the plan, the board shall issue a notice of conditional approval to the city, county, or regional agency which identifies the specific reasons for the conditional approval. The notice of conditional approval shall include specific recommendations on how to correct the remaining deficiencies in the plan or element.

(b) If the board disapproves a countywide or regional integrated waste management plan, or any element of the plan, the board shall issue a notice of deficiency to the city, county, or regional agency which identifies the specific reasons for the disapproval. The notice of deficiency shall include specific recommendations on how to correct the deficiencies in the plan or element.

As added by AB 939 (Sher), Stats. 1989, c. 1095 and amended by AB 688 (Sher), Stats. 1994, c. 1227.

41810.1. (a) Any city, county, or regional agency which receives a notice of conditional approval for a countywide or regional integrated waste management plan, or any element of the plan, pursuant to subdivision (a) of Section 41810, shall, within 60 days from the date of receipt of the notice of conditional approval, submit a compliance schedule to the board that demonstrates how the city, county, or regional agency will correct the deficiencies identified in the notice of conditional approval by the earliest feasible date, but in no event shall that correction take longer to make than one year from the date of submission of the compliance schedule.

(b) The board shall approve or disapprove a compliance schedule submitted pursuant to subdivision (a) within 60 days from the date of its receipt of the schedule.

(c) If the board determines, based on substantial evidence in the record, that a city, county, or regional agency is not in compliance with a compliance schedule approved pursuant to subdivision (b), the board may revoke the notice of conditional approval, and shall issue a notice of deficiency pursuant to subdivision (b) of Section 41810.

(d) It is the intent of the Legislature that a notice of conditional approval shall provide flexibility for a city, county, or regional agency to make substantial progress towards meeting the requirements of this part while ensuring full compliance with this part at the earliest feasible date.

As added by AB 688 (Sher), Stats. 1994, c. 1227.

41811. Within 120 days of receipt of the notice of deficiency issued pursuant to Section 41810, the city or county shall correct the deficiencies, readopt, and resubmit the city source reduction and recycling element or the countywide integrated waste management plan to the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41811.5. (a) If the board disapproves an element for which a city, county, or regional agency has received a notification of excluded wastes pursuant to Section 41801.5, the city, county, or regional agency may, concurrent with the procedures specified in Section 41811, submit additional information to substantiate that the requirements of Section 41781.2 have been met. The additional information shall be submitted to the board within 60 days of disapproval of the element.

(b) Following the receipt of additional information pursuant to subdivision (a) the board shall determine, within 60 days, whether all, or a portion of, the excluded waste will be included in the source reduction and recycling element for purposes of calculating compliance with Section 41780.

(c) Based upon the board's determination pursuant to subdivision (b), the city, county, or regional agency shall revise its source reduction and recycling element to correct any deficiencies resulting from the exclusion of wastes

pursuant to Section 41781.2, and shall resubmit the element to the board. The element shall be resubmitted within 120 days of a board determination pursuant to subdivision (b). Notwithstanding Section 41811, if an element is disapproved pursuant to Section 41800, and the notice of deficiency issued pursuant to Section 41810 identifies reasons for disapproval, including, but not limited to, noncompliance with Section 41781.2, the city, county, or regional agency shall correct all deficiencies, and readopt and resubmit the element to the board pursuant to the requirements of this section.

(d) In revising the source reduction and recycling element to address deficiencies arising from noncompliance with Section 41781.2, a city, county, or regional agency may limit the revisions to an identification and description of the specific measures that will be undertaken to achieve compliance with Section 41780.

(e) If a city, county, or regional agency is unable to resubmit the source reduction and recycling element within 120 days, the board may, on a case-by-case basis, extend the deadline imposed by subdivision (c) for submittal of a revised element.

As added by AB 2494 (Sher), Stats. 1992, c. 1292.

41812. If the board determines that the revised city, county, or regional agency source reduction and recycling element or the countywide or regional agency integrated waste management plan submitted pursuant to Section 41811 or 41811.5 still fails to meet the requirements of this part, the board shall conduct a public hearing for the purpose of hearing testimony on the plan or element and the deficiencies identified by the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292.

41813. (a) After conducting a public hearing pursuant to Section 41812, the board may impose administrative civil penalties of not more than ten thousand dollars ($10,000) per day on any city or county, or, pursuant to Section 40974, on any city or county as a member of a regional agency, which fails to submit an adequate element or plan in accordance with the requirements of this chapter.

(b) The board shall not impose any penalty against a city or county pursuant to this section if the city or county is in substantial compliance with this part and if those aspects of a plan or element of a plan submitted by a city, county, or regional agency which is not in compliance with this part do not directly or substantially affect achievement of the diversion requirements of Section 41780.

(c) In determining whether a city, county, or regional agency is in substantial compliance, the board shall consider whether the city, county, or regional agency has made a good faith effort to implement all reasonable and feasible measures to comply.

(d) The board shall not use the money collected from the penalties imposed pursuant to subdivision (a) for administrative purposes. The board shall use the money collected from the penalties imposed pursuant to subdivision (a), to the extent possible, to assist local governments in meeting the requirements of this part.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2211 (Sher), Stats. 1992, c. 280, and AB 688 (Sher), Stats. 1994, c. 1227.

ARTICLE 3. OTHER PROVISIONS

(Article 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

(Note: Article 3, Review and Enforcement, was renumbered to Article 4 by AB 1820 (Sher), Stats. 1990, c. 145)

41820. (a) The board may grant one or more, single, or multiyear time extension from the requirements of paragraph (2) of subdivision (a) of Section 41780 to any city, county, or regional agency if the following conditions are met:

(1) Any multiyear extension that is granted does not exceed three years and a city, county, or regional agency is not granted extensions that exceed a total of five years.

(2) Any extension granted prior to January 1, 2000, commences on January 1, 2000. The board shall require that any city, county, or regional agency granted an extension prior to January 1, 2000, complies with this section after the date that the extension is granted.

(3) No extension is granted for any period after January 1, 2006, and no extension is effective after January 1, 2006.

(4) The board considers the extent to which a city, county, or regional agency complied with its plan of correction before considering another extension.

(5) No city, county, or regional agency is granted an extension if that city, county, or regional agency failed to meet the applicable requirements of Chapter 2 (commencing with Section 41000), Chapter 3 (commencing with Section 41300), Chapter 3.5 (commencing with Section 41500), and Chapter 4.5 (commencing with Section 41730).

(6) The board adopts written findings, based upon substantial evidence in the record as follows:

(A) The city, county, or regional agency is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its source reduction and recycling element.

(B) The city, county, or regional agency submits a plan of correction that demonstrates that the city, county, or regional agency will meet the requirements of paragraph (2) of subdivision (a) of Section 41780 before the time extension expires, includes the source reduction, recycling, or composting steps the city, county, or regional agency will implement, a date prior to the expiration of the time extension when the requirements of paragraph (2) of subdivision (a) of Section 41780 will be met, existing programs it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

(b) (1) When considering a request for an extension, the board may make specific recommendations for the implementation of alternative programs.

(2) Nothing in this section shall preclude the board from disapproving any request for an extension.

(3) If the board disapproves a request for an extension, the board shall specify its reasons for the disapproval.

(c) (1) In determining whether to grant the request by a city, county, or regional agency for the time extension authorized by subdivision (a), the board shall consider information provided by the city, county, or regional agency that describes relevant circumstances in the city, county, or regional agency that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling, and composting programs, facilities built or planned, waste disposal patterns within the jurisdiction, and the type of residential and nonresidential waste disposed by the city, county, or regional agency.

(2) The city, county, or regional agency may provide the board with any additional information that the jurisdiction determines to be necessary to demonstrate to the board the need for the extension.

(d) If the board grants a time extension pursuant to subdivision (a), the city, county, or regional agency may request technical assistance from the board to assist it in meeting the diversion requirements of paragraph (2) of subdivision (a) of Section 41780 during the extension period. If requested by the city, county, or regional agency, the board shall assist the city, county, or regional agency with identifying model policies and programs implemented by other jurisdictions of similar size, geography, and demographic mix.

(e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 626 (Sher), Stats. 1996, c. 1038, and SB 1066 (Sher), Stats. 1997, c. 672.

41820.5. (a) In addition to its authority under Section 41820, the board may, after a public hearing, grant a time extension from the diversion requirements of Section 41780 to a city if both of the following conditions exist:

(1) The city was incorporated pursuant to Division 3 (commencing with Section 56000) of Title 5 of the Government Code after January 1, 1990, and before January 1, 2001.

(2) The county within which the city is located did not include provisions in its franchises that ensured that the now incorporated area would comply with the diversion requirements of Section 41780.

(b) The board may authorize a city that meets the requirements of subdivision (a) to submit a source reduction and recycling element that includes an implementation schedule that shows both of the following:

(1) The city shall divert 25 percent of its estimated generation amount of solid waste from landfill or transformation facilities within three years from the date on which the source reduction and recycling element is due pursuant to subdivision (b) of Section 41791.5, through source reduction, recycling, and composting activities.

(2) The city shall divert 50 percent of its estimated generation amount of solid waste from landfill or transformation facilities within eight years from the date on which the source reduction and recycling element is due pursuant to subdivision (b) of Section 41791.5, through source reduction, recycling, and composting activities.

As added by SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

41820.6. (a) In addition to its authority under Section 41820, the board may, after a public hearing, grant a time extension from the diversion requirements of Section 41780 to a city if both of the following conditions exist:

(1) The city was incorporated pursuant to Division 3 (commencing with Section 56000) of Title 5 of the Government Code on or after January 1, 2001.

(2) The county within which the city is located did not include provisions in its franchises that ensured that the now incorporated area would comply with the diversion requirements of Section 41780.

(b) The board may authorize a city that meets the requirements of subdivision (a) to submit a source reduction and recycling element that includes an implementation schedule that shows that the city shall divert 50 percent of its estimated generation amount of solid waste from landfill or transformation facilities, within three years from the date on which the source reduction and recycling element is due pursuant to subdivision (b) of Section 41791.5, through source reduction, recycling, and composting activities.

As added by AB 1405 (Morrow), Stats. 1993, c. 183, and amended by AB 2938 (Aguiar), Stats. 1994, c. 1150, and renumbered from 41820.5 and amended by SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

41821. (a) (1) Each year following the board's approval of a city, county, or regional agency's source reduction and recycling element, household hazardous waste element, and nondisposal facility element, the city, county, or regional agency shall submit a report to the board summarizing its progress in reducing solid waste as required by Section 41780.

(2) The annual report shall be due on or before August 1 of the year following board approval of the source reduction and recycling element, the household hazardous waste element, and the nondisposal facility element, and on or before August 1 in each subsequent year. The information in this report shall encompass the previous calendar year, January 1 to December 31, inclusive.

(b) Each jurisdiction's annual report to the board shall, at a minimum, include the following:

(1) Calculations of annual disposal reduction.

(2) Information on the changes in waste generated or disposed of due to increases or decreases in population, economics, or other factors in complying with subdivision (c) of Section 41780.1.

(3) A summary of progress made in implementing the source reduction and recycling element and the household hazardous waste element. The city, county, or regional agency may also include information about existing and new programs it is implementing that are not part of the original or

modified source reduction and recycling element adopted by the jurisdiction and approved by the board to achieve the diversion requirements of Section 41780.

(4) A summary of progress made in diversion of construction and demolition of waste material, including information on programs and ordinances implemented by the local government and quantitative data, where available.

(5) If the jurisdiction has been granted a time extension by the board pursuant to Section 41820, the jurisdiction shall include a summary of progress made in meeting the source reduction and recycling element implementation schedule pursuant to paragraph (2) of subdivision (a) of Section 41780 and complying with the jurisdiction's plan of correction, prior to the expiration of the time extension.

(6) If the jurisdiction has been granted an alternative source reduction, recycling, and composting requirement pursuant to Section 41785, the jurisdiction shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

(7) Other information relevant to compliance with Section 41780.

(c) A jurisdiction may also include, in the report required by this section, all of the following:

(1) Any factor that the jurisdiction believes would affect the accuracy of the estimated waste disposal reduction calculation provided in the report pursuant to paragraph (1) of subdivision (b) to accurately reflect the changes in the amount of solid waste that is actually disposed. The jurisdiction may include, but is not limited to including, all of the following factors:

(A) Whether the jurisdiction hosts a solid waste facility.

(B) The effects of self-hauled waste and construction and demolition waste.

(C) The original or subsequent base year calculation, the amount of orphan waste, and the waste disposal reduction adjustment methodology.

(2) Information regarding the programs the jurisdiction is undertaking to respond to the factors specified in paragraph (1), and why it is not feasible to implement programs to respond to other factors that affect the amount of waste that is disposed.

(3) An estimate that the jurisdiction believes reflects that jurisdiction's annual reduction or increase in the disposal of solid waste.

(d) The board shall use, but is not limited to the use of, the annual report in the determination of whether the jurisdiction's source reduction and recycling element needs to be revised.

(e) (1) The board shall adopt procedures for requiring additional information in a jurisdiction's annual report. The procedures shall require the board to notify a jurisdiction of any additional required information no later than 120 days after the board receives the report from the jurisdiction.

(2) Paragraph (1) does not prohibit the board from making additional requests for information in a timely manner. A jurisdiction receiving a request for information shall respond in a timely manner.

(f) The board shall adopt procedures for conferring with a jurisdiction regarding the implementation of a diversion program or changes to a jurisdiction's calculation of its annual disposal reduction.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 440 (Sher), Stats. 1993, c. 1169, and repealed and added by AB 626 (Sher), Stats. 1996, c. 1038, and amended by SB 1066 (Sher), Stats. 1997, c. 672, and SB 2202 (Senate Environmental Quality Committee), Stats. 2000, c. 740, and SB 1374 (Kuehl), Stats. 2002, c. 501.

41821.1. (a) Each year following the board's approval of a county or regional agency's siting element and summary plan, the county or regional agency shall submit a report to the board summarizing the adequacy of the siting element and summary plan. The report on the siting element shall discuss any changes in disposal capacity, disposal facilities, or any other relevant issues. The annual report shall be due on or before August 1 of the year following board approval of a county or regional agency's siting element and summary plan, and on or before August 1 in each subsequent year. The information in this report shall encompass the previous calendar year, January 1 to December 31, inclusive.

(b) The board shall adopt procedures that may authorize a jurisdiction to submit an abbreviated version of the report required pursuant to this section, if the board determines that the jurisdiction has met or exceeded the requirements of paragraph (2) of subdivision (a) of Section 41780 for the previous two years, and if the board determines that the jurisdiction has otherwise complied with this division for the previous five years.

As added by AB 626 (Sher), Stats. 1996, c. 1038, and amended by SB 2202 (Senate Environmental Quality Committee), Stats. 2000, c. 740.

41821.2. (a) For the purposes of this section, "district" means a community service district that provides solid waste handling services or implements source reduction and recycling programs.

(b) Notwithstanding any other law, each district shall provide the city, county, or regional agency in which it is located, information on the programs implemented by the district and the amount of waste disposed and diverted within the district. The board may adopt regulations pertaining to the format of the information to be provided and deadlines for supplying this information to the city, county, or regional agency so that it may be incorporated into the annual report submitted to the board pursuant to Section 41821.

(c) This section shall become inoperative on July 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute that is enacted before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

As added by AB 75 (Strom-Martin), Stats. 1999, c. 764, and amended by SB 2202 (Senate Environmental Quality Committee), Stats. 2000, c. 740.

41821.2. (a) For the purposes of this section, "district" means a community services district, public utility district, or sanitary district that provides solid waste handling services or implements source reduction and recycling programs.

(b) Notwithstanding any other law, each district shall do all of the following:

(1) Comply with the source reduction and recycling element and the household hazardous waste element of the city, county, or regional agency in which the district is located, as required by the city, county, or regional agency. The city, county, or regional agency shall notify a district of any program that it is implementing or modifying when it annually submits a report to the board pursuant to Section 41821.

(2) Provide each city, county, or regional agency in which it is located, information on the programs implemented by the district, the amount of waste disposed and reported to the disposal tracking system pursuant to Section 41821.5 for each city, county, or regional agency, and the amount of waste diverted by the district for each city, county, or regional agency.

(c) The board may adopt regulations pertaining to the format of the information to be provided pursuant to paragraph (2) of subdivision (b) and deadlines for supplying this information to the city, county, or regional agency, so that it may be incorporated into the annual report submitted to the board pursuant to Section 41821.

(d) A district is subject to the portion of a penalty imposed, pursuant to Section 41850, upon a city, county, or regional agency in which the district is located, that is in proportion to the district's responsibility for failure to implement that jurisdiction's source reduction and recycling element and household hazardous waste element, as determined by that city, county, or regional agency. The board shall not determine the proportion of a district's responsibility as part of its determination to impose penalties. The city, county, or regional agency shall provide the district with a written notice regarding the district's responsibility, including the basis for determining the district's proportional responsibility, and an opportunity for hearing before the city, county, or regional agency's governing body, before assessing the district a proportion of the penalty imposed by the board.

(e) A district may impose a fee in an amount sufficient to pay for the costs of complying with this section. The fees shall be assessed and collected in the same manner as the fees imposed pursuant to Sections 41901 and 41902.

As added by SB 2202 (Senate Environmental Quality Committee), Stats. 2000, c. 740, and amended by SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

41821.3. (a) For the purposes of this section the following definitions shall apply:

(1) "Inert waste" means only rock, concrete, brick, sand, soil, ceramics, and cured asphalt. "Inert waste" does not include any waste that meets the definition of "designated waste," as defined in Section 13173 of the Water Code, or "hazardous waste" as defined in Section 40141.

(2) "Inert waste removed from the solid waste stream and not disposed of in a solid waste landfill" means the use or placement of inert waste on property where surface mining operations, as defined in Section 2735, are being conducted, or have been conducted previously, if the use or placement is for purposes of reclamation, as defined in Section 2733, pursuant to either of the following:

(A) A reclamation plan approved under Section 2774.

(B) For surface mining operations conducted prior to January 1, 1976, an agreement with a city or county, or a permit issued by a city or county, that provides for a fill appropriately engineered for the planned future use of the reclaimed mine site.

(3) "Jurisdiction" means a city, county, or regional agency.

(b) A jurisdiction shall deduct, from the amount of disposed waste that is required to be included in the annual report submitted to the board pursuant to subdivision (b) of Section 41821, inert waste removed from the solid waste stream and not disposed of in a solid waste landfill, as defined in paragraph (2) of subdivision (a). A jurisdiction shall deduct this inert waste only in accordance with the procedures specified in subdivisions (c) to (e), inclusive, commencing with the report submitted by the jurisdiction to the board for the year 2001.

(c) (1) A jurisdiction shall deduct inert waste pursuant to subdivision (b) from its reported disposal tonnage for the year 2001, and shall identify, in the jurisdiction's annual report, that the deduction is being made pursuant to this section and the exact amount of the deduction.

(2) The board shall verify that the deduction made pursuant to paragraph (1) is consistent with the requirements of this section and the amount deducted is consistent with the amount reported through the board's disposal reporting system. The board shall approve the deduction made by the jurisdiction upon making this verification.

(3) If the board finds that the amount deducted pursuant to paragraph (1) does not meet the requirements of this section, or if the amount deducted is not consistent with the amount reported through the board's disposal reporting system, the board shall notify the jurisdiction of its preliminary determination and confer with representatives of the jurisdiction to reach an agreement regarding the amount of the deduction. If the jurisdiction agrees upon the amount of the deduction, the board shall approve the deduction as modified. If the board and the jurisdiction are unable to reach agreement upon the amount of the deduction, the jurisdiction may request a hearing before the board to obtain a final determination.

(d) (1) A jurisdiction shall deduct tonnage from its base-year disposal in an amount equal to the amount deducted from the jurisdiction's 2001 disposal tonnage pursuant to this section. The jurisdiction shall not deduct an amount from its base-year disposal tonnage that is greater than the amount of disposed inert waste that was included in its most recent board-approved revised base-year approved by the board.

(2) The board shall verify that the base-year deduction made pursuant to paragraph (1) is consistent with the requirements of this section. The board shall approve the revised base-year disposal tonnage upon making this verification.

(3) If the board finds that the base-year deduction requested pursuant to paragraph (1) is not consistent with the requirements of this section, the board shall notify the jurisdiction of its preliminary determination and confer with representatives of the jurisdiction in order to reach agreement regarding the amount of the deduction. If the jurisdiction agrees upon the amount of the deduction, the board shall approve the revised base-year disposal tonnage accordingly. If the board and the jurisdiction are unable to reach agreement upon the amount of the deduction, the jurisdiction may request a hearing before the board to obtain a final determination.

(e) (1) A jurisdiction shall deduct all inert waste from its reported disposal tonnage in all of its annual reports for all subsequent years. The board shall verify this deduction pursuant to paragraphs (2) and (3) of subdivision (c).

(2) If the board approves the jurisdiction's revised base-year disposal tonnage pursuant to subdivision (d), the revised base year disposal tonnage shall not be subsequently revised for inert waste under this section.

(f) This section does not limit the authority of the board to require any facility that uses or places inert material on property where surface mining operations are being conducted, or have been conducted previously, to report to the board on the quantities of inert material used or placed on the property for the purpose of reclamation.

(g) It is the intent of the Legislature that a city, county, or regional agency not be required to revise its source reduction and recycling element to comply with this section unless the city, county, or regional agency elects to implement this section as authorized by this section.

(h) This section shall become inoperative on the operative date of any regulation adopted by the board relating to "inert waste removed from the solid waste stream and not disposed of in a solid waste landfill," as defined in paragraph (2) of subdivision (a), if that regulation includes procedures to facilitate the counting of the inert waste for purposes of the disposal reporting system established under Section 41821.5 when that inert waste is placed in a mine reclamation facility as fill material, and, as of January 1 immediately following that operative date, is repealed, unless a later enacted statute that is enacted before that January 1 deletes or extends the dates on which it becomes inoperative and is repealed.

As added by AB 2308 (Chavez), Stats. 2002, c. 993.

41821.5. (a) Disposal facility operators shall submit to counties information from periodic tracking surveys on the disposal tonnages by jurisdiction or region of origin that are disposed of at each disposal facility. To enable disposal facility operators to provide that information, solid waste handlers and transfer station operators shall provide information to disposal facility operators on the origin of the solid waste that they deliver to the disposal facility.

(b) Recycling and composting facilities shall submit periodic information to counties on the types and quantities of materials that are disposed of, sold to end users, or that are sold to exporters or transporters for sale outside of the state, by county of origin. When materials are sold or transferred by one recycling or composting facility to another, for other than an end use of the material or for export, the seller or transferror of the material shall inform the buyer or transferee of the county of origin of the materials. The reporting requirements of this subdivision do not apply to entities that sell the byproducts of a manufacturing process.

(c) Each county shall submit periodic reports to the cities within the county, to any regional agency of which it is a member agency, and to the board, on the amounts of solid waste disposed by jurisdiction or region of origin, as specified in subdivision (a), and on the categories and amounts of solid waste diverted to recycling and composting facilities within the county or region, as specified in subdivision (b).

(d) The board may adopt regulations pursuant to this section requiring practices and procedures that are reasonable and necessary to perform the periodic tracking surveys required by this section, and that provide a representative accounting of solid wastes that are handled, processed, or disposed. Those regulations or periodic tracking surveys approved by the board shall not impose an unreasonable burden on waste handling, processing, or disposal operations or otherwise interfere with the safe handling, processing, and disposal of solid waste.

(e) On or before January 1, 2002, the board shall submit a report to the Legislature that evaluates the implementation of this section. The report shall include, but not be limited to, all of the following:

(1) An evaluation of the accuracy of the disposal reporting system under differing circumstances.

(2) The status of implementation of the disposal reporting system at the local level by waste haulers, landfills, transfer station and material recovery operators, and local agencies.

(3) The need for modification of the disposal reporting system to improve accuracy.

(4) Recommendations for regulatory and statutory changes needed to address deficiencies in the disposal reporting system.

(5) Recommendations to improve implementation and to streamline the reporting system, including ways to assist agencies to meet the reporting and tracking requirements.

(f) The board shall convene a working group composed of representatives of stakeholder groups, including, but not limited to, cities, counties, regional agencies, the solid waste industry, recyclers, and environmental organizations, to assist the board in preparing the report required pursuant to subdivision (e).

As added by AB 2494 (Sher), Stats. 1992, c. 1292, and amended by AB 688 (Sher), Stats. 1994, c. 1227, and SB 2202 (Senate Environmental Quality Committee), Stats. 2000, c. 740.

41821.6. To assist market development efforts by the board, local agencies, and the private sector, the board shall use existing data resources collected from recycling, composting, and disposal facilities, or from other sources, to provide periodic information on the recovery and availability of recycled materials.

As added by SB 1066 (Sher), Stats. 1997, c. 672.

41822. Each city, county, or regional agency shall review its source reduction and recycling element or the countywide integrated waste management plan at least once every five years to correct any deficiencies in the element or plan, to comply with the source reduction and recycling requirements established under Section 41780, and to revise the documents, as necessary, to comply with this part. Any revision made to an element or plan pursuant to this section shall be submitted to the board for review and approval or disapproval pursuant to the schedule established under this chapter.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 626 (Sher), Stats. 1996, c. 1038.

41823. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2707 (LaFollette), Stats. 1990, c. 1406, and repealed by AB 2494 (Sher), Stats. 1992, c. 1292.

41824. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 1515 (Sher), Stats. 1991, c. 717.

ARTICLE 4. REVIEW AND ENFORCEMENT

(Article 4, formerly Article 3, as added by AB 939 (Sher), Stats. 1989, c. 1095 was renumbered Article 4 by AB 1820 (Sher), Stats. 1990, c. 145)

41825. (a) At least once every two years, the board shall review each city, county, or regional agency source reduction and recycling element and household hazardous waste element.

(b) If after a public hearing, which, to the extent possible, is held in the local or regional agency's jurisdiction, the board finds that the city, county, or regional agency has failed to implement its source reduction and recycling element or its household hazardous waste element, the board shall issue an order of compliance with a specific schedule for achieving compliance. The compliance order shall include those conditions that the board determines to be necessary for the local agency or regional agency to complete in order to implement its source reduction and recycling element or household hazardous waste element.

(c) (1) The board shall confer with a jurisdiction regarding conditions relating to a proposed order of compliance, with a first meeting occurring not less than 60 days before issuing a notice of intent to issue an order of compliance.

(2) The board shall issue a notice of intent to issue an order of compliance not less than 30 days before the board holds a hearing to issue the notice of compliance. The notice of intent shall specify all of the following:

(A) The proposed basis for issuing an order of compliance.

(B) Proposed actions that board staff recommends are necessary for the jurisdiction to complete in order to implement its source reduction and recycling element or household hazardous waste element.

(C) Proposed staff recommendations to the board.

(3) The board shall consider any information provided pursuant to subdivision (c) of Section 41821 if the proposed issuance of an order of compliance involves changes to a jurisdiction's calculation of annual disposal reduction.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2707 (LaFollette), Stats. 1990, c. 1406, and repealed and added by AB 54 (Sher), Stats. 1993, c. 663, and amended by AB 688 (Sher), Stats. 1994, c. 1227, and SB 2202 (Senate Environmental Quality Committee), Stats. 2000, c. 740.

41826. REPEALED.

Added by AB 3777 (Chandler), Stats. 1990, c. 1634, renumbered by AB 1487 (Horcher), Stats. 1991, c. 1091, and repealed by AB 54 (Sher), Stats. 1993, c. 663.

ARTICLE 5. ENFORCEMENT

(Article 5, formerly Article 4, as added by AB 939 (Sher), Stats. 1989, c. 1095, was renumbered Article 5, and amended by AB 1820 (Sher), Stats. 1990, c. 145)

41850. (a) Except as specifically provided in Section 41813, if, after holding the public hearing and issuing an order of compliance pursuant to Section 41825, the board finds that the city, county, or regional agency has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board may impose administrative civil penalties upon the city or county or, pursuant to Section 40974, upon the city or county as a member of a regional agency, of up to ten thousand dollars ($10,000) per day until the city, county, or regional agency implements the element.

(b) In determining whether or not to impose any penalties, or in determining the amount of any penalties imposed under this section, including any penalties imposed due to the exclusion of solid waste pursuant to Section 41781.2 that results in a reduction in the quantity of solid waste diverted by a city, county, or regional agency, the board shall consider whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element. In addition, the board shall consider only those relevant circumstances that have prevented a city, county, or regional agency from meeting the requirements of this division, including the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780, including, but not limited to, all of the following:

(1) Natural disasters.

(2) Budgetary conditions within a city, county, or regional agency that could not be remedied by the imposition or adjustment of solid waste fees.

(3) Work stoppages that directly prevent a city, county, or regional agency from implementing its source reduction and recycling element or household hazardous waste element.

(4) The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source reduction and recycling programs in the jurisdiction on the host jurisdiction's ability to meet the requirements of paragraph (2) of subdivision (a) of Section 41780.

(c) In addition to the factors specified in subdivision (b), the board shall consider all of the following:

(1) The extent to which a city, county, or regional agency has implemented additional source reduction, recycling, and composting activities to comply with the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780.

(2) The extent to which a city, county, or regional agency is meeting the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780.

(3) Whether the jurisdiction has requested and been granted an extension to the requirements of Section 41780, pursuant to Section 41820, or an alternative requirement to Section 41780, pursuant to Section 41785.

(4) Whether a local jurisdiction has provided information to the board concerning whether construction and demolition waste material is at least a moderately significant portion of the waste stream, and, if so, whether the local jurisdiction has adopted an ordinance for diversion of construction and demolition waste materials from solid waste disposal facilities, has adopted a model ordinance pursuant to subdivision (a) of Section 42912 for diversion of construction and demolition waste materials from solid waste disposal facilities, or has implemented another program to encourage or require diversion of construction and demolition waste materials from solid waste disposal facilities.

(d) (1) For the purposes of this section, "good faith effort" means all reasonable and feasible efforts by a city, county, or regional agency to implement those programs or activities identified in its source reduction and recycling element or household hazardous waste element, or alternative programs or activities that achieve the same or similar results.

(2) For purposes of this section "good faith effort" may also include the evaluation by a city, county, or regional agency of improved technology for the handling and management of solid waste that would reduce costs, improve efficiency in the collection, processing, or marketing of recyclable materials or yard waste, and enhance the ability of the city, county, or regional agency to meet the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780, provided that the city, county, or regional agency has submitted a compliance schedule pursuant to Section 41825, and has made all other reasonable and feasible efforts to implement the programs identified in its source reduction and recycling element or household hazardous waste element.

(3) In determining whether a jurisdiction has made a good faith effort, the board shall consider the enforcement criteria included in its enforcement policy, as adopted on April 25, 1995, or as subsequently amended.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 688 (Sher), Stats. 1994, c. 1227, and AB 381 (Baca), Stats. 1995, c. 219, and SB 1066 (Sher), Stats. 1997, c. 672, and SB 2202 (Senate Environmental Quality Committee), Stats. 2000, c. 740, and SB 1374 (Kuehl), Stats 2002, c. 501.

41850.5. Any administrative civil penalty imposed by the board pursuant to Section 41813 or 41850 shall be deposited in the Local Government Assistance Account, which is hereby created in the Integrated Waste Management Fund. Any funds deposited in that account shall be used solely for the purposes of assisting local governments in complying with the diversion requirements established under Section 41780, and shall not be used by the board for administrative purposes.

As added by AB 688 (Sher), Stats. 1994, c. 1227.

41851. Nothing in this chapter shall infringe on the existing authority of counties and cities to control land use or to make land use decisions, and nothing in this chapter provides or transfers new authority over that land use to the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

Chapter 8. Local Fee Authority

(Chapter 8 as added by AB 939 (Sher), Stats. 1989, c. 1095)

41900. Each city and county shall demonstrate a funding source, or sources, available to pay for preparing, adopting, and implementing the element or plan, as required by this part.

As added AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145.

41901. A city, county, or city and county may impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing a countywide integrated waste management plan prepared pursuant to this division. The fees shall be based on the types or amounts of the solid waste, and shall be used to pay the actual costs incurred by the city or county in preparing, adopting, and implementing the plan, as well as in setting and collecting the local fees. In determining the amounts of the fees, a city or county shall include only those costs directly related to the preparation, adoption, and implementation of the plan and the setting and collection of the local fees. A city, county, or city and county shall impose the fees pursuant to Section 66016 of the Government Code.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2567 (Moore), Stats. 1992, c. 487.

41902. A local agency may directly collect the fees authorized by this chapter or may, by agreement, arrange for the fees to be collected by a solid waste hauler providing solid waste collection for the city or county.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41903. A city or county may assess special fees of a reasonable amount on the importation of waste from outside of the county to publicly owned or privately owned facilities. No city or county shall export solid waste to any other jurisdiction unless the exporting city or county has, within one year following the date specified in Section 41791 or a later date established or permitted by the board, an approved city or county household hazardous waste element and a source reduction and recycling element which have both been implemented, or have submitted a countywide integrated waste management plan, and is in compliance with it, provided, however, that, until one year following the date specified in Section 41791 or a later date established by the board, nothing herein shall be construed as prohibiting the export of solid waste. The board may waive the requirements of this section if the board determines that all additional reasonable source reduction and recycling programs are being implemented in the city or county or if the board determines that the system to export waste supports or enhances the city or county source recovery and recycling element.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2707 (LaFollette), Stats. 1990, c. 1406.

41904. (a) For the purposes of this section, the following terms have the following meaning:

(1) "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

(2) "Residue" means the solid waste resulting from the receipt, collection, transportation, sorting, processing, or sale of goods or materials donated to the nonprofit charitable reuser for reuse or recycling, including solid wastes left at collection, processing, or sale sites, but does not include solid wastes resulting from other activities of the nonprofit charitable reuser, such as, but not limited to, the assembly or manufacture of products from new materials, the provision of charitable services such as classroom education, meal preparation, and shelter, or the provision of services for a fee, including solid waste handling services.

(b) The Legislature hereby finds and declares both of the following:

(1) In addition to their service to the poor, disabled, and disadvantaged, charitable organizations provide a valuable service by providing for the reuse or recycling of many articles that otherwise would be disposed of at disposal sites. That reuse or recycling is a leading form of source reduction, which has the highest priority among solid waste management practices identified for California.

(2) The purpose of this section is to authorize local agencies to limit the amount of solid waste handling and disposal fees, as well as any fees authorized by this chapter, for nonprofit charitable reusers to help those nonprofit organizations meet the costs of reusing or recycling donated goods or materials.

(3) The activities of nonprofit charitable reusers that reuse and recycle waste that would otherwise be disposed of assist local agencies in meeting the diversion requirements of Section 41780.

(c) (1) A city, county, district, or regional agency may structure its fees for the solid waste handling services or disposal services that it directly provides in a manner that requires nonprofit charitable reusers to pay only the direct costs of handling and disposing of their residue, and exempts them from paying any fee amounts associated with administrative costs to the city, county, district, or regional agency or associated with any other costs that are incurred by the city, county, district, or regional agency pursuant to this division.

(2) A city, county, district, or regional agency may exempt nonprofit charitable reusers from all or part of any fees imposed on the handling or disposal of their residue pursuant to this chapter.

(d) To implement this section, a city, county, district, or regional agency may, by ordinance, resolution, or otherwise, restrict any fee reduction or exemption to specified classes of nonprofit charitable reusers, such as by their size or location, or by the amount, origin, or types of solid waste handled or disposed of, and may require that nonprofit charitable reusers enter into contractual agreements to report the amounts of solid waste disposed of and materials diverted, to maintain specified levels of service and performance, or to perform any activity that the city, county, district, or regional agency may require to achieve the diversion requirements of Section 41780.

As added by AB 3022 (Sher), Stats. 1996, c. 519.

Chapter 9. Unlawful Acts

(Chapter 9 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. GENERALLY

(Article 1 as added by SB 2092 (Hart), Stats. 1990, c. 1452)

41950. (a) No person, other than the authorized recycling agent of the city or county, shall remove paper, glass, cardboard, plastic, used motor oil, ferrous metal, aluminum, or other recyclable materials which have been segregated from solid waste materials and placed at a designated recycling collection location for residential curbside collection programs authorized by a city, county, or local agency for the purposes of collection and recycling.

(b) No person shall be subject to an action for a violation of this section, unless the person knows, or reasonably should know, that the materials would otherwise be collected by the authorized recycling agent for residential curbside collection programs authorized by a city, county, or local agency for the purpose of recycling the materials.

(c) From the time that the recyclable materials specified in subdivision (a) are placed for collection at curbside, for a residential curbside collection program authorized by a city,

county, or local agency, the recyclable materials are the property of the authorized recycling agent.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1707 (Becerra), Stats. 1991, c. 420, and AB 2558 (Alby), Stats. 1996, c. 732.

41951. (a) For the purposes of this section, "commercial entity" includes a multifamily residential complex.

(b) Unless otherwise provided by contract, paper, glass, cardboard, plastics, used motor oil, ferrous metal, aluminum, and other recyclable materials, which have been segregated from other waste materials, and placed at the designated recycling collection location by any commercial or industrial entity, shall not be removed by anyone other than the authorized recycling agent.

(c) Unless otherwise provided by contract, from the time that the recyclable materials specified in subdivision (b) are placed at the designated recycling location, the recyclable materials are the property of the authorized recycling agent.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2558 (Alby), Stats. 1996, c. 732.

41952. Nothing in this chapter limits the right of any person to donate, sell, or otherwise dispose of his or her recyclable materials.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

41953. (a) In any civil action by a recycling agent against a person alleged to have violated Section 41950 or 41951, the court may either allow treble damages, as measured by the market value of the recyclable material removed, or award a civil penalty of not more than two thousand dollars ($2,000), whichever is greater, for each unauthorized removal, against the unauthorized person removing the recyclable material.

(b) In any civil action by a recycling agent against a person alleged to have violated Section 41950 or 41951 for a second, or subsequent time, in any 12-month period, the court may either allow treble damages, as measured by the market value of the recyclable material removed, or award a civil penalty of not more than five thousand dollars ($5,000), whichever is greater, for each unauthorized removal against the unauthorized person removing the recyclable material.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1707 (Becerra), Stats. 1991, c. 420, and AB 2558 (Alby), Stats. 1996, c. 732.

41954. Nothing in this article limits the authority of a local agency to adopt or enforce regulations or ordinances on the same matters of this article. However, any ordinance which imposes civil penalties shall be approved by a majority vote of the governing board which has proposed adoption of the ordinance.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1707 (Becerra), Stats. 1991, c. 420.

41955. If the value of the stolen material is more than fifty dollars ($50), but less than four hundred dollars ($400), a violation of this part may be charged as either a misdemeanor or an infraction. A violation after a second conviction within a 12-month period shall be charged as a misdemeanor punishable pursuant to Section 19 of the Penal Code.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2558 (Alby), Stats. 1996, c. 732.

41956. The board may award special enforcement grants to cities or counties to support pilot programs designed to develop and evaluate enforcement techniques to reduce the theft of recyclable materials from commercial, industrial, or other nonresidential establishments.

As added by AB 2558 (Alby), Stats. 1996, c. 732.

ARTICLE 2. TRASH BAGS (REPEALED)

(Article 2 as added by SB 2092 (Hart), Stats. 1990, c. 1452, and repealed by SB 951 (Hart), Stats. 1993, c. 1076)

Note: See instead Chapter 5.4 of Part 3 (Sections 42290–42297).

41970 to 41978. REPEALED.

As added by SB 2092 (Hart), Stats. 1990, c. 1452, and repealed by SB 951 (Hart), Stats. 1993, c. 1076.

PART 3. STATE PROGRAMS

(Part 3 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096)

Chapter 1. Market Development Programs

(Chapter 1 as added by AB 1909 (O'Connell), Stats. 1993, c. 733)

ARTICLE 1. GENERAL PROVISIONS

(Article 1 as added by AB 1909, Stats. 1993, c. 733)

42000. The Legislature hereby finds and declares all of the following:

(a) This division requires cities and counties to divert 25 percent of all solid waste from landfills and transformation facilities by 1995 and 50 percent by 2000. As of 1990, the overall diversion rate in the state was 12 percent.

(b) California's source reduction, recycling, and composting efforts need to increase greatly if local jurisdictions are to meet the 25-percent and the 50-percent diversion requirements.

(c) Market development is the key to increased, cost-effective recycling. Market development includes activities that strengthen demand by manufacturers and end-use consumers for recyclable materials collected by municipalities, nonprofit organizations, and private entities.

(d) Developing markets for recyclable materials creates opportunities that will reindustrialize California. The board estimates that the development of markets for recyclable materials may create over 20,000 jobs in California's manufacturing sector, an additional 25,000 jobs in the sorting and processing fields, and an unestimated number of jobs in other fields that may develop through full implementation of this division.

(e) The board is authorized to conduct individual market development activities, but is not presently required to

implement a comprehensive plan that addresses the full range of market development needs.

As added by SB 1322 (Bergeson),, Stats. 1989, c. 1096, and repealed by AB 1515 (Sher), Stats. 1991, c. 717, and added by AB 1809 (O'Connell), Stats. 1993, c. 733, and amended by AB 626 (Sher), Stats. 1996, c. 1038, and SB 1066 (Sher), Stats. 1997, c. 672.

42001. The Legislature further finds and declares that the health, safety, and welfare of the people of California depend upon the development, stability, and expansion of domestic markets for the postconsumer wastes and secondary wastes collected within the state. It is therefore the purpose of this chapter to stimulate the use of postconsumer waste materials and secondary waste materials generated in California as raw materials used as feedstock by private business, industry, and commerce.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1515 (Sher), Stats. 1991, c. 717, and added by AB 1909, Stats. 1993, c. 733.

42002. The following definitions govern the construction of this chapter:

(a) "Applicant" means a person, as defined in Section 40170, who applies for designation as a Recycling Market Development Zone.

(b) "Postconsumer waste material" means any product generated by a business or a consumer which has served its intended end use, and which has been separated from solid waste for the purposes of collection, recycling, and disposal, and which does not include secondary waste material.

(c) "Recycling-based business" means any business that increases market demand for, or adds value to, postconsumer waste material or secondary waste material.

(d) "Recycling market development zone" or "zone" means any single or joint, contiguous parcels of property that, based on the determination of the board, meets the following criteria:

(1) The area has been zoned an appropriate land use for the development of commercial, industrial, or manufacturing purposes.

(2) The area is identified in the countywide or regional agency integrated waste management plan as part of the market development area.

(3) The area is located in a city with an existing postconsumer waste collection infrastructure.

(4) The area may be used to establish commercial, manufacturing, or industrial processes which would produce end products that consist of not less than 50 percent recycled materials.

(e) "Revolving loan program" means the Recycling Market Development Revolving Loan Program established pursuant to Section 42023.1.

(f) "Secondary waste material" means industrial byproducts which would otherwise go to disposal facilities and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes, such as home scrap and mill broke.

(g) "Subaccount" means the Recycling Market Development Revolving Loan Subaccount created pursuant to subdivision (a) of Section 42023.1.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, repealed by AB 1515 (Sher), Stats. 1991, c. 717, added by AB 1909, Stats. 1993, c. 733, and amended by SB 1021 (Thompson), Stats. 1994, c. 436, and AB 1364 (Migden), Stats. 1999, c. 467.

42002.5 to 42004. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1515 (Sher), Stats. 1991, c. 717.

42003. (a) The board shall, on or before December 31, 1998, conduct a feasibility study, in consultation with affected state agencies, on expanding the use of agricultural waste and forest waste in the production of commercial products. The study shall be transmitted to the Governor and to the Legislature pursuant to Section 11095 of the Government Code. The study shall include the following components:

(1) Based on consultation by the board with appropriate state and local regulatory agencies, an analysis of the kinds of technologies that are available and the commercial products that could be reasonably manufactured.

(2) An analysis, to the extent that information is available, of the potential impact that the diversion might have on landfills and, for specified agricultural and forestry-dependent counties, in meeting mandates of this division.

(b) For purposes of this section, "agricultural waste" has the same meaning as in paragraph (4) of subdivision (b) of Section 41781.2.

(c) For purposes of this section, "forest waste" includes forest debris and wood waste from forest wood waste landfills.

(d) To the extent feasible, the board shall secure cooperation and funding for the study from other governmental agencies.

(e) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

As added by AB 3345 (Bustamante), Stats. 1996, c. 991.

ARTICLE 2. MARKET DEVELOPMENT PLAN

(Article 2 as added by AB 1909 (O'Connell), Stats. 1993, c. 733)

42005. (a) The board shall develop a comprehensive market development plan using existing resources, that will stimulate market demand in the state for postconsumer waste material and secondary waste material generated in the state.

(b) The board's market development plan shall include, but shall not be limited to, achieving all of the following goals:

(1) Increasing market demand for postconsumer waste materials and secondary waste materials available due to California's source reduction and recycling programs.

(2) Increasing demand for recycled content products, especially high quality, value-added products.

(3) Promoting efficient local waste diversion systems which yield high quality, industrially usable feedstocks.

(4) Promoting the competitive collection and use of secondary waste materials.

(c) The board's development plan shall also include efforts to encourage and promote cooperative, regional programs to expand markets for recycled material. These programs shall include activities to address problems and opportunities that are unique to rural, urban, and suburban areas of the state.

(d) The board shall develop a plan, using existing resources, to provide assistance to local agencies when requested by a city, county, or regional agency, in the implementation of cost-effective programs that provide a quality supply of recycled materials for markets.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1515 (Sher), Stats. 1991, c. 717, and added by AB 1909 (O'Connell), Stats. 1993, c. 733, and amended by SB 1066 (Sher), Stats. 1997, c. 672, and SB 1191 (Speier), Stats. 2001, c. 745.

42006. (a) The plan required by Section 42005 shall describe and prioritize actions that should be undertaken to meet the goals specified in subdivision (b) of Section 42005.

(b) The plan shall include provisions for periodic review and revision in response to changing market factors or actual changes in secondary waste materials markets.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1515 (Sher), Stats. 1991, c. 717, and added by AB 1909 (O'Connell), Stats. 1993, c. 733.

42007. Upon adoption of the plan required by Section 42005, the board shall conduct a detailed analysis of staff resources and consider how to most effectively implement the plan in consideration of existing statutory mandates and resource constraints.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1515 (Sher), Stats. 1991, c. 717, and added by AB 1909 (O'Connell), Stats. 1993, c. 733.

42008. REPEALED.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733, and repealed by AB 626 (Sher), Stats. 1996, c. 1038.

42009. Nothing in this chapter shall be construed to infringe upon regulations relating to civil rights, equal employment rights, equal opportunity rights, or fair housing rights of any person or any environmental protection or public health law.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733.

ARTICLE 3. MARKET DEVELOPMENT ZONE PROGRAM

(Article 3 as added by AB 1909 (O'Connell), Stats. 1993, c. 733)

42010. (a) The local governing body may, either by ordinance or resolution, upon the recommendation of the appropriate land use planning agency, propose eligible parcels of property within its jurisdiction as a recycling market development zone.

(b) The proposal of a recycling market development zone shall be based upon the following findings by the local governing body:

(1) The current waste management practices and conditions are favorable to the development of postconsumer waste material markets.

(2) The designation as a recycling market development zone is necessary to assist in attracting private sector recycling investments to the area.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733, and amended by SB 1021 (Thompson), Stats. 1994, c. 436, and SB 1535 (Killea), Stats. 1996, c. 615, and SB 947 (Senate Judiciary Committee), Stats. 1997, c. 17, and SB 1066 (Sher), Stats. 1997, c. 672, and AB 1364 (Migden), Stats. 1999, c. 467.

42011. Any parcel of property designated as a recycling market development zone shall retain this designation for 10 years.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733.

42012. The local governing body, or any person through the local governing body, may apply to the board for designation as a recycling market development zone.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733.

42013. The board shall adopt regulations and guidelines concerning the necessary contents of each application for designation and, in the countywide integrated waste management plans, shall determine the maximum number of recycling market development zones to be designated pursuant to this chapter.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733.

42014. The board may designate or redesignate recycling market development zones for persons applying for that designation.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733.

42015. If there are more applications for designation than the number of recycling market development zones to be designated, the board shall select the applicants who shall receive the designation of a recycling market development zone based on a comparison of the applications submitted and an indication that the applicant's proposals include effective, innovative, and comprehensive tax incentives and regulatory incentives, and other incentives programs, to attract private sector investment in the proposed recycling market development zone.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733.

42016. For the purpose of Section 42015, "regulatory incentives" include, but are not limited to, all of the following:

(a) The suspension or relaxation of locally originated or modified building codes, zoning laws, and general plans.

(b) The elimination or reduction of fees for applications, permits and local government services, and the establishment of a streamlined local permit process.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733.

42017. For purposes of Section 42015, "tax incentives" include, but are not limited to, the elimination or reduction of construction taxes or business license taxes.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733.

42018. For purposes of Section 42015, "other incentives" may include, but are not limited to, all of the following:

(a) The provision for expansion of infrastructure.

(b) Provisions for increased amounts of recyclable feedstock.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733.

42019. In evaluating an application for the designation of a recycling market development zone, the board shall consider the amount of landfill capacity remaining in the jurisdiction where the zone would be located.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733.

42020. In evaluating an application for the designation of a recycling market development zone, the board shall not deny the application solely because of technical deficiencies. The board shall provide applicants with an opportunity tocorrect technical deficiencies. An application shall be denied if technical deficiencies are not corrected within 14 days.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733.

42021. Nothing in this chapter prohibits an applicant from seeking designation of an enterprise zone and receiving economic incentives as defined in Section 7073 of the Government Code.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733, and amended by AB 2889 (Assembly Consumer Protection, Governmental Efficiency, and Economic Development Committee), Stats. 2000, c. 1055, and SB 1097 (Senate Budget and Fiscal Review Committee), Stats. 2004, c. 225.

42022. REPEALED.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733, amended by AB 2889 (Assembly Consumer Protection, Governmental Efficiency, and Economic Development Committee), Stats. 2000, c. 1055, and repealed by SB 1097 (Senate Budget and Fiscal Review Committee), Stats. 2004, c. 225.

42023. Nothing in this section shall be interpreted to limit the authority of local governments to make land use decisions within their jurisdiction.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733.

42023.1. (a) The Recycling Market Development Revolving Loan Subaccount is hereby created in the account for the purpose of providing loans for purposes of the Recycling Market Development Revolving Loan Program established pursuant to this article.

(b) Notwithstanding Section 13340 of the Government Code, the funds deposited in the subaccount are hereby continuously appropriated to the board without regard to fiscal year for making loans pursuant to this article.

(c) The board may expend interest earnings on funds in the subaccount for administrative expenses incurred in carrying out the Recycling Market Development Revolving Loan Program, upon the appropriation of funds in the subaccount for that purpose in the annual Budget Act.

(d) The money from any loan repayments and fees, including, but not limited to, principal and interest repayments, fees and points, recovery of collection costs, income earned on any asset recovered pursuant to a loan default, and funds collected through foreclosure actions, shall be deposited in the subaccount.

(e) All interest accruing on interest payments from loan applicants shall be deposited in the subaccount.

(f) The board may expend the money in the subaccount to make loans to local governing bodies, private businesses, and nonprofit entities within recycling market development zones, or in areas outside zones where partnerships exist with other public entities to assist local jurisdictions to comply with Section 40051.

(g) The board shall establish and collect fees for applications for loans authorized by this section. The application fee shall be set at a level that is sufficient to fund the board's cost of processing applications for loans. In addition, the board shall establish a schedule of fees, or points, for loans which are entered into by the board, to fund the board's administration of the revolving loan program.

(h) The board may expend money in the subaccount for the administration of the Recycling Market Development Revolving Loan Program, upon the appropriation of funds in the subaccount for that purpose in the annual Budget Act. In addition, the board may expend money in the account to administer the revolving loan program, upon the appropriation of funds in the subaccount for that purpose in the annual Budget Act. However, funding for the administration of the revolving loan program from the account shall be provided only if there are not sufficient funds in the subaccount to fully fund the administration of the program.

(i) The board, pursuant to subdivision (a) of Section 47901, may set aside funds for the purposes of paying costs necessary to protect the state's position as a lender-creditor. These costs shall be broadly construed to include, but not be limited to, foreclosure expenses, auction fees, title searches, appraisals, real estate brokerage fees, attorney fees, mortgage payments, insurance payments, utility costs, repair costs, removal and storage costs for repossessed equipment and inventory, and additional expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

(j) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

As added by AB 1364 (Migden), Stats. 1999, c. 467, and amended by AB 1873 (Hancock), Stats. 2004, c. 500.

42023.2. (a) Upon authorization by the Legislature in the annual Budget Act, the Controller shall transfer a sum not to exceed five million dollars ($5,000,000) from the account to the subaccount as necessary to meet anticipated loan demand under the program. Those amounts shall be a loan to the

subaccount, repayable with interest to the account at the rate of return for money in the Surplus Money Investment Fund.

(b) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

As added by AB 1364 (Migden), Stats. 1999, c. 467, and amended by AB 1873 (Hancock), Stats. 2004, c. 500.

42023.3. (a) All money remaining in the subaccount on July 1, 2011, and all money received as repayment and interest on loans shall, as of July 1, 2011, be transferred to the account and any money due and outstanding on loans as of July 1, 2011, shall be repaid to the board and deposited by the board in the account until paid in full, except that, upon authorization by the Legislature in the annual Budget Act, interest earnings may be expended for administrative costs associated with the collection of outstanding loan accounts.

(b) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

As added by AB 1364 (Migden), Stats. 1999, c. 467, and amended by AB 1873 (Hancock), Stats. 2004, c. 500.

42023.4. (a) Loans made pursuant to Section 42023.1 shall be subject to all of the following requirements:

(1) The terms of any approved loan shall be specified in a loan agreement between the borrower and the board. The loan agreement shall include a requirement that the failure to comply with the agreement shall result in any remaining unpaid amount of the loan, with accrued interest, being immediately due and payable. Notwithstanding any term of the agreement, any recipient of a loan that the board approves shall repay the principal amount, plus interest on the basis of the rate of return for money in the Surplus Money Investment Fund at the time of the loan commitment. Except as provided in subdivision (a) of Section 42023.3, all money received as repayment and interest on loans made pursuant to this section shall be deposited in the subaccount.

(2) The term of any loan made pursuant to this section shall be not more than 10 years when collateralized by assets other than real estate, or not more than 15 years when partially or wholly collateralized by real estate.

(3) The board shall approve only those loan applications that demonstrate the applicant's ability to repay the loan. The highest priority for funding shall be given to projects which demonstrate that the project will increase market demand for recycling the project's type of postconsumer waste material.

(4) The board shall finance not more than three-fourths of the cost of each project, or not more than two million dollars ($2,000,000) for each project, whichever is less.

(5) The Department of Finance may audit the expenditure of the proceeds of any loan made pursuant to Section 42023.1 and this section.

(b) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

As added by AB 1364 (Migden), Stats. 1999, c. 467, and amended by AB 1873 (Hancock), Stats. 2004, c. 500.

42023.5. (a) The board shall, as part of the annual report to the Legislature, pursuant to Section 40507, include a report on the performance of the Recycling Market Development Revolving Loan Program, including the number and size of loans made, characteristics of loan recipients, projected loan demand, and the cost of administering the program.

(b) This section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

As added by AB 1364 (Migden), Stats. 1999, c. 467, and amended by AB 1873 (Hancock), Stats. 2004, c. 500.

42023.6. (a) The board shall encourage applicants to seek participation from private financial institutions or other public agencies. For purposes of enabling the board and local agencies to comply with Sections 40051 and 41780, the board may participate, in an amount not to exceed five hundred thousand dollars ($500,000), in the Capital Access Loan Program as provided in Article 8 (commencing with Section 44559) of Chapter 1 of Division 27 of the Health and Safety Code.

(b) For purposes of participating in the Capital Access Loan Program, as specified in subdivision (a), or in any program that leverages subaccount funds, the board may operate both inside and outside the recycling market development zones.

(c) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

As added by AB 1364 (Migden), Stats. 1999, c. 467, and amended by AB 1873 (Hancock), Stats. 2004, c. 500.

42024. The board, the Treasurer, and other appropriate state agencies shall, to the extent feasible and as appropriate, coordinate activities that will leverage financing for market development projects and encourage joint activities to strengthen markets for recycled materials.

As added by SB 1066 (Sher), Stats. 1997, c. 672, and amended by SB 1097 (Senate Budget and Fiscal Review Committee), Stats. 2004, c. 225.

Chapter 2. Metal Plating Facilities

(Chapter 2 as added by AB 721 (Núñez), Stats. 2005, c. 695.)

42100. For purposes of this chapter, the following definitions apply:

(a) "Agency" means the Business, Transportation and Housing Agency.

(b) "Air board" means the State Air Resources Board.

(c) "Applicant" means a small business that is a metal plating facility that produces hazardous waste and applies for financial assistance pursuant to this chapter to reduce the generation of hazardous waste.

(d) "Chrome plating" has the same meaning as "decorative chromium electroplating" and "chromic acid anodizing" as defined in the regulations specifying a hexavalent chromium toxic control measure for chrome plating adopted by the air board and contained in Section 93102 of Title 17 of the California Code of Regulations.

(e) "Department" means the Department of Toxic Substances Control.

(f) "Emission reduction" has the same meaning as "airborne toxic risk reduction measure," as defined in subdivisions (a) and (b) of Section 44390 of the Health and Safety Code.

(g) "Financial company" is defined pursuant to Section 14010 of the Corporations Code.

(h) "Financial Development Corporation (FDC)" means a corporation formed under the California Small Business Financial Development Corporations Law (Ch. 1 (commencing with Sec. 14000) Pt. 5, Div. 3, Corp. C.).

(i) "Green business program" means a program coordinated by a local, state, or federal agency for the purposes of assisting and recognizing businesses that are in compliance with all environmental laws and regulations, and taking additional steps to conserve natural resources and prevent pollution.

(j) "Metal plating facility" means an establishment primarily engaged in all types of electroplating, plating, anodizing, coloring, and finishing of metals and formed products for the trade. Metal plating facility includes a chrome plating facility.

(k) "Model Shop Program" means the voluntary pollution prevention program developed by the Department of Toxic Substances Control with assistance from the Los Angeles City Bureau of Sanitation, Sanitation Districts of Los Angeles County, and the Metal Finishing Association of Southern California, to assist the metal plating industry in identifying possible sources of pollution and developing alternative business practices in order to run cleaner, safer shops.

(l) "National Metal Finishing Strategic Goal Program" means the voluntary program established through a partnership between the United States Environmental Protection Agency and the metal finishing industry that encourages companies to move beyond environmental compliance by offering participants incentives, resources, and means for removing regulatory and policy barriers as they work to achieve specific environmental goals.

(m) "Pollution prevention" means the same as source reduction, as defined by subdivision (e) of Section 25244.14 of the Health and Safety Code.

(n) "Sensitive receptor" means a school, general acute care hospital, long-term health care facility, and child day care facility. For purposes of this subdivision, "general acute care hospital" has the meaning provided by subdivision (a) of Section 1250 of the Health and Safety Code, "long-term health care facility" has the meaning provided by subdivision (a) of Section 1418 of the Health and Safety Code, and "child day care facility" has the meaning provided by Section 1596.750 of the Health and Safety Code.

(o) "Water board" means the State Water Resources Control Board.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1515 (Sher), Stats. 1991, c. 717, and added by AB 721 (Núñez), Stats. 2005, c. 695, and amended by AB 1806 (Assembly Budget Committee), Stats. 2006, c. 69.

42101. (a) The agency shall work with the department, the air board, and the water board to develop a loan guarantee program, through its existing relationship with the Financial Development Corporations (FDCs) located throughout the state, to assist chrome plating facilities in purchasing high performance environmental control equipment or technologies that will enable that facility to meet new or exceed existing regulatory requirements, or both, and implement additional pollution prevention opportunities.

(b) In establishing the loan guarantee program pursuant to subdivision (a), the agency shall make every effort to integrate and leverage existing financing mechanisms for this new program, including the Treasurer's California Pollution Control Financing Authority California Capital Access Program (CalCAP), and the California Infrastructure and Economic Development Bank's (I-Bank) Revenue Bond program.

As added by AB 721 (Núñez), Stats. 2005, c. 695.

42101.1. The agency shall only make loan guarantees available to applicants that meet all of the following eligibility requirements:

(a) The applicant is a small business, as defined in subdivision (d) of Section 14837 of the Government Code.

(b) The applicant owns or operates a metal plating facility.

(c) The applicant satisfies one of the following conditions:

(1) Has completed or is currently participating in the Model Shop Program for metal platers.

(2) Has completed or is currently participating in the National Metal Finishing Strategic Goals Program.

(3) Is participating in a green business program whose goals are consistent with the pollution prevention and natural resource conservation elements of the Model Shop Program.

(4) Is certified as a green business whose goals are consistent with the pollution prevention and natural resource conservation elements of the Model Shop Program.

(d) Funds are not obtainable, upon reasonable terms, from financial companies, without a loan guarantee.

(e) The applicant demonstrates that the facility meets new or exceeds existing regulatory requirements, or both, has no pending local, state, or federal enforcement or correction actions, and is participating in or has completed additional pollution prevention activities.

As added by AB 721 (Núñez), Stats. 2005, c. 695, and amended by AB 1806 (Assembly Budget Committee), Stats. 2006, c. 69.

42101.1. The agency shall only make loan guarantees available to applicants that meet all of the following eligibility requirements:

(a) The applicant is a small business, as defined in subdivision (d) of Section 14837 of the Government Code.

(b) The applicant owns or operates a chrome plating facility.

(c) The applicant satisfies one of the following conditions:

(1) Has completed or is currently participating in the Model Shop Program for chrome platers.

(2) Has completed or is currently participating in the National Metal Finishing Strategic Goals Program.

(3) Is participating in a green business program whose goals are consistent with the pollution prevention and natural resource conservation elements of the Model Shop Program.

(4) Is certified as a green business whose goals are consistent with the pollution prevention and natural resource conservation elements of the Model Shop Program.

(d) Funds are not obtainable, upon reasonable terms, from financial companies, without a loan guarantee.

(e) The applicant demonstrates that the facility meets new or exceeds existing regulatory requirements, or both, has no pending local, state, or federal enforcement or correction actions, and is participating in or has completed additional pollution prevention activities.

As added by AB 721 (Núñez), Stats. 2005, c. 695.

42101.2. (a) The maximum amount the agency may guarantee for one applicant is one hundred thousand dollars ($100,000).

(b) All other terms and conditions are defined pursuant to Article 9 (commencing with Section 14070) of Chapter 1 of Part 5 of the Corporations Code.

As added by AB 721 (Núñez), Stats. 2005, c. 695.

42101.3. The agency shall carry out all of the requirements of this chapter and shall consult with the California Environmental Protection Agency, local environmental regulatory agencies, and other interested parties, as needed.

As added by AB 721 (Núñez), Stats. 2005, c. 695.

42102. There is hereby created, in the State Treasury, the Chrome Plating Pollution Prevention Fund, for the sole purpose of receiving deposits of state, federal, or local government money, and other public or private money, for expenditure, upon appropriation by the Legislature, by the Business, Transportation and Housing Agency.

As added by AB 139 (Assembly Budget Committee), Stats. 2005, c. 74.

42102.4. (a) Notwithstanding Section 16305.7 of the Government Code, all interest or other increments resulting from the investment of the moneys in the Chrome Plating Pollution Prevention Fund pursuant to Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code shall be deposited in the fund.

(b) The money in the fund shall be expended by the agency, upon appropriation by the Legislature, to make loan guarantees, to support the Model Shop Program pursuant to this chapter, and to pay for administrative costs associated with the implementation of this chapter. No more than 5 percent of moneys deposited into the fund may be used for administrative purposes.

(c) Loan guarantees shall be secured by a reserve of at least 25 percent.

As added by AB 721 (Núñez), Stats. 2005, c. 695.

42102.7. (a) On January 1, 2006, all moneys remaining in the Hazardous Waste Reduction Loan Account, created pursuant to Section 14096 of the Corporations Code, are hereby transferred to the Chrome Plating Pollution Prevention Fund created pursuant to Section 42102, and are hereby appropriated from that fund to the agency for expenditure pursuant to this chapter. Those moneys are subject to all encumbrances on those moneys made prior to January 1, 2005, and to all legal restrictions on their use other than by state statute.

(b) All moneys paid on or after January 1, 2006, to the Hazardous Waste Reduction Loan Account, for a loan issued pursuant to former Article 13 (commencing with Section 14095) of Chapter 1 of Part 5 of Division 3 of Title 1 of the Corporations Code, shall be transferred to the Chrome Plating Pollution Prevention Fund, and shall be subject to this chapter.

As added by AB 721 (Núñez), Stats. 2005, c. 695.

42103. The agency, in collaboration with the air board, water board,, the department, and the FDCs, shall prepare and adopt criteria and procedures for evaluating applications for loan guarantees awarded pursuant to this chapter, as well as

establish the appropriate requirements to determine that the equipment proposed to be purchased assists the small business in meeting new or exceeding existing applicable environmental standards. In developing these criteria, the agency shall specifically consider proximity of the facility to sensitive receptors and residences and coordinate with existing enforcement activities.

As added by AB 721 (Núñez), Stats. 2005, c. 695.

42104. The department shall establish the Model Shop Program in northern California by replicating the existing Metal Plating Model Shop Pilot Program, which is currently available only to southern California metal plating facilities. In selecting participants for inclusion in the Model Shop Program, the department shall specifically consider proximity of the facility to sensitive receptors and residences and coordinate with existing enforcement activities.

As added by AB 721 (Núñez), Stats. 2005, c. 695, and amended by AB 1806 (Assembly Budget Committee), Stats. 2006, c. 69.

42104.1. Not more than two hundred thousand dollars ($200,000) of the funds deposited in the Chrome Plating Pollution Prevention Fund may be used for administration and support of the Model Shop Program.

As added by AB 721 (Núñez), Stats. 2005, c. 695.

42105. On or before January 1, 2007, and every odd-numbered year thereafter, the agency shall prepare a report concerning the performance of the loan guarantee program established by this chapter, including the number and size of loan guarantees made, statewide distribution of applicants, level of participation and performance of each of the FDCs, characteristics of recipients, and the amount of money spent on administering the program. This report shall be posted on the agency's Internet Web site and notification provided to the appropriate fiscal and policy committees of the Legislature, and, upon request, to individual Members of the Legislature. The department shall provide, as a supplement to this report, an evaluation of the Model Shop Program, including recommendations for its improvement and expansion, as well as coordination with existing enforcement activities.

As added by AB 721 (Núñez), Stats. 2005, c. 695.

42106. The agency in consultation with the air board, water board and the department, may adopt regulations to implement this chapter. The agency may adopt emergency regulations to implement the loan guarantee program in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11346.1 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, an emergency regulation adopted by the board pursuant to this section shall be filed with, but not repealed by, the Office of Administrative Law, and shall remain in effect until revised by the agency.

As added by AB 721 (Núñez), Stats. 2005, c. 695.

42107. (a) This chapter shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2012, deletes or extends that date.

(b) All unencumbered moneys in the Chrome Plating Pollution Prevention Fund on January 1, 2012, shall be transferred to the General Fund.

(c) The repeal of this chapter does not terminate any of the following rights, obligations, or authorities, or any provision necessary to carry out these rights, obligations, and authorities:

(1) The repayment of loans, outstanding as of January 1, 2012, due and payable to the relevant financial company.

(2) The resolution of any cost recovery action.

As added by AB 721 (Núñez), Stats. 2005, c. 695.

Chapter 2. Recycled Market Development Commission (REPEALED)

(Chapter 2, as added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1515 (Sher), Stats. 1991, c. 717)

Chapter 3. Market Development Zones (REPEALED)

(Chapter 3, as added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1909 (O'Connell), Stats. 1993, c. 733)

Note: See instead Article 3 of Chapter 1 of Part 3 (Sections 42010-42023 and 42145.5)

42140 to 42145. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1909 (O'Connell), Stats. 1993, c. 733.

42145.5. Renumbered as Section 40506.1.

As added by AB 1909 (O'Connell), Stats. 1993, c. 733, and renumbered and amended by AB 3601 (Isenberg), Stats. 1994, c. 180.

42146 to 42158. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1909 (O'Connell), Stats. 1993, c. 733.

Chapter 3.5. Metallic Discards

(Chapter 3.5 as added by AB 1760 (Eastin), Stats. 1991, c. 849)

ARTICLE 1. DEFINITIONS

(Article 1 as added by AB 1760 (Eastin), Stats. 1991, c. 849)

42160. The definitions in this article govern the construction of this chapter.

As added by AB 1760 (Eastin), Stats. 1991, c. 849.

42161. "Metallic discard" means any large metal article or product, or any part thereof, including, but not limited to, metal furniture, machinery, major appliances, electronic products, and wood-burning stoves.

As added by AB 1760 (Eastin), Stats. 1991, c. 849.

42162. "Salvage" means the controlled removal of metallic discards from the solid waste stream at a permitted solid waste facility for the express purpose of recycling or reuse.

As added by AB 1760 (Eastin), Stats. 1991, c. 849.

42163. "Recycling residue" means nonhazardous residue or residue treated to be nonhazardous that is a direct result of metals recovery operations for the express purposes of recycling.

As added by AB 1760 (Eastin), Stats. 1991, c. 849.

42164. "Solid waste landfill" means a solid waste landfill, as defined in Section 40195.1.

As added by AB 1760 (Eastin), Stats. 1991, c. 849, and amended by AB 3358 (Ackerman), Stats. 1996, c. 1041.

42165. "Vehicle" means any device used for transportation. "Vehicle" includes bicycles, airplanes, and other transportation devices not used on highways, and automobiles and other vehicles, as defined in Section 670 of the Vehicle Code.

As added by AB 1760 (Eastin), Stats. 1991, c. 849.

42166. "Major appliance" means any domestic or commercial device, including, but not limited to, a washing machine, clothes dryer, hot water heater, dehumidifier, conventional oven, microwave oven, stove, refrigerator, freezer, air-conditioner, trash compactor, and residential furnace.

As added by AB 1760 (Eastin), Stats. 1991, c. 849.

42167. "Materials that require special handling" means all of the following:

(a) Sodium azide canisters in unspent airbags that are determined to be hazardous by federal and state law or regulation.

(b) Encapsulated polychlorinated biphenyls (PCBs), Di (2-Ethylhexylphthalate) (DEHP), and metal encased capacitors, in major appliances.

(c) Chlorofluorocarbons (CFCs), hydrochloro-fluorocarbons (HCFCs), and other non-CFC replacement refrigerants, injected in air-conditioning/refrigeration units.

(d) Used oil, as defined in subparagraph (A) of paragraph (1) of subdivision (a) of Section 25250.1 of the Health and Safety Code, in major appliances. Materials described in subparagraph (B) of paragraph (1) of subdivision (a) of Section 25250.1 of the Health and Safety Code are not excluded from the definition of used oil for the purposes of this section.

(e) Mercury found in switches and temperature control devices in major appliances.

(f) Any other material that, when removed from a major appliance, is a hazardous waste regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

As added by AB 1760 (Eastin), Stats. 1991, c. 849, and amended by AB 847 (Wayne), Stats. 1997, c. 884, and AB 2277 (Dymally), Stats. 2004, c. 880.

42168. "Solid waste facility" means a solid waste facility as defined in Section 40194.

As added by AB 1760 (Eastin), Stats. 1991, c. 849.

ARTICLE 2. DISPOSAL OF METALLIC DISCARDS

(Article 2 as added by AB 1760 (Eastin), Stats. 1991, c. 849)

42170. (a) After January 1, 1994, no solid waste facility shall accept for disposal any major appliance, vehicle, or other metallic discard which contains enough metal to be economically feasible to salvage as determined by the solid waste facility operator.

(b) After January 1, 1994, no person shall place a major appliance or other metallic discard in mixed municipal solid waste or dispose of a major appliance or other metallic discard in or on land, except for a solid waste landfill operator who complies with subdivision (a). This material shall be delivered to a facility to process for reuse or recycling, placed in a solid waste facility for salvage, or disposed of at a solid waste landfill if economically infeasible to salvage.

(c) Notwithstanding any other provision of law, any solid waste facility operator who salvages major appliances, vehicles, other metallic discards or other recyclables shall not be required to revise the solid waste facilities permit to implement these activities.

(d) This section shall be subject to enforcement pursuant to Chapter 1 (commencing with Section 45000) of Part 5.

As added by AB 1760 (Eastin), Stats. 1991, c. 849.

42171. The board shall evaluate the use of recycling residue for use as solid waste landfill cover materials or for use as extenders for currently used cover material. If used as daily cover or as extenders to daily cover, recycling residues shall have all of the physical characteristics required by regulations for cover materials adopted pursuant to Section 43020. The results of this evaluation shall be reported in the report required pursuant to Section 40507.

As added by AB 1760 (Eastin), Stats. 1991, c. 849, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

42172. The board shall conduct its evaluation of recycling residue in consultation with the Department of Toxic Substances Control, the State Air Resources Board, the state water board, and any other agency having pertinent jurisdiction. Recycling residue used as daily cover or as extenders in daily cover shall meet performance standards and requirements for cover material as specified in the regulations adopted pursuant to Section 43020.

As added by AB 1760 (Eastin), Stats. 1991, c. 849, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

ARTICLE 3. PROCESSING METALLIC DISCARDS

(Article 3 as added by AB 1760 (Eastin), Stats. 1991, c. 849)

42175. Materials that require special handling shall be removed from major appliances and vehicles in which they are

contained prior to crushing for transport or transferring to a baler or shredder for recycling.

As added by AB 1760 (Eastin), Stats. 1991, c. 849, and amended by AB 847 (Wayne), Stats. 1997, c. 884.

42175.1. (a) Any hazardous material that becomes a hazardous waste when released or removed from any major appliance shall be managed pursuant to Article 10.1 (commencing with Section 25211) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(b) Any mercury-containing motor vehicle light switch that becomes a hazardous waste when removed from any vehicle shall be managed pursuant to Article 10.2 (commencing with Section 25214.5) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(c) Failure to comply with the requirements of Section 42175 is a violation of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

As added by AB 847 (Wayne), Stats. 1997, c. 884, and amended by SB 633 (Sher), Stats. 2001, c. 656, and SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625, and SB 1011 (Sher), Stats. 2002, c. 626.

42176. On or before January 1, 1993, and with existing funds, the board shall develop and submit a management plan to the Legislature for the removal of materials which require special handling from major appliances and vehicles. The plan shall specify how the removal of materials which require special handling should be financed and administered. The plan shall also specify what, if any, state agency approvals are to be required of those persons removing these materials.

As added by AB 1760 (Eastin), Stats. 1991, c. 849.

ARTICLE 4. FEES AND SURCHARGES FOR RECYCLING RESIDUE

(Article 4 as added by AB 1760 (Eastin), Stats. 1991, c. 849)

42185. No city or county shall impose any fees, except facility operating fees, state-mandated fees, or fees pursuant to Sections 41901, 41902, 41903, and 43213, or surcharges on the disposal of recycling residue generated from the metals recovery and reuse of major appliances, vehicles, and other metallic discards, provided the residue is not delivered to the solid waste facility mixed with other solid waste.

As added by AB 1760 (Eastin), Stats. 1991, c. 849.

Chapter 4. Recycled-Content High Grade, Bleached Printing and Writing Papers Program (REPEALED)

(Chapter 4 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590)

42200-42201. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

42202. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by SB 1915 (Marks), Stats. 1994, c. 942, and SB 975 (Senate Judiciary Committee), Stats. 1995, c. 91, and AB 571 (Machado), Stats. 1996, c. 319.

42210-42222. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

Chapter 5. Compost Market Program

(Chapter 5 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096)

ARTICLE 1. DEFINITIONS

(Article 1 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096)

42230. The following definitions govern the construction of this chapter.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

42231. "Compost" means the product resulting from the controlled biological decomposition of organic wastes that are sources separated from the municipal solid waste stream.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

ARTICLE 2. COMPOST MARKET PROGRAM

(Article 2 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096)

42240. The Department of General Services and the board, in consultation with other affected state agencies, shall maintain specifications for the purchase of compost by the State of California. The specifications shall designate the state minimum operating standards and product quality standards. The specifications shall be designed to maximize the use of compost without jeopardizing the safety and health of the citizens of the state or the environment.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by SB 2195 (Bergeson) Stats. 1990, c. 1156, and SB 1110 (Senate Natural Resources and Water Committee), Stats. 2005, c. 383.

42241. On or after January 1, 1991, the Department of Transportation shall use compost in place of, or to supplement, petroleum-based commercial fertilizers in the state's highway landscape maintenance program.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

42241.5. The board may develop a program to increase the use of compost products in agricultural applications. The program may include, but shall not be limited to, the following:

(a) Identification of federal, state, and local financial assistance.

(b) Cooperative efforts with appropriate federal and state agencies.

As added by SB 1066 (Sher), Stats. 1997, c. 672.

42242. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by SB 1066 (Sher), Stats. 1997, c. 672.

42243. On or after January 1, 1993, the Department of Forestry and Fire Protection, the Department of Parks and Recreation, and the Department of General Services shall initiate programs to restore public lands that use compost, co-

compost, rice straw and chemically fixed sewage sludge and shall use those products or materials wherever possible.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by AB 2661 (Chandler), Stats. 1992, c. 1207.

42244. The board shall evaluate compost, cocompost, and chemically fixed sewage sludge for use as solid waste landfill cover materials or for use as extenders for currently used cover material. Compost, cocompost, and chemically fixed sewage sludge products, when used as a substitute for or mixed with currently approved cover material, shall possess all the physical characteristics required in the definition of a cover material.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by SB 2195 (Bergeson) Stats. 1990, c. 1156, and AB 626 (Sher), Stats. 1996, c. 1038.

42244.5. On or before January 1, 1994, the board shall evaluate rice straw for use as a solid waste landfill cover material or for use as an extender for currently used cover material. Rice straw or rice straw materials, when used as a substitute for or mixed with currently approved cover material, shall possess all the physical characteristics required in the definition of a cover material. The results of the evaluation shall be included in the report required pursuant to Section 40507.

As added by AB 2661 (Chandler), Stats. 1992, c. 1207.

42245. On or after January 1, 1992, based on the results of the evaluation conducted in accordance with Section 42244, the board may, on a case-by-case basis, approve the use of compost, co-compost, and chemically fixed sewage sludge, that meet the performance standards for cover material, for up to 25 percent of landfill cover materials or landfill cover extenders.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

42246. Any procuring agency that prepares a request for bid for commercial fertilizers or soil amendment products shall document its determination that the use of a compost, co-compost, or chemically fixed sewage sludge would jeopardize public health or safety or would jeopardize the intended result of the project.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

42247. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293, and repealed by AB 626 (Sher), Stats. 1996, c. 1038.

Chapter 5.1. At-Store Recycling Program

(Chapter 5.1 as added by AB 2449 (Levine), Stats. 2006, c. 845)

42250. For purposes of this chapter, the following definitions shall apply:

(a) "Manufacturer" means the producer of a plastic carryout bag sold to a store.

(b) "Operator" means a person in control of, or having daily responsibility for, the daily operation of a store, which may include, but is not limited to, the owner of the store.

(c) "Plastic carryout bag" means a plastic carryout bag provided by a store to a customer at the point of sale.

(d) "Reusable bag" means either of the following:

(1) A bag made of cloth or other machine washable fabric that has handles.

(2) A durable plastic bag with handles that is at least 2.25 mils thick and is specifically designed and manufactured for multiple reuse.

(e) "Store" means a retail establishment that provides plastic carryout bags to its customers as a result of the sale of a product and that meets either of the following requirements:

(1) Meet the definition of a "supermarket" as found in Section 14526.5.

(2) Has over 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.

As added by AB 2449 (Levine), Stats. 2006, c. 845.

42251. (a) The operator of a store shall establish an at-store recycling program pursuant to this chapter that provides an opportunity for a customer of the store to return to the store clean plastic carryout bags.

(b) A retail establishment that does not meet the definition of a store, as specified in Section 42250, and that provides plastic carryout bags to customers at the point of sale may also adopt an at-store recycling program, as specified in this chapter.

As added by AB 2449 (Levine), Stats. 2006, c. 845.

42252. An at-store recycling program provided by the operator of a store shall include all of the following:

(a) A plastic carryout bag provided by the store shall have printed or displayed on the bag, in a manner visible to a consumer, the words "PLEASE RETURN TO A PARTICIPATING STORE FOR RECYCLING."

(b) A plastic carryout bag collection bin shall be placed at each store and shall be visible, easily accessible to the consumer, and clearly marked that the collection bin is available for the purpose of collecting and recycling plastic carryout bags.

(c) All plastic bags collected by the store shall be collected, transported, and recycled in a manner that does not conflict with the local jurisdiction's source reduction and recycling element, pursuant to Chapter 2 (commencing with Section 41000) and Chapter 3 (commencing with Section 41300) of Part 2.

(d) The store shall maintain records describing the collection, transport, and recycling of plastic bags collected for a minimum of three years and shall make the records available to the board or the local jurisdiction, upon request, to demonstrate compliance with this chapter.

(e) The operator of the store shall make reusable bags available to customers within the store, which may be purchased and used in lieu of using a plastic carryout bag or paper bag. This subdivision is not applicable to a retail establishment specified pursuant to subdivision (b) of Section 42251.

As added by AB 2449 (Levine), Stats. 2006, c. 845.

42253. The manufacturer of a plastic carryout bag shall develop educational materials to encourage the reducing, reusing, and recycling plastic bags and shall make those materials available to stores required to comply with this chapter.

As added by AB 2449 (Levine), Stats. 2006, c. 845.

42254. (a) The Legislature finds and declares that all of these are matters of statewide interest and concern:

(1) Requiring a store to collect, transport, or recycle plastic carryout bags.

(2) Imposing a plastic carryout bag fee upon a store.

(3) Requiring a store to conduct auditing or reporting with regard to plastic carryout bags.

(b) Unless expressly authorized by this chapter, a city, county, or other public agency shall not adopt, implement, or enforce an ordinance, resolution, regulation, or rule to do any of the following:

(1) Require a store that is in compliance with this chapter to collect, transport, or recycle plastic carryout bags.

(2) Impose a plastic carryout bag fee upon a store that is in compliance with this chapter.

(3) Require auditing or reporting requirements that are in addition to what is required by subdivision (d) of Section 42252, upon a store that is in compliance with this chapter.

(c) This section does not prohibit the adoption, implementation, or enforcement of any local ordinance, resolution, regulation, or rule governing curbside or drop off recycling programs operated by, or pursuant to a contract with, a city, county, or other public agency, including any action relating to fees for these programs.

(d) This section does not affect any contract, franchise, permit, license, or other arrangement regarding the collection or recycling of solid waste or household hazardous waste.

As added by AB 2449 (Levine), Stats. 2006, c. 845.

42255. (a) A city, county, or the state may impose civil liability in the amount of five hundred dollars ($500) for the first violation of this chapter, one thousand dollars ($1,000) for the second violation, and two thousand dollars ($2,000) for the third and subsequent violation.

(b) Any civil penalties collected pursuant to subdivision (a) shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action. The penalties collected pursuant to this section by the Attorney General may be expended by the Attorney General, upon appropriation by the Legislature, to enforce this chapter.

As added by AB 2449 (Levine), Stats. 2006, c. 845.

42256. This chapter shall become operative on July 1, 2007.

As added by AB 2449 (Levine), Stats. 2006, c. 845.

42257. This chapter shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

As added by AB 2449 (Levine), Stats. 2006, c. 845.

Chapter 5.4. Plastic Trash Bags

(Chapter 5.4 as added by SB 951 (Hart), Stats. 1993, c. 1076)

42290. For purposes of this chapter, the following terms have the following meaning:

(a) "Manufacturer" means a person who manufactures plastic trash bags for sale in this state.

(b) (1) "Plastic trash bag" means a bag that is manufactured for intended use as a container to hold, store, or transport materials to be discarded, composted, or recycled, including, but not limited to, garbage bags, composting bags, lawn and leaf bags, can-liner bags, kitchen bags, compactor bags, and recycling bags.

(2) A plastic trash bag does not include a grocery sack or any other bag that is manufactured for intended use as a container to hold, store, or transport food.

(3) A plastic trash bag does not include any plastic bag that is used for the purpose of containing either of the following wastes:

(A) "Hazardous waste," as defined in Section 25117 of the Health and Safety Code.

(B) "Medical waste," as defined in Section 117690 of the Health and Safety Code.

(c) "Postconsumer material" means a finished product that would normally be disposed of as solid waste, having completed its intended end-use and product life cycle. "Postconsumer material" does not include manufacturing and fabrication scrap.

(d) "Regulated bag" means a plastic trash bag of 0.70 mil or greater thickness that is intended for sale in the state.

(e) "Wholesaler" means any person who purchases plastic trash bags from a manufacturer for resale in this state.

As added by SB 951 (Hart), Stats. 1993, c. 1076, and amended by SB 1497 (Senate Health and Human Services Committee), Stats. 1996, c. 1023, and SB 698 (Rainey), Stats. 1998, c. 44.

42290.5. To encourage waste diversion of polyethylene from California landfills as well as to encourage California's postconsumer market development, it is the intent of the Legislature that any certification of postconsumer materials used for compliance with this chapter not be the same materials that are certified or used for compliance with any other state requirement or with any federal requirement that requires the use or reporting of postconsumer materials for plastic products.

As added by SB 698 (Rainey), Stats. 1998, c. 44.

42291. (a) Until January 1, 1998, every manufacturer that manufactures plastic trash bags of 0.75 mil or greater

thickness for sale in this state shall ensure that at least 30 percent of the material used in those plastic trash bags is recycled plastic postconsumer material.

(b) (1) On and after January 1, 1998, the manufacturer's required use of recycled plastic postconsumer material shall be determined pursuant to paragraph (2). Compliance by a manufacturer with either alternative shall be deemed to be compliance with this subdivision.

(2) Every manufacturer of regulated bags shall do one of the following:

(A) Ensure that its plastic trash bags intended for sale in this state contain a quantity of recycled plastic postconsumer material equal to at least 10 percent of the weight of the regulated bags.

(B) Ensure that at least 30 percent of the weight of the material used in all of its plastic products intended for sale in this state is recycled plastic postconsumer material.

(3) Beginning March 1, 1999, and annually thereafter, every manufacturer subject to this subdivision shall certify to the board that it has used the required amount of recycled plastic postconsumer material annually in compliance with paragraph (2).

(c) Any certification of postconsumer materials used for compliance with this chapter shall not include any materials that are certified or used for compliance with any other state or federal requirement that requires the use or reporting of postconsumer materials for any plastic products.

(d) If any manufacturer subject to this section is unable to obtain sufficient amounts of recycled plastic postconsumer material to comply with this section within a reporting period because of unavailability or because the available material did not meet recycled plastic postconsumer material quality standards adopted by the board, the manufacturer shall certify that fact to the board. Each manufacturer making that certification shall make a reasonable effort to identify available supplies of material before submitting certification to the board.

(e) The Legislature hereby finds and declares that although the changes made to this section by the act amending this section during the 1998 portion of the 1997–98 Regular Session become effective after January 1, 1998, it is the intent of the Legislature that the new requirements specified in subdivision (b) be effective as of January 1, 1998. The Legislature further finds that this change is requested by the manufacturers subject to this section and that the retroactive effect of these changes will not cause any hardship on any manufacturer subject to this section, or cause any manufacturer to be subject to regulatory action as a result of these changes, but rather, would instead have the effect of preventing hardship to the manufacturers regulated by this section.

As added by SB 951 (Hart), Stats. 1993, c. 1076, and amended by AB 3601 (Isenberg), Stats. 1994, c. 146, and AB 1851(Sher), Stats. 1995, c. 821, and SB 698 (Rainey), Stats. 1998, c. 44.

42291.5. For each pound of recycled plastic post consumer material purchased from a source of recycled plastic post consumer material in this state for use in the manufacture of plastic trash bags, or other products manufactured with recycled plastic post consumer material in compliance with this chapter, the board shall credit the manufacturer certifying pursuant to Section 42293 with having used 1.2 pounds of recycled plastic post consumer material toward compliance with the requirements of Section 42291.

As added by SB 698 (Rainey), Stats. 1998, c. 44, and amended by SB 1127 (Karnette), Stats. 2001, c. 406.

42292. Each manufacturer shall obtain from its suppliers of recycled plastic postconsumer material for use in the manufacture of plastic trash bags, or other products manufactured with recycled plastic postconsumer material in compliance with this chapter, a statement identifying the quantity, source location, and proximate prior usage of, and the actual postconsumer material content of, each shipment of recycled plastic postconsumer material purchased by the manufacturer, and any other information that the board, may, by regulation, require the manufacturer to obtain from its suppliers, for purposes of inclusion in the annual report required by Section 42293.

As added by SB 951 (Hart), Stats. 1993, c. 1076, and amended by SB 698 (Rainey), Stats. 1998, c. 44.

42293. (a) On or before March 1, 1999, and annually thereafter, each manufacturer subject to this chapter shall submit a report to the board certifying that it has complied with Section 42291 during the preceding calendar year, certifying the name and physical location of each of its suppliers of recycled plastic postconsumer material for use in the manufacture of plastic trash bags, or other products manufactured with recycled plastic postconsumer material in compliance with this chapter, and containing the information obtained pursuant to Section 42292 and any other information that the board may require by regulation. Any manufacturer that processes its own recycled plastic postconsumer material shall certify to the board that it is the supplier of the material.

(b) On or before October 1, 2001, the board shall survey manufacturers subject to this section and, notwithstanding Section 7550.5 of the Government Code, report back to the Legislature. The survey shall do all of the following:

(1) Identify the name and physical location of suppliers certified by manufacturers pursuant to subdivision (a).

(2) Identify the quantity of recycled plastic postconsumer material provided by suppliers within the state and the quantity of the material provided by suppliers outside the state.

(3) Provide recommendations regarding recycled plastic postconsumer material content requirements based on the availability of that material.

(4) Identify gauge thickness of all regulated bags.

(5) Determine national production versus production of a separate line for California.

As added by SB 951 (Hart), Stats. 1993, c. 1076, and amended by SB 698 (Rainey), Stats. 1998, c. 44.

42294. (a) Every wholesaler of plastic trash bags of l.0 mil or greater thickness sold in this state shall certify to the board the name and physical location of each manufacturer from whom it purchased plastic trash bags for purposes of inclusion in the annual report required by subdivision (c).

(b) On and after January 1, 1995, every wholesaler of trash bags of 0.75 mil or greater thickness sold in this state shall certify to the board the name and physical location of each manufacturer from whom it purchased plastic trash bags for purposes of inclusion in the annual report required by subdivision (c).

(c) On or before March 1, 1994, and annually thereafter, each wholesaler shall submit a report to the board containing the certification required by this section for the preceding calendar year, together with any other information that the board may require by regulation.

As added by SB 951 (Hart), Stats. 1993, c. 1076.

42295. Each supplier, manufacturer, and wholesaler required to provide a certification or any information pursuant to this chapter shall be subject to audit by the board.

As added by SB 951 (Hart), Stats. 1993, c. 1076.

42296. (a) If any supplier provides a manufacturer with false or misleading information, the board, within 30 days of determining that fact, shall refer the false or misleading information to the Attorney General for prosecution for fraud.

(b) If any manufacturer or wholesaler provides the board with a false or misleading certification or other information, the board, within 30 days of determining that fact, shall refer the false or misleading certification or information to the Attorney General for prosecution for fraud.

As added by SB 951 (Hart), Stats. 1993, c. 1076.

42297. (a) The board may adopt such regulations as it determines are necessary to more specifically define terms for purposes of the chapter and to otherwise implement this chapter.

(b) Annually on or before July 1, the board shall publish a list of any suppliers, manufacturers, or wholesalers who have failed to comply with this chapter.

(c) (1) Any supplier, manufacturer, or wholesaler, and any of its divisions, subsidiaries, or successors, who fails to comply with this chapter, shall be ineligible for the award of any state contract or subcontract, or for the renewal, extension, or modification of an existing contract or subcontract, until the board determines that it is in compliance with this chapter.

(2) No state agency shall solicit offers from, award contracts to, or renew, extend, or modify a current contract or subcontract with, any supplier, manufacturer, or wholesaler, or any of its divisions, subsidiaries, or successors, who fails to comply with this chapter until the board determines that it is in compliance with this chapter.

As added by SB 951 (Hart), Stats. 1993, c. 1076, and amended by SB 698 (Rainey), Stats. 1998, c. 44.

42298. REPEALED.

As added by AB 1851 (Sher), Stats. 1995, c. 821, and repealed by SB 698 (Rainey), Stats. 1998, c. 44.

Chapter 5.5. Plastic Packaging Containers

(Chapter 5.5 as added by SB 235 (Hart), Stats. 1991, c. 769)

ARTICLE 1. LEGISLATIVE FINDINGS AND DEFINITIONS

(Article 1 as added by SB 235 (Hart), Stats. 1991, c. 769)

42300. The Legislature finds and declares all of the following:

(a) Recycling rigid plastic packaging containers saves landfill space, reduces energy consumption, and preserves natural resources.

(b) The California Integrated Waste Management Act of 1989 requires cities and counties to reduce the amount of waste disposed in landfills by 50 percent by the end of the decade through source reduction, recycling, and composting.

(c) Rigid plastic packaging containers represent a significant component of the solid waste generated in the state.

(d) In order for recycling in the state to be successful, it is critical that stable, in-state markets be developed for material separately collected from the waste stream and processed for recycling.

(e) As of the effective date of this chapter, curbside collection of recyclables is available to nearly 20 percent of the state's residents. In order to expand the variety of materials collected in these programs, including all rigid plastic packaging containers, it is essential that stable markets exist for the plastic materials collected.

(f) The state has required several types of products to use increasing levels of postconsumer recycled material in their manufacture, including newsprint, glass containers, and plastic trash bags.

(g) Some of the nation's largest consumer product manufacturers have announced plans to require, or are currently requiring, their plastic packaging suppliers to provide them with containers comprised of increasing levels of postconsumer recycled materials, demonstrating that the technology is already available to use recycled material to make new plastic packaging. containers. However, many businesses continue to purchase packaging materials made from 100 percent virgin plastic and to sell them in the state.

(h) The food and consumer products industries are manufacturing safe products and packaging using plastic materials, some of which use less raw material than other packaging materials through source reduction and the reuse and recycling of used plastic materials.

(i) The Legislature recognizes that the need to reduce the amount of solid waste generated by food products must be balanced with the need to package those products so that they are resistant to tampering, damage, and spoilage.

(j) It is, therefore, the intent of the Legislature to spur markets for plastic materials collected for recycling by requiring manufacturers to utilize increasing amounts of postconsumer recycled material in their rigid plastic packaging

containers only if the use of that material does not present an unreasonable risk to the public health and safety, and to achieve high recycling rates for these rigid plastic packaging containers.

As added by SB 235 (Hart), Stats. 1991, c. 769, and amended by SB 951 (Hart), Stats. 1993, c. 1076.

42301. For purposes of this chapter, the following definitions apply:

(a) "Container manufacturer" means a company or a successor company that sells any rigid plastic packaging container subject to this chapter to a manufacturer that sells or offers for sale in this state any product packaged in that container.

(b) "Curbside collection program" means a recycling program that collects materials set out by households for collection at the curb at intervals not less than every two weeks. "Curbside collection program" does not include redemption centers, buyback locations, drop-off programs, material recovery facilities, or plastic recovery facilities.

(c) "Refillable package" means a rigid plastic packaging container that the board determines is routinely returned to and refilled by the product manufacturer at least five times with the original product contained by the package.

(d) "Reusable package" means a rigid plastic packaging container that the board determines is routinely reused by consumers at least five times to store the original product contained by the package.

(e) "Manufacturer" means the producer or generator of a product that is sold or offered for sale in the state and that is stored inside of a rigid plastic packaging container.

(f) "Rigid plastic packaging container" means any plastic package having a relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, that is capable of maintaining its shape while holding other products, including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in the state.

(g) "Postconsumer material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product lifecycle. Postconsumer material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

(h) "Recycled" means a product or material that has been reused in the production of another product and has been diverted from disposal in a landfill.

(i) "Recycling rate" means the proportion, as measured by weight, volume, or number, of a rigid plastic packaging container sold or offered for sale in the state that is being recycled in a given calendar year, that is one of the following:

(1) A particular type of rigid plastic packaging container, such as a milk jug, soft drink container, or detergent bottle.

(2) A product-associated rigid plastic packaging container.

(3) A single resin type, as specified in Section 18015, of rigid plastic packaging container, notwithstanding the exemption of that container from this chapter pursuant to subdivision (b), (c), or (d) of Section 42340.

(j) (1) "Source reduced container" means either of the following:

(A) A rigid plastic packaging container for which the manufacturer seeks compliance as of January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with the packaging used for that product by the manufacturer from January 1, 1990, to December 31, 1994.

(B) A rigid plastic container for which the manufacturer seeks compliance after January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with one of the following:

(i) The packaging used for the product by the manufacturer on January 1, 1995.

(ii) The packaging used for that product by the manufacturer over the course of the first full year of commerce in this state.

(iii) The packaging used in commerce that same year for similar products whose containers have not been considered source reduced.

(2) A rigid plastic packaging container is not a source reduced container for the purposes of this chapter if the packaging reduction was achieved by any of the following:

(A) Substituting a different material type for a material that previously constituted the principal material of the container.

(B) Increasing a container's weight per unit or use of product after January 1, 1991.

(C) Packaging changes that adversely affect the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material.

(k) "Product-associated rigid plastic packaging container" means a brand-specific, rigid plastic packaging line that may have one or more sizes, shapes, or designs and that is used in conjunction with a particular generic product line.

(l) "PETE" means polyethylene terephthalate as specified in subdivision (a) of Section 18015.

(m) "HDPE" means high-density polyethylene.

As added by SB 235 (Hart), Stats. 1991, c. 769, and amended by SB 951 (Hart), Stats. 1993, c. 1076, and SB 1729 (Chesbro), Stats. 2004, c. 561, and SB 743 (Chesbro), Stats. 2005, c. 666.

ARTICLE 2. MANUFACTURING

(Article 2 as added by SB 235 (Hart), Stats. 1991, c. 769)

42310. Except as otherwise provided in this chapter, every rigid plastic packaging container sold or offered for sale in this state shall, on average, meet one of the following criteria:

(a) Be made from 25 percent postconsumer material.

(b) Have a recycling rate of 45 percent if it is a product-associated rigid plastic packaging container or a single resin type of rigid plastic packaging container, as demonstrated to the board by the product maker, container manufacturer, or

other entity. The board may take appropriate action to verify the demonstration, but the board is not required to expend state funds to conduct a survey or calculate the rate.

(c) Be a reusable package or a refillable package.

(d) Be a source reduced container.

(e) Is a container containing floral preservative that is subsequently reused by the floral industry for at least two years.

As added by SB 235 (Hart), Stats. 1991, c. 769, and amended by SB 951 (Hart), Stats. 1993, c. 1076, and AB 2508 (House), Stats. 1996, c. 511, and SB 1729, Stats. 2004, c. 561, and SB 743 (Chesbro), Stats. 2005, c. 666.

42310.1. (a) Until January 1, 1997, the criteria specified in Section 42310 shall not apply to any rigid plastic packaging container that is manufactured for use with food or cosmetics, as defined in subdivisions (f) and (i) of Section 321 of Title 21 of the United States Code.

(b) Notwithstanding subdivision (a), rigid plastic packaging containers actually recycled shall be included in calculating the recycling rate pursuant to subdivision (b) or (c) of Section 42310.

(c) Every manufacturer of a product packaged in a rigid plastic packaging container described in subdivision (a), which is not in compliance with Section 42310, that is exempt from the criteria specified in Section 42310 pursuant to subdivision (a), shall do both of the following:

(1) On or before December 1, 1995, the manufacturer shall submit a report to the board which demonstrates that the manufacturer is taking, and will continue to take, all feasible actions consistent with Section 42310 to ensure the reduction, recycling, or reuse of the rigid plastic packaging containers described in subdivision (a) and the development and expansion of markets for rigid plastic packaging containers. Those actions may include, but are not limited to, all of the following:

(A) The use of postconsumer recycled plastic in rigid plastic packaging containers sold in this state.

(B) The use of postconsumer recycled plastic in other packaging materials sold or manufactured in this state.

(C) The use of postconsumer recycled plastic in other products sold or manufactured in this state.

(D) Arranging for the use of postconsumer recycled plastic collected for recycling in this state in the manufacture of nonrigid plastic packaging container products or packaging of another entity.

(E) The procurement of products containing postconsumer recycled plastic, including, but not limited to, trash bags, trash containers, pallets, carpeting, slip sheets, and shrink wrap.

(F) The demonstration of financial investment in recycled plastic collecting, processing, and remanufacturing activities in the state.

(2) On or before January 1, 1996, every manufacturer of rigid plastic packaging containers shall, for any rigid plastic packaging container that is exempt from, and not in compliance with, the criteria specified in Section 42310 pursuant to subdivision (a), diligently seek one or more "nonobjection letters" from the United States Food and Drug Administration which will permit the manufacturer of rigid plastic packaging containers to use recycled plastic in the manufacture of the rigid plastic packaging containers described in subdivision (a).

As added by SB 466 (Boatwright), Stats. 1993, c. 1062, and amended by AB 688 (Sher), Stats. 1994, c. 1227.

42310.2. (a) On or before July 1, 1994, as part of the regulations required to be adopted pursuant to Section 42325, the board shall adopt regulations to carry out the requirements of paragraph (1) of subdivision (c) of Section 42310.1. In adopting regulations pursuant to this section, the board shall make every effort to limit paperwork and information to only those matters that are needed for the board to determine if manufacturers are taking all feasible actions to ensure the reduction, recycling, or reuse of the rigid plastic packaging containers described in subdivision (a) of Section 42310.1, and the development and expansion of markets for rigid plastic packaging containers.

(b) On or before February 1, 1996, the board shall review, and approve or disapprove, the reports required pursuant to paragraph (1) of subdivision (c) of Section 42310.1. If a report is not submitted pursuant to a schedule established by the board, or, if, based upon the report, the board determines that a manufacturer has not taken all feasible actions to ensure the reduction, recycling, or reuse of the containers and the development and expansion of markets for rigid plastic packaging containers, the board may take one of the following actions, as selected by the manufacturer:

(1) Require the manufacturer to take additional actions, including, but not limited to, one or more of the measures described in paragraph (1) of subdivision (c) of Section 42310.1, to ensure that the manufacturer is taking, and will continue to take, all feasible actions to ensure the reduction, recycling, or reuse of the containers and the development and expansion of markets for rigid plastic packaging containers.

(2) Impose a civil penalty of up to one hundred thousand dollars ($100,000) pursuant to Section 42322. In imposing monetary penalties pursuant to this paragraph, the board shall take into consideration all of the following factors:

(A) The size and net worth of the manufacturer.

(B) The impact of the violation on the overall objectives of this chapter.

(C) The severity of the violation. A penalty imposed pursuant to this paragraph shall not be required to be paid by a manufacturer before January 1, 1997.

(c) If the board determines that the conditions in paragraphs (1) and (2) are met, the board shall enter into a contract, or other legally binding agreement, with one or more trade associations representing manufacturers of resin, manufacturers of rigid plastic packaging containers, or manufacturers of products packaged in rigid plastic packaging containers subject to this section and Section 42310.1. The agreement shall allow the trade association, in lieu of those individual manufacturers in the trade association who elect to be a party to the contract or agreement, to submit the report

required pursuant to paragraph (1) of subdivision (c) of Section 42310.1 and to implement the actions identified in the report. The board shall enter into the agreement only if both of the following conditions exist:

(1) The agreement ensures that the report will contain sufficient information that otherwise would be required to be submitted by individual manufacturers pursuant to Section 42310.1, and any other information that is necessary and directly related to the board's ability to comply with this section.

(2) The agreement ensures that each manufacturer that elects to be a party to the agreement and that is a member of the trade association that submits the report shall be liable for the full amount of any civil penalties that may be imposed or shall comply with any requirement imposed by the board pursuant to paragraph (1) of subdivision (b), as selected by the manufacturer. A manufacturer subject to this paragraph shall not be liable for a civil penalty greater than one hundred thousand dollars ($100,000), regardless of the number of trade associations of which the manufacturer is a member.

(d) Notwithstanding any other provision of this section, a trade association representing resin manufacturers shall be responsible for submitting an additional report as provided pursuant to paragraph (1) of subdivision (c) of Section 42310.1. The resin manufacturer's trade association is subject to the review, penalties, and sanctions specified in paragraphs (1) and (2) of subdivision (b). No member of the resin manufacturer's trade association is liable for penalties and sanctions set forth in paragraph (1) or (2) of subdivision (b) pursuant to this subdivision if that member would not otherwise be subject to those penalties and sanctions.

(e) For the purposes of subdivision (b) and paragraph (1) of subdivision (c) of Section 42310.1, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(f) For purposes of Section 42310.1 and this section regarding all reporting, compliance, and penalty obligations, "manufacturer" includes all subsidiaries and affiliates.

As added by SB 466 (Boatright), Stats. 1993, c. 1062, and amended by SB 1729 (Chesbro), Stats. 2004, c. 561.

42310.3. (a) Notwithstanding Section 42310, a manufacturer is in compliance with the requirements of this chapter if the manufacturer demonstrates through its own actions, or the actions of another company under the same corporate ownership, that one of the following actions were taken during the same period for which the manufacturer is subject to this chapter, with regard to a rigid plastic packaging container that stores the manufacturer's product that is sold or intended for sale in this state:

(1) The manufacturer, or another company under the same corporate ownership, consumed postconsumer material generated in the state in the manufacture of a rigid plastic packaging container subject to Section 42310, or a rigid plastic packaging container or other plastic products or plastic packaging not subject to that section, and that is equivalent to, or exceeds the postconsumer material that the rigid plastic packaging container is otherwise required to contain, as specified in subdivision (a) of Section 42310.

(2) The manufacturer, or any company under the same corporate ownership, arranged by contractual agreement for the purchase and consumption of postconsumer material generated in the state and exported to another state for the manufacture of rigid plastic packaging container subject to Section 42310, or a rigid plastic packaging container or other plastic products or plastic packaging not subject to that section that is equivalent to, or exceeds the postconsumer material that the rigid plastic packaging container is otherwise required to contain, as specified in subdivision (a) of Section 42310.

(b) The board shall determine the manner of demonstrating compliance with the requirements of this section.

As added by SB 1155 (Maddy), Stats. 1996, c. 754, and repealed by SB 1729 (Chesbro), Stats. 2004, c. 561, and added by SB 743 (Chesbro), Stats. 2005, c. 666, and amended by SB 1344 (Chesbro), Stats. 2006, c. 144.

ARTICLE 3. PENALTIES, REGULATIONS, AND REPORT

(Article 3 as added by SB 235 (Hart), Stats. 1991, c. 769)

42320. Any entity required to make a certification pursuant to this chapter may be audited by the board.

As added by SB 235 (Hart), Stats. 1991, c. 769.

42321. If any entity provides the board with a false or misleading certificate pursuant to this chapter, the board, within 30 days of making this determination, shall refer the provider of the false or misleading certificate to the Attorney General for prosecution for fraud.

As added by SB 235 (Hart), Stats. 1991, c. 769.

42321.5. (a) A container manufacturer who sells a rigid plastic packaging container to a manufacturer and who submits a certification to the manufacturer, for purposes of this chapter, shall not provide any false or misleading information. A container manufacturer who submits to a manufacturer a certification with false or misleading information is subject to the same penalties and fines that are imposed upon a manufacturer that does not comply with Sections 42321 and 42322.

(b) Notwithstanding Sections 42321 and 42322, a manufacturer is not subject to any fine or penalty for not complying with this chapter as a result of the submittal of false or misleading information by a container manufacturer to the manufacturer with regard to a container sold to that manufacturer.

As added by SB 743 (Chesbro), Stats. 2005, c. 666.

42322. (a) Any violation of this chapter is a public offense punishable by a fine of not more than one hundred thousand dollars ($100,000).

(b) In addition to the penalty specified under subdivision (a), any violation of this chapter may be subject to a civil penalty assessed by the board of not more than fifty thousand dollars ($50,000) for each violation, pursuant to a notice and hearing procedure that conforms with Chapter 5

(commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The total annual fines or penalties assessed upon a violator of this chapter shall not exceed one hundred thousand dollars ($100,000).

(d) The board shall annually publish a list by July 1 setting forth any fines or penalties that have been levied against a violator of this chapter in the preceding calendar year, for failure to comply with the requirements of this chapter.

(e) The board shall deposit all penalties or fines paid pursuant to this section into the Rigid Container Account, which is hereby created in the Integrated Waste Management Fund in the State Treasury. The moneys deposited in the Rigid Container Account shall be expended by the board, upon appropriation by the Legislature, to assist local governmental agencies to develop and implement collection and processing systems for the recycling of materials that are subject to this chapter, for the development of markets for these materials, and for the board's costs of implementing this chapter.

As added by SB 235 (Hart), Stats. 1991, c. 769, and amended by SB 1127 (Karnette), Stats. 2001, c. 406.

42323. Proprietary information included in part of a report or certificate submitted to the board pursuant to this chapter shall not be made available to the general public.

As added by SB 235 (Hart), Stats. 1991, c. 769.

42324. REPEALED.

As added by SB 235 (Hart), Stats. 1991, c. 769, and repealed and added by SB 466 (Boatright), Stats. 1993, c. 1062, and repealed by SB 1729 (Chesbro), Stats. 2004, c. 561.

42325. The board shall adopt regulations to implement this chapter. These regulations shall include, but shall not be limited to, all of the following:

(a) Procedures for certifying compliance with Article 2 (commencing with Section 42310), including a requirement that product manufacturers include in their specifications for rigid plastic packaging containers a requirement that the packaging manufacturer certify that the rigid plastic packaging containers comply with this chapter.

(b) Procedures for considering and granting waivers pursuant to Article 4 (commencing with Section 42330).

As added by SB 235 (Hart), Stats. 1991, c. 769, and amended by SB 1729 (Chesbro), Stats. 2004, c. 561.

42326. In developing the regulations required by Section 42325, the board shall consult with representatives of the manufacturers affected by this chapter, with representatives of environmental organizations, and other interested parties.

As added by SB 235 (Hart), Stats. 1991, c. 769 and amended by SB 1729 (Chesbro), Stats. 2004, c. 561.

42327. The board may expend funds from the Integrated Waste Management Account to implement this chapter, upon appropriation by the Legislature.

As added by SB 235 (Hart), Stats. 1991, c. 769.

ARTICLE 4. WAIVERS

(Article 4 as added by SB 235 (Hart), Stats. 1991, c. 769)

42330. (a) The board shall grant a waiver from the postconsumer material content requirement of subdivision (a) of Section 42310, but not from any other requirement of Section 42310, if the board finds one or more of the following:

(1) The rigid plastic packaging containers cannot meet the postconsumer material requirements of subdivision (a) of Section 42310 and remain in compliance with applicable provisions of regulations adopted by the Food and Drug Administration or other state or federal laws or regulations.

(2) It is technologically infeasible to use rigid plastic packaging containers that achieve the postconsumer material requirement of subdivision (a) of Section 42310.

(b) The board shall grant a waiver from all of the requirements of Section 42310 if the board finds either of the following:

(1) Less than 60 percent of the single-family homes in the state on and after January 1, 1994, have curbside collection programs that include beverage container recycling.

(2) At least 50 percent, by number, of a manufacturer's rigid plastic packaging containers sold or offered for sale in the state in the current calendar year achieve the postconsumer material requirements of subdivision (a) of Section 42310 and all of the manufacturer's rigid plastic packaging containers will comply with the requirements of Section 42310 on or before January 1, 1996.

(c) The board shall grant a one-year waiver from all of the requirements of Section 42310 for products packaged in rigid plastic packaging containers that are introduced and sold in this state after January 1, 1995.

As added by SB 235 (Hart), Stats. 1991, c. 769, and amended by SB 951 (Hart), Stats. 1993, c. 1076, and AB 3082 (Assembly Judiciary Committee), Stats. 2004, c. 183.

ARTICLE 5. EXEMPTIONS

(Article 5 as added by SB 235 (Hart), Stats. 1991, c. 769)

42340. The following rigid plastic packaging containers are exempt from this chapter:

(a) Rigid plastic packaging containers produced in or out of the state which are destined for shipment to other destinations outside the state and which remain with the products upon that shipment.

(b) Rigid plastic packaging containers which contain drugs, medical devices, cosmetics, food, medical food, or infant formula as defined by the Federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 301 et seq.).

(c) Rigid plastic packaging containers which contain toxic or hazardous products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.).

(d) Rigid plastic packaging containers which are manufactured for use in the shipment of hazardous materials and are prohibited from being manufactured with used material by federal packaging material specifications set forth in Sections 178.509 and 178.522 of Title 49 of the Code of

Federal Regulations, or are subject to testing standards set forth in Sections 178.600 to 178.609, inclusive, of Title 49 of the Code of Federal Regulations, or to which recommendations of the United Nations on the transport of dangerous goods are applicable.

As added by SB 235 (Hart), Stats. 1991, c. 765, and amended by SB 466 (Boatwright), Stats. 1993, c. 1062, and SB 605 (Mello), Stats. 1995, c. 171, and SB 1155 (Maddy), Stats. 1996, c. 754.

42340. REPEALED.

As added by SB 466 (Boatwright), Stats. 1993, c. 1062, and repealed by SB 605 (Mello), Stats. 1995, c. 171.

42345. Any extension of time for manufacturers to comply with Section 42310, beyond that which is granted pursuant to Section 42310.1 for the rigid plastic packaging containers described in that section, shall only be enacted by a statute passed by a two-thirds vote of both houses of the Legislature.

As added by SB 466 (Boatwright), Stats. 1993, c. 1062.

Chapter 5.6. Plastic Ring Devices

(Chapter 5.6 as added by AB 3263 (Ackerman), Stats. 1996, c. 990)

42350. (a) For the purposes of this section, "degradable" means all of the following:

(1) Biodegradation, photodegradation, chemo-degradation, or degradation by other natural degrading processes, as defined by the American Society of Testing Materials.

(2) Degradation at a rate that meets the requirements of Part 238 (commencing with Section 238.10) of Subchapter H of Chapter I of Title 40 of the Code of Federal Regulations.

(3) Degradation that, as attested by the manufacturer of the device, will not produce or result in a residue or byproduct that, during or after the process of degrading, would be a hazardous or extremely hazardous waste identified pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(b) Except as provided in subdivision (c), no container shall be sold or offered for sale at retail in this state that is connected to any other container by means of a plastic ring or similar plastic device that is not degradable when disposed of as litter.

(c) This section does not apply to devices that do not contain an enclosed hole or circle of more than one and one-half inches in diameter or that do not contain a hole.

(d) Any person who sells at wholesale or distributes to a retailer for sale at retail in this state containers that are connected to each other in violation of subdivision (b) is guilty of an infraction and shall be punished by a fine not exceeding one thousand dollars ($1,000).

As added by AB 3263 (Ackerman), Stats. 1996, c. 990, and amended by SB 947 (Senate Judiciary Committee), Stats. 1997, c. 17.

Chapter 5.7. Biodegradable And Compostable Plastic Bags

(Chapter 5.7 as added by SB 1749 (Karnette), Stats. 2004, c. 619)

42355. The Legislature finds and declares that it is the public policy of the state that environmental marketing claims, whether explicit or implied, should be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the environmental impact of plastic bags. For consumers to have accurate and useful information about the environmental impact of plastic bags and packages, environmental marketing claims should adhere to uniform and recognized standards, including those standard specifications established by the American Society for Testing and Materials.

As added by SB 1749 (Karnette), Stats. 2004, c. 619.

42356. For purposes of this chapter, the following definitions apply:

(a) "ASTM" means the American Society for Testing and Materials.

(b) "ASTM standard specification" means a definition found in the Style and Form Guide for ASTM Standards and does not include an ASTM Standard Guide, a Standard Practice, or a Standard Test Method.

(c) "Manufacturer" means a person, firm, association, partnership, or corporation that produces a plastic bag.

(d) "Supplier" means a person who does one or more of the following:

(1) Sells, offers for sale, or offers for promotional purposes, a plastic bag that is used by a person to contain a product.

(2) Takes title to a plastic bag produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

As added by SB 1749 (Karnette), Stats. 2004, c. 619.

42357. (a) A person shall not sell a plastic bag in this state that is labeled with the term "compostable," "biodegradable," "degradable," or any form of those terms, or in anyway imply that the bag will break down in a landfill, composting, marine, or other natural terrestrial environment, unless, at the time of the sale, the plastic bag meets a current ASTM standard specification for the term used on the label.

(b) A manufacturer or supplier, upon the request of a member of the public, shall submit to that member, within 90 days of the request, information and documentation demonstrating compliance with this chapter, in a format that is easy to understand and scientifically accurate.

As added by SB 1749 (Karnette), Stats. 2004, c. 619.

Chapter 5.8. Plastic Food and Beverage Containers

(As added by AB 2147 (Harmon), Stats. 2006, c. 349)

42359. The Legislature finds and declares that it is the public policy of the state that environmental marketing claims, whether explicit or implied, should be substantiated by competent and reliable evidence to prevent deceiving or

misleading consumers about the environmental impact of compostable plastic food or beverage containers. For consumers to have accurate and useful information about the environmental impact of compostable plastic food or beverage containers, environmental marketing claims should adhere to uniform and recognized standards, including those standard specifications established by the American Society for Testing and Materials.

As added by AB 2147 (Harmon), Stats. 2006, c. 349.

42359.5. For purposes of this chapter, the following definitions apply:

(a) "ASTM" means the American Society for Testing and Materials.

(b) "ASTM standard specification" means ASTM Standard Specification for Compostable Plastics (D6400-04).

(c) "Plastic food or beverage container" means plastic packaging for a finished product that contains food or drink items, or utensils, for retail sale.

(d) "Manufacturer" means a person, firm, association, partnership, or corporation that produces a plastic food or beverage container.

(e) "Supplier" means a person who does one or more of the following:

(1) Sells, offers for sale, or offers for promotional purposes, a plastic food or beverage container that is used by a person to contain a product.

(2) Takes title to a plastic food or beverage container produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

As added by AB 2147 (Harmon), Stats. 2006, c. 349.

42359.6. (a) A person shall not sell a plastic food or beverage container in this state that is labeled with the term "compostable," "biodegradable," "degradable," or any form of those terms, or in anyway imply that the container will break down in a landfill, composting, marine, or other natural terrestrial environment, unless, at the time of the sale, the plastic food or beverage container meets the ASTM standard specification for the term used on the label.

(b) A manufacturer or supplier, upon the request of a member of the public, shall submit to that member, within 90 days of the request, information and documentation demonstrating compliance with this chapter, in a format that is easy to understand and scientifically accurate.

As added by AB 2147 (Harmon), Stats. 2006. c. 349.

Chapter 6. Plastic Recycling Program (REPEALED)

(Chapter 6 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590)

ARTICLE 1. DEFINITIONS (REPEALED)

(Article 1 as added by SB 1322 (Bergeson), Stats. 1989, c. 1076, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590)

42360-42353. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

ARTICLE 2. PLASTIC RECYCLING PROGRAM

(Article 2 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590)

42370. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

42371. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by SB 2195 (Bergeson), Stats. 1990, c. 1156, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005. c. 590.

42372. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

42373. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by SB 2195 (Bergeson), Stats. 1990, c. 1156, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293, and repealed by AB 626 (Sher), Stats. 1996, c. 1038.

ARTICLE 3. PLASTIC WASTE RECYCLING (REPEALED)

(Article 3 as added by SB 1761 (Vuich), Stats. 1990, c. 586, and repealed by AB 626 (Sher), Stats. 1996, c. 1038)

Chapter 7. Retreaded Tire Program

(Chapter 7 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096)

ARTICLE 1. DEFINITIONS

(Article 1 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096)

42400. The following definitions govern the construction of this chapter.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

42401. "Retreaded tire" means any tire that utilizes an existing casing for the purpose of vulcanizing new tread to such casing which meets all performance and quality standards specified in the Federal Motor Vehicle Safety Standards determined by the United States Department of Transportation.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

ARTICLE 2. RETREADED TIRE PROGRAM

(Article 2 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096)

42410. The board shall evaluate current state and federal quality standards for retreaded tires and identify the obstacles for an increased market for retreads. The results of this evaluation and the activities that the board will undertake to increase the use of retreaded tires shall be included in the reporting requirements specified in Section 42950.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

42411. The Department of General Services and the board, in consultation with representatives of the California

retreading industry, shall adopt specifications for the purchase of retreaded tires by the State of California. The specifications shall designate the state minimum quality standards for retreaded tires. The specifications shall be designed to maximize the use of retreads without jeopardizing the safety of the occupants of the vehicle or the intended end use of the tire.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by SB 2195 (Bergeson), Stats. 1990, c. 1156.

42412. On or before July 1, 1991, and to the extent that existing stock shall be utilized first, all tires for use on state vehicles issued for short-term use through Fleet Administration shall, at the next required installation of tires, be equipped with retreaded tires.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

42413. Emergency vehicles, as defined in Section 165 of the California Vehicle Code are exempt from this provision.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

42414. The number of retreaded tires purchased annually by the Department of General Services during each fiscal year shall be tabulated and forwarded to the board by August 31 every year.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293, and AB 626 (Sher), Stats. 1996, c. 1038.

42415. The board, in consultation with the Department of General Services, shall perform a study to determine if the retreads, procured by the Department of General Services, have met all quality and performance criteria of a new tire.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293, AB 626 (Sher), Stats. 1996, c. 1038.

42416. On or before July 1, 1991, the board shall, in consultation with the retreading industry, develop a procedure to estimate the number of retreads sold in California. This information, in addition to other facts compiled on utilization of retread tires, shall be used to evaluate the effectiveness of this program. The results of this evaluation shall be included in the report required pursuant to Section 40507.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

Chapter 8. Recycled Battery Programs

(Chapter 8 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by SB 1813 (McCorquodale), Stats. 1990, c. 711)

ARTICLE 1. LEAD-ACID BATTERY PROGRAM

(Article 1 as added by SB 1813 (McCorquodale), Stats. 1990, c. 711)

42440. For the purposes of this chapter, "lead-acid battery" means any battery which is primarily composed of both lead and sulfuric acid, with a capacity of six volts or more, and which is used for any of the following purposes:

(a) As a starting battery which is designed to deliver a high burst energy necessary to crank an engine until it starts.

(b) As a motive power battery which is designed to provide the sources of power for propulsion or operation.

(c) As a stationary standby battery which is designed to be used in systems where the battery acts as a source of emergency power, serving as a backup in case of failure or interruption in the flow of power from the primary source.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

42441. "Recycled lead-acid battery" means any lead-acid battery which contains a minimum percentage of postconsumer recovered lead. The required minimum percentage of postconsumer recovered lead shall be determined by the board in consultation with the Market Development Commission.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

42442. On or before January 1, 1991, all lead-acid batteries purchased by any state agency for, and, at the next required installation of a battery in, an automobile or light truck owned or operated by the state agency, the battery shall be a recycled lead-acid battery, to the extent that all existing stock of nonrecycled batteries have been utilized.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

42443. The number of recycled lead-acid batteries purchased each year by the Department of General Services shall be tabulated and forwarded to the board on or before March 31 of each year.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293, and AB 626 (Sher), Stats. 1996, c. 1038.

ARTICLE 2. HOUSEHOLD BATTERY PROGRAM

(Article 2 as added by SB 1813 (McCorquodale), Stats. 1990, c.711)

42450. (a) The board may conduct a study on the disposal and recyclability of household batteries, taking into account any studies completed or underway elsewhere, including, but not limited to, any studies by the Environmental Protection Agency. The board may participate in the study.

(b) The study may include, but is not limited to, all of the following:

(1) The effect of used household batteries on solid waste landfills and transformation facilities, including any threats to human health or environment.

(2) The recyclability of used household batteries, including, but not limited to, the following topics:

(A) Applicable recycling technologies and their effectiveness.

(B) Collection systems.

(C) Possible adverse effects on human health or the environment resulting from exposure to household batteries at all stages of the recycling process.

(D) Costs and revenues associated with recycling, including avoided disposal costs.

(E) Development of markets for products derived from recycled household batteries.

(c) For the purposes of this section, "household batteries" means batteries made of mercury, alkaline, carbon-

zinc, nickel-cadmium, and other batteries typically generated as household waste, including, but not limited to, batteries used in hearing aids, cameras, watches, computers, calculators, flashlights, lanterns, standby and emergency lighting, portable radio and television sets, meters, toys, and clocks, but excluding lead-acid batteries as defined in Section 42440.

As added by SB 1813 (McCorquodale), Stats. 1990, c. 711.

Chapter 8.4. Rechargeable Battery Recycling Act of 2006

(Chapter 8.4 as added by AB 1125 (Pavley), Stats. 2005, c. 572)

ARTICLE 1. GENERAL PROVISIONS

(Article 1 as added by AB 1125 (Pavley), Stats. 2005, c. 572)

42451. (a) This chapter shall be known, and may be cited, as the Rechargeable Battery Recycling Act of 2006.

(b) The Legislature finds and declares all of the following:

(1) The Department of Toxic Substances Control has determined that, due to their hazardous material content, the solid waste disposal of all household and rechargeable batteries should be prohibited. A regulation authorizing a temporary householder exemption to this prohibition will expire, by its own terms, in February 2006.

(2) The purpose of this chapter is to enact a comprehensive and innovative system for the reuse, recycling, and proper and legal disposal of previously used rechargeable batteries.

(3) It is the further purpose of this chapter to enact a law that establishes a program that is convenient for consumers and the public to return, recycle, and ensure the safe and environmentally sound disposal of used rechargeable batteries, and that provides for a system that does not charge the consumer when a rechargeable battery is returned.

(4) It is the intent of the Legislature that the cost associated with the handling, recycling, and disposal of used rechargeable batteries be the responsibility of the producers and consumers of rechargeable batteries, and not local government or their service providers, state government, or taxpayers.

(5) In order to reduce the likelihood of illegal disposal of hazardous materials, it is the intent of this chapter to ensure that all costs associated with the proper management of used rechargeable batteries is internalized by the producers and consumers of rechargeable batteries at or before the point of purchase, and not at the point of discard.

(6) Manufacturers and retailers of rechargeable batteries, in working to achieve the goals and objectives of this chapter, should have the flexibility to partner with each other and with those private and nonprofit business enterprises that currently provide collection and processing services to develop and promote a safe and effective used rechargeable battery recycling system for California.

(7) The producers of household and rechargeable batteries should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in household and rechargeable batteries.

(8) Household and rechargeable batteries, to the greatest extent feasible, should be designed for extended life and reuse.

(9) The purpose of this chapter is to provide for the safe, cost free, and convenient collection, reuse, and recycling of 100 percent of the rechargeable batteries discarded or offered for recycling in the state.

(10) In establishing a cost-effective system for the recovery, reuse, recycling, and proper disposal of used rechargeable batteries, it is the intent of the Legislature to encourage manufacturers and retailers to build on the retailer take-back systems initiated by the Rechargeable Battery Recycling Corporation and others.

As added by AB 1125 (Pavley), Stats. 2005, c. 572.

ARTICLE 2. DEFINITIONS

(Article 2 as added by AB 1125 (Pavley), Stats. 2005, c. 572)

42452. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) “Consumer” means a purchaser or owner of a rechargeable battery. "Consumer" also includes a business, corporation, limited partnership, nonprofit organization, or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

(b) “Department” means the Department of Toxic Substances Control.

(c) “Rechargeable battery” means a small, nonvehicular, rechargeable nickel-cadmium, nickel metal hydride, lithium ion, or sealed lead-acid battery, or a battery pack containing these types of batteries.

(d) “Retailer” means a person who makes a retail sale of a rechargeable battery to a consumer in this state, including a manufacturer of a rechargeable battery who sells that rechargeable battery directly to a consumer. A sale includes, but is not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other similar electronic means, but does not include a sale that is a wholesale transaction with a distributor or retailer. “Retailer” does not include a person who sells primarily food and is listed in the Progressive Marketing Grocers Guidebook. “Retailer” does not include a person who has less than one million dollars ($1,000,000) annually in gross sales.

(e)(1) “Sell” or “sale” means a transfer for consideration of title or of the right to use, by lease or sales contract, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other similar electronic means, but does not include a wholesale transaction with a distributor or a retailer.

(2) For purposes of this subdivision and subdivision (d), “distributor” means a person who sells a rechargeable battery to a retailer.

(f) “Used rechargeable battery” means a rechargeable battery that has been previously used and is made available, by a consumer, for reuse, recycling, or proper disposal.

As added by AB 1125 (Pavley), Stats. 2005, c. 572.

ARTICLE 3. RECHARGEABLE BATTERY RECYCLING

(Article 3 as added by AB 1125 (Pavley), Stats. 2005, c. 572)

42453. (a) (1) On and after July 1, 2006, every retailer shall have in place a system for the acceptance and collection of used rechargeable batteries for reuse, recycling, or proper disposal.

(2) A retailer is not subject to the requirements of this chapter for the sale of rechargeable batteries that are contained in or packaged with a battery-operated device.

(b) A system for the acceptance and collection of used rechargeable batteries for reuse, recycling, or proper disposal shall, at a minimum, include all of the following elements:

(1) (A) The take-back at no cost to the consumer of a used rechargeable battery, the type or brand of which the retailer sold or previously sold.

(B) A retailer's no-cost take-back obligation may be limited to a quantity equal to the number sold at the time of the take-back or previously sold to the consumer.

(2) If the retailer sells a rechargeable battery through a catalog order, telephone order, or other method that does not involve in-store sales, the retailer shall be deemed in compliance with this article if the retailer provides a reasonable notice either at the time of purchase or delivery to the consumer of an opportunity to return used rechargeable batteries at no cost for reuse, recycling, or proper disposal.

(A) The opportunity to return the rechargeable batteries shall be either through the retailer's take-back program established pursuant to paragraph (1) or through participation with the Rechargeable Battery Recycling Corporation or similar take-back and recycling program.

(B) The notice shall include informational materials, including, but not limited to, Internet Web site links or a telephone number, placed on the invoice or purchase order, or packaged with the battery, that provide consumers access to obtain more information about the opportunities and locations for no-cost battery recycling.

(3) Making information available to consumers about rechargeable battery recycling opportunities provided by the retailer and encouraging consumers to utilize those opportunities. This information may include, but is not limited to, one or more of the following:

(A) Signage that is prominently displayed and easily visible to the consumer.

(B) Written materials provided to the consumer at the time of purchase or delivery, or both.

(C) Reference to the rechargeable batteries recycling opportunity in retailer advertising or other promotional materials, or both.

(D) Direct communications with the consumer at the time of purchase.

(c) An individual retailer location that is actively participating in the Rechargeable Battery Recycling Corporation's or similar battery take-back and recycling program, and has implemented one or more of the public education components described in paragraph (3) of subdivision (b) shall be deemed in compliance with this article.

(d) If a retailer is participating in an existing battery recycling system that includes rechargeable batteries, in addition to any other type of batteries, and the system otherwise complies with the requirements of this article, the retailer may continue to participate in that existing system and is not required to implement or participate in a system that only includes rechargeable batteries.

As added by AB 1125 (Pavley), Stats. 2005, c. 572.

42454. On and after July 1, 2006, it is unlawful for a retailer to sell a rechargeable battery to a consumer unless the retailer complies with this chapter.

As added by AB 1125 (Pavley), Stats. 2005, c. 572.

ARTICLE 4. ANNUAL RETURN DATA

(Article 4 as added by AB 1125 (Pavley), Stats. 2005, c. 572)

42456. (a) On or before July 1, 2007, and each July 1 thereafter, the department shall survey battery handling or battery recycling facilities, or both, for the data required for subdivision (b). The survey shall be a representative sample of facilities, as determined by the department.

(b) From the data obtained pursuant to subdivision (a), the department shall post on its Internet Web site the estimated amount, by weight, of each type of rechargeable batteries returned for recycling in California during the previous calendar year.

As added by AB 1125 (Pavley), Stats. 2005, c. 572.

Chapter 8.5. Electronic Waste Recycling

(Chapter 8.5 as added by SB 20 (Sher), Stats. 2003, c. 526)

ARTICLE 1. GENERAL PROVISIONS

(Article 1 as added by SB 20 (Sher), Stats. 2003, c. 526)

42460. This act shall be known, and may be cited, as the Electronic Waste Recycling Act of 2003.

As added by SB 20 (Sher), Stats. 2003, c. 526.

42461. The Legislature finds and declares all of the following:

(a) The purpose of this chapter is to enact a comprehensive and innovative system for the reuse, recycling, and proper and legal disposal of covered electronic devices, and to provide incentives to design electronic devices that are less toxic, more recyclable, and that use recycled materials.

(b) It is the further purpose of this chapter to enact a law that establishes a program that is cost free and convenient for consumers and the public to return, recycle, and ensure the safe and environmentally-sound disposal of covered electronic devices.

(c) It is the intent of the Legislature that the cost associated with the handling, recycling, and disposal of covered electronic devices is the responsibility of the producers and consumers of covered electronic devices, and not local government or their service providers, state government, or taxpayers.

(d) In order to reduce the likelihood of illegal disposal of these hazardous materials, it is the intent of this chapter to ensure that any cost associated with the proper management of covered electronic devices be internalized by the producers and consumers of covered electronic devices at or before the point of purchase, and not at the point of discard.

(e) Manufacturers of covered electronic devices, in working to achieve the goals and objectives of this chapter, should have the flexibility to partner with each other and with those public sector entities and business enterprises that currently provide collection and processing services to develop and promote a safe and effective covered electronic device recycling system for California.

(f) The producers of electronic products, components, and devices should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in those products.

(g) Electronic products, components, and devices, to the greatest extent feasible, should be designed for extended life, repair, and reuse.

(h) The purpose of the Hazardous Electronic Waste Recycling Act is to provide sufficient funding for the safe, cost-free, and convenient collection and recycling of 100 percent of the covered electronic waste discarded or offered for recycling in the state, to eliminate electronic waste stockpiles and legacy devices by December 31, 2007, to end the illegal disposal of covered electronic devices, to establish manufacturer responsibility for reporting to the board on the manufacturer's efforts to phase out hazardous materials in electronic devices and increase the use of recycled materials, and to ensure that electronic devices sold in the state do not violate the regulations adopted by the Department of Toxic Substances Control pursuant to Section 25214.10 of the Health and Safety Code.

As added by SB 20 (Sher), Stats. 2003, c. 526.

ARTICLE 2. DEFINITIONS

(Article 2 as added by SB 20 (Sher), Stats. 2003, c. 526)

42463. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) "Account" means the Electronic Waste Recovery and Recycling Account created in the Integrated Waste Management Fund under Section 42476.

(b) "Authorized collector" means any of the following:

(1) A city, county, or district that collects covered electronic devices.

(2) A person or entity that is required or authorized by a city, county, or district to collect covered electronic devices pursuant to the terms of a contract, license, permit, or other written authorization.

(3) A nonprofit organization that collects or accepts covered electronic devices.

(4) A manufacturer or agent of the manufacturer that collects, consolidates, and transports covered electronic devices for recycling from consumers, businesses, institutions, and other generators.

(5) An entity that collects, handles, consolidates, and transports covered electronic devices and has filed applicable notifications with the department pursuant to Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(c) "Board" means the California Integrated Waste Management Board.

(d) "Consumer" means a person who purchases a new or refurbished covered electronic device in a transaction that is a retail sale or in a transaction to which a use tax applies pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(e) "Department" means the Department of Toxic Substances Control.

(f) (1) Except as provided in paragraph (2), "covered electronic device" means a video display device containing a screen greater than four inches, measured diagonally, that is identified in the regulations adopted by the department pursuant to subdivision (b) of Section 25214.10.1 of the Health and Safety Code.

(2) "Covered electronic device" does not include any of the following:

(A) A video display device that is a part of a motor vehicle, as defined in Section 415 of the Vehicle Code, or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.

(B) A video display device that is contained within, or a part of a piece of industrial, commercial, or medical equipment, including monitoring or control equipment.

(C) A video display device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air-conditioner, dehumidifier, or air purifier.

(D) An electronic device, on and after the date that it ceases to be a covered electronic device under subdivision (e) of Section 25214.10.1 of the Health and Safety Code.

(g) "Covered electronic waste" or "covered e-waste" means a covered electronic device that is discarded.

(h) "Covered electronic waste recycling fee" or "covered e-waste recycling fee" means the fee imposed pursuant to Article 3 (commencing with Section 42464).

(i) "Covered electronic waste recycler" or "covered e-waste recycler" means any of the following:

(1) A person who engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of reuse or recycling.

(2) A person who changes the physical or chemical composition of a covered electronic device, in accordance with the requirements of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code and the regulations adopted pursuant to that chapter, by deconstructing, size reduction, crushing, cutting, sawing, compacting, shredding, or refining for purposes of segregating components, for purposes of recovering or recycling those

components, and who arranges for the transport of those components to an end user.

(3) A manufacturer who meets any conditions established by this chapter and Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code for the collection or recycling of covered electronic waste.

(j) "Discarded" has the same meaning as defined in subdivision (b) of Section 25124 of the Health and Safety Code.

(k) "Electronic waste recovery payment" means an amount established and paid by the board pursuant to Section 42477.

(l) "Electronic waste recycling payment" means an amount established and paid by the board pursuant to Section 42478.

(m) "Hazardous material" has the same meaning as defined in Section 25501 of the Health and Safety Code.

(n) "Manufacturer" means either of the following:

(1) A person who manufactures a covered electronic device sold in this state.

(2) A person who sells a covered electronic device in this state under that person's brand name.

(o) "Person" means an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. Notwithstanding Section 40170, "person" also includes a city, county, city and county, district, commission, the state or a department, agency, or political subdivision thereof, an interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(p) "Recycling" has the same meaning as defined in subdivision (a) of Section 25121.1 of the Health and Safety Code.

(q) "Refurbished," when used to describe a covered electronic device, means a device that the manufacturer has tested and returned to a condition that meets factory specifications for the device, has repackaged, and has labeled as refurbished.

(r) "Retailer" means a person who makes a retail sale of a new or refurbished covered electronic device. "Retailer" includes a manufacturer of a covered electronic device who sells that covered electronic device directly to a consumer through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or the Internet, or any other similar electronic means.

(s) (1) "Retail sale" has the same meaning as defined under Section 6007 of the Revenue and Taxation Code.

(2) "Retail sale" does not include the sale of a covered electronic device that is temporarily stored or used in California for the sole purpose of preparing the covered electronic device for use thereafter solely outside the state, and that is subsequently transported outside the state and thereafter used solely outside the state.

(t) "Vendor" means a person that makes a sale of a covered electronic device for the purpose of resale to a retailer who is the lessor of the covered electronic device to a consumer under a lease that is a continuing sale and purchase pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(u) "Video display device" means an electronic device with an output surface that displays, or is capable of displaying, moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display, in that it cannot be easily removed from the display by the consumer, that produces the moving image on the screen. A video display device may use, but is not limited to, a cathode ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by AB 3082 (Assembly Judiciary Committee), Stats. 2004, c. 183, and SB 50 (Sher), Stats. 2004, c. 863, and AB 575 (Wolk), Stats. 2005, c. 59 and SB 1852 (Committee on Judiciary), Stats. 2006, c. 538.

ARTICLE 3. COVERED ELECTRONIC WASTE RECYCLING FEE

(Article 3 as added by SB 20 (Sher), Stats. 2003, c. 526)

42464. (a) On and after January 1, 2005, or as otherwise provided by Section 25214.10.1 of the Health and Safety Code, a consumer shall pay a covered electronic waste recycling fee upon the purchase of a new or refurbished covered electronic device, in the following amounts:

(1) Six dollars ($6) for each covered electronic device with a screen size of less than 15 inches measured diagonally.

(2) Eight dollars ($8) for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.

(3) Ten dollars ($10) for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

(b) Except as provided in subdivision (d), a retailer shall collect from the consumer a covered electronic waste recycling fee at the time of the retail sale of a covered electronic device.

(c) (1) A retailer may retain 3 percent of the covered electronic waste recycling fee as reimbursement for all costs associated with the collection of the fee and shall transmit the remainder of the fee to the state pursuant to Section 42464.4.

(2) If a retailer makes an election pursuant to paragraph (2) of subdivision (d), and the conditions of subparagraphs (A), (B), and (C) of paragraph (2) of subdivision (d) are met, the vendor, in lieu of the retailer, may retain 3 percent of the covered electronic waste recycling fee as reimbursement for all costs associated with the collection of the fee and the vendor shall transmit the remainder of the fee to the state pursuant to Section 42464.4.

(d) (1) If a retailer elects to pay the covered electronic waste recycling fee on behalf of the consumer, the retailer shall provide an express statement to that effect on the receipt given to the consumer at the time of sale. If a retailer elects to pay the covered electronic waste recycling fee on behalf of the

consumer, the fee is a debt owed by the retailer to the state, and the consumer is not liable for the fee.

(2) A retailer may elect to pay the covered electronic waste recycling fee on behalf of the consumer by paying the covered electronic waste recycling fee to the retailer's vendor, but only if all of the following conditions are met:

(A) The vendor is registered with the State Board of Equalization to collect and remit the covered electronic waste recycling fee pursuant to this chapter.

(B) The vendor holds a valid seller's permit pursuant to Article 2 (commencing with Section 6066) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code.

(C) The retailer pays the covered electronic waste recycling fee to the vendor that is separately stated on the vendor's invoice to the retailer.

(D) The retailer provides an express statement on the invoice, contract, or other record documenting the sale that is given to the consumer, that the covered electronic waste recycling fee has been paid on behalf of the consumer.

(3) For the purpose of making the election in paragraph (2), if the conditions set forth in subparagraphs (A), (B), (C), and (D) of paragraph (2), are met, the covered electronic waste recycling fee is a debt owed by the vendor to the state, and the retailer is not liable for the fee.

(e) The retailer shall separately state the covered electronic waste recycling fee on the receipt given to the consumer at the time of sale.

(f) On or before August 1, 2005, and, thereafter, no more frequently than annually, and no less frequently than biennially, the board, in collaboration with the department, shall review, at a public hearing, the covered electronic waste recycling fee and shall make any adjustments to the fee to ensure that there are sufficient revenues in the account to fund the covered electronic waste recycling program established pursuant to this chapter. Adjustments to the fee that are made on or before August 1, shall apply to the calendar year beginning the following January 1. The board shall base an adjustment of the covered electronic waste recycling fee on both of the following factors:

(1) The sufficiency, and any surplus, of revenues in the account to fund the collection, consolidation, and recycling of covered electronic waste that is projected to be recycled in the state.

(2) The sufficiency of revenues in the account for the board and the department to administer, enforce, and promote the program established pursuant to this chapter, plus a prudent reserve not to exceed 5 percent of the amount in the account.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by AB 901 (Jackson), Stats. 2004, c. 84, and SB 50 (Sher), Stats. 2004, c. 863, and AB 575 (Wolk), Stats. 2005, c. 59..

42464.2. The State Board of Equalization shall collect the covered electronic waste recycling fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code). For the purposes of this section, the reference in the Fee Collection Procedures Law to "feepayer" shall include a retailer, a consumer, and a vendor, in the case of a retailer's election pursuant to paragraph (2) of subdivision (d) of Section 42464.

As added by SB 20 (Sher), Stats. 2003, c. 526, and repealed and added by SB 50 (Sher), Stats. 2004, c. 863 , and AB 575 (Wolk), Stats. 2005, c. 59.

42464.4. (a) The covered electronic waste recycling fee shall be due and payable quarterly on or before the last day of the month following each calendar quarter. The payments shall be accompanied by a return in the form as prescribed by the State Board of Equalization or that person authorized to collect, including, but not limited to, electronic media.

(b) The State Board of Equalization may require the payment of the fee and the filing of returns for other than quarterly periods.

As added by SB 50 (Sher), Stats. 2004, c. 863.

42464.6. (a) The State Board of Equalization shall not accept or consider a petition for redetermination of fees determined under this chapter if the petition is founded upon the grounds that an item is or is not a covered electronic device. The State Board of Equalization shall forward to the department any appeal of a determination that is based on the grounds that an item is or is not a covered electronic device.

(b) The State Board of Equalization shall not accept or consider a claim for refund of fees paid pursuant to this chapter if the claim is founded upon the grounds that an item is or is not a covered electronic device. The State Board of Equalization shall forward to the department any claim for refund that is based on the grounds that an item is or is not a covered electronic device.

As added by SB 50 (Sher), Stats. 2004, c. 863.

42464.8. Notwithstanding Section 55381 of the Revenue and Taxation Code, the State Board of Equalization may disclose the name, address, account number, and account status of a person registered with the State Board of Equalization to collect and remit the covered electronic waste recycling fee.

As added by AB 575 (Wolk), Stats. 2005, c. 59.

ARTICLE 4. MANUFACTURER RESPONSIBILITY

(Article 4 as added by SB 20 (Sher), Stats. 2003, c. 526)

42465. On and after the date specified in subdivision (a) of Section 42464, a person shall not sell a new or refurbished covered electronic device to a consumer in this state if the board or department determines that the manufacturer of that covered electronic device is not in compliance with this chapter or as provided otherwise by Section 25214.10.1 of the Health and Safety Code.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by SB 50 (Sher), Stats. 2004, c. 863.

42465.1. On and after January 1, 2005, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, a person may not sell or offer for sale in this state a new or refurbished covered electronic device unless the device is

labeled with the name of the manufacturer or the manufacturer's brand label, so that it is readily visible.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by SB 50 (Sher), Stats. 2004, c. 863.

42465.2. (a) On or before July 1, 2005, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, and at least once annually thereafter as determined by the board, each manufacturer of a covered electronic device sold in this state shall do all of the following:

(1) Submit to the board a report that includes all of the following information:

(A) An estimate of the number of covered electronic devices sold by the manufacturer in the state during the previous year.

(B) A baseline or set of baselines that show the total estimated amounts of mercury, cadmium, lead, hexavalent chromium, and PBB's used in covered electronic devices manufactured by the manufacturer in that year and the reduction in the use of those hazardous materials from the previous year.

(C) A baseline or set of baselines that show the total estimated amount of recyclable materials contained in covered electronic devices sold by the manufacturer in that year and the increase in the use of those recyclable materials from the previous year.

(D) A baseline or a set of baselines that describe any efforts to design covered electronic devices for recycling and goals and plans for further increasing design for recycling.

(E) A list of those retailers, including, but not limited to, Internet and catalog retailers, to which the manufacturer provided a notice in the prior 12 months pursuant to Section 42465.3 and subdivision (c) of Section 25214.10.1 of the Health and Safety Code.

(2) Make information available to consumers, that describes where and how to return, recycle, and dispose of the covered electronic device and opportunities and locations for the collection or return of the device, through the use of a toll-free telephone number, Internet Web site, information labeled on the device, information included in the packaging, or information accompanying the sale of covered electronic device.

(b) (1) For the purposes of complying with paragraph (1) of subdivision (a), a manufacturer may submit a report to the board that includes only those covered electronic devices that include applications of the compounds listed in subparagraph (B) of paragraph (1) of subdivision (a) that are exempt from the Directive 2002/95/EC adopted by the European Parliament and the Council of the European Union on January 27, 2003, and any amendments made to that directive, if both of the following conditions are met, as modified by Section 24214.10 of the Health and Safety Code:

(A) The manufacturer submits written verification to the department that demonstrates, to the satisfaction of the department, that the manufacturer is in compliance with Directive 2002/95/EC, and any amendments to that directive, for those covered electronic devices for which it is not submitting a report to the board pursuant to this subdivision.

(B) The department certifies that the manufacturer is in compliance with Directive 2002/95/EC, and any amendments to that directive, for those covered electronic devices for which the manufacturer is not submitting a report to the board pursuant to this subdivision.

(2) When reporting pursuant to this subdivision, a manufacturer is required only to report on specific applications of compounds used in covered electronic devices that are exempt from Directive 2002/95/EC.

(c) Any information submitted to the board pursuant to subdivision (a) that is proprietary in nature or a trade secret shall be subject to protection under state laws and regulations governing that information.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by SB 50 (Sher), Stats. 2004, c. 863.

42465.3. A manufacturer of a covered electronic device shall comply with the notification requirements of subdivision (c) of Section 25214.10.1 of the Health and Safety Code.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by SB 50 (Sher), Stats. 2004, c. 863.

ARTICLE 5. ADMINISTRATION

(Article 5 as added by SB 20 (Sher), Stats. 2003, c. 526)

42472. (a) The imposition of a covered electronic waste recycling fee is a matter of statewide interest and concern and is applicable uniformly throughout the state. A city, county, city and county, or other public agency may not adopt, implement, or enforce an ordinance, resolution, regulation, or rule requiring a consumer, manufacturer, or retailer to recycle covered electronic devices or imposing a covered electronic waste recycling fee upon a manufacturer, retailer, or consumer, unless expressly authorized under this chapter.

(b) Nothing in this section prohibits the adoption, implementation, or enforcement of any local ordinance, resolution, regulation, or rule governing curbside or drop off recycling programs operated by, or pursuant to a contract with, a city, county, city and county, or other public agency, including any action relating to fees for these programs. Nothing in this section shall be construed to affect any contract, franchise, permit, license, or other arrangement regarding the collection or recycling of solid waste or household hazardous waste.

As added by SB 20 (Sher), Stats. 2003, c. 526.

42473. The Legislature declares that the imposition of a covered electronic waste recycling fee would not result in the imposition of a tax within the meaning of Article XIII A of the California Constitution, because the amount and nature of the fee has a fair and reasonable relationship to the adverse environmental burdens imposed by the disposal of covered electronic devices and there is a sufficient nexus between the

fee imposed and the use of those fees to support the recycling and reuse of these devices.

As added by SB 20 (Sher), Stats. 2003, c. 526.

42474. (a) Civil liability in an amount of up to two thousand five hundred dollars ($2,500) per offense may be administratively imposed by the board for each sale of a covered electronic device for which a covered electronic waste recycling fee has not been paid pursuant to Section 42464.

(b) A civil penalty in an amount of up to five thousand dollars ($5,000) per offense may be imposed by a superior court for each sale of a covered electronic device for which a covered electronic waste recycling fee has not been paid pursuant to Section 42464.

(c) Civil liability in an amount of up to twenty-five thousand dollars ($25,000) may be administratively imposed by the board against manufacturers for failure to comply with this chapter, except as otherwise provided in subdivision (a).

As added by SB 20 (Sher), Stats. 2003, c. 526.

42474.5. This chapter and all regulations adopted pursuant to this chapter may be enforced by the department pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

As added by SB 20 (Sher), Stats. 2003, c. 526.

42475. (a) The board shall administer and enforce this chapter in consultation with the department.

(b) The board and the department may adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that are necessary to implement this chapter, and any other regulations that the board and the department determines are necessary to implement the provisions of this chapter in a manner that is enforceable.

(c) The board shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that ensure the protection of any proprietary information submitted to the board by a manufacturer of covered electronic devices.

(d) The board and the department may prepare, publish, or issue any materials that the board or department determines to be necessary for the dissemination of information concerning the activities of the board or department under this chapter.

(e) In carrying out this chapter, the board and the department may solicit and use any and all expertise available in other state agencies, including, but not limited to, the department, the Department of Conservation, and the State Board of Equalization.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by SB 50 (Sher), Stats. 2004, c. 863.

42475.1 REPEALED.

As added by SB 20 (Sher), Stats. 2003, c. 526, and repealed by SB 50 (Sher), Stats. 2004, c. 863.

42475.2. (a) The board and the department may each adopt regulations to implement and enforce this chapter as emergency regulations.

(b) The emergency regulations adopted pursuant to this chapter shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the board or the department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the department or the board, whichever occurs sooner.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by AB 3082 (Assembly Judiciary Committee), Stats. 2004, c. 183, and SB 50 (Sher), Stats. 2004, c. 863.

42475.3. The board in collaboration with the department shall convene a covered electronic waste working group comprised of representatives from manufacturers of covered electronic devices and other interested parties to develop and, by July 1, 2005, advise the board and the State and Consumer Services Agency on environmental purchasing criteria that may be used by state agencies to identify covered electronic devices with reduced environmental impacts. In defining criteria, the group shall consider the environmental impacts of products over their entire life cycle, as well as tradeoffs in other product attributes such as safety, product functionality, and cost. The group shall also consider any federal product evaluation or rating system, or market based system to promote the development and sale of environmentally conscious products.

As added by SB 20 (Sher), Stats. 2003, c. 526.

42475.4. (a) The board shall annually establish, and update as necessary, statewide recycling goals for covered electronic waste. In implementing this section, the board shall do all of the following:

(1) Post on its Web site information on the amount of covered electronic devices sold in the state in the previous year as reported to the board.

(2) Post on its Web site information on the amount of covered electronic waste recycled in the state in the previous year as reported to the board.

(3) Develop and adopt recycling goals, with input from manufacturers, retailers, covered electronic waste recyclers, and collectors, that reflect projections of covered electronic device sales, rates of obsolescence, and stockpiles.

(b) Nothing in this section authorizes the board to establish any recycling rates or dates by which a manufacturer of covered electronic devices shall comply with this chapter,

or to impose any other recycling goal or target on a manufacturer of those devices.

As added by SB 20 (Sher), Stats. 2003, c. 526.

ARTICLE 6. FINANCIAL PROVISIONS

(Article 6 as added by SB 20 (Sher), Stats. 2003, c. 526)

42476. (a) The Electronic Waste and Recovery and Recycling Account is hereby established in the Integrated Waste Management Fund. All fees collected pursuant to this chapter shall be deposited in the account. Notwithstanding Section 13340 of the Government Code, the funds in the account are hereby continuously appropriated, without regard to fiscal year, for the following purposes:

(1) To pay refunds of the covered electronic waste recycling fee imposed under Section 42464.

(2) To make electronic waste recovery payments to an authorized collector of covered electronic waste pursuant to Section 42479.

(3) To make electronic waste recycling payments to covered electronic waste recyclers pursuant to Section 42479.

(4) To make payments to manufacturers pursuant to subdivision (g).

(b) (1) The money in the account may be expended for the following purposes only upon appropriation by the Legislature in the annual Budget Act:

(A) For the administration of this chapter by the board and the department.

(B) To reimburse the State Board of Equalization for its administrative costs of registering, collecting, making refunds, and auditing retailers and consumers in connection with the covered electronic waste recycling fee imposed under Section 42464.

(C) To provide funding to the department to implement and enforce Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, as that chapter relates to covered electronic devices, and any regulations adopted by the department pursuant to that chapter.

(D) To establish the public information program specified in subdivision (d).

(2) Any fines or penalties collected pursuant to this chapter shall be deposited in the Electronic Waste Penalty Subaccount, which is hereby established in the account. The funds in the Electronic Waste Penalty Subaccount may be expended by the board or department only upon appropriation by the Legislature.

(c) Notwithstanding Section 16475 of the Government Code, any interest earned upon funds in the Electronic Waste Recovery and Recycling Account shall be deposited in that account for expenditure pursuant to this chapter.

(d) Not more than 1 percent of the funds annually deposited in the Electronic Waste Recovery and Recycling Account shall be expended for the purposes of establishing the public information program to educate the public in the hazards of improper covered electronic device storage and disposal and on the opportunities to recycle covered electronic devices.

(e) The board shall adopt regulations specifying cancellation methods for the recovery, processing, or recycling of covered electronic waste.

(f) The board may pay an electronic waste recycling payment or electronic waste recovery payment for covered electronic waste only if all of the following conditions are met:

(1) The covered electronic waste, including any residuals from the processing of the waste, is handled in compliance with all applicable statutes and regulations.

(2) The manufacturer or the authorized collector or recycler of the electronic waste provide a cost free and convenient opportunity to recycle electronic waste, in accordance with the legislative intent specified in subdivision (b) of Section 42461.

(3) If the covered electronic waste is processed, the covered electronic waste is processed in this state according to the cancellation method authorized by the board.

(4) The board declares that the state is a market participant in the business of the recycling of covered electronic waste for all of the following reasons:

(A) The fee is collected from the state's consumers for covered electronic devices sold for use in the state.

(B) The purpose of the fee and subsequent payments is to prevent damage to the public health and the environment from waste generated in the state.

(C) The recycling system funded by the fee ensures that economically viable and sustainable markets are developed and supported for recovered materials and components in order to conserve resources and maximize business and employment opportunities within the state.

(g) (1) The board may make a payment to a manufacturer that takes back a covered electronic device from a consumer in this state for purposes of recycling the device at a processing facility. The amount of the payment made by the board shall equal the value of the covered electronic waste recycling fee paid for that device. To qualify for a payment pursuant to this subdivision, the manufacturer shall demonstrate both of the following to the board:

(A) The covered electronic device for which payment is claimed was used in this state.

(B) The covered electronic waste for which a payment is claimed, including any residuals from the processing of the waste, has been, and will be, handled in compliance with all applicable statutes and regulations.

(2) A covered electronic device for which a payment is made under this subdivision is not eligible for an electronic waste recovery payment or an electronic waste recycling payment under Section 42479.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by SB 50 (Sher), Stats. 2004, c. 863.

42476.5. A person who exports covered electronic waste, or a covered electronic device intended for recycling or disposal, to a foreign country, or to another state for ultimate export to a foreign country, shall do all of the following at least 60 days prior to export:

(a) Notify the department of the destination, disposition, contents, and volume of the waste, or device intended for recycling or disposal to be exported, and include with the notification the demonstrations required pursuant to subdivisions (b) to (e), inclusive.

(b) Demonstrate that the waste or device is being exported for the purposes of recycling or disposal.

(c) Demonstrate that the importation of the waste or device is not prohibited by an applicable law in the state or country of destination and that any import will be conducted in accordance with all applicable laws. As part of this demonstration, required import and operating licenses, permits, or other appropriate authorization documents shall be forwarded to the department.

(d) Demonstrate that the exportation of the waste or device is conducted in accordance with applicable United States or applicable international law.

(e) (1) Demonstrate that the waste or device will be managed within the country of destination only at facilities whose operations meet or exceed the binding decisions and implementing guidelines of the Organization for Economic Cooperation and Development for the environmentally sound management of the waste or device being exported.

(2) The demonstration required by this subdivision applies to any country of destination, notwithstanding that the country is not a member of the Organization for Economic Cooperation and Development.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by SB 50 (Sher), Stats. 2004, c. 863.

42476.6. Section 42476.5 does not apply to a component part of a covered electronic device that is exported to an authorized collector or recycler and that is reused or recycled into a new electronic component.

As added by SB 20 (Sher), Stats. 2003, c. 526.

42477. (a) On July 1, 2004, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, and on July 1 every two years thereafter, the board in collaboration with the department shall establish an electronic waste recovery payment schedule for covered electronic wastes generated in this state to cover the net cost for an authorized collector to operate a free and convenient system for collecting, consolidating and transporting covered electronic wastes generated in this state.

(b) The board shall make the electronic waste recovery payments either directly to an authorized collector or to a covered electronic waste recycler for payment to an authorized collector pursuant to this article.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by SB 50 (Sher), Stats. 2004, c. 863.

42478. (a) Except as provided in subdivision (b), on July 1, 2004, or as specified otherwise in Section 25214.10.1 of the Health and Safety Code, and on July 1 every two years thereafter, the board, in collaboration with the department, shall establish a covered electronic waste recycling payment schedule for covered electronic wastes generated in this state to cover the average net cost for an electronic waste recycler to receive, process, and recycle each major category, as determined by the board, of covered electronic waste received from an authorized collector. The board shall make the electronic waste recycling payments to a covered electronic waste recycler pursuant to this article.

(b) Until the board adopts a new payment schedule that covers the average net cost for an electronic waste recycler to receive, process, and recycle each major category, as determined by the board of covered electronic waste received from an authorized collector, the amount of the covered electronic waste recycling payment shall be equal to twenty-eight cents ($0.28) per pound of the total weight of covered electronic waste received from an authorized collector and subsequently processed for recycling.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by SB 50 (Sher), Stats. 2004, c. 863.

42479. (a) (1) For covered electronic waste collected for recycling on and after January 1, 2005, the board shall make electronic waste recovery payments and electronic waste recycling payments for the collection and recycling of covered electronic waste to an authorized collector or covered electronic waste recycler, respectively, upon receipt of a completed and verified invoice submitted to the board by the authorized collector or recycler in the form and manner determined by the board.

(2) To the extent authorized pursuant to Section 42477, a covered electronic waste recycler shall make the electronic waste recovery payments to an authorized collector upon receipt of a completed and verified invoice submitted to the recycler by the authorized collector in the form and manner determined by the board.

(b) An e-waste recycler is eligible for a payment pursuant to this section only if the e-waste recycler meets all of the following requirements:

(1) The e-waste recycler is in compliance with applicable requirements of Article 6 (commencing with Section 66273.70) of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations.

(2) The e-waste recycler demonstrates to the board that any facility utilized by the e-waste recycler for the handling, processing, refurbishment, or recycling of covered electronic devices meets all of the following standards:

(A) The facility has been inspected by the department within the past 12 months and had been found to be operating in conformance with all applicable laws, regulations, and ordinances.

(B) The facility is accessible during normal business hours for unannounced inspections by state or local agencies.

(C) The facility has health and safety, employee training, and environmental compliance plans and certifies compliance with the plans.

(D) The facility meets or exceed the standards specified in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2, Division 4 (commencing with Section 3200), and Division 5 (commencing with Section 6300), of the Labor

Code or, if all or part of the work is to be performed in another state, the equivalent requirements of that state.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by SB 50 (Sher), Stats. 2004, c. 863.

ARTICLE 7. STATE AGENCY PROCUREMENT

(Article 7 as added by SB 20 (Sher), Stats. 2003, c. 526)

42480. (a) (1) A state agency that purchases or leases covered electronic devices shall require each prospective bidder, to certify that it, and its agents, subsidiaries, partners, joint venturers, and subcontractors for the procurement, have complied with this chapter and any regulations adopted pursuant to this chapter, or to demonstrate that this chapter is inapplicable to all lines of business engaged in by the bidder, its agents, subsidiaries, partners, joint venturers, or subcontractors.

(2) The certification requirement set forth in paragraph (1) does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

(b) Failure to provide certification pursuant to this section shall render the prospective bidder and its agents, subsidiaries, partners, joint venturers, and subcontractors ineligible to bid on the procurement of covered electronic devices.

(c) The bid solicitation documents shall specify that the prospective bidder is required to cooperate fully in providing reasonable access to its records and documents that evidence compliance with this chapter.

(d) Any person awarded a contract by a state agency that is found to be in violation of this section is subject to the following sanctions:

(1) The contract shall be voided by the state agency to which the equipment, materials, or supplies were provided.

(2) The contractor is ineligible to bid on any state contract for a period of three years.

(3) If the Attorney General establishes in the name of the people of the State of California that any money, property, or benefit was obtained by a contractor as a result of violating this section, the court may, in addition to any other remedy, order the disgorgement of the unlawfully obtained money, property, or benefit in the interest of justice.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by SB 828 (Maldonado), Stats. 2005, c. 381.

ARTICLE 8. INAPPLICABILITY OF CHAPTER

(Article 8 as added by SB 20 (Sher), Stats. 2003, c. 526)

42485. Except as provided in subdivision (b) of Section 42486, the board and the department shall not implement this chapter if either of the following occur:

(a) A federal law, or a combination of federal laws, takes effect and does all of the following:

(1) Establishes a program for the collection, recycling, and proper disposal of covered electronic waste that is applicable to all covered electronic devices sold in the United States.

(2) Provides revenues to the state to support the collection, recycling, and proper disposal of covered electronic waste, in an amount that is equal to, or greater than, the revenues that would be generated by the fee imposed under Section 42464.

(3) Requires covered electronic device manufacturers, retailers, handlers, processors, and recyclers to dispose of those devices in a manner that is in compliance with all applicable federal, state, and local laws, and prohibits the devices from being exported for disposal in a manner that poses a significant risk to the public health or the environment.

(b) A trial court issues a judgment, which is not appealed, or an appellate court issues an order affirming a judgment of a trial court, holding that out-of-state manufacturers or retailers, or both, may not be required to collect the fee authorized by this chapter. The out-of-state manufacturers or retailers, or both, shall continue to collect the fee during the appellate process.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by SB 50 (Sher), Stats. 2004, c. 863.

42486. (a) Except as provided in subdivision (b), the provisions of this chapter shall become inoperative on the date that either of the events described in subdivision (a) or (b) of Section 42485 occurs, and if both occur, the earlier date.

(b) On the date specified in subdivision (a), the provisions of this chapter shall remain operative only for the collection of fees, the liability for which accrued prior to that date, making refunds, effecting credits, the disposition of moneys collected, and commencing an action or proceeding pursuant to this chapter.

As added by SB 50 (Sher), Stats. 2004, c.863.

Chapter 8.6. Cell Phone Recycling Act Of 2004

(Chapter 8.6 as added by AB 2901 (Pavley), Stats. 2004, c. 891)

ARTICLE 1. GENERAL PROVISIONS

(Article 1 as added by AB 2901 (Pavley), Stats. 2004, c. 891)

42490. This act shall be known, and may be cited as, the Cell Phone Recycling Act of 2004.

As added by AB 2901 (Pavley), Stats. 2004, c. 891

42490.1. The Legislature finds and declares all of the following:

(a) The purpose of this chapter is to enact a comprehensive and innovative system for the reuse, recycling, and proper and legal disposal of used cell phones.

(b) It is the further purpose of this chapter to enact a law that establishes a program that is convenient for consumers and the public to return, recycle, and ensure the safe and environmentally sound disposal of used cell phones, and

providing a system that does not charge when a cell phone is returned.

(c) It is the intent of the Legislature that the cost associated with the handling, recycling, and disposal of used cell phones be the responsibility of the producers and consumers of cell phones, and not local government or their service providers, state government, or taxpayers.

(d) In order to reduce the likelihood of illegal disposal of hazardous materials, it is the intent of this chapter to ensure that all costs associated with the proper management of used cell phones is internalized by the producers and consumers of cell phones at or before the point of purchase, and not at the point of discard.

(e) Manufacturers and retailers of cell phones and cell phone service providers, in working to achieve the goals and objectives of this chapter, should have the flexibility to partner with each other and with those private and nonprofit business enterprises that currently provide collection and processing services to develop and promote a safe and effective used cell phone recycling system for California.

(f) The producers of cell phones should reduce and, to the extent feasible, ultimately phase out the use of hazardous materials in cell phones.

(g) Cell phones, to the greatest extent feasible, should be designed for extended life, repair, and reuse.

(h) The purpose of this chapter is to provide for the safe, cost free, and convenient collection, reuse, and recycling of 100 percent of the used cell phones discarded or offered for recycling in the state.

(i) In establishing a cost effective system for the recovery, reuse, recycling and proper disposal of used cell phones, it is the intent of the Legislature to encourage manufacturers, retailers and service providers to build on the retailer take-back systems initiated recently by some cell phone service providers.

(j) An estimated 5 percent of obsolete cell phones are currently being recycled through a mechanism, whereby private sector recyclers provide retailers with a postage paid box for mailing returned cell phones to the recycler at no cost to the retailers. In some instances, the scrap value of these used phones is sufficient for the recycler to either pay the retailer or make a financial contribution on behalf of the retailer to a nonprofit charity. It is the intent of the Legislature that this model system be substantially expanded as a result of the enactment of this act.

As added by AB 2901 (Pavley), Stats. 2004, c. 891

ARTICLE 2. DEFINITIONS

(Article 2 as added by AB 2901 (Pavley), Stats. 2004, c. 891)

42493. For the purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) "Cell phone" means a wireless telephone device that is designed to send or receive transmissions through a cellular radiotelephone service, as defined in Section 22.99 of Title 47 of the Code of Federal Regulations. A cell phone includes the rechargeable battery that may be connected to that cell phone. A cell phone does not include a wireless telephone device that is integrated into the electrical architecture of a motor vehicle.

(b) "Consumer" means a purchaser or owner of a cell phone. "Consumer" also includes a business, corporation, limited partnership, nonprofit organization, or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

(c) "Department" means the Department of Toxic Substances Control.

(d) "Retailer" means a person who sells a cell phone in the state to a consumer, including a manufacturer of a cell phone who sells that cell phone directly to a consumer. A sale includes, but is not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other similar electronic means, but does not include a sale that is a wholesale transaction with a distributor or retailer.

(e) (1) "Sell" or "sale" means a transfer for consideration of title or of the right to use, by lease or sales contract, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet or any other, similar electronic means, but does not include a wholesale transaction with a distributor or a retailer.

(2) For purposes of this subdivision and subdivision (d), "distributor" means a person who sells a cell phone to a retailer.

(f) "Used cell phone" means a cell phone that has been previously used and is made available, by a consumer, for reuse, recycling, or proper disposal.

As added by AB 2901 (Pavley), Stats. 2004, c. 891

ARTICLE 3. CELL PHONE RECYCLING

(Article 3 as added by AB 2901 (Pavley), Stats. 2004, c. 891)

42494. (a) On and after July 1, 2006, every retailer of cell phones sold in this state shall have in place a system for the acceptance and collection of used cell phones for reuse, recycling, or proper disposal.

(b) A system for the acceptance and collection of used cell phones for reuse, recycling, or proper disposal shall, at a minimum, include all of the following elements:

(1) The take-back from the consumer of a used cell phone that the retailer sold or previously sold to the consumer, at no cost to that consumer. The retailer may require proof of purchase.

(2) The take-back of a used cell phone from a consumer who is purchasing a new cell phone from that retailer, at no cost to that consumer.

(3) If the retailer delivers a cell phone directly to a consumer in this state, the system provides the consumer, at the time of delivery, with a mechanism for the return of used cell phones for reuse, recycling, or proper disposal, at no cost to the consumer.

(4) Make information available to consumers about cell phone recycling opportunities provided by the retailer and encourage consumers to utilize those opportunities. This information may include, but is not limited to, one or more of the following:

(A) Signage that is prominently displayed and easily visible to the consumer.

(B) Written materials provided to the consumer at the time of purchase or delivery, or both.

(C) Reference to the cell phone recycling opportunity in retailer advertising or other promotional materials, or both.

(D) Direct communications with the consumer at the time of purchase.

(c) Paragraph (4) of subdivision (b) does not apply to a retailer that only sells prepaid cell phones and does not provide the ability for a consumer to sign a contract for cell phone service.

As added by AB 2901 (Pavley), Stats. 2004, c. 891

42495. On and after July 1, 2006, it is unlawful to sell a cell phone to a consumer in this state unless the retailer of that cell phone complies with this chapter.

As added by AB 2901 (Pavley), Stats. 2004, c. 891

ARTICLE 4. STATEWIDE RECYCLING GOALS

(Article 4 as added by AB 2901 (Pavley), Stats. 2004, c. 891)

42496.4. On July 1, 2007, and each July 1, thereafter, the department shall post on its Web site an estimated California recycling rate for cell phones, the numerator of which shall be the estimated number of cell phones returned for recycling in California during the previous calendar year, and the denominator of which is the number of cell phones estimated to be sold in this state during the previous calendar year.

As added by AB 2901 (Pavley), Stats. 2004, c. 891

ARTICLE 5. STATE AGENCY PROCUREMENT

(Article 5 as added by AB 2901 (Pavley), Stats. 2004, c. 891)

42498. (a) (1) A state agency that purchases or leases cell phones shall require each prospective bidder, to certify that it, and its agents, subsidiaries, partners, joint venturers, and subcontractors for the procurement, have complied with this chapter and any regulations adopted pursuant to this chapter, or to demonstrate that this chapter is inapplicable to all lines of business engaged in by the bidder, its agents, subsidiaries, partners, joint venturers, or subcontractors.

(2) The certification requirement set forth in paragraph (1) does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

(b) Failure to provide certification pursuant to this section shall render the prospective bidder and its agents, subsidiaries, partners, joint venturers, and subcontractors ineligible to bid on the procurement of cell phones.

(c) The bid solicitation documents shall specify that the prospective bidder is required to cooperate fully in providing reasonable access to its records and documents that evidence compliance with this chapter.

(d) Any person awarded a contract by a state agency that is found to be in violation of this section is subject to the following sanctions:

(1) The contract shall be voided by the state agency to which the equipment, materials, or supplies were provided.

(2) The contractor is ineligible to bid on any state contract for a period of three years.

(3) If the Attorney General establishes in the name of the people of the State of California that any money, property, or benefit was obtained by a contractor as a result of violating this section, the court may, in addition to any other remedy, order the disgorgement of the unlawfully obtained money, property, or benefit in the interest of justice.

As added by AB 2901 (Pavley), Stats. 2004, c. 891, and amended by SB 828 (Maldonado), Stats. 2005, c. 381

ARTICLE 6. EFFECT OF ACT

(Article 6 as added by AB 2901 (Pavley), Stats. 2004, c. 891)

42499. This chapter shall not be construed to affect Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, any regulation adopted pursuant to that chapter, or any obligation imposed on a person pursuant to that chapter, relating to cell phones or used cell phones.

(As added by AB 2901 (Pavley), Stats. 2004, c. 891)

Chapter 9. Technical Assistance Program

(Chapter 9 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096)

ARTICLE 1. ENFORCEMENT AGENCY TRAINING AND ASSISTANCE

(Article 1 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096)

42500. The board shall provide periodic training to enforcement agencies regarding changes in state or federal regulations, new technologies affecting solid waste landfill operations, and other matters which will enhance the enforcement agencies' ability to carry out their enforcement responsibilities. In providing that training, the board shall pay particular attention to cities and counties which meet the criteria specified in Section 41782.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by SB 2061 (Leslie), Stats. 1992, c. 1035.

42501. (a) The board shall provide ongoing technical assistance and guidance to enforcement agencies to assist in their decisionmaking processes. This assistance shall include, but is not limited to, providing all of the following:

(1) Technical studies and reports.

(2) Copies of innovative facility operation plans.

(3) Investigative findings and analyses of new waste management practices and procedures.

(b) In providing that assistance, the board shall pay particular attention to cities and counties which meet the criteria specified in Section 41782.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by SB 2061 (Leslie), Stats. 1992, c. 1035.

ARTICLE 2. NONYARD WOOD WASTE DISPOSAL MINIMIZATION

(Article 2 as added by AB 1515 (Sher), Stats. 1991, c. 717; formerly Article 2, Waste Evaluations, consisting of Sections 42510 and 42511, was added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1515 (Sher), Stats. 1991, c. 717)

42510. It is the intent of the Legislature that actions taken by the board and cities and counties pursuant to this article serve in the best interests of cities and counties by preserving existing disposal site capacity and providing a source of revenue from the stabilization and expansion of markets for processed wood waste materials. Except as provided in Sections 41783, 41784, and 41785, any actions taken pursuant to this article shall be separate from, and not be counted toward, the diversion requirements established pursuant to paragraphs (1) and (2) of subdivision (a) of Section 41780.

As added by AB 1515 (Sher), Stats. 1991, c. 717, and amended by AB 2211 (Sher), Stats. 1992, c. 280.

42511. The board shall assist cities and counties to divert nonyard wood wastes which cannot otherwise feasibly be reduced, recycled, or composted, for processing and utilization as a fuel resource, provided that the facilities which use the nonyard wood waste as a fuel resource have obtained any necessary permits which allow the use of those materials as a fuel and to the extent the diversion is consistent with the hierarchy set forth in Section 40051.

As added by AB 1515 (Sher), Stats. 1991, c. 717.

42512. REPEALED.

As added by AB 1515 (Sher), Stats. 1991, c. 717, and amended by AB 242 (Sher), Stats. 1996, c . 21, and repealed by AB 626 (Sher), Stats. 1996, c. 1038.

ARTICLE 3. PLASTIC RECYCLING ASSISTANCE

(Article 3 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096)

42520. The board shall establish a Plastics Recycling Information Clearinghouse. This clearinghouse shall provide information to postconsumer plastics collectors, reprocessors, and recyclers about programs collecting postconsumer plastics, availability of postconsumer plastics, and recent advances in postconsumer plastics recycling technology.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by AB 1515 (Sher), Stats. 1991, c. 717, and AB 626 (Sher), Stats. 1996, c. 1038.

ARTICLE 4. ASSESSMENT OF COSTS OF WASTE MANAGEMENT OPTIONS (REPEALED)

(Article 4 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1515 (Sher), Stats. 1991, c. 717)

42530-42535. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1515 (Sher), Stats. 1991, c. 717.

ARTICLE 5. CITY AND COUNTY INTEGRATED WASTE MANAGEMENT PLANS

(Article 5 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096)

42540. The board shall provide technical assistance to counties and cities to assist in development, revision, amendment, and implementation of local city source reduction and recycling elements and countywide integrated waste management plans. Assistance rendered, at the discretion of the board, includes, but is not limited to, all of the following:

(a) Developing regulations for the implementation of the city source reduction and recycling elements and the countywide integrated waste management plans.

(b) Conducting waste characterization studies on a city, county, district, regional, or statewide basis, or any combination thereof.

(c) Developing annual baseline data for measurement of the effectiveness of local plans in achieving statewide goals.

(d) Conducting studies on issues or problems that impact the ability of local government, the state, or business and industry in achieving individual or collective goals for integrated waste management.

(e) Developing mechanisms to implement market development recommendations recommended by the board.

(f) Providing technical and general information deemed appropriate to assist state and local governments achieve the objectives of integrated waste management elements and plans.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

Chapter 9.5. Telephone Directory Recycling

(Chapter 9.5 as added by SB 1066 (Dills), Stats. 1991, c. 1066)

ARTICLE 1. TELEPHONE DIRECTORY GOALS

(Article 1 as added by SB 1066 (Dills), Stats. 1991, c. 1066)

42550. For purposes of this chapter, "telephone directory" means a directory which lists the calling numbers of telephones located in this state of which 1,000 or more copies are distributed to the general public.

As added by SB 1066 (Dills), Stats. 1991, c. 1066.

42551. The board shall conduct a study of the feasibility of requiring that all telephone directories issued or sold in this state be made of materials that will allow for the maximum volume of directories to be recycled. The board shall consult with representatives of telephone directory publishers, including the Yellow Pages Publishers Association, as well as representatives of recycling operators. The board shall make use of public hearings and workshops as a means of providing an opportunity for public comment. The board may create an advisory board consisting of members representing telephone directory publishers, recycling operators, and other interested parties.

As added by SB 1066 (Dills), Stats. 1991, c. 1066.

42552. REPEALED

As added by SB 1066 (Dills), Stats. 1991, c. 1066, and repealed by SB 111 (Knight), Stats. 2004, c. 193.

42553. Article 2 (commencing with Section 42557) shall become operative only if the report required in former Section 42552, as added by Chapter 1066 of the Statutes of 1991, contains an affirmative finding regarding the feasibility of producing recyclable telephone directories without significantly reducing the durability of the directories nor significantly increasing production costs.

As added by SB 1066 (Dills), Stats. 1991, c. 1066, and amended by SB 111 (Knight), Stats. 2004, c. 193.

42554. It is the goal of this state that not less than 30 percent of telephone directories distributed in this state be recycled on and after January 1, 1994, that 35 percent of telephone directories distributed in this state be recycled on and after January 1, 1996, that 40 percent of telephone directories distributed in this state be recycled on and after January 1, 1998, and that 50 percent of telephone directories distributed in this state be recycled on and after January 1, 2000.

As added by SB 1066 (Dills), Stats. 1991, c. 1066.

42555. If the board determines that the policy goals established by Section 42554 are not being met by January 1, 1995, the board shall make recommendations to the Legislature, on or before January 1, 1996, on strategies for meeting the goals established in Section 42554.

As added by SB 1066 (Dills), Stats. 1991, c. 1066.

42556. If the board determines that the policy goals established by Section 42554 are not being met by January 1, 1999, the board shall make recommendations to the Legislature, on or before January 1, 2000, on strategies for meeting the goals established in Section 42554.

As added by SB 1066 (Dills), Stats. 1991, c. 1066.

ARTICLE 2. RECYCLABLE TELEPHONE DIRECTORIES

(Article 2 as added by SB 1066 (Dills), Stats. 1991, c. 1066)

42557. On and after January 1, 1995, all telephone directories distributed within the state shall be made from materials that will allow for the maximum volume of directories to be recycled, as determined by the board. If reasonably feasible, it is the goal of this state that existing waste paper recyclers make an effort to accept telephone directories for recycling.

As added by SB 1066 (Dills), Stats. 1991, c. 1066.

42558. For the purposes of implementing and enforcing this chapter, the board shall adopt general guidelines regarding the materials which may be used in the production of telephone directories which can and will be recycled. The guidelines shall be reviewed and promptly updated, as necessary, in order to avoid delay in the introduction of new materials or new recycling processes which will advance efforts to recycle telephone directories.

As added by SB 1066 (Dills), Stats. 1991, c. 1066.

Chapter 10. Office Paper Recovery Program

(Chapter 10 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096)

42560. "Recycled-content high grade, bleached printing and writing papers" means any of the following papers:

(a) Offset printing, mimeograph, and duplicator paper.

(b) Stationery, bond, and office paper.

(c) High-speed copier paper.

(d) Envelopes without plastic address windows.

(e) Form bond, including computer paper and carbonless forms.

(f) Book papers.

(g) Ledger, cover stock, and cotton fiber papers having a secondary wastepaper, as defined in Section 42204, or postconsumer wastepaper, as defined in Section 42203, content of at least 50 percent by weight.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

42561. On or before January 1, 1991, the board shall initiate a high grade white office paper recovery assistance program for state and local agencies and private businesses.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

42562. The high grade white office paper recovery assistance program shall include the following elements:

(a) Staff training materials designed to provide training to local program coordinators and instruction to personnel of state and local agencies and private businesses who would participate in high grade white office paper recovery programs.

(b) Public information materials designed to provide initial program startup support and periodic reinforcement to high grade white office paper recovery programs.

(c) Desk top collection containers designed for use by personnel within the office setting.

(d) Metal collection bins that meet State Fire Marshal's standards for overnight storage of flammable materials for use in intermediate storage of recovered paper.

(e) Staff assistance from the board to identify markets for collected materials, including model contracts for negotiation with local paper brokers.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096.

42563. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by AB 1515, (Sher), Stats. 1991, c. 717, and repealed by AB 626 (Sher), Stats. 1996, c. 1038.

Chapter 11. Los Angeles County Pilot Litter Program (REPEALED)

(Chapter 11 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1515 (Sher), Stats. 1991, c. 717)

42580. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1515 (Sher), Stats. 1991, c. 717.

Chapter 12. Public Information and Education

(Chapter 12 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed and added by AB 1515 (Sher), Stats. 1991, c. 717)

42600. The board shall establish a statewide public information and education program to encourage participation by the general public, business, government, and industry in all phases of integrated waste management. To the maximum extent possible, the public information and education program developed pursuant to this chapter shall be coordinated so as to not duplicate the efforts of other state agency public information programs for the promotion of source reduction, recycling, and composting. The public information and education program shall encourage participation in the board's integrated waste management programs and in local and regional programs. The board's program shall, at a minimum, include strategies and specific campaign activities to do all of the following:

(a) Encourage business and industry to reduce excess packaging of consumer products, to eliminate nonrecyclable contaminants from consumer goods, and to increase product durability. The board shall also promote waste handling practices which reduce waste generation by business and industry.

(b) Encourage consumers to reduce waste generation through selective purchasing and to encourage recycling at home and work.

(c) Encourage local government procurement of products containing recycled materials, integration of recycling into the community waste management infrastructure, and public participation in local waste management decisionmaking.

(d) Implement a "Buy Recycled" campaign to encourage business, industrial, and residential consumers to purchase products manufactured with, or packaged in, recycled materials. To promote the "Buy Recycled" program, the board shall develop a directory of California vendors providing recycled products and shall work to dispel myths regarding the inferiority of recycled products.

(e) Provide information to cities, counties, and regional agencies on programs implemented by the board pursuant to this section and strategies that may be pursued jointly by the board and cities, counties, and regional agencies to maximize coordination between state and local public information and education programs to reduce costs and improve efficiencies of state and local governments.

(f) Develop and disseminate to cities, counties, and regional agencies model public information materials and programs that can be used by those agencies in compliance with Sections 41220 and 41420.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed and added by AB 1515 (Sher), Stats. 1991, c. 717, and amended by AB 2494 (Sher), Stats. 1992, c. 1292.

42601. The board shall measure public information program effectiveness through research which establishes program benchmarks and tracks results. The results of that measurement shall serve as the basis for program modification.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed and added by AB 1515 (Sher), Stats. 1991, c. 717, and AB 626 (Sher) Stats. 1996, c. 1038.

42602. The board shall employ appropriate marketing techniques to disseminate its message, including radio and television advertising. The board may conduct paid advertising campaigns or solicit joint sponsorship of advertising campaigns by private industry for the purposes of complying with this chapter.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed and added by AB 1515 (Sher), Stats. 1991, c. 717.

42603. REPEALED

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed and added by AB 1515 (Sher), Stats. 1991, c. 717, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293, and AB 626 (Sher), Stats. 1996, c. 1038, and SB 373 (Torlakson), Stats. 2001, c. 926, and repealed by AB 1548 (Pavley), Stats. 2003, c. 665.

42604. On or before January 1, 1993, the State Board of Education shall include in the science framework appropriate language addressing the issue of integrated waste management in the ecology and environmental studies areas.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed and added by AB 1515 (Sher), Stats. 1991, c. 717.

42605. The State Department of Education shall encourage participation in the integrated waste management education program established pursuant to this chapter in cooperation with the California Integrated Waste Management Board to satisfy the teaching requirements of the science framework adopted by the State Board of Education.

As added by AB 1515 (Sher), Stats. 1991, c. 717.

42610-42611. REPEALED.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and repealed by AB 1515 (Sher), Stats. 1991, c. 717.

Chapter 12.5. Schoolsite Source Reduction and Recycling

(Chapter 12.5 as added by AB 1381 (Areias), Stats. 1991, c. 843)

42620. (a) The Legislature finds as follows:

(1) There are 1,029 school districts and 7,170 schools in California.

(2) Source reduction and recycling programs in the schools will significantly assist cities and counties in meeting the solid waste diversion goals set for 1995 and the year 2000, by Section 41780.

(3) Source reduction and recycling programs in the schools will also educate children on the importance of these activities, and will teach them waste management skills that will last throughout their lives.

(b) The Legislature, therefore, declares that school districts throughout the state should be assisted in establishing and implementing source reduction and recycling programs.

As added by AB 1381 (Areias), Stats. 1991, c. 843.

42621. The board shall develop and implement a source reduction and recycling program for school districts which shall include, but not be limited to, all of the following elements:

(a) A survey of school districts throughout the state to determine which districts already have source reduction and recycling programs and which districts need those programs.

(b) Development of a model waste reduction and recycling program for school districts.

(c) Providing training for school districts on how to implement source reduction and recycling programs.

(d) Providing ongoing technical and informational assistance for school districts implementing source reduction and recycling programs.

(e) Establishment of a repository of literature and teaching materials from other states and institutions which have instituted source reduction and recycling programs for their waste stream.

(f) Determining the types of equipment needed by school districts to implement source reduction recycling programs.

(g) Providing assistance to school districts in locating markets for their reusable or recyclable materials.

(h) Disseminating information to school districts on office equipment and other items which are made from recycled materials and which are available for purchase by school districts.

As added by AB 1381 (Areias), Stats. 1991, c. 843, and amended by AB 54 (Sher), Stats. 1993, c. 663.

42622. The source reduction and recycling program for school districts developed pursuant to Section 42621 shall, to the extent feasible, be designed to complement and further the educational goals of the supplementary educational materials developed pursuant to Part 4 (commencing with Section 71300) of Division 34, and the integrated waste management issues addressed within the science curriculum framework developed by the State Board of Education.

As added by AB 1381 (Areias), Stats. 1991, c. 843, and amended by AB 1548 (Pavley), Stats. 2003, c. 665.

42623. REPEALED.

As added by AB 1381 (Areias), Stats. 1991, c. 843, and repealed by AB 626 (Sher), Stats. 1996, c. 1038.

Chapter 12.6. Schoolsite Source Reduction and Recycling Assistance Program

(Chapter 12.6 as added by SB 373 (Torlakson), Stats. 2001, c. 926)

ARTICLE 1. LEGISLATIVE FINDINGS

(Article 1 as added by SB 373 (Torlakson), Stats. 2001, c. 926)

42630. (a) It is the intent of the Legislature, by enacting this chapter, to accomplish all of the following:

(1) Every school district and schoolsite in this state will be encouraged to implement source reduction, recycling, and composting programs that would do all of the following:

(A) Reduce waste and conserve resources.

(B) Provide pupils with a "hands-on" learning experience.

(C) Minimize the expenditure of taxpayer and education dollars on solid waste collection and disposal.

(2) School districts and individual schoolsites will cooperate with cities and counties in developing plans and programs to meet and exceed the state's 50 percent waste reduction and recycling mandate.

(3) To the maximum extent feasible, school districts and schools will utilize products and supplies made from recycled materials.

(4) The State Department of Education, State Board of Education, Secretary for Education, the California Environmental Protection Agency, and the Resources Agency, will coordinate efforts in the development, dissemination, and promotion of the use of environmental education programs for pupils.

(b) The Legislature, therefore, declares that school districts throughout the state should be assisted in establishing and implementing source reduction and recycling programs.

As added by SB 373 (Torlakson), Stats. 2001, c. 926.

ARTICLE 2. DEFINITIONS

(Article 2 as added by SB 373 (Torlakson), Stats. 2001, c. 926)

42635. For purposes of this chapter, the following definitions shall apply:

(a) "Environmentally preferable product" means a product that promotes healthy indoor environments for children, and demonstrates the use of the environmentally preferable materials and systems. When compared to other similar products with similar functions an environmentally preferable product has some, or all, of the following characteristics relative to those similar products serving similar functions:

(1) Less hazardous to public health, safety, and the environment.

(2) Consumes less energy in their manufacture or use.

(3) Contains more, or any amount of, recycled or post-consumer material content in their manufacture.

(4) Results in less potential waste.

(5) Results in less harm to indoor air quality.

(6) Consumes less water.

(7) Include features, or is manufactured from materials, that promotes recycling or reuse of the product.

(b) "Local agency" means a city that has prepared, adopted, and submitted to the county a source reduction and recycling element pursuant to Section 41000, and a county that has prepared and submitted to the board an integrated waste management plan pursuant to Section 41570.

(c) "Office" means a county office of education.

(d) "School" or "schoolsite" means a public elementary or secondary school.

(e) "School district" has the same meaning as defined in Section 80 of the Education Code.

As added by SB 373 (Torlakson), Stats. 2001, c. 926.

ARTICLE 3. DIVERSION

(Article 3 as added by SB 373 (Torlakson), Stats. 2001, c. 926)

42638. Each school district and office may coordinate with local agencies to implement solid waste management programs to maximize the diversion of solid waste from landfill disposal or transformation facilities. This coordination between the school district or office and the local agency may include, but is not limited to, assessing the school district's solid waste and diversion needs and developing new or expanding existing integrated waste management programs, including waste prevention, recycling and composting programs.

As added by SB 373 (Torlakson), Stats. 2001, c. 926.

ARTICLE 4. MODELS AND SCHOOL WASTE REDUCTION TOOLS

(Article 4 as added by SB 373 (Torlakson), Stats. 2001, c. 926)

42640. (a) On or before July 1, 2002, after researching and determining the best waste reduction practices for school districts and schoolsites, the board shall develop models and school waste reduction tools, based upon the program developed pursuant to Section 42621, that may be used by schools, school districts, offices, and local agencies to implement waste reduction programs. The models and tools may include, but not be limited to, all of the following:

(1) Waste prevention, recycling, composting, procurement, and green building elements that, when properly implemented, create hands-on learning experiences for pupils and result in a greater reduction in schoolsite and school district solid waste generation than currently exists.

(2) Model waste reduction programs that may be implemented by the local agencies, schoolsites, and school districts.

(3) Environmental, economic, and educational benefits of implementing waste reduction programs.

(b) The board shall make the models and tools available and downloadable to local agencies, schools, and school districts from the board's Web site.

As added by SB 373 (Torlakson), Stats. 2001, c. 726.

ARTICLE 5. TRAINING, ASSISTANCE, AND INFORMATION

(Article 5 as added by SB 373 (Torlakson), Stats. 2001, c. 926)

42641. The board shall provide training and ongoing technical and informational assistance to local agencies, offices, schools, and school districts on implementing waste reduction programs.

As added by SB 373 (Torlakson), Stats. 2001, c. 926.

42642. The Division of the State Architect, in consultation with the board, shall develop and maintain on its Web site, a list of environmentally preferable products and a list of recycled products that may be used in the construction and modernization of school facilities. The board shall provide notice to each school district of the existence of these lists and their location on these Web sites.

As added by SB 373 (Torlakson), Stats. 2001, c. 926.

ARTICLE 6. GRANTS

(Article 6 as added by SB 373 (Torlakson), Stats. 2001, c. 926)

42645. (a) The board, in consultation with the State Department of Education, the State Board of Education, and the Secretary for Education, shall establish a program to provide grants to school districts and schools to assist in the development and implementation of educational programs and to promote the use of existing educational programs to teach the concepts of source reduction, recycling, and composting.

(b) The board, in consultation with the State Department of Education, the State Board of Education, and the Secretary for Education, shall adopt criteria for awarding grants pursuant to this article, including, but not limited to, the grant's structure, the schedule for awarding grants, and grant amount limits. This criteria shall include, but not be limited to, a procedure for the geographic distribution of the grants and the appropriate representation of elementary, middle, and high school as grant recipients. In adopting this criteria, the board shall include, in the criteria, the extent to which an office, a school district, or a school has demonstrated a commitment to achieving the following goals:

(1) The adoption of waste reduction and recycling programs and practices.

(2) The adoption and implementation of the unified education strategy adopted pursuant to Part 4 (commencing with Section 71300) of Division 34.

(3) The allocation of adequate space for the safe collection, storage, and loading of recyclable materials.

(4) To the maximum extent feasible, the use of recycled materials and environmentally preferable products in the construction or modernization of public school facilities.

(5) Participation in the environmental ambassador pilot program established pursuant to Section 51226.4 of the Education Code.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the adoption of criteria for the awarding of grants pursuant to this article is not the adoption of a regulation, and is exempt from the requirements of that chapter.

As added by SB 373 (Torlakson), Stats. 2001, c. 926, and amended by AB 3034 (Assembly Judiciary Committee), Stats. 2002, c. 664, and AB 1548 (Pavley), Stats. 2003, c. 665.

42646. On or before January 1, 2004, the board shall evaluate the implementation of school waste reduction and recycling programs in the state's schools and if the board determines less than 75 percent of schools have implemented a waste reduction and recycling program, the board shall recommend to the Legislature those statutory changes needed to require schools to implement such a program.

As added by SB 373 (Torlakson), Stats. 2001, c. 926.

42647. The board may enter into an interagency agreement with the State Department of Education or other state agencies to implement this chapter, Part 4 (commencing with Section 71300) of Division 34, and Sections 33541 and 51226.4 of the Education Code.

As added by SB 373 (Torlakson), Stats. 2001, c. 926, and amended by AB 1548 (Pavley), Stats. 2003, c. 665.

Chapter 12.7. Large Venue Recycling

(Chapter 12.7 as added by AB 2176 (Moñtanez), Stats. 2004, c. 879)

42648. For purposes of this chapter, the following definitions apply:

(a) "Individual" means a person who works at, or attends, a large venue or large event, or a customer who is seated or served at the large venue or large event.

(b) "Large event" means an event that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, including, but not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event, including, but not limited to, a sporting event or a flea market.

(c) "Large venue" means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of this chapter, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this chapter, a site under common ownership or control that includes more than one large venue that is contiguous with other large venues in the site, is a single large venue.

(d) "Local agency" means a city or county.

As added by AB 2176 (Moñtanez), Stats. 2004, c. 879.

42648.1. On or before April 1, 2005, the board shall take all of the following actions:

(a) Make available one or more model ordinances that are suitable for modification by a local agency and that may be adopted by a local agency to facilitate solid waste reduction, reuse, and recycling programs, at large venues and large events in accordance with the requirements of this chapter.

(b) While developing the model ordinance, consult with representatives of the League of California Cities, the California State Association of Counties, recyclers, private and public solid waste services and appropriate personnel involved with the operation and management of large venues and large events.

(c) Post information on the board's Internet Web site on the solid waste reduction, reuse, and recycling programs for implementation by operators of large venues and large events to decrease solid waste and increase diversion of recyclable materials.

(d) Post information on the board's Internet Web site for local agencies, with examples of solid waste reduction, reuse, and recycling programs, including, but not limited to, those operated by community conservation corps.

As added by AB 2176 (Moñtanez), Stats. 2004, c. 879.

42648.2. (a) (1) On and after July 1, 2005, when issuing a permit to an operator of a large venue or large event, the local agency shall provide information to the operator on programs that can be implemented to reduce, reuse, and recycle solid waste materials generated at the venue or event, and provide contact information about where solid waste materials may be donated, recycled, or composted. This information may include, but is not limited to, providing information directing the operator of the large venue or large event to the board's Web site or any other appropriate Web site included by the local agency, direct mailings, brochures, or other relevant literature.

(2) On or before August 1, 2006, and annually thereafter until August 1, 2008, each local agency shall provide the board with an estimate and description of the top 10 percent of large venues and large events within its jurisdiction, based upon amount of solid waste generated, as submitted by operators of large venues and large events pursuant to Section 42648.3. To the extent that the information is readily available to the local agency, the information shall include the name, location, and a brief description of the venue or event, a brief description of the types of wastes generated, types, and estimated amount of materials disposed and diverted, by weight, and existing solid waste reduction, reuse, and recycling programs that the operator of the large venue or large event utilizes to reduce, reuse, and recycle the solid waste. This information shall be reported to the board as a part of the local agency's annual report submitted pursuant to Section 41821.

(b) On or before December 1, 2008, the board shall evaluate the solid waste reduction, reuse, and recycling rates and implementation of waste reduction, reuse, and recycling plans in the top 10 percent of large venues and large events as reported by each local agency pursuant to paragraph (2) of subdivision (a). If the board, upon reviewing the information reported to the board by local agencies pursuant to paragraph (2) of subdivision (a), determines that less than 75 percent of the solid waste reduction, reuse, and recycling plans for the large venues and large events have been prepared or implemented to meet their waste reduction, reuse, and recycling rates developed pursuant to subdivision (a) of Section 42648.4, according to the schedule determined pursuant to subdivision (b) of Section 42468.4, the board shall recommend to the Legislature those statutory changes needed to require operators of large venues and large events to implement waste reduction, reuse, and recycling plans.

As added by AB 2176 (Moñtanez), Stats. 2004, c. 879.

42648.3. On or before July 1, 2005, and on or before July 1 annually thereafter, each operator of a large venue or large event shall submit to the local agency, upon request by the local agency, written documentation of waste reduction,

reuse, recycling, and diversion programs, if any, implemented at the large venue or large event, and the type and weight of materials diverted and disposed at that large venue or large event. If the operator of a large venue or large event cannot implement a program as provided in the solid waste reduction, reuse, and recycling plan, the operator shall include a brief explanation for the delay as part of its report to the local agency. The operator of the large venue or large event shall submit the requested information to the local agency, no later than one month from the date the operator receives the request.

As added by AB 2176 (Moñtanez), Stats. 2004, c. 879.

42648.4. On or before July 1, 2005, and on or before July 1, biennially thereafter, the operator of a large venue or large event shall meet with recyclers and with the solid waste enterprise that provides solid waste handling services to the large venue or large event, whether by an exclusive franchise with the local agency, or by a permit, contract, or nonexclusive franchise, to determine the solid waste reduction, reuse, and recycling programs that are appropriate for the large venue or large event. In determining feasible solid waste reduction, reuse, and recycling programs, the operator may do any of the following:

(a) Develop solid waste reduction, reuse, and recycling rates and a solid waste reduction, reuse, and recycling plan that would achieve those solid waste reduction, reuse, and recycling rates.

(b) Determine a timeline for implementation of the solid waste reduction, reuse, and recycling plan and solid waste reduction, reuse, and recycling rates.

As added by AB 2176 (Moñtanez), Stats. 2004, c. 879.

42648.5. The board shall provide technical assistance and tools to implement this chapter, to the extent feasible under existing financial resources. This technical assistance may include, but is not limited to, model documents, training, research on solid waste management best practices, cost reduction, and innovative products to assist local agencies and operators of large venues and large events to develop and implement effective solid waste reduction, reuse, and recycling plans and rates.

As added by AB 2176 (Moñtanez), Stats. 2004, c. 879.

42648.6. If a large venue or large event has contiguous parcels located in both the City of Los Angeles and the County of Los Angeles, the requirements of this chapter shall apply only to the local agency containing the majority of the property for that large venue or large event.

As added by AB 2176 (Moñtanez), Stats. 2004, c. 879, and amended by SB 1108 (Senate Judiciary Committee), Stats. 2005, c. 22.

42648.7. A local agency may charge and collect a fee from an operator of a large venue or large event in order to recover the local agency's estimated costs incurred in complying with this chapter.

As added by AB 2176 (Moñtanez), Stats. 2004, c. 879.

Chapter 13. Research and Development Program

(Chapter 13 as added by SB 1322 (Bergeson), Stats. 1989, c. 1096)

42650. (a) The board may establish a research and development program, based on priorities that are consistent with Section 40051, and designed to identify, develop, and refine processes and technologies that will assist state and local governments and private industries to implement innovative resource management and waste reduction programs. The board may conduct research and development programs, upon appropriation therefor by the Legislature, that include, but are not limited to, all of the following:

(1) Establishing, in coordination with the Department of Conservation, a recycling extension service within the board to serve as a central clearinghouse for recycling research information.

(2) Establishing cooperative research ad development facilities at universities and colleges in the state.

(3) Developing a research program to study the feasibility of using disposal site mining technology to extend the life of existing disposal sites, recover valuable resources, and to reuse the reclaimed disposal site in an environmentally sound manner.

(4) Establishing a research program to identify educational and promotional methods that can effect environmentally positive changes in human behavior.

(5) Conducting studies into hazards posed by special wastes and by ash and air emissions from the incineration of waste.

(6) Conducting research to develop statistical tools to establish computer-based data bases on waste characteristics, special waste volumes, and county and regional waste capacities.

(7) Analyzing disposal site encroachment problems and assisting local agencies in the development of effective public policy tools to discourage disposal site encroachment.

(b) The board shall submit the results of the research and development programs specified in subdivision (a) in the report required pursuant to Section 40507.

As added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293, and AB 59 (Sher), Stats. 1995, c. 952.

42651. In determining the types of research and development which may be undertaken pursuant to Section 42650, the board shall prioritize the allocation of funds for processes and technologies based upon the hierarchy established under Section 40051.

As added by AB 2494 (Sher), Stats. 1992, c. 1292.

Chapter 14. Paving Materials

Chapter 14 as added by SB 937 (Vuich), Stats. 1990, c. 35)

ARTICLE 1. RECYCLED MATERIALS

(Article 1 as added by SB 1026 (Dills), Stats. 1995, c. 605)

42700. The Director of Transportation, upon consultation with the board, shall review and modify all bid

specifications relating to the purchase of paving materials, and base, subbase, and pervious backfill materials, using recycled materials. The recycled materials shall include, but are not limited to, recycled asphalt pavement, crushed concrete subbase, foundry slag, asphalt flux produced from the reprocessing or re-refining of used oil, and paving materials utilizing recycled materials, including, but not limited to, crumb rubber from automobile tires, ash, and glass and glassy aggregates. The specifications shall be based on standards developed by the Department of Transportation for recycled paving materials and for recycled base, subbase, and pervious backfill materials. The standards and specifications shall provide for the use of recycled materials and shall not reduce the quality standards for highway and road construction.

As added by AB 1306 (Killea), Stats. 1989, c. 1092, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by SB 1979 (O'Connell), Stats. 1996, c. 901.

42701. (a) In purchasing any materials to be used in paving or paving subbase for use by the Department of Transportation and any other state agencies that provide construction and repair services, the State Procurement Officer shall contract for those items that utilize recycled materials in paving materials and base, subbase, and pervious backfill materials, unless the Director of Transportation determines that the use of the materials is not cost effective. In determining the cost-effectiveness of the materials subject to this section, the factors that the director shall consider include both of the following:

(1) The lifespan and durability of the pavement containing the materials.

(2) The maintenance cost of the pavement containing the materials.

(b) This section also applies to any person who contracts with the Department of General Services or with any other state agency to provide these construction and repair services.

(c) The recycled materials shall include, but are not limited to, recycled asphalt, crushed concrete subbase, foundry slag, and paving materials utilizing crumb rubber from automobile tires, ash, and glass and glassy aggregates. The specifications shall be based on the standards of the Department of Transportation for recycled paving materials and for recycled base, subbase, and pervious backfill materials.

As added by AB 1306 (Killea), Stats. 1989, c. 1092, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35,and amended by SB 827 (Sher), Stats. 1999, c. 816, and SB 420 (Simitian), Stats. 2006, c. 392.

42703. (a) Except as provided in subdivision (d), the Department of Transportation shall require the use of crumb rubber in lieu of other materials at the following levels for state highway construction or repair projects that use asphalt as a construction material:

(1) On and after January 1, 2007, the Department of Transportation shall use, on an annual average, not less than 6.62 pounds of CRM per metric ton of the total amount of asphalt paving materials used.

(2) On and after January 1, 2010, the Department of Transportation shall use, on an annual average, not less than 8.27 pounds of CRM per metric ton of the total amount of asphalt paving materials used.

(3) On and after January 1, 2013, the Department of Transportation shall use, on an annual average, not less than 11.58 pounds of CRM per metric ton of the total amount of asphalt paving materials used.

(b) (1) The annual average use of crumb rubber required in subdivision (a) shall be achieved on a statewide basis and shall not require the use of asphalt containing crumb rubber in each individual project or in a place where it is not feasible to use that material.

(2) On and after January 1, 2007, and before January 1, 2015, not less than 50 percent of the asphalt pavement used to comply with the requirements of subdivision (a) shall be rubberized asphalt concrete.

(3) On and after January 1, 2015, the Department of Transportation may use any material meeting the definition of asphalt containing crumb rubber, with respect to product type or specification, to comply with the requirements of subdivision (a).

(c) (1) The Secretary of Business, Transportation and Housing shall, on or before January 1, 2009, and on or before January 1 annually thereafter, prepare an analysis comparing the cost differential between asphalt containing crumb rubber and conventional asphalt. The analysis shall include the cost of the quantity of asphalt product needed per lane mile paved and, at a minimum, shall include all of the following:

(A) The lifespan and duration of the asphalt materials.

(B) The maintenance cost of the asphalt materials and other potential cost savings to the department, including, but not limited to, reduced soundwall construction costs resulting from noise reduction qualities of rubberized asphalt concrete.

(C) The difference between each type or specification of asphalt containing crumb rubber, considering the cost-effectiveness of each type or specification separately in comparison to the cost-effectiveness of conventional asphalt paving materials.

(2) Notwithstanding subdivision (a), if, after completing the analysis required by paragraph (1), the secretary determines that the cost of asphalt containing crumb rubber exceeds the cost of conventional asphalt, the Department of Transportation shall continue to meet the requirement specified in paragraph (1) of subdivision (a), and shall not implement the requirement specified in paragraph (2) of subdivision (a). If the secretary determines, pursuant to an analysis prepared pursuant to paragraph (1), that the cost of asphalt containing crumb rubber does not exceed the cost of conventional asphalt, the Department of Transportation shall implement paragraph (2) of subdivision (a) within one year of that determination, but not before January 1, 2010.

(3) Notwithstanding subdivision (a), if the Department of Transportation delays the implementation of paragraph (2) of subdivision (a), the Department of Transportation shall not implement the requirement of paragraph (3) of subdivision (a)

until three years after the date the department implements paragraph (2) of subdivision (a).

(d) For the purposes of complying with the requirements of subdivision (a), only crumb rubber manufactured in the United States that is derived from waste tires taken from vehicles owned and operated in the United States may be used.

(e) The Department of Transportation and the board shall develop procedures for using crumb rubber and other derived tire products in other projects.

(f) The Department of Transportation shall notify and confer with the East Bay Municipal Utility District before using asphalt containing crumb rubber on a state highway construction or repair project that overlays district infrastructure.

(g) For purposes of this section the following definitions shall apply:

(1) "Asphalt containing crumb rubber" means any asphalt pavement construction, rehabilitation, or maintenance material that contains reclaimed tire rubber and that is specified for use by the Department of Transportation.

(2) "Crumb rubber" or "CRM" has the same meaning as defined in Section 42801.7.

(3) "Rubberized asphalt concrete" or "RAC" means a paving material that uses an asphalt rubber binder containing an amount of reclaimed tire rubber that is 15 percent or more by weight of the total blend, and that meets other specifications for both the physical properties of asphalt rubber and the application of asphalt rubber, as defined in the American Society for Testing and Materials (ASTM) Standard Specification for Asphalt-Rubber Binder.

As added by AB 338 (Levine), Stats. 2005, c. 709.

ARTICLE 2. TIRE-FIRED KILNS

(Article 2 as added by SB 1026 (Dills), Stats. 1995, c. 605)

42705. The Legislature hereby finds and declares as follows:

(a) California currently faces a serious problem with respect to the collection, disposal, and recycling of used tires that are no longer consumer usable.

(b) It is estimated that California has an existing tire inventory of at least 100 million tires, an amount which grows by over 20 million tires per year.

(c) California has pursued several methods of tire disposal including, but not limited to, shredding and as an additive to asphalt for paving material.

(d) The cement industry in California has implemented a process that utilizes used tires as fuel for the kilns essential to the manufacture of cement.

(e) Used tires utilized as fuel for those kilns are completely consumed, including the rubber, fiber, and steel ingredients of the tire.

(f) The use of used tires in that process benefits California by reducing reliance on fossil fuel imported from outside the state.

(g) The consumption of used tires rather than fossil fuel for the kilns may reduce air pollution and may contribute to the improvement of air quality.

As added by SB 1026 (Dills), Stats. 1995, c. 605

Chapter 15. Newsprint

(Chapter 15 as added by SB 937 (Vuich), Stats. 1990, c. 35)

ARTICLE 1. DEFINITIONS

(Article 1 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42750. "Consumer of newsprint" means a person who uses newsprint in a commercial printing operation or in a commercial publishing operation.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42752. "Deink" or "deinking old newspapers" means a process in which old newspaper is mixed with water, the paper fibers are separated to form a paper pulp, and the pulp is cleaned to remove contaminants.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42753. "Newsprint" means uncoated paper, whether supercalendered or machine finished, of the type generally used for, but is not limited to, the publication of newspapers, commercial advertising inserts, directories, or commercial advertising mailers, which is made primarily from mechanical woodpulps combined with some chemical woodpulp. "Newsprint" includes paper made from old newspapers which have been deinked, using the recycled pulp in lieu of virgin pulp. "Newsprint" includes all grades of paper sold as newsprint, supercalendered (SC) uncoated groundwood, or machine finished (MF) uncoated groundwood.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42754. "Old newspaper" or "recovered newspaper" means any newsprint which is separated from other types of solid waste or collected separately from other types of solid waste and made available for reuse in making new newsprint, and which meets quality standards for use as a raw material in the manufacture of a new paper product.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42755. "Postconsumer waste paper" means a finished material which would normally be disposed of as a solid waste, having completed its life cycle as a consumer item, including, but not limited to, printing plant waste paper.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42756. "Recycled-content newsprint" means newsprint in which not less than 40 percent of its fiber consists of post consumer waste paper.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

ARTICLE 2. RECYCLED-CONTENT NEWSPRINT PROGRAM

(Article 2 as added by SB 937 (Vuich), Stats. 1990, c. 35.)

42760. On and after January 1, 1991, every consumer of newsprint in California shall ensure that at least 25 percent of all newsprint used by that consumer of newsprint is made from recycled-content newsprint, if recycled-content newsprint is available at a price comparable to that of newsprint made from virgin material, if the recycled-content newsprint meets the quality standards established by the board pursuant to Section 42775, and if the recycled-content newsprint is available within a reasonable period of time.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42761. The percentage of newsprint used which is made from recycled-content newsprint shall be calculated in tons used on an annual basis and shall increase to:

(a) Thirty percent on and after January 1, 1994.

(b) Thirty-five percent on and after January 1, 1996.

(c) Forty percent on and after January 1, 1998.

(d) Fifty percent on and after January 1, 2000.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42762. This division does not apply to any newsprint purchased prior to January 1, 1990.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

ARTICLE 3. CERTIFICATION OF USE

(Article 3 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42770. Each consumer of newsprint within the State of California shall, on or before March 1 of each year, certify to the board the number of tons of newsprint used during the preceding calendar year and the number of tons of recycled-content newsprint used during the preceding calendar year.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42771. Every consumer of newsprint who submits recycled-content newsprint usage certification pursuant to Section 42770 may be subject to an audit to ensure that the recycled-content newsprint was used.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42772. Each person who supplies a consumer of newsprint with newsprint shall certify the amounts of recycled-content newsprint contained in each shipment to each consumer of newsprint. If a shipment contains no recycled-content newsprint, the supplier shall so certify.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42773. If a consumer of newsprint is unable to obtain sufficient amounts of recycled-content newsprint within any reporting period because recycled-content newsprint was not available at a comparable price to that for virgin material, failed to meet the quality standards established pursuant to Section 42775, or was not available within a reasonable period of time, the consumer of newsprint shall so certify to the board and shall provide the board with the specific reason for failing to use recycled-content newsprint. In order to make that certification in good faith, the newsprint consumer shall have contacted, for the purpose of obtaining recycled-content newsprint, every producer of recycled-content newsprint that offered to sell recycled-content newsprint to the consumer of newsprint within the last 12 months. The name of each person contacted, the corporate name, if any, and address and telephone number shall accompany each filing with the board.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42774. For the purposes of implementing and enforcing this chapter, the board shall develop and maintain a list which identifies every consumer of newsprint, as defined in Section 42750, and every person who supplies a consumer of newsprint with newsprint, in the state. The board may use information from local business permits, trade publications, or any other relevant information to develop the list.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 2211 (Assembly Judiciary Committee), Stats. 1993, c. 589.

42775. (a) For the purposes of implementing and enforcing this chapter, the board shall set newsprint comparable quality standards for each of the grades of newsprint specified in Section 42753 to determine the comparable quality of recycled-content newsprint to virgin material. These standards shall be based on the average numerical standards of printing opacity, brightness level, and cross machine tear strength available from all producers selling recycled-content newsprint in the state in quantities of at least 5,000 metric tons per year. The board shall set standards which deviate from this average by not more than 5 percent.

(b) The board shall review its standards at least once every two years and determine whether they should be adjusted to reflect changes in industry standards and practices, and, if so, the board shall set new standards according to the criteria in subdivision (a).

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42776. REPEALED.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35 and repealed by SB 111 (Knight), Stats. 2004, c. 193.

ARTICLE 4. FALSE CERTIFICATION

(Article 4 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42780. If any person provides a consumer of newsprint with a false or misleading certificate concerning the recycled content of the delivered newsprint pursuant to Section 42772, the board, within 30 days of making this determination, shall

refer the false or misleading certificate to the Attorney General for prosecution for fraud.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42781. If any consumer of newsprint provides the board with a false or misleading certificate concerning the percentage of recycled-content newsprint used pursuant to Section 42770, the board within 30 days of making this determination, shall refer the false or misleading certificate to the Attorney General for prosecution for fraud.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42782. If any consumer of newsprint provides the board with a false or misleading certificate concerning why the consumer of newsprint was unable to obtain the minimum amounts of recycled-content newsprint pursuant to Section 42773, the board, within 30 days of making this determination, shall refer the false or misleading certificate to the Attorney General for prosecution for fraud.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42783. Specific information on newsprint prices included as part of a certificate submitted to the board by newsprint consumers or suppliers of newsprint is propriety information and shall not be made available to the general public.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

ARTICLE 5. PENALTIES

(Article 5 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42790. Any person who violates Article 3 (commencing with Section 42770) is guilty of an infraction punishable by a fine of not more than one thousand dollars ($1,000).

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 54 (Sher), Stats. 1993, c. 663.

42791. In addition to Section 42790, any person who violates Article 3 (commencing with Section 42770) may be assessed a civil penalty by the board of not more than one thousand dollars ($1,000) for each violation, pursuant to notice and hearing. Any civil penalties received pursuant to this subdivision shall be deposited in a separate account in the fund and, upon appropriation by the Legislature, shall be used by the board for the administration of this division.

As added by AB 1305 (Killea), Stats. 1989, c. 1093, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 2211 (Sher), Stats. 1992, c. 280, and AB 54 (Sher), Stats. 1993,c. 663.

Chapter 16. Waste Tires

(Chapter 16 as added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35)

ARTICLE 1. DEFINITIONS

(Article 1 as added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35)

42800. The following definitions govern the construction of this chapter.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42801. "Agricultural purposes" means the use of waste tires as bumpers on agricultural equipment or as a ballast to maintain covers or structures on an agricultural site.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42801.5. (a) "Altered waste tire" means a waste tire that has been baled, shredded, chopped, or split apart. "Altered waste tire" does not mean crumb rubber.

(b) "Alteration" or "altering," with reference to a waste tire, means an action that produces an altered waste tire.

As added by SB 876 (Escutia), Stats. 2000, c. 838.

42801.6. "Baled tire" means either a whole or an altered tire that has been compressed and then secured with a binding material for the purpose of reducing its volume.

As added by SB 876 (Escutia), Stats. 2000, c. 838.

42801.7. "Crumb rubber" means rubber granules derived from a waste tire that are less than or equal to, one-quarter inch or six millimeters in size.

As added by SB 876 (Escutia), Stats. 2000, c. 838.

42802. "Fund" means the California Tire Recycling Management Fund created by subdivision (a) of Section 42885.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42803. "Local agency" means a county, city, special district, or other local governmental agency which provides or regulates solid waste handling services.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42803.5. "New or used motor vehicle" means any device by which any person or property may be propelled, moved or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

As added by SB 876 (Escutia), Stats. 2000, c. 838.

42804. "Operator" means the person responsible for the overall operation of a waste tire facility.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42805. "Owner" means a person who owns, in whole or in part, a waste tire facility, the waste tires located at a facility, or the land on which a waste tire facility is located.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42805.5. "Repairable tire" means a worn, damaged, or defective tire that is retreadable, recappable, or regrooveable, or that can be otherwise repaired to return the tire to its use as a vehicle tire, and that meets the applicable requirements of the Vehicle Code and Title 13 of the California Code of Regulations.

As added by SB 876 (Escutia), Stats. 2000, c. 838.

42805.6. "Scrap tire" means a worn, damaged, or defective tire that is not a repairable tire.

As added by SB 876 (Escutia), Stats. 2000, c. 838.

42805.7. "Tire derived product" means material that meets both of the following requirements:

(a) Is derived from a process using whole tires as a feedstock. A process using whole tires includes, but is not limited to, shredding, crumbing, or chipping.

(b) Has been sold and removed from the processing facility.

As added by SB 876 (Escutia), Stats. 2000, c. 838.

42806. "Tire" means a pneumatic tire or solid tire manufactured for use on any type of motor vehicle.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42806.5. "Used tire" means a tire that meets all of the following requirements:

(a) The tire is no longer mounted on a vehicle but is still suitable for use as a vehicle tire.

(b) The tire meets the applicable requirements of the Vehicle Code and Title 13 of the California Code of Regulations.

(c) (1) The used tire is ready for resale, is stored by size in a rack or a stack not more than two rows wide, but not in a pile, and is stored in accordance with local fire and vector control requirements and with state minimum standards.

(2) A used tire stored pursuant to this section shall be stored in a manner to allow the inspection of each individual tire.

As added by SB 876 (Escutia), Stats. 2000, c. 838, and amended by SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

42807. "Waste tire" means a tire that is no longer mounted on a vehicle and is no longer suitable for use as a vehicle tire due to wear, damage, or deviation from the manufacturer's original specifications. A waste tire includes a repairable tire, scrap tire, altered waste tire, and a used tire that is not organized for inspection and resale by size in a rack or a stack in accordance with Section 42806.5, but does not include a tire derived product or crumb rubber.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by SB 876 (Escutia), Stats. 2000, c. 838, and AB 1249 (Blakeslee), Stats. 2005, c. 404.

42808. "Waste tire facility" means a location, other than a solid waste facility permitted pursuant to this division that receives for transfer or disposal less than 150 tires per day averaged on an annual basis, where, at any time, waste tires are stored, stockpiled, accumulated, or discarded. "Waste tire facility" includes all of the following:

(a) "Existing waste tire facility" means a waste tire facility which is receiving, storing, or accumulating waste tires, or upon which waste tires are discarded, on January 1, 1990.

(b) "Major waste tire facility" means a waste tire facility where, at any time, 5,000 or more waste tires are or will be stored, stockpiled, accumulated, or discarded.

(c) "Minor waste tire facility" means a waste tire facility where, at any time, 500 or more, but less than 5,000, waste tires are or will be stored, stockpiled, accumulated, or discarded. However, a "minor waste tire facility" does not include a tire dealer or an automobile dismantler, as defined in Sections 220 and 221 of the Vehicle Code, who stores waste tires on the dealer's or dismantler's premises for less than 90 days if not more than 1,500 total used or waste tires are ever accumulated on the dealer's or dismantler's premises.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 2923 (Hauser), Stats. 1992, c. 199, and SB 876 (Escutia), Stats. 2000, c. 838, and SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

ARTICLE 2. GENERAL PROVISIONS

(Article 2 as added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed and added by AB 1515 (Sher), Stats. 1991, c. 717)

42810. Nothing in this chapter limits the authority of a local agency to regulate persons or businesses that store, stockpile, process, or dispose of waste tires.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed and added by AB 1515 (Sher), Stats. 1991, c. 717.

42811. The board may delegate specific powers and authority in this chapter to enforcement agencies, as defined in Section 40130, including any of the following:

(a) Review of operation plans submitted pursuant to regulations adopted under subdivision (a) of Section 42821.

(b) Inspection of permitted facilities.

(c) Enforcement of waste tire facility permits.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed and added by AB 1515 (Sher), Stats. 1991, c. 717.

42812. Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the issuance of a permit for the operation of an existing waste tire facility pursuant to this chapter, except as to any substantial change in

the design or operation of the waste tire facility made between the time this chapter becomes effective and the permit is initially issued by the board and as to any subsequent substantial changes made in the design or operation of the waste tire facility.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed and added by AB 1515 (Sher), Stats. 1991, c. 717.

Sections 42813 to 42817. REPEALED.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed by AB 1515 (Sher), Stats. 1991, c. 717.

42814. REPEALED.

As added by SB 876 (Escutia), Stats. 2000, c. 838, and repealed by SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

ARTICLE 3. MAJOR WASTE TIRE FACILITY PERMITS

(Article 3 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42820. (a) The board, in consultation with the Office of Environmental Health Hazard Assessment, shall adopt regulations setting forth the procedures and requirements necessary to obtain a major waste tire facility permit. The regulations adopted pursuant to this subdivision shall not be limited to, but shall include by reference, the regulations adopted by the State Fire Marshal pursuant to subdivision (b).

(b) The State Fire Marshal, in consultation with the board, shall adopt fire prevention regulations for a major waste tire facility.

(c) Regulations adopted pursuant to subdivision (a) shall not require the issuance of a separate permit to a solid waste disposal facility that is permitted pursuant to Chapter 3 (commencing with Section 44001) of Part 4.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by the Gov. Reorg. Plan No. 1 of 1991, and AB 1249 (Blakeslee), Stats. 2005, c. 404.

42821. The regulations for a major waste tire facility permit shall include, but not be limited to, all of the following:

(a) Requirements for submission of a detailed operations plan that contains the following components:

(1) Fire prevention measures consistent with applicable regulations adopted by the State Fire Marshal pursuant to subdivision (b) of Section 42820.

(2) Fencing and other security measures.

(3) Vector control measures.

(4) Limits on the size and height of tire piles.

(5) A closure plan.

(b) Requirements for submission of a detailed plan and implementation schedule for the elimination or substantial reduction of existing tire piles using any of the following methods or techniques:

(1) Polymer treatment.

(2) Rubber reclaiming and crumb rubber production.

(3) Pyrolysis.

(4) Production of supplemental fuels for cement kilns, lumber operations, or other industrial processes.

(5) Tire shredding and transportation to an authorized solid waste landfill.

(6) Energy recovery through incineration of whole or shredded tires in accordance with the terms and conditions of a permit issued by an air pollution control district or air quality management district.

(7) Other applications determined to be appropriate by the board.

(c) Requirements for the submission of evidence of financial assurances secured by the operator of the facility that are adequate to cover damage claims arising out of the operation of the facility and that are adequate to cover the cost of closure if that becomes necessary. The financial assurance shall be a trust fund, surety bond, letter of credit, insurance, or other equivalent financial arrangement acceptable to the board.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 1249 (Blakeslee), Stats. 2005, c. 404.

42822. The board shall issue major waste tire facility permits pursuant to the regulations upon application therefor.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42823. Except as provided in Section 42823.5, no person shall establish a new major waste tire facility or expand an existing minor waste tire facility unless the person has obtained a major waste tire facility permit issued by the board pursuant to Section 42822.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 1515 (Sher), Stats. 1991, c. 717, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293, and AB 1071 (Morrow), Stats. 1995, c. 191.

42823.5. (a) A cement manufacturing plant shall be exempt from the requirement to obtain a permit pursuant to Section 42823 if the operator of the cement manufacturing plant meets both of the following requirements:

(1) The owner or operator of the cement manufacturing plant stores not more than a one-month supply of waste tires at the site of the cement manufacturing plant at any time. A one-month supply of waste tires shall be based on either of the following:

(A) The average monthly consumption of waste tires by the plant during the previous year.

(B) The waste tire percentage of the total fuel supply allowed by the air pollution control district or air quality management district, multiplied by the average monthly consumption of fuel for the previous year.

(2) The operator or owner of the cement manufacturing plant is in compliance with any regulations adopted by the board pertaining to waste tire storage and disposal.

(b) To apply for the exemption provided by this section, the operator or owner of a cement manufacturing plant shall provide all of the following information to the board in writing:

(1) The name, address, and physical location of the plant.

(2) The name, address, and telephone number of the plant operator and owner.

(3) Information describing compliance with subdivision (a).

(4) Signatures of the operator and owner of the plant certifying to the accuracy of the information provided.

(c) If there is any change to the information provided pursuant to subdivision (b), the operator or owner of the cement manufacturing plant shall report the change to the board, in writing, within 30 days from the date of the change.

(d) Within 60 days from the date of the receipt of the information required by subdivision (b), the board shall determine whether the operator or owner of a cement manufacturing plant qualifies for the exemption provided by this section and shall notify the operator or owner of the plant of its determination in writing.

(e) The board or the local enforcement agency may inspect a cement manufacturing plant that receives the exemption provided by this section to determine compliance with this section.

(f) Any operator or owner of a cement manufacturing plant who receives an exemption pursuant to this section shall allow the board, upon presentation of the proper credentials, to enter the cement manufacturing plant during normal working hours to examine and copy books, papers, records, or memoranda pertaining to the use and storage of waste tires, and to conduct inspections and investigations pertaining to waste tire use and storage.

As added by AB 1071 (Morrow), Stats. 1995, c. 191, and amended by AB 3358 (Ackerman), Stats. 1996, c. 1041.

42824. On and after September 1, 1994, it is unlawful to direct or transport waste tires to a major waste tire facility or to accept waste tires at a major waste tire facility unless the operator has obtained a major waste tire facility permit.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 1515 (Sher), Stats. 1991, c. 717, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

42825. (a) Any person who accepts waste tires at a major waste tire facility that has not been issued a permit or an authorization to operate from the board, or who knowingly directs, transports, or abandons waste tires to or at a major waste tire facility that has not been issued a permit or an authorization to operate from the board shall, upon conviction, be punished by a fine of not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000) for each day of violation, by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) For purposes of subdivision (a), "each day of violation" means each day on which a violation continues. In any case where a person has accepted waste tires at a major waste tire facility, or knowingly directed or transported waste tires to a major waste tire facility, that has not been issued a permit, in violation of subdivision (a), each day that the waste tires remain at the facility and the person has knowledge thereof is a separate additional violation, unless the person has filed a report with the board disclosing the violation and is in compliance with any order regarding the waste tires issued by the board, a hearing officer, or a court of competent jurisdiction.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and AB 2181 (Firestone), Stats. 1998, c. 299, and AB 228 (Migden), Stats. 1998, c. 1019.

ARTICLE 4. MINOR WASTE TIRE FACILITY PERMITS

(Article 4 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42830. (a) On or before December 1, 1991, the board, in consultation with the State Fire Marshal and the Office of Environmental Health Hazard Assessment, shall adopt emergency regulations setting forth the procedures and requirements necessary to obtain a minor waste tire facility permit.

(b) Regulations adopted pursuant to subdivision (a) shall not require the issuance of a separate permit to a solid waste disposal facility which is permitted pursuant to Chapter 3 (commencing with Section 44001) of Part 4.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by the Gov. Reorg. Plan No. 1 of 1991.

42831. The board may exempt either of the following from the permit requirements of this article:

(a) An owner or operator of a tire retreading business for the business site if not more than 3,000 waste tires are kept on the business premises.

(b) A person using waste tires for agricultural purposes if the waste tires are kept on the site of use.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42832. The regulations for minor waste tire facility permits shall include, but not be limited to, all of the following:

(a) Fire prevention measures.

(b) Vector control measures.

(c) Other measures determined by the board to be necessary to protect the public health and safety.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42833. The board shall issue minor waste tire facility permits pursuant to the regulations upon application therefor.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42834. On and after July 1, 1994, it is unlawful to direct or transport waste tires to a minor waste tire facility or to accept waste tires at a minor waste tire facility unless the operator has obtained a minor waste tire facility permit.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

42835. (a) Any person who accepts waste tires at a minor waste tire facility that has not been issued a permit or an authorization to operate from the board, or who knowingly directs, transports, or abandons waste tires to or at a minor waste tire facility that has not been issued a permit or an authorization to operate from the board shall, upon conviction, be punished by a fine of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) for each day of violation, by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) For purposes of subdivision (a), "each day of violation" means each day on which a violation continues. In any case where a person has accepted waste tires at a minor waste tire facility, or knowingly directed or transported waste tires to a minor waste tire facility, that has not been issued a permit, in violation of subdivision (a), each day that the waste tires remain at the facility and the person has knowledge thereof is a separate additional violation, unless the person has filed a report with the board disclosing the violation and is in compliance with any order regarding the waste tires issued by the board, a hearing officer, or a court of competent jurisdiction.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and AB 2181 (Firestone), Stats. 1998, c. 299, and AB 228 (Migden), Stats. 1998, c. 1019, and SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

ARTICLE 5. RENEWAL, SUSPENSION, OR REVOCATION

(Article 5 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42840. A waste tire facility permit issued pursuant to this chapter is valid for five years unless suspended or revoked. The permit shall be renewed prior to the expiration thereof.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42841. The board may refuse to issue or renew a waste tire facility permit on any grounds for which it may suspend or revoke a permit.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42842. REPEALED.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed by SB 876 (Escutia), Stats. 2000, c. 838.

42843. (a) The board, after holding a hearing in accordance with the procedures set forth in Sections 11503 to 11519, inclusive, of the Government Code, may revoke, suspend, or deny a waste tire facility permit for a period of up to three years, if the board determines any of the following:

(1) The permit was obtained by a material misrepresentation or failure to disclose relevant factual information.

(2) The operator of the waste tire facility, during the previous three years, has been issued a final order for, failed to comply with, or has been convicted of, any of the following:

(A) One or more violations of this chapter or the regulations adopted pursuant to this chapter.

(B) One or more violations of Chapter 19 (commencing with Section 42950) or the regulations adopted pursuant to that chapter.

(C) The terms or conditions of the operator's waste tire facility permit.

(D) Any order, direction, or penalty issued by the board relating to the safe storage or processing of waste tires.

(b) If the board determines that a violation specified in paragraph (2) of subdivision (a) demonstrates a chronic, recurring pattern of noncompliance that poses, or may pose, a significant risk to public health and safety or the environment, or if the violation has not been corrected or reasonable progress toward correction has not been achieved, the board may suspend, revoke, or deny a waste tire facility permit, in accordance with the procedure specified in subdivision (a), for a period of not more than five years.

(c) If the board determines that a violation specified in paragraph (2) of subdivision (a) has resulted in significant harm to human health or the environment, the board may suspend, revoke, or deny a waste tire facility permit, in accordance with the procedure specified in subdivision (a), for a period of five years or greater.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 2211 (Sher), Stats. 1992, c. 280, and repealed and added by SB 876 (Escutia), Stats. 2000, c. 838.

42844. (a) The board may temporarily suspend any permit issued pursuant to this chapter prior to any hearing if the board determines that the action is necessary to prevent or mitigate an imminent or substantial endangerment to the public health or safety or the environment.

(b) The board shall notify the holder of the permit of the temporary suspension and the effective date thereof and, at the same time, shall serve the person with an accusation.

(c) Upon receipt by the board of a notice of defense to the accusation from the holder of the permit, the board shall, within 15 days, set the matter for a hearing, which shall be held as soon as possible, but not later than 30 days after receipt of the notice.

(d) The temporary suspension shall remain in effect until the hearing is completed and the board has made a final determination on the merits, which shall be made within 60 days after the completion of the hearing. If the determination is not transmitted within this period, the temporary suspension shall be of no further effect.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42845. (a) Any person who stores, stockpiles, or accumulates waste tires at a location for which a waste tire facility permit is required pursuant to this chapter, or in violation of the terms and conditions of the permit, the provisions of this chapter, or the regulations adopted under this chapter, shall, upon order of the board, clean up those waste tires or abate the effects thereof, or, in the case of

threatened pollution or nuisance, take other necessary remedial action.

(b) (1) Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with that order. In any suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

(2) If the Attorney General declines, or is unable, to petition the appropriate superior court for issuance of an injunction within 45 days from the board's request, pursuant to paragraph (1), the district attorney or county counsel of that county may, at the board's request, petition the superior court for issuance of the injunction specified in paragraph (1).

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by SB 876 (Escutia), Stats. 2000, c. 838, and AB 1187 (Simitian), Stats. 2001, c. 316.

42846. (a) The board may expend available moneys to perform any cleanup, abatement, or remedial work required under the circumstances set forth in Section 42845 which in its judgment is required by the magnitude of endeavor or the need for prompt action to prevent substantial pollution, nuisance, or injury to the public health or safety. The action may be taken in default of, or in addition to, remedial work by the violator or other persons, and regardless of whether injunctive relief is being sought.

(b) The board may perform the work itself, or by or in cooperation with any other governmental agency, and may use rented tools or equipment, either with operators furnished or unoperated. Notwithstanding any other provisions of law, the board may enter into oral contracts for that work, and the contracts, whether written or oral, may include provisions for equipment rental and in addition the furnishing of labor and materials necessary to accomplish the work. The contracts are exempt from approval by the Department of General Services pursuant to Section 10295 of the Public Contract Code.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 1515 (Sher), Stats. 1991, c. 717.

42846.5. If the owner of property upon which waste tires are unlawfully stored, stockpiled, or accumulated refuses to allow the board or its contractors access to enter onto the property and perform all necessary cleanup, abatement, or remedial work as authorized under Section 42846, the board or its contractors shall be permitted reasonable access to the property to perform that activity if an order setting civil liability has been issued or obtained pursuant to Article 6 (commencing with Section 42850) by the board, or by its designee pursuant to subdivision (c) of Section 42850, against the property owner, and the board finds that there is a significant threat to public health or the environment.

As added by SB 1055 (Bowen), Stats. 1999, c. 292.

42847. If waste tires are cleaned up, the effects of the tires are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who unlawfully stored, stockpiled, or accumulated the waste tires or who unlawfully permitted the storage, stockpile, or accumulation of waste tires or who threatened to cause or permit the unlawful storage, stockpile, or accumulation of waste tires shall be liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects thereof, or taking other remedial actions. The amount of those costs shall be recoverable in a civil action by, and paid to, the governmental agency and the board to the extent of the latter's contribution to the cleanup costs from available funds. The board shall seek recovery of its costs if that recovery is feasible.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and SB 1330 (Lockyer), Stats. 1997, c. 875.

42847.5. (a) Any costs or damages incurred by the board under this article constitute a lien upon the real property owned by any responsible party that is subject to the remedial action. The lien shall attach regardless of whether the responsible party is insolvent. A lien imposed under this section shall arise at the time costs are first incurred by the board with respect to a remedial action at the site.

(b) A lien established under this section shall be subject to the notice and hearing procedures required by due process of the law. Prior to imposing the lien, the board shall send the property owner via certified mail a "Notice of Intent to Place A Lien" letter. This letter shall provide that the owner, within 14 calendar days from the date of receipt of the letter, may object to the imposition of the lien either in writing or through an informal proceeding before a neutral official. This neutral official shall be the board's executive director or his or her designee, who may not have had any prior involvement with the site. The issue before the neutral official shall be whether the board has a reasonable basis for its determination that the statutory elements for lien placement under this section are satisfied. During this proceeding the property owner may present information or submit documents, or both, to establish that the board should not place a lien as proposed. The neutral official shall assure that a record of the proceeding is made, and shall issue a written decision. The decision shall state whether the property owner has established any issue of fact or law to alter the board's intention to file a lien, and the basis for the decision.

(c) The board may not be considered a responsible party for a remediated site merely because a lien is imposed under this section.

(d) A lien imposed under this section shall continue until the liability for the costs or damages incurred under this article, or a judgment against the responsible party, is satisfied. However, if it is determined by a court that the judgment against the responsible party will not be satisfied, the board may exercise its rights under the lien.

(e) A lien imposed under this section shall have the force and effect of, and the priority of, a judgment lien upon its

recordation in the county in which the property subject to the lien is located. The lien shall contain a legal description of the real property that is subject to, or affected by, the remedial action, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll.

(f) All funds recovered under this section on behalf of the board's waste tire stabilization and abatement program shall be deposited in the California Tire Recycling Management Fund established under Section 42885.

As added by SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

42848. If, despite reasonable efforts by the board to identify the person responsible for the unlawful storage, stockpiling, or accumulation of waste tires or the condition of pollution or nuisance, the person is not identified at the time cleanup, abatement, or remedial work must be performed, the board shall not be required to issue an order under this section.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42849. (a) "Threaten" or "threat," for purposes of this article, means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, natural resources, or the public health or safety.

(b) If the board finds either an imminent threat to public health, safety, or the environment, or a threat, as defined by subdivision (a), the board may conduct an emergency meeting to determine the legal, enforcement, cleanup, or other necessary actions that may be taken to correct that imminent threat or threat. Such a finding by the board shall be deemed to be an "emergency situation" for purposes of, and in addition to the situations described in, Section 11125.5 of the Government Code.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by SB 876 (Escutia), Stats. 2000, c. 838.

ARTICLE 6. ADMINISTRATIVE ENFORCEMENT

(Article 6 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42850. (a) Any person who negligently violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, is liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000), for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

(b) Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to this article.

(c) Upon request of a city, county, or city and county, that city, county, or city and county may be designated, in writing, by the board, to exercise the enforcement authority granted to the board under this chapter. Any city, county, or city and county so designated shall follow the same procedures set forth for the board under this article. This designation shall not limit the authority of the board to take action it deems necessary or proper to ensure to enforcement of this chapter.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 2211 (Sher), Stats. 1992, c. 280, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293, and AB 54 (Sher), Stats. 1993, c. 663, and AB 2181 (Firestone), Stats. 1998, c. 299, and AB 228 (Migden), Stats. 1998, c. 1019.

42850.1. (a) Any person who intentionally violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, shall, upon conviction, be punished by a fine not to exceed ten thousand dollars ($10,000) for each day of violation, by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) (1) Any person who intentionally violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, is liable for a civil penalty not to exceed ten thousand dollars ($10,000), for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

(2) Liability under this subdivision may be imposed in a civil action or may be imposed administratively pursuant to this article.

As added by AB 2181 (Firestone), Stats.1998, c. 299.

42851. (a) The board may issue a complaint to any person on whom civil liability may be imposed pursuant to this article. The complaint shall allege the acts or failures to act that constitute a basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the party so served that a hearing shall be conducted within 60 days after the party has been served, unless the party waives the right to a hearing.

(b) If the party waives the right to a hearing, the board shall issue an order setting liability in the amount proposed in the complaint unless the board and the party have entered into a settlement agreement, in which case the board shall issue an order setting liability in the amount specified in the settlement agreement. If the party has waived the right to a hearing or if the board and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42852. (a) Any hearing required under this section shall be conducted by an independent hearing officer according to the procedures specified in Sections 11507 to 11517, inclusive, of the Government Code, except as otherwise specified in this section. In making a determination, the hearing officer shall take into consideration the nature,

circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed civil penalty, and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole.

(b) After conducting any hearing required under this section, the hearing officer shall, within 30 days after the case is submitted, issue a decision, including an order setting the amount of civil penalty to be imposed, if any.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42853. Orders setting civil liability issued under this section shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. Copies of these orders shall be served by personal service or by certified mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42854. (a) Within 30 days after service of a copy of a decision issued by the hearing officer, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within the 30-day period may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies.

(b) Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure governs any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record.

(c) The filing of a petition for writ of mandate does not stay any corrective action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter.

(d) This section does not prohibit the court from granting any appropriate relief within its jurisdiction.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42855. All penalties collected under Section 42850 shall be deposited in the California Tire Recycling Management Fund created pursuant to Section 42885 if the attorney who brought the action represented the board, or shall be retained by a city, county, or city and county designated pursuant to subdivision (c) of Section 42850, if the attorney who brought the action represents the city, county, or city and county. The moneys retained by the city, county, or city and county shall be expended on enforcement and cleanup required under this chapter, including, but not limited to, the prosecution of enforcement actions.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and AB 228 (Migden), Stats. 1998, c. 1019.

ARTICLE 7. WASTE TIRES TO ENERGY (REPEALED)

(Article 7 as added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed by AB 626 (Sher), Stats. 1996, c. 1038)

42859. REPEALED.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed by AB 626 (Sher), Stats. 1996, c. 1038.

Chapter 17. California Tire Recycling Act

(Chapter 17 as added by SB 937 (Vuich), Stats. 1990, c. 35)

ARTICLE 1. FINDINGS

(Article 1 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42860. This chapter shall be known and may be cited as the California Tire Recycling Act.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42861. The Legislature finds and declares the following:

(a) The problem posed by used tire storage and disposal requires a comprehensive, statewide response, including, but not limited to, reducing landfill disposal of used whole tires, recycling of tires into secondary uses, source material development and promotion of secondary markets for used tire byproducts, tire shredding, and energy recovery.

(b) California is currently faced with an existing used tire inventory of at least 100 million tires, an amount which grows by over 20 million tires per year. Without a dedication of resources to address the state's growing tire population, the health and safety of all Californians will be increasingly at risk.

(c) There are currently no dedicated resources for the recycling of used tires, or a comprehensive tire shredding program. Therefore, the levying of a fee on the disposal of used whole tires in the state is needed to support tire recycling activities.

(d) Used tires represent a valuable state resource which should be reclaimed and recycled whenever possible. An abundance of tire recycling alternatives exist which have been demonstrated to be environmentally safe. These alternatives need to be promoted in order to achieve the maximum use of used tires.

(e) Shredding of used tires represents a preferable alternative to whole tire storage or disposal. Given the rapidly decreasing amount of landfill space available to local jurisdictions, shredding represents a positive way of storing tires until a secondary use can be developed.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

ARTICLE 2. STORAGE AT LANDFILLS

(Article 2 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42865. (a) It is the policy of the state that until a state tire recycling program is fully underway and operational, the shredding of used tires shall be encouraged.

(b) For the purposes of this act, a "tire" refers to any vehicle tire whose major component is rubber, and its component parts. "Shredding" includes both mechanical and cryogenic shredding which reduces tires to a size of less than four inches in width.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42866. REPEALED.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed by SB 876 (Escutia), Stats. 2000, c. 838.

42867. Except as otherwise determined by the board, only landfills authorized in this article shall be eligible for financial assistance in the shredding of tires pursuant to Article 3 (commencing with Section 42870).

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

ARTICLE 3. TIRE RECYCLING

(Article 3 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42870. It is the intent of the Legislature:

(a) To reduce the landfill disposal and stockpiling of used whole tires by 25 percent within four years of full implementation of a statewide tire recycling program and to recycle and reclaim used tires and used tire components to the greatest extent possible in order to recover valuable natural resources.

(b) To eliminate illegal dumping and unnecessary stockpiling of used tires.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42871. The board shall administer a tire recycling program that promotes and develops alternatives to the landfill disposal of used whole tires.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and AB 117 (Escutia), Stats. 1998, c. 1020, and SB 1191 (Speier), Stats. 2001, c. 745.

42872. The tire recycling program may include, but is not limited to, the following:

(a) The awarding of grants, subsidies, and loans to businesses or other enterprises, and public entities, involved in activities and applications that result in reduced landfill disposal of used whole tires and reduced illegal disposal or stockpiling of used whole tires.

(b) The awarding of grants for research aimed at developing technologies or improving current activities and applications that result in reduced landfill disposal of used whole tires.

(c) The awarding of grants or loans for the evaluation, planning, design, improvement, and implementation of alternative used tire recycling programs in this state.

(d) The awarding of grants or loans to businesses which shred used tires for purposes of recycling.

(e) Development and implementation of an information and education program, including seminars and conferences, aimed at promoting alternatives to the landfill disposal of used whole tires.

(f) The awarding of grants or loans to tire shredding programs at authorized landfills, solid waste transfer stations, or dedicated tire shredding facilities, including the direct purchase of shredders or financing of shredder contracts.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42872.5. (a) (1) In addition to the purposes listed in Section 42872, the tire recycling program may include the awarding of grants to cities, counties, and other local government agencies for the funding of public works projects that use rubberized asphalt concrete. In addition to the factors listed in Sections 42874 and 42875, the board may award a grant for a public works project that uses rubberized asphalt concrete if the project will use at least 1,250 tons of rubberized asphalt concrete during the life of the project and will use 20 pounds or more of crumb rubber per ton of rubberized asphalt concrete.

(2) The board shall annually determine the amount of a grant to be awarded pursuant to this section, based on the per ton amount of rubberized asphalt concrete to be used in the project.

(3) The board shall not award a grant pursuant to this section that exceeds a maximum amount of two hundred fifty thousand dollars ($250,000).

(b) The grants authorized under this section shall be funded by an appropriation in the annual Budget Act from the California Tire Recycling Management Fund established pursuant to Section 42885. To the extent possible, depending on the number of qualified applications, and whether there is a sufficient supply of crumb rubber materials, any funds appropriated pursuant to this section shall not be less than 16 percent of the funds appropriated pursuant to this chapter for market development and new technology activities for used tires and waste tires.

(c) In order to provide outreach to local agencies regarding the use of rubberized asphalt concrete in public works projects, all of the following shall occur:

(1) The board shall create, annually update, and post on its Internet Web site a database of public works projects that include rubberized asphalt concrete that were completed by local agencies under the program established by this section.

(2) The Department of Transportation shall post on its public Internet Web site data and descriptions regarding state public works projects using rubberized asphalt concrete.

(3) The board shall post on its public Internet Web site a link to the data and descriptions provided under paragraph (2).

(4) The board shall provide technical support to local agencies on the design and application for rubberized asphalt concrete.

(d) This section shall become inoperative on June 30, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

As added by SB 1346 (Kuehl), Stats. 2002, c. 671, and amended by SB 369 (Simitian), Stats. 2006, c. 300.

42873. (a) Activities eligible for funding under this article, that reduce, or that are designed to reduce or promote the reduction of, landfill disposal of used whole tires, may include the following:

(1) Polymer treatment.

(2) Rubber reclaiming and crumb rubber production.

(3) Retreading.

(4) Shredding.

(5) The manufacture of products made from used tires, including, but not limited to, all of the following:

(A) Rubberized asphalt, asphalt rubber, modified binders, and chip seals.

(B) Playground equipment.

(C) Crash barriers.

(D) Erosion control materials.

(E) Nonslip floor and track surfacing.

(F) Oilspill recovery equipment.

(G) Roofing adhesives.

(H) Tire-derived aggregate applications, including lightweight fill and vibration mitigation.

(6) Other environmentally safe applications or treatments determined to be appropriate by the board.

(b) (1) The board may not expend funds for an activity that provides support or research for the incineration of tires. For the purposes of this article, incineration of tires, includes, but is not limited to, fuel feed system development, fuel sizing analysis, and capacity and production optimization.

(2) Paragraph (1) does not affect the permitting or regulation of facilities that engage in the incineration of tires.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 1756 (Assembly Budget Committee), Stats. 2003, c. 228, and SB 369 (Simitian), Stats. 2006, c. 300.

42874. The board shall evaluate applications for loans or grants under this article based upon, but not limited to, the following factors in the proposal:

(a) The quantity of used tires that will be diverted from landfills.

(b) The estimated cost per tire in the recycling, processing, or conversion process.

(c) The availability of markets for the recycled tire product.

(d) The degree to which the processing program mitigates or avoids adverse environmental effects.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42875. The board may also consider the following factors in awarding grant or loan applications:

(a) The ability of the proposed processing program to integrate with existing or proposed solid waste management activities.

(b) Financial support for implementation and operation of the proposed processing program from sources other than loans and grants from the board.

(c) The degree to which the technical approach of the proposal makes the loan and grant program financially self-sufficient.

(d) The degree to which the program can be measured or evaluated for success.

(e) The probability that the processing program can be implemented and operated with the funds applied for and the amount of funds sought.

(f) The time that the land or property on which the proposed processing facility is available to the applicant. No proposal shall be considered for a loan or grant unless the property or facility is available for at least five years.

(g) The business plan for operation of the facility.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

ARTICLE 4. ADMINISTRATION

(Article 4 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42880. The board shall administer this chapter. For organizational purposes, the board may create a new division, bureau, office, or unit to administer this chapter.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42881. (a) In addition to any regulations which the board is required by statute to adopt, the board may adopt any rules or regulations which the board determines may be necessary or useful to carry out this chapter or any of the board's duties or responsibilities imposed pursuant to this chapter.

(b) The board may prepare, publish, or issue printed materials which the board determines to be necessary for the dissemination of information concerning the activities of the board pursuant to this chapter.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42882. In carrying out this chapter, the board may solicit and use any and all expertise available in other state agencies, including, but not limited to, the State Board of Equalization, and, where an existing state agency performs functions of a similar nature to the board's functions, the board may contract with, or cooperate with that agency in carrying out this chapter. If the board contracts with the State Board of Equalization to collect the fee imposed in Section 42885, the State Board of Equalization may collect that fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing

with Section 55001) of Division 2 of the Revenue and Taxation Code).

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and as amended by SB 718 (Senate Revenue and Taxation Committee), Stats. 1995, c. 555.

42883. The recipient of a grant, subsidy, or loan pursuant to Article 3 (commencing with Section 42870) shall, on or before January 1 of each year, submit a report to the board containing information required by the board, including, but not limited to, the number of used whole tires recycled, which is necessary to measure the success of the recipient's program in reducing the number of tires disposed of in landfills or stockpiled.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42884. REPEALED.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed by AB 626 (Sher), Stats. 1996, c. 1038.

ARTICLE 5. FINANCIAL PROVISIONS

(Article 5 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42885. (a) For purposes of this section, "California tire fee" means the fee imposed pursuant to this section.

(b) (1) A person who purchases a new tire, as defined in subdivision (g), shall pay a California tire fee of one dollar and seventy-five cents ($1.75) per tire.

(2) The retail seller shall charge the retail purchaser the amount of the California tire fee as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the retail purchaser.

(3) The retail seller shall collect the California tire fee from the retail purchaser at the time of sale and may retain 11/2 percent of the fee as reimbursement for any costs associated with the collection of the fee. The retail seller shall remit the remainder to the state on a quarterly schedule for deposit in the California Tire Recycling Management Fund, which is hereby created in the State Treasury.

(c) The board, or its agent authorized pursuant to Section 42882, shall be reimbursed for its costs of collection, auditing, and making refunds associated with the California Tire Recycling Management Fund, but not to exceed 3 percent of the total annual revenue deposited in the fund.

(d) The California tire fee imposed pursuant to subdivision (b) shall be separately stated by the retail seller on the invoice given to the customer at the time of sale. Any other disposal or transaction fee charged by the retail seller related to the tire purchase shall be identified separately from the California tire fee.

(e) A person or business who knowingly, or with reckless disregard, makes a false statement or representation in a document used to comply with this section is liable for a civil penalty for each violation or, for continuing violations, for each day that the violation continues. Liability under this section may be imposed in a civil action and shall not exceed twenty-five thousand dollars ($25,000) for each violation.

(f) In addition to the civil penalty that may be imposed pursuant to subdivision (e), the board may impose an administrative penalty in an amount not to exceed five thousand dollars ($5,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues, on a person who intentionally or negligently violates a permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter. The board shall adopt regulations that specify the amount of the administrative penalty and the procedure for imposing an administrative penalty pursuant to this subdivision.

(g) For purposes of this section, "new tire" means a pneumatic or solid tire intended for use with on-road or off-road motor vehicles, motorized equipment, construction equipment, or farm equipment that is sold separately from the motorized equipment, or a new tire sold with a new or used motor vehicle, as defined in Section 42803.5, including the spare tire, construction equipment, or farm equipment. "New tire" does not include retreaded, reused, or recycled tires.

(h) The California tire fee shall not be imposed on a tire sold with, or sold separately for use on, any of the following:

(1) A self-propelled wheelchair.

(2) A motorized tricycle or motorized quadricycle, as defined in Section 407 of the Vehicle Code.

(3) A vehicle that is similar to a motorized tricycle or motorized quadricycle and is designed to be operated by a person who, by reason of the person's physical disability, is otherwise unable to move about as a pedestrian.

(i) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 2108 (Mazzoni), Stats. 1996, c. 304, and AB 117 (Escutia), Stats. 1998, c. 1020, and SB 876 (Escutia), Stats. 2000, c. 838, and SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625, and AB 923 (Firebaugh), Stats. 2004, c. 707, and AB 1803 (Assembly Budget Committee), Stats. 2006, c. 77.

42885. (a) For purposes of this section, "California tire fee" means the fee imposed pursuant to this section.

(b) (1) Every person who purchases a new tire, as defined in subdivision (g), shall pay a California tire fee of seventy-five cents ($0.75) per tire.

(2) The retail seller shall charge the retail purchaser the amount of the California tire fee as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the retail purchaser.

(3) The retail seller shall collect the California tire fee from the retail purchaser at the time of sale and may retain 3 percent of the fee as reimbursement for any costs associated with the collection of the fee. The retail seller shall remit the remainder to the state on a quarterly schedule for deposit in the California Tire Recycling Management Fund, which is hereby created in the State Treasury.

(c) The board, or its agent authorized pursuant to Section 42882, shall be reimbursed for its costs of collection, auditing, and making refunds associated with the California Tire Recycling Management Fund, but not to exceed 3 percent of the total annual revenue deposited in the fund.

(d) The California tire fee imposed pursuant to subdivision (a) shall be separately stated by the retail seller on the invoice given to the customer at the time of sale. Any other disposal or transaction fee charged by the retail seller related to the tire purchase shall be identified separately from the California tire fee.

(e) Any person or business who knowingly, or with reckless disregard, makes any false statement or representation in any document used to comply with this section is liable for a civil penalty for each violation or, for continuing violations, for each day that the violation continues. Liability under this section may be imposed in a civil action and shall not exceed twenty-five thousand dollars ($25,000) for each violation.

(f) In addition to the civil penalty that may be imposed pursuant to subdivision (e), the board may impose an administrative penalty in an amount not to exceed five thousand dollars ($5,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues, on any person who intentionally or negligently violates any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter. The board shall adopt regulations that specify the amount of the administrative penalty and the procedure for imposing an administrative penalty pursuant to this subdivision.

(g) For purposes of this section, "new tire" means a pneumatic or solid tire intended for use with on-road or off-road motor vehicles, motorized equipment, construction equipment, or farm equipment that is sold separately from the motorized equipment, or a new tire sold with a new or used motor vehicle, as defined in Section 42803.5, including the spare tire, construction equipment, or farm equipment. "New tire" does not include retreaded, reused, or recycled tires.

(h) The California tire fee may not be imposed on any tire sold with, or sold separately for use on, any of the following:

(1) Any self-propelled wheelchair.

(2) Any motorized tricycle or motorized quadricycle, as defined in Section 407 of the Vehicle Code.

(3) Any vehicle that is similar to a motorized tricycle or motorized quadricycle and is designed to be operated by a person who, by reason of the person's physical disability, is otherwise unable to move about as a pedestrian.

(i) This section shall become operative on January 1, 2015.

As added by AB 923 (Firebaugh), Stats. 2004, c. 707.

42885.5. (a) The board shall adopt a five-year plan, which shall be updated every two years, to establish goals and priorities for the waste tire program and each program element.

(b) On or before July 1, 2001, and every two years thereafter, the board shall submit the adopted five-year plan to the appropriate policy and fiscal committees of the Legislature. The board shall include in the plan, programmatic and fiscal issues including, but not limited to, the hierarchy used by the board to maximize productive uses of waste and used tires, and the performance objectives and measurement criteria used by the board to evaluate the success of its waste and used tire recycling program. Additionally, the plan shall describe each program element's effectiveness, based upon performance measures developed by the board, including, but not limited to, the following:

(1) Enforcement and regulations relating to the storage of waste and used tires.

(2) Cleanup, abatement, or other remedial action related to waste tire stockpiles throughout the state.

(3) Research directed at promoting and developing alternatives to the landfill disposal of waste tires.

(4) Market development and new technology activities for used tires and waste tires.

(5) The waste and used tire hauler program and manifest system.

(6) A description of the grants, loans, contracts, and other expenditures proposed to be made by the board under the tire recycling program.

(7) Until June 30, 2010, the grant program authorized under Section 42872.5 to encourage the use of rubberized asphalt concrete technology in public works projects.

(8) Border region activities, conducted in coordination with the California Environmental Protection Agency, including, but not limited to, all of the following:

(A) Training programs to assist Mexican waste and used tire haulers to meet the requirements for hauling those tires in California.

(B) Environmental education training.

(C) Development of a waste tire abatement plan, with the appropriate government entities of California and Mexico.

(D) Tracking both the legal and illegal waste and used tire flow across the border and recommended revisions to the waste tire policies of California and Mexico.

(E) Coordination with businesses operating in the border region and with Mexico, with regard to applying the same environmental and control requirements throughout the border region.

(c) The board shall base the budget for the California Tire Recycling Act and program funding on the plan.

(d) The plan may not propose financial or other support that promotes, or provides for research for the incineration of tires.

As added by SB 876 (Escutia), Stats. 2000, c. 838, and amended by SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625, and SB 1346 (Kuehl), Stats. 2002, c. 671, and AB 1756 (Assembly Budget Committee), Stats. 2003, c. 228, and AB 2701 (Runner), Stats. 2004, c. 644, and SB 772 (Ducheny), Stats. 2005, c. 214, and SB 369 (Simitian), Stats. 2006, c. 300.

42886. The fees remitted pursuant to Section 42885 are due and payable quarterly on or before the 15th day of the month following each calendar quarter.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by SB 1231 (Senate Revenue and Taxation Committee), Stats. 1999, c. 941, and AB 1123 (Assembly Revenue and Taxation Committee), Stats. 2001, c. 251.

42886.1. (a) The State Board of Equalization if it deems it necessary in order to ensure payment to or facilitate the collection by the state of the amount of fees, may require returns and payment of the amount of fees for a yearly period.

(b) On or before the 15th day of the month following each designated yearly period, a return for the preceding designated yearly period shall be filed with the State Board of Equalization in the form as the State Board of Equalization may prescribe.

As added by SB 1231 (Senate Revenue and Taxation Committee), Stats. 1999, c. 941, and AB 1123 (Assembly Revenue and Taxation Committee), Stats. 2001, c. 251.

42887. Except in the case of fraud, intent to evade this chapter or rules and regulations adopted to implement this chapter, or failure to file a return, the notice of a deficiency determination shall be mailed within three years after the amount that is proposed to be determined was due or within three years after the return is filed, whichever period expires later. In the case of failure to file a return, the notice of determination shall be mailed within eight years after the amount that is proposed to be determined was due.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42888. (a) Except as agreed to by the board, no refund shall be approved by the board after three years from the date the payment was due for which the overpayment was made, or with respect to deficiency or jeopardy determinations, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given by the board.

(b) A refund may be approved by the board for any period agreed to by the board for good cause if a claim for the referral is filed with the board before the expiration of the period agreed upon.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by SB 1852 (Senate Judiciary Committee), Stats. 2006, c. 538..

42889. (a) Commencing January 1, 2005, of the moneys collected pursuant to Section 42885, an amount equal to seventy-five cents ($0.75) per tire on which the fee is imposed shall be transferred by the State Board of Equalization to the Air Pollution Control Fund. The state board shall expend those moneys, or allocate those moneys to the districts for expenditure, to fund programs and projects that mitigate or remediate air pollution caused by tires in the state, to the extent that the state board or the applicable district determines that the program or project remediates air pollution harms created by tires upon which the fee described in Section 42885 is imposed.

(b) The remaining moneys collected pursuant to Section 42885 shall be used to fund the waste tire program, and shall be appropriated to the board in the annual Budget Act in a manner consistent with the five-year plan adopted and updated by the board. These moneys shall be expended for the payment of refunds under this chapter and for the following purposes:

(1) To pay the administrative overhead cost of this chapter, not to exceed 6 percent of the total revenue deposited in the fund annually, or an amount otherwise specified in the annual Budget Act.

(2) To pay the costs of administration associated with collection, making refunds, and auditing revenues in the fund, not to exceed 3 percent of the total revenue deposited in the fund, as provided in subdivision (c) of Section 42885.

(3) To pay the costs associated with operating the tire recycling program specified in Article 3 (commencing with Section 42870).

(4) To pay the costs associated with the development and enforcement of regulations relating to the storage of waste tires and used tires. The board shall consider designating a city, county, or city and county as the enforcement authority of regulations relating to the storage of waste tires and used tires, as provided in subdivision (c) of Section 42850. If the board designates a local entity for that purpose, the board shall provide sufficient, stable, and noncompetitive funding to that entity for that purpose, based on available resources, as provided in the five-year plan adopted and updated as provided in subdivision (a) of Section 42885.5. The board may consider and create, as appropriate, financial incentives for citizens who report the illegal hauling or disposal of waste tires as a means of enhancing local and statewide waste tire and used tire enforcement programs.

(5) To pay the costs of cleanup, abatement, removal, or other remedial action related to waste tire stockpiles throughout the state, including all approved costs incurred by other public agencies involved in these activities by contract with the board. Not less than six million five hundred thousand dollars ($6,500,000) shall be expended by the board during each of the following fiscal years for this purpose: 2001-02 to 2006-07, inclusive.

(6) To make studies and conduct research directed at promoting and developing alternatives to the landfill disposal of waste tires.

(7) To assist in developing markets and new technologies for used tires and waste tires. The board's expenditure of funds for purposes of this subdivision shall reflect the priorities for waste management practices specified in subdivision (a) of Section 40051.

(8) To pay the costs associated with implementing and operating a waste tire and used tire hauler program and

manifest system pursuant to Chapter 19 (commencing with Section 42950).

(9) To pay the costs to create and maintain an emergency reserve, which shall not exceed one million dollars ($1,000,000).

(10) To pay the costs of cleanup, abatement, or other remedial action related to the disposal of waste tires in implementing and operating the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program established pursuant to Chapter 2.5 (commencing with Section 48100) of Part 7.

(c) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by SB 744 (McCorquodale), Stats. 1993, c. 511, and SB 1330 (Lockyer), Stats. 1997, c. 875, and SB 876 (Escutia), Stats. 2000, c. 838, and SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625, and AB 923 (Firebaugh), Stats. 2004, c. 707, and AB 1803 (Assembly Budget Committee), Stats. 2006, c. 77.

42889. Funding for the waste tire program shall be appropriated to the board in the annual Budget Act. The moneys in the fund shall be expended for the payment of refunds under this chapter and for the following purposes:

(a) To pay the administrative overhead cost of this chapter, not to exceed 5 percent of the total revenue deposited in the fund annually, or an amount otherwise specified in the annual Budget Act.

(b) To pay the costs of administration associated with collection, making refunds, and auditing revenues in the fund, not to exceed 3 percent of the total revenue deposited in the fund, as provided in subdivision (b) of Section 42885.

(c) To pay the costs associated with operating the tire recycling program specified in Article 3 (commencing with Section 42870).

(d) To pay the costs associated with the development and enforcement of regulations relating to the storage of waste tires and used tires. The board shall consider designating a city, county, or city and county as the enforcement authority of regulations relating to the storage of waste tires and used tires, as provided in subdivision (c) of Section 42850. If the board designates a local entity for that purpose, the board shall provide sufficient, stable, and noncompetitive funding to that entity for that purpose, based on available resources, as provided in the five-year plan adopted and updated as provided in subdivision (a) of Section 42855.5. The board may consider and create, as appropriate, financial incentives for citizens who report the illegal hauling or disposal of waste tires as a means of enhancing local and statewide waste tire and used tire enforcement programs.

(e) To pay the costs of cleanup, abatement, removal, or other remedial action related to waste tire stockpiles throughout the state, including all approved costs incurred by other public agencies involved in these activities by contract with the board. Not less than six million five hundred thousand dollars ($6,500,000) shall be expended by the board during each of the following fiscal years for this purpose: 2001–02 to 2006–07, inclusive.

(f) This section shall become operative on January 1, 2015.

As added by AB 923 (Firebaugh), Stats. 2004, c. 707.

42889.1. REPEALED.

As added by SB 1055 (Bowen), Stats. 1999, c. 292, and amended by SB 876 (Escutia), Stats. 2000, c. 838, and repealed by AB 2701 (Runner), Stats. 2004, c. 644.

42889.3. On or before January 1 of each year, the Department of Transportation shall report to the Legislature and the board on the use of waste tires in transportation and civil engineering projects during the previous five years, including, but not limited to, the approximate number of waste tires used every year, and the types and location of these projects.

As added by SB 876 (Escutia), Stats. 2000, c. 838, and amended by SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

42889.4. If facilities are permitted to burn tires in the previous calendar year, the State Air Resources Board, in conjunction with air pollution control districts and air quality management districts, shall post on its Web site, updated on or before July 1 of the subsequent year, information summarizing the types and quantities of air emissions, if any, from those facilities.

As added by SB 876 (Escutia), Stats. 2000, c. 838, and amended by AB 2701 (Runner), Stats. 2004, c. 644.

ARTICLE 6. USE OF RECYCLED TIRE PRODUCTS BY STATE AGENCIES

(Article 6 as added by SB 937 (Vuich), Stats. 1990, c. 35)

42890. "Recycled tire product" means a product with not less than 50 percent of its total content derived from recycled used tires.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42891. The Department of General Services shall revise its procedures and procurement specifications for state purchases of products that are made of, or contain components that can be derived from the recycling of, used tires, including, but not limited to, rubber, oil, natural gas, carbon black, asphalt rubber, floor tiles, carpet underlays, mats, drainage pipes, garbage cans, retreaded tires, and water hoses. For those purchases, the department shall give preference, wherever feasible, to the suppliers of recycled tire products. This preference shall be 5 percent of the lowest bid or price quoted by suppliers offering similar products made from nonrecycled components.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by SB 1852 (Senate Judiciary Committee), Stats. 2006, c. 538.

42892. In bids in which the state has reserved the right to make multiple awards, the recycled tire product preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of recycled tire product businesses in the contract award.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42893. (a) The combined amount of preference granted pursuant to this section shall not exceed one hundred thousand dollars ($100,000) each year.

(b) Notwithstanding Section 42892, the recycled tire product preference shall not exceed fifty thousand dollars ($50,000) if a preference exceeding that amount would preclude an award to a small business that offers a similar product made of nonrecycled tire components and is qualified in accordance with Section 14838 of the Government Code. This provision applies regardless of whether the small business is the lowest responsible bidder or is eligible for the contract award on the basis of application of the 5 percent small business preference.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42894. To encourage the use of recycled tires, the department's specifications shall require recycled tire product contracts to be awarded to the bidder whose product has the greatest percentage of recycled tire content if the fitness, quality, and price are otherwise equal.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

42895. The department may adopt rules and regulations to carry out this article.

As added by AB 1843 (W. Brown), Stats. 1989, c. 974, formerly in the Gov. C., and added by SB 937 (Vuich), Stats. 1990, c. 35.

Chapter 18. California Solid Refuse and Recycling Access Act of 1991

(Chapter 18 as added by AB 1327 (Farr), Stats. 1991, c. 842)

ARTICLE 1. SHORT TITLE AND FINDINGS AND DECLARATIONS

(Article 1 as added by AB 1327 (Farr), Stats. 1991, c. 842)

42900. This chapter shall be known and may be cited as the California Solid Waste Reuse and Recycling Access Act of 1991.

As added by AB 1327 (Farr), Stats. 1991, c. 842.

42901. The Legislature finds and declares as follows:

(a) Cities and counties must divert 50 percent of all solid waste by January 1, 2000, through source reduction, recycling, and composting activities.

(b) Diverting 50 percent of all solid waste requires the participation of the residential, commercial, industrial, and public sectors.

(c) The lack of adequate areas for collecting and loading recyclable materials that are compatible with surrounding land uses is a significant impediment to diverting solid waste and constitutes an urgent need for state and local agencies, to address access to solid waste for source reduction, recycling, and composting activities.

As added by AB 1327 (Farr), Stats. 1991, c. 842.

ARTICLE 2. DEFINITIONS

(Article 2 as added by AB 1327 (Farr), Stats. 1991, c. 842)

42905. As used in this chapter, "development project" means any of the following:

(a) A project for which a building permit will be required for a commercial, industrial, or institutional building, marina, or residential building having five or more living units, where solid waste is collected and loaded and any residential project where solid waste is collected and loaded in a location serving five or more units.

(b) Any new public facility where solid waste is collected and loaded and any improvements for areas of a public facility used for collecting and loading solid waste.

As added by AB 1327 (Farr), Stats. 1991, c. 842.

ARTICLE 3. ORDINANCES

(Article 3 as added by AB 1327 (Farr), Stats. 1991, c. 842)

42910. (a) Not later than March 1, 1993, after holding a public hearing, the board shall adopt a model ordinance for adoption by any local agency relating to adequate areas for collecting and loading recyclable materials in development projects.

(b) The board shall consult with representatives of the League of California Cities, County Supervisors Association of California, American Planning Association, American Institute of Architects, private and public waste services, building construction and management, and retail businesses in developing the model ordinance.

(c) Not later than January 1, 1993, the board shall distribute the draft model ordinance to all local agencies and other interested parties for review. Any comments shall be submitted to the board by February 1, 1993, for consideration at the public hearing of the board to adopt the ordinance.

As added by AB 1327 (Farr), Stats. 1991, c. 842.

42911. (a) Each local agency shall adopt an ordinance relating to adequate areas for collecting and loading recyclable materials in development projects.

(b) If a local agency has not adopted an ordinance for collecting and loading recyclable materials in development projects on or before September 1, 1994, the model ordinance adopted pursuant to Section 42910 shall take effect on September 1, 1994, and shall be enforced by the local agency and have the same force and effect as if adopted by the local agency as an ordinance.

(c) On and after July 1, 2005, a local agency shall not issue a building permit to a development project, unless the

development project provides adequate areas for collecting and loading recyclable materials.

As added by AB 1327 (Farr), Stats. 1991, c. 842, and amended by SB 452 (Senate Budget and Fiscal Review Committee), Stats. 1993, c. 60, and AB 2176 (Moñtanez), Stats. 2004, c. 879.

42912. (a) Not later than March 1, 2004, after holding a public hearing, the board shall do all of the following:

(1) Adopt one or more model ordinances, suitable for modification by a local agency, that the local agency may adopt that will require a range of diversion rates of construction and demolition waste materials from 50 to 75 percent, as determined by the board, and as measured by weight.

(2) Consult with representatives of the League of California Cities, the California State Association of Counties, private and public waste services and building construction materials industry and construction management personnel throughout the development of the model ordinances.

(3) Compile a report on programs, other than a model ordinance, that local governments and general contractors can implement to increase diversion of construction and demolition waste materials.

(4) Post on the board's Internet Web site, a report for general contractors on methods by which contractors can increase diversion of construction and demolition waste materials.

(5) Post on the board's Internet Web site, a report for local governments with suggestions of programs, in addition to adoption of the model ordinance, to increase diversion of construction and demolition waste materials.

(b) Not later than January 1, 2004, the board shall distribute the draft model ordinance to all local agencies and other interested parties for review. Any comments shall be submitted to the board by February 1, 2004, for consideration at the public hearing of the board to adopt the ordinance.

As added by SB 1374 (Kuehl), Stats. 2002, c. 501.

Chapter 18.5. State Agency Integrated Waste Management Plan

(Chapter 18.5 as added by AB 75 (Strom-Martin), Stats. 1999, c. 764)

42920. (a) On or before February 15, 2000, the board shall adopt a state agency model integrated waste management plan for source reduction, recycling, and composting activities.

(b) (1) On or before July 1, 2000, each state agency shall develop and adopt, in consultation with the board, an integrated waste management plan, in accordance with the requirements of this chapter. The plan shall build upon existing programs and measures, including the state agency model integrated waste management plan adopted by the board pursuant to subdivision (a), that will reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content in all state agency offices and facilities, including any leased locations. It is the intent of the Legislature that the local jurisdiction and the state agency or large state facility located within that jurisdiction work together to implement the state agency integrated waste management plan.

(2) Each state agency shall submit an adopted integrated waste management plan to the board for review and approval on or before July 15, 2000. The board shall adopt procedures for reviewing and approving those integrated waste management plans. The board shall complete its plan review process on or before January 1, 2001.

(3) If a state agency has not submitted an adopted integrated waste management plan or the model integrated waste management plan with revisions to the board by January 1, 2001, or if the board has disapproved the plan that was submitted, then the model integrated waste management plan, as revised by the board in consultation with the agency, shall take effect on that date, or on a later date as determined by the board, and shall have the same force and effect as if adopted by the state agency.

(c) Notwithstanding subdivision (e) of Section 12217 of the Public Contract Code, at least one solid waste reduction and recycling coordinator shall be designated by each state agency. The coordinator shall perform the duties imposed pursuant to this chapter using existing resources. The coordinator shall be responsible for implementing the integrated waste management plan and shall serve as a liaison to other state agencies and coordinators.

(d) The board shall provide technical assistance to state agencies for the purpose of implementing the integrated waste management plan.

As added by AB 75 (Strom-Martin), Stats. 1999, c. 764, and amended by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

42921. (a) Each state agency and each large state facility shall divert at least 25 percent of all solid waste generated by the state agency from landfill disposal or transformation facilities by January 1, 2002, through source reduction, recycling, and composting activities.

(b) On and after January 1, 2004, each state agency and each large state facility shall divert at least 50 percent of all solid waste from landfill disposal or transformation facilities through source reduction, recycling, and composting activities.

As added by AB 75 (Strom-Martin), Stats. 1999, c. 764.

42922. (a) On and after January 1, 2002, upon the request of a state agency or a large state facility, the board may establish a source reduction, recycling, and composting requirement that would be an alternative to the 50-percent requirement imposed pursuant to subdivision (b) of Section 42921, if the board holds a public hearing and makes all of the following findings based upon substantial evidence on the record:

(1) The state agency or a large state facility has made a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its integrated waste management plan, and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the board.

(2) The state agency or the large state facility has been unable to meet the 50-percent diversion requirement despite implementing the measures described in paragraph (1).

(3) The alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the state agency or the large state facility may reasonably and feasibly achieve.

(b) In making the decision whether to grant an alternative requirement pursuant to subdivision (a), and in determining the amount of the alternative requirement, the board shall consider circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed by the state agency or the large state facility. The state agency or the large state facility may provide the board with any additional information that the state agency or the large state facility determines to be necessary to demonstrate to the board the need for the alternative requirement.

(c) If a state agency or a large state facility that requests an alternative source reduction, recycling, and composting requirement has not previously requested an extension pursuant to Section 42923, the state agency or the large state facility shall provide information to the board that explains why it has not requested an extension.

(d) A state agency or a large state facility that has previously been granted an alternative source reduction, recycling, and composting requirement may request another alternative source reduction, recycling, and composting requirement. A state agency or a large state facility that requests another alternative requirement shall provide information to the board that demonstrates that the circumstances that supported the previous alternative source reduction, recycling, and composting requirement continue to exist, or shall provide information to the board that describes changes in those previous circumstances that support another alternative source reduction, recycling, and composting requirement. The board shall review the original circumstances that supported the state agency's or the large state facility's request, as well as any new information provided by the state agency or the large state facility that describes the current circumstances, to determine whether to grant another alternative requirement. The board may approve another alternative requirement if the board holds a public hearing and makes both of the following findings based upon substantial evidence in the record:

(1) The state agency or the large state facility has made a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its integrated waste management plan, and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the board.

(2) The alternative source reduction, recycling, and composting requirement represents the greatest diversion amount the state agency or the large state facility may reasonably and feasibly achieve.

(e) If the board establishes a new alternative requirement or rescinds the existing alternative requirement, the board shall do so at a public hearing. If the board establishes a new alternative requirement, it shall make all of the following findings based upon substantial evidence in the record:

(1) The state agency or the large state facility has made a good faith effort to effectively implement the source reduction, recycling, and composting measures described in its integrated waste management plan, and has demonstrated progress toward meeting the alternative requirement as described in its annual reports to the board.

(2) The former alternative diversion requirement is no longer appropriate.

(3) The new alternative requirement represents the greatest amount of diversion that the state agency or the large state facility may reasonably and feasibly achieve.

(f) (1) No single alternative requirement may be granted for a period that exceeds three years and, if after the granting of the original alternative requirement, another alternative requirement is granted, the combined period that the original and the new alternative requirement is in force and effect shall not exceed a total of five years.

(2) No alternative requirement shall be granted for any period after January 1, 2006, and no alternative requirement shall be effective after January 1, 2006.

(3) No state agency or large state facility shall be granted an alternative requirement if the state agency or the large state facility has failed to meet, on or before January 1, 2002, the requirements of subdivision (a) of Section 42921.

(g) (1) When considering a request for an alternative source reduction, recycling, and composting requirement, the board may make specific recommendations for the implementation of the alternative plan.

(2) Nothing in this section precludes the board from disapproving any request for an alternative requirement.

(3) If the board disapproves a request for an alternative requirement, the board shall specify, in writing, the reasons for its disapproval.

(h) If the board grants an alternative source reduction, recycling, and composting requirement, the state agency may request technical assistance from the board to assist it in meeting the alternative source reduction, recycling, and composting requirement. If requested by the state agency or the large state facility, the board shall assist with identifying model policies and plans implemented by other agencies.

(i) A state agency or a large state facility that is granted an alternative requirement pursuant to this section shall continue to implement source reduction, recycling, and composting programs, and shall report the status of those programs in the report required pursuant to Section 42926.

(j) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

As added by AB 75 (Strom-Martin), Stats. 1999, c. 764.

42923. (a) The board may grant one or more single or multiyear time extensions from the requirements of

subdivision (a) of Section 42921 to any state agency or large state facility if all of the following conditions are met:

(1) Any multiyear extension that is granted does not exceed three years, and a state agency or a large state facility is not granted extensions that exceed a total of five years.

(2) An extension is not granted for any period after January 1, 2006, and an extension is not effective after January 1, 2006.

(3) The board considers the extent to which a state agency or a large state facility complied with its plan of correction before considering another extension.

(4) The board adopts written findings, based upon substantial evidence in the record, as follows:

(A) The state agency or the large state facility is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan.

(B) The state agency or the large state facility submits a plan of correction that demonstrates that the state agency or the large state facility will meet the requirements of Section 42921 before the time extension expires, including the source reduction, recycling, or composting steps the state agency or the large state facility will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.

(b) (1) When considering a request for an extension, the board may make specific recommendations for the implementation of the alternative plans.

(2) Nothing in this section shall preclude the board from disapproving any request for an extension.

(3) If the board disapproves a request for an extension, the board shall specify its reasons for the disapproval.

(c) (1) In determining whether to grant the request by a state agency or a large state facility for the time extension authorized by subdivision (a), the board shall consider information provided by the state agency or the large state facility that describes relevant circumstances that contributed to the request for extension, such as a lack of markets for recycled materials, local efforts to implement source reduction, recycling, and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed by the agency or facility.

(2) The state agency or the large state facility may provide the board with any additional information that the state agency or the large state facility determines to be necessary to demonstrate to the board the need for the extension.

(d) If the board grants a time extension pursuant to subdivision (a), the state agency may request technical assistance from the board to assist it in meeting the diversion requirements of subdivision (a) of Section 42921 during the extension period. If requested by the state agency or the large state facility, the board shall assist the state agency or the large state facility with identifying model policies and plans implemented by other agencies.

(e) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

As added by AB 75 (Strom-Martin), Stats. 1999, c. 764, and amended by AB 2539 (Assembly Judiciary Committee), Stats. 2000, c. 135, and SB 662 (Senate Judiciary Committee), Stats. 2001, c. 159.

42924. (a) On or before February 15, 2000, the board shall develop and adopt requirements relating to adequate areas for collecting, storing, and loading recyclable materials in state buildings. In developing the requirements, the board may rely on the model ordinance adopted pursuant to Chapter 18 (commencing with Section 42900).

(b) Each state agency or large state facility, when entering into a new lease, or renewing an existing lease, shall ensure that adequate areas are provided for, and adequate personnel are available to oversee, the collection, storage, and loading of recyclable materials in compliance with the requirements established pursuant to subdivision (a).

(c) In the design and construction of state agency offices and facilities, the Department of General Services shall allocate adequate space for the collection, storage, and loading of recyclable materials in compliance with the requirements established pursuant to subdivision (a).

As added by AB 75 (Strom-Martin), Stats. 1999, c. 764.

42925. (a) Any cost savings realized as a result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency's integrated waste management plan to fund plan implementation and administration costs, in accordance with Sections 12167 and 12167.1 of the Public Contract Code.

(b) The board shall establish and implement a waste reduction award program for state agencies and large state facilities that develop, adopt, and implement innovative and effective integrated waste management plans in compliance with this chapter.

As added by AB 75 (Strom-Martin), Stats. 1999, c. 764.

42926. (a) In addition to the information provided to the board pursuant to Section 12167.1 of the Public Contract Code, each state agency shall submit a report to the board summarizing its progress in reducing solid waste as required by Section 42921. The annual report shall be due on or before April 1, 2002, and on or before April 1 in each subsequent year. The information in this report shall encompass the previous calendar year.

(b) Each state agency's annual report to the board shall, at a minimum, include all of the following:

(1) Calculations of annual disposal reduction.

(2) Information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors.

(3) A summary of progress made in implementing the integrated waste management plan.

(4) The extent to which the state agency intends to utilize programs or facilities established by the local agency for the handling, diversion, and disposal of solid waste. If the state agency does not intend to utilize those established programs or facilities, the state agency shall identify sufficient disposal capacity for solid waste that is not source reduced, recycled, or composted.

(5) If the agency has been granted a time extension by the board pursuant to Section 42923, the state agency shall include a summary of progress made in meeting the integrated waste management plan implementation schedule pursuant to subdivision (b) of Section 42921 and complying with the state agency's plan of correction, prior to the expiration of the time extension.

(6) If the state agency has been granted an alternative source reduction, recycling, and composting requirement pursuant to Section 42922, the state agency shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

(7) Other information relevant to compliance with Section 42921.

(c) The board shall use, but is not limited to the use of, the annual report in the determination of whether the agency's integrated waste management plan needs to be revised.

As added by AB 75 (Strom-Martin), Stats. 1999, c. 764.

42927. (a) If a state agency is unable to comply with the requirements of this chapter, the agency shall notify the board in writing, detailing the reasons for its inability to comply and shall request an alternative pursuant to Section 42922 or an extension pursuant to Section 42923.

(b) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

As added by AB 75 (Strom-Martin), Stats. 1999, c. 764.

42928. (a) The board may adopt regulations that establish specified criteria for granting, reviewing, and considering reductions or extensions pursuant to Sections 42922 and 42923.

(b) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

As added by AB 75 (Strom-Martin), Stats. 1999, c. 764.

Chapter 19. Tire Hauler Registration

(Chapter 19 as added by SB 744 (McCorquodale), Stats. 1993, c. 511)

ARTICLE 1. DEFINITIONS

(Article 1 as added by SB 744 (McCorquodale), Stats. 1993, c. 511)

42950. For purposes of this chapter, the following definitions apply:

(a) "Agricultural purposes" means the use of waste tires as bumpers on agricultural equipment or as a ballast to maintain covers or structures at an agricultural site.

(b) (1) "Altered waste tire" means a waste tire that has been baled, shredded, chopped, or split apart. "Altered waste tire" does not mean crumb rubber.

(2) "Alteration" or "altering," with reference to a waste tire, means an action that produces an altered waste tire.

(c) "Applicant" means any person seeking to register as a waste tire hauler.

(d) "Baled tire" means either a whole or an altered tire that has been compressed and then secured with a binding material for the purpose of reducing its volume.

(e) "Common carrier" means a "common carrier," as defined in Section 211 of the Public Utilities Code.

(f) "Crumb rubber" means rubber granules derived from a waste tire that are less than or one-quarter inch or six millimeters in size.

(g) "Repairable tire" means a worn, damaged, or defective tire that is retreadable, recappable, or regrooveable, or that can be otherwise repaired to return the tire to use as a vehicle tire, and that meets the applicable requirements of the Vehicle Code and Title 13 of the California Code of Regulations.

(h) "Scrap tire" means a worn, damaged, or defective tire that is not a repairable tire.

(i) "Tire derived product" means material that meets both of the following requirements:

(1) Is derived from a process using waste tires or waste tire equivalents as a feedstock. A process using waste tires or waste tire equivalents includes, but is not limited to, shredding, crumbing, or chipping.

(2) Has been sold and removed from the processing facility.

(j) "Used tire" means a tire that meets both of the following requirements:

(1) The tire is no longer mounted on a vehicle but is still suitable for use as a vehicle tire.

(2) The tire meets the applicable requirements of the Vehicle Code and of Title 13 of the California Code of Regulations.

(k) "Waste tire" means a tire that is no longer mounted on a vehicle and is no longer suitable for use as a vehicle tire due to wear, damage, or deviation from the manufacturer's original specifications. A waste tire includes a repairable tire, scrap tire, and altered waste tire, but does not include a tire derived product crumb rubber, or a used tire.

(l) "Waste tire generator" or "waste tire generating business" means any person as defined by Section 40170 whose act or process produces waste tires as defined in Section 42807, causes a waste tire hauler to transport those waste tires, or otherwise causes waste tires to become subject to regulation. "Waste tire generator" or "waste tire generating

business" does not include a person who transports 10 or fewer waste tires at any one time.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511, and amended by AB 3601 (Isenberg), Stats. 1994, c. 146, and SB 876 (Escutia), Stats. 2000, c. 838, and SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

ARTICLE 2. REGISTRATION AND GENERAL PROVISIONS

(Article 2 as added by SB 744 (McCorquodale), Stats. 1993, c. 511)

42951. (a) Every person who engages in the transportation of waste or used tires shall hold a valid waste and used tire hauler registration, unless exempt as specified in Section 42954.

(b) A registered waste and used tire hauler shall only transport waste or used tires to a facility that is permitted, excluded, exempted, or otherwise authorized by the board, by statute, or by regulation, to accept waste and used tires, or to a facility that lawfully accepts waste or used tires for reuse or disposal.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511, and amended by SB 876 (Escutia), Stats. 2000, c. 838, and SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

42952. Except as provided in Section 42954, any person engaged in transporting waste or used tires shall comply with all of the following requirements:

(a) The person shall be registered as a waste and used tire hauler with the board.

(b) The person shall not advertise or represent himself or herself as being in the business of a waste and used tire hauler without being registered as a waste and used tire hauler by the board.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511, and amended by SB 876 (Escutia), Stats. 2000, c. 838.

42953. Any person who gives, contacts, or arranges with another person to transport waste or used tires shall utilize only a person holding a valid waste and used tire hauler registration from the board, unless the hauler is exempt as specified in Section 42954.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511, and amended by SB 876 (Escutia), Stats. 2000, c. 838.

42954. (a) A person who hauls waste or used tires is exempt from registration under this chapter if at least one of the following conditions is met:

(1) The person transports fewer than 10 waste or used tires at any one time.

(2) The person is, or hauls used and waste tires in a vehicle owned and operated by, the United States, the State of California, or any county, city, town, or municipality in the state, except when vehicles the public agency owns or operates are used as a waste and used tire carrier for hire.

(3) The waste or used tires were inadvertently mixed or commingled with solid waste, and it is not economical or safe to remove or recover them.

(4) The vehicle originated outside the boundaries of the state and is destined for a point outside the boundaries of the state, if no waste or used tires are loaded or unloaded within the boundaries of the state.

(5) The person is hauling waste or used tires for agricultural purposes. However, notwithstanding Section 42961.5, a person hauling waste or used tires for agricultural purposes shall carry a manifest from the generator in the vehicle during transportation, which may be destroyed after delivery.

(6) The waste or used tires were hauled by a common carrier who transported something other than waste or used tires to an original destination point and then transported waste or used tires on the return part of the trip, and the revenue derived from the waste or used tires is incidental when compared to the revenue earned by the carrier.

(7) The person, who is not a waste tire generating business, is transporting waste or used tires to an amnesty day event or to a location as defined in subdivision (b) of Section 42951, and has received written authorization, which includes specific conditions and dates, from the local enforcement agency. The local enforcement agency shall provide copies of any written authorizations to the board within 30 days of their issuance.

(8) The person complies with any additional conditions for exemption, as approved by the board.

(b) Any person who transports tires in violation of subdivision (b) of Section 42951 shall not be exempt pursuant to subdivision (a).

As added by SB 744 (McCorquodale), Stats. 1993, c. 511, and amended by SB 876 (Escutia), Stats. 2000, c. 838, and SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

42955. An application for a new or renewed waste and used tire hauler registration shall be made on a form approved by the board.

The application shall include, but not be limited to, all of the following:

(a) A vehicle description, vehicle identification number, vehicle license number, and the name of the registered vehicle owner for each vehicle used for transporting waste or used tires.

(b) The business name under which the hauler operates, and the business owners' name, address, and telephone number.

(c) Other business names under which the hauler operates.

(d) A bond in favor of the State of California in the amount of ten thousand dollars ($10,000). Proof of bond renewal shall be submitted with the application for annual renewal of a waste and used tire hauler registration.

(e) Any additional information required by the board.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511, and amended by SB 876 (Escutia), Stats. 2000, c. 838.

42956. (a) Upon approval of an application submitted pursuant to Section 42955, the board shall issue a waste and used tire hauler registration to be carried in the vehicle and a waste and used tire hauler decal to be permanently affixed to the lower right hand corner of the windshield.

(b) Any person who operates a vehicle or who authorizes the operation of a vehicle that transports 10 or more tires without a valid and current waste and used tire hauler registration, as issued by the board pursuant to Section 42955, shall be subject to the enforcement actions specified in Article 4 (commencing with Section 42962).

(c) The waste and used tire hauler registration shall be presented upon demand of an authorized representative of the board.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511, and amended by AB 2108 (Mazzoni), Stats. 1996, c. 304, and SB 876 (Escutia), Stats. 2000, c. 838.

ARTICLE 3. RENEWAL, SUSPENSION, AND REVOCATION

(Article 3 as added by SB 744, Stats. 1993, c. 511)

42958. The initial waste and used tire hauler registration issued pursuant to this chapter shall be valid from the date of issuance to January 1 of the subsequent calendar year. Subsequent renewals shall be valid for one calendar year. The registration shall be renewed prior to its expiration.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511, and amended by SB 876 (Escutia), Stats. 2000, c. 838.

42959. REPEALED.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511, and repealed by SB 876 (Escutia), Stats. 2000, c. 838.

42960. (a) The board may suspend, revoke, or deny a waste and used tire hauler registration for a period of up to three years, by filing an accusation in accordance with the procedures of Sections 11505 to 11519, inclusive, of the Government Code, if the holder of the registration does any of the following:

(1) Commits more than three violations of, or fails to comply with any requirements of, this chapter or Chapter 16 (commencing with Section 42800), or the regulations adopted pursuant to those provisions, within a one year period.

(2) Commits, aids, or abets any violation of this chapter or Chapter 16 (commencing with Section 42800), or the regulations adopted pursuant to those provisions, or permits an agent to do so, and the board determines that the violation poses an immediate threat of harm to public safety or to the environment.

(3) Commits, aids, or abets a failure to comply with this chapter or Chapter 16 (commencing with Section 42800), or the regulations adopted pursuant to those provisions, or permits an agent to do so, and the board determines that the failure to comply shows a repeating or recurring occurrence or that the failure to comply may pose a threat to public health or safety or the environment.

(4) Commits any misrepresentation or omission of a significant fact or other required information in the application for a waste and used tire hauler registration or commits any misrepresentation or omission of fact on any manifest more than three times in one year.

(b) The board may suspend, revoke, or deny a waste and used tire hauler registration for a period of three years to five years, or may suspend, revoke, or deny a waste and used tire hauler registration permanently, in accordance with the procedures specified in subdivision (a), under any of the following circumstances:

(1) The hauler's registration has been previously revoked or denied for any violation specified in subdivision (a).

(2) The hauler has been previously fined pursuant to this chapter or Chapter 16 (commencing with Section 42800).

(3) The board determines that the hauler's operations pose a significant threat to public health and safety.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511, and amended by SB 876 (Escutia), Stats. 2000, c. 838.

42961. If the board denies an application for registration, the applicant may request a hearing by the board.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511.

42961.5. (a) For purposes of this chapter, the following definitions shall apply:

(1) "California Uniform Waste and Used Tire Manifest" means a shipping document signed by a generator of waste or used tires, a waste and used tire hauler, or the operator of a waste or used tire facility or other destination that contains all of the information required by the board, including, but not limited to, an accurate measurement of the number of tires being shipped, the type or types of the tires, the date the shipment originated, and the origin and intended final destination of the shipment.

(2) "Waste and used tire hauler" means any person required to be registered with the board pursuant to subdivision (a) of Section 42951.

(b) Any person generating waste or used tires that are transported or submitted for transportation, for offsite handling, altering, storage, disposal, or for any combination thereof, shall complete a California Uniform Waste and Used Tire Manifest, as required by the board. The generator shall provide the manifest to the waste and used tire hauler at the time of transfer of the tires. Each generator shall submit to the board, on a quarterly schedule, a legible copy of each manifest. The copy submitted to the board shall contain the signatures of the generator and the waste and used tire hauler.

(c) (1) Any waste and used tire hauler shall have the California Uniform Waste and Used Tire Manifest in his or her possession while transporting waste or used tires. The manifest shall be shown upon demand to any representative of the board, any officer of the California Highway Patrol, any peace officer, as defined in Section 830.1 or 830.2 of the Penal Code, or any local public officer designated by the board.

(2) Any waste and used tire hauler hauling waste or used tires for offsite handling, altering, storage, disposal, or any combination thereof, shall complete the California Uniform Waste and Used Tire Manifest as required by the board. The waste and used tire hauler shall provide the manifest to the waste or used tire facility operator who receives the waste or used tires for handling, altering, storage, disposal, or any combination thereof. Each waste and used tire hauler shall submit to the board, on a quarterly schedule, a

legible copy of each manifest. The copy submitted to the board shall contain the signatures of the generator and the facility operator.

(d) Each waste or used tire facility operator that receives waste or used tires for handling, altering, storage, disposal, or any combination thereof, that was transported with a manifest pursuant to this section, shall submit copies of each manifest provided by the waste and used tire hauler to the board and the generator on a quarterly schedule. The copy submitted to the board shall contain the signatures of each generator, each transporter, and the facility operator. If approved by the board, in lieu of submitting a copy of each manifest used, a facility operator may submit an electronic report to the board meeting the requirements of Section 42814.

(e) The board shall develop and implement a system for auditing manifests submitted to the board pursuant to this section, for the purpose of enforcing this section. The board or its agent shall continuously conduct random sampling and matching of manifests submitted by any person generating waste or used tires, hauling waste or used tires, or operating waste or used tire facilities, to assure compliance with this section.

(f) (1) If approved by the board, any waste and used tire generator, waste and used tire hauler, or operator of a waste tire facility that is subject to the manifest requirements of this section, may submit an electronic report to the board, in lieu of submitting the copy of the manifest required. The electronic report shall include all information required to be on the California Uniform Waste and Used Tire Manifest, and any other information required by the board.

(2) A waste and used tire generator, waste and used tire hauler, or operator of a waste tire facility that is subject to paragraph (1) may submit the electronic reports to the board on a quarterly schedule.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511, and amended by AB 2108 (Mazzoni), Stats. 1996, c. 304, and repealed and added by SB 876 (Escutia), Stats. 2000, c. 838, and AB 1187 (Simitian), Stats. 2001, c. 316.

ARTICLE 4. ENFORCEMENT

(Article 4 as added by SB 744 (McCorquodale), Stats. 1993, c. 511)

42962. (a) Any person who does any of the following shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each violation of a separate provision or for continuing violations for each day that violation continues:

(1) Intentionally or negligently violates any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter.

(2) Knowingly, or with reckless disregard, makes any false statement or representation in any application, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this chapter.

(b) Liability under subdivision (a) may be imposed in a civil action.

(c) In addition to the civil penalty that may be imposed pursuant to subdivision (a), the board may impose civil penalties administratively in an amount not to exceed five thousand dollars ($5,000) for each violation of a separate provision or for continuing violations for each day that violation continues, on any person who intentionally or negligently violates any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter. The board shall adopt regulations that specify the procedures and amounts for the imposition of administrative civil penalties pursuant to this subdivision.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511, and amended by SB 876 (Escutia), Stats. 2000, c. 838.

42962.5. Any traffic officer, as defined in Section 625 of the Vehicle Code, and any peace officer, as specified in Section 830.1 of the Penal Code, may enforce this chapter as authorized representatives of the board.

As added by AB 2108 (Mazzoni), Stats. 1996, c. 304.

42963. This chapter, or any regulations adopted pursuant to Section 42966, is not a limitation on the power of a city, county, or district to impose and enforce reasonable land use conditions or restrictions on facilities that handle waste or used tires in order to protect the public health and safety or the environment, including preventing or mitigating potential nuisances, if the conditions or restrictions do not conflict with, or impose less stringent requirements than, this chapter or those regulations. However, this chapter, including any regulations that are adopted pursuant to Section 42966, is intended to establish a uniform statewide program for the regulation of waste and used tire haulers that will prevent the illegal disposal of tires, but which will not subject waste and used tire haulers to multiple registration or manifest requirements. Therefore, any local laws regulating the transportation of waste or used tires are preempted by this chapter.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511, and amended by SB 876 (Escutia), Stats. 2000, c. 838.

ARTICLE 5. FINANCIAL PROVISIONS

(Article 5 as added by SB 744 (McCorquodale), Stats. 1993, c. 511)

42964. The board may expend funds from the California Tire Recycling Management Fund, upon appropriation by the Legislature, for purposes of implementation of this chapter.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511.

ARTICLE 6. ADMINISTRATION

(Article 6 as added by SB 744 (McCorquodale), Stats. 1993, c. 511)

42966. The board shall administer this chapter. The board may adopt any regulations necessary or useful to carry out this chapter or any of the board's duties or responsibilities imposed pursuant to this chapter. The board shall initially, as soon as possible, adopt 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, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the office of

Administrative Law as necessary for safety, and general welfare. Emergency regulations adopted pursuant to this section shall remain in effect for a period not to exceed 120 days.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511.

42967. (a) The costs of administering this chapter shall be paid from fees deposited in the California Tire Recycling Management Fund pursuant to subdivision (i) of Section 42889.

(b) The board may develop a legislative proposal for an alternative fee system for the payment of the costs of administering this chapter and submit that proposal to the Legislature for its consideration as part of the 1994–95 fiscal year budget review process.

As added by SB 744 (McCorquodale), Stats. 1993, c. 511.

Chapter 20. Report to the Legislature (REPEALED)

(Chapter 20, (consisting of sections 42950-42952) as added by SB 1322 (Bergeson), Stats. 1989, c. 1096, and renumbered by SB 937 (Vuich), Stats. 1990, c. 35, and repealed by AB 1515 (Sher), Stats. 191, c. 717)

PART 4. SOLID WASTE FACILITIES

(Part 4 as added by AB 939 (Sher), Stats. 1989, c. 1095)

Chapter 1. Solid Waste Facility Standards

(Chapter 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. LANDFILL FACILITY REQUIREMENTS

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

43000. The following definitions govern the construction of this chapter:

(a) "Waste management unit" means the area of a solid waste landfill facility in or on which solid wastes are placed for disposal.

(b) "New waste management unit" means a waste management unit which is not authorized on or before January 1, 1990, under waste discharge provisions adopted on or before that date pursuant to Division 7 (commencing with Section 13000) of the Water Code and for which a solid waste facility permit was not issued on or before that date pursuant to Title 7.3 (commencing with Section 66700) of the Government Code as it read before January 1, 1990.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 2. HANDLING AND DISPOSAL STANDARDS

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

43020. The board shall adopt and revise regulations which set forth minimum standards for solid waste handling, transfer, composting, transformation, and disposal, in accordance with this division, and Section 117590 of, and Chapter 6.5 (commencing with Section 25100) of Division 20 of, the Health and Safety Code. The board shall not include any requirements that are already under the authority of the State Air Resources Board for the prevention of air pollution or of the state water board for the prevention of water pollution.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 1220 (Eastin), Stats. 1993, c. 656, and SB 1497 (Senate Health and Human Services Committee), Stats. 1996, c. 1023.

43020.1. (a) As part of the existing regulatory review process for regulations adopted pursuant to this article, the board may consider whether the operational requirements that apply to nonhazardous wood waste landfills should differ from the operational requirements that apply to other categories of solid waste landfills, such as those used for the disposal of municipal solid waste. If the board determines that the operational requirements that apply to nonhazardous wood waste landfills should differ from the operational requirements that apply to other categories of solid waste landfills, such as those used for the disposal of municipal solid waste, the board shall revise its regulations accordingly.

(b) For the purposes of this section, "nonhazardous wood waste landfill" means a landfill that exclusively accepts untreated bark, sawdust, shavings, and chips that are the byproducts of primary wood product manufacturing and processes that are not used as raw material and that are destined for disposal. "Nonhazardous wood waste landfill" does not include any landfill that accepts chemically treated or adulterated bark, sawdust, shavings, and chips that are the byproducts of primary wood product manufacturing and processes that are not used as raw material and that are destined for disposal.

(c) Nothing in this section is intended to authorize the board to adopt regulations which are less stringent than those adopted by the Environmental Protection Agency pursuant to Part 256 (commencing with Section 256.01) of Title 40 of the Code of Federal Regulations.

As added by SB 2061 (Leslie), Stats. 1992, c. 1035.

43021. Regulations shall include standards for the design, operation, maintenance, and ultimate reuse of solid waste facilities, but shall not include aspects of solid waste handling or disposal which are solely of local concern or which are within the jurisdiction of the State Air Resources Board, air pollution control districts and air quality management districts, or the state water board or regional water boards.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 1220 (Eastin), Stats. 1993, c. 656.

43022. (a) The open burning of solid waste, except for the infrequent burning of agricultural wastes, silvicultural wastes, landclearing debris, diseased trees, or debris from emergency cleanup operations, is prohibited at any solid waste facility.

(b) The owners and operators of solid waste facilities shall comply with subdivision (a) on and after the effective date of the federal regulations set forth in Subpart C

(commencing with Section 258.20) of Part 258 of Title 40 of the Code of Federal Regulations.

As added by AB 1827 (Sher), Stats. 1993, c. 289.

43030. (a) The board shall adopt regulations that are consistent with Section 40055 governing the monitoring and control of the subsurface migration of landfill gas.

(b) The board shall consult with the state water board, the State Air Resources Board, and the California Air Pollution Control Officers Association to ensure that the regulations do not conflict with any regulations adopted by the state water board and the State Air Resources Board or air pollution control districts and air quality management districts.

(c) The regulations adopted by the board pursuant to subdivision (a) shall establish monitoring and control standards, based on the potential of the waste to generate landfill gas, as determined by the board, and shall require owners and operators of disposal sites or disposal facilities to report monitoring data and to perform, or cause to be performed, site inventories and evaluations of disposal sites or disposal facilities for the subsurface migration of landfill gas.

(d) If an owner or operator of a disposal site or disposal facility is in compliance with requirements of the air pollution control district or the air quality management district within whose jurisdiction the disposal site or disposal facility is located, the owner or operator shall be deemed to be in compliance with this section and with any regulations adopted by the board pursuant to this section. However, owners or operators of disposal sites and disposal facilities shall be required to comply with regulations adopted by the board pursuant to this section, which impose requirements not addressed by the requirements of the air pollution control district or the air quality management district within whose jurisdiction the disposal site or disposal facility is located.

As added by AB 4032 (Harvey), Stats. 1990, c. 668, and amended by AB 1220 (Eastin), Stats. 1993, c. 656, and AB 626 (Sher), Stats. 1996, c. 1038.

43035. (a) The board, in cooperation with the Office of Emergency Services, shall develop an integrated waste management disaster plan to provide for the handling, storage, processing, transportation, and diversion from disposal sites, or provide for disposal at a disposal site where absolutely necessary, of solid waste, resulting from a state of emergency or a local emergency, as defined, respectively, in subdivisions (b) and (c) of Section 8558 of the Government Code.

(b) The board may adopt regulations, including emergency regulations, necessary to carry out the integrated waste management disaster plan.

As added by AB 2920 (Lee), Stats. 1992, c. 436.

ARTICLE 3. FINANCIAL RESPONSIBILITY

(Article 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

43040. (a) The board shall adopt standards and regulations requiring that, as a condition for the issuance, modification, revision, or review of a solid waste facilities permit for a disposal facility, the operator of the disposal facility shall provide assurance of adequate financial ability to respond to personal injury claims and public or private property damage claims resulting from the operations of the disposal facility which occur before closure.

(b) To the extent practicable and consistent with federal law and regulations, the board and the state water board shall, on or before January 1, 1994, develop a work plan for combining financial assurance requirements for operating liability with financial assurance requirements for corrective actions into one mechanism which provides appropriate coverage for both purposes.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1220 (Eastin), Stats. 1993, c. 656.

ARTICLE 4. LONG-TERM THREATS TO LANDFILLS

(Article 4 as added by AB 2296 (Montañez), Stats. 2006, c. 504)

43050. (a) On or before January 1, 2008, the board shall conduct a study to define the conditions that potentially affect solid waste landfills, including technologies and engineering controls designed to mitigate potential risks, in order to identify potential long-term threats to public health and safety and the environment. The board shall also study various financial assurance mechanisms that would protect the state from long-term postclosure and corrective action costs in the event that a landfill owner or operator fails to meet its legal obligations to fund postclosure maintenance or corrective action during the postclosure period. The board, on or before July 1, 2009, shall adopt regulations and develop recommendations for needed legislation to implement the findings of the study.

(b) In conducting the study described in subdivision (a), the board shall consult with representatives of the League of California Cities, the County Supervisors Association of California, private and public waste services, and environmental organizations.

As added by AB 2296 (Montañez), Stats. 2006, c. 504.

Chapter 1.5. The Solid Waste Disposal Regulatory Reform Act of 1993

(Chapter 1.5 as added by AB 1220 (Eastin), Stats. 1993, c. 656)

43100. This chapter shall be known, and may be cited, as the Solid Waste Disposal Regulatory Reform Act of 1993.

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

4310l. The Legislature hereby finds and declares as follows:

(a) The board and the state water board have submitted a report entitled Joint Report: Reforming the California Solid Waste Disposal Regulatory Process, and have recommended legislation to the Governor and the Legislature that identifies areas of regulatory overlap, conflict, and duplication and makes recommendations for change.

(b) The report found that regulatory overlap, conflict, and duplication were evident between the board and the state water board and between the board and local enforcement agencies and that regulatory reform was necessary to streamline the state's solid waste disposal regulatory process.

In addition, it was found that a recasting of the solid waste facilities permit was warranted to make more efficient and streamlined the permitting and regulation of solid waste disposal facilities. The report also makes numerous other appropriate recommendations for improving the manner in which the management of solid waste is regulated by the state which require immediate legislative response.

(c) It is, therefore, the intent of the Legislature, in enacting this chapter, and in making the necessary revisions to this division and Division 7 (commencing with Section 13000) of the Water Code by the act enacting this chapter, to accomplish all of the following:

(1) As provided by Sections 40054 and 40055, the board, the state water board, and the regional water boards shall retain their appropriate statutory authority over solid waste disposal facilities and sites. A clear and concise division of authority shall be maintained in both statute and regulation to remove all areas of overlap, duplication, and conflict between the board and the state water board and regional water boards, or between the board and any other state agency, as appropriate.

(2) The state water board and regional water boards shall be the sole agencies regulating the disposal and classification of solid waste for the purpose of protecting the waters of the state, consistent with Section 40055, and the board and the certified local enforcement agencies shall regulate all other aspects of solid waste disposal within the scope of their appropriate regulatory authority.

(3) To effectuate that clear division of authority, the board and the state water board shall develop one consolidated set of solid waste disposal facility regulations where distinct chapters are written and implemented by the appropriate agency, and one consolidated permit application, including one technical report to incorporate the requirements of both the solid waste facilities permit and waste discharge requirements.

(4) The process and timeframe for the review and approval of the consolidated application shall be revised to allow, to the greatest extent feasible, for the concurrent development and review of the waste discharge requirements and the solid waste facilities permit. The intent of this permit streamlining effort is to shorten the overall timeframe for processing a permit and to accommodate concurrent reviews by the local enforcement agency and the regional water boards within a set timeframe.

(5) Any details of a concurrent permit approval process shall be worked out in an implementation plan that is developed jointly by the board and state water board with input from interested parties.

(6) If practicable, joint inspections of facilities shall be conducted by the board, regional water boards, and local enforcement agencies, and inspection reports shall be shared with any other affected state or local agency.

(7) The closure and postclosure maintenance requirements of the board and the state water board for solid waste landfills shall be combined into one set of consolidated regulations which require one closure and postclosure maintenance plan to be prepared for each solid waste landfill.

(8) A clear and concise division of responsibilities shall be maintained to minimize overlap and duplication of permitting, inspection, and compliance duties between the board and certified local enforcement agencies. The board's primary role in regard to permitting and compliance shall be to provide technical assistance and ongoing training and support to local enforcement agencies, to ensure a local enforcement agency's performance in complying with state minimum standards, and to review permits and other documents submitted by local enforcement agencies for board concurrence or approval. The board shall strengthen the state certification and evaluation program for local enforcement agencies and shall set clear and uniform standards to be met by local enforcement agencies.

(9) The Solid Waste Disposal Site Cleanup and Maintenance Account shall be abolished and a solid waste disposal fee established for deposit in the Integrated Waste Management Account which provides adequate funding for all obligations imposed pursuant to this division. In addition, the costs of the state water board and the regional water boards of regulating solid waste facilities shall be funded from the account.

(l0) The Solid Waste Assessment Test Program shall continue operating with resources from the Integrated Waste Management Account until all of the ranked solid waste disposal sites are reviewed.

(11) Responsibility for establishing and enforcing financial responsibility requirements for solid waste landfills, from operation through to cleanup, shall, to the greatest extent practicable and consistent with applicable federal law, be consolidated into one set of regulations administered by the board, in consultation with the state water board.

(12) At a minimum, the financial assurance requirements for closure and postclosure maintenance shall be combined, and the requirements for corrective action and operating liability shall be reviewed, as required by subdivision (b) of Section 43040, to determine if there can be further consolidation of financial assurance requirements for solid waste landfills.

(13) The state water board or the appropriate regional water board shall have access to the financial assurance funds for closure and postclosure activities and to financial assurance funds for corrective action, as necessary, to address water quality problems, if the owner or operator has failed to implement the required closure and postclosure activities or corrective action activities.

(d) It is the intent of the Legislature, in enacting this chapter, and in making the necessary revisions to this division and Division 7 (commencing with Section 13000) of the Water Code, to ensure that the state minimum standards for environmental protection at solid waste disposal facilities are not reduced.

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

43102. On or before July 1, 1994, the board and the state water board shall jointly develop a plan to implement the changes made to this division and Division 7 (commencing with Section 13000) of the Water Code by the act adding this chapter, and shall make recommendations for additional reforms to both statutory law and regulations, which are consistent with the intent specified in Section 4310l. In developing an implementation plan, the board and the state water board shall seek the active participation of representatives of local government, other state agencies, the regulated community, environmental organizations, and interested parties. At a minimum, the implementation plan shall include a work plan for revising regulations, a timeline for implementation, and a description of necessary administrative actions.

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

43103. The board and the state water board shall adopt regulations for the implementation of the changes required by this chapter, and the act adding this chapter.

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

43104. REPEALED.

As added and repealed by its own terms by AB 1220 (Eastin), Stats. 1993, c. 656.

Chapter 2. Solid Waste Handling and Disposal

(Chapter 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. LOCAL ENFORCEMENT AGENCIES

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

43200. (a) The board shall prepare and adopt certification regulations for local enforcement agencies. The regulations shall specify requirements that a local agency shall meet before being designated as an enforcement agency. The regulations shall include, but are not limited to, all of the following:

(1) Technical expertise.

(2) (A) Adequacy of staff resources.

(B) For the purposes of this paragraph, the board shall adopt regulations for specified enforcement agencies, as defined in subparagraph (C), which meet all of the following requirements:

(i) The regulations shall not require a specific number of person-hours or staff resources for the performance of duties as a specified enforcement agency.

(ii) The regulations shall establish performance standards for specified enforcement agencies which will provide a comparable level of public health and safety and environmental protection to that required of other local agencies certified pursuant to this article.

(iii) The regulations shall establish procedures to ensure that all duties required of specified enforcement agencies pursuant to this article are actually performed.

(iv) The regulations shall require specified enforcement agency personnel to receive a comparable level of training to that require of personnel employed by other local agencies certified pursuant to this article.

(C) For the purposes of subparagraph (B), "specified enforcement agency" means a local enforcement agency which has a population of less than 50,000 persons.

(3) Adequacy of budget resources.

(4) Training requirements.

(5) The existence of at least one permitted solid waste facility within the jurisdiction of the local agency. For the purposes of this paragraph, "permitted solid waste facility" includes a proposed solid waste facility for which an environmental impact report or negative declaration has been prepared and certified pursuant to Division 13 (commencing with Section 21000) or for which a conditional use permit has been issued by a city or county.

(b) The regulations adopted pursuant to subdivision (a) shall specify four separate types of certifications for which an enforcement agency may be designated, as follows:

(1) Permitting, inspection, and enforcement of regulations at solid waste landfills.

(2) Permitting, inspection, and enforcement of solid waste incinerators.

(3) Permitting, inspection, and enforcement of transfer and processing stations.

(4) Inspection and enforcement of litter, odor, and nuisance regulations at solid waste landfills.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 457 (Areias), Stats. 1993, c. 665.

43201. After August 1, 1992, no enforcement agency shall be designated pursuant to this article unless the board determines that the agency fully complies with one or more of the certification types specified in Section 43200. No enforcement agency shall, after August 1, 1992, exercise the powers of an enforcement agency pursuant to this chapter unless the agency has been certified by the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43202. An enforcement agency may be designated by the local governing body and certified by the board to act to carry out this chapter within each jurisdiction. If an enforcement agency is not designated and certified, the board, in addition to its other powers and duties, shall be the enforcement agency within the jurisdiction, subject to the agreement required pursuant to Section 43212.1 or 43310.1.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and as amended by AB 59 (Sher), Stats. 1995, c. 952.

43203. The designation of the enforcement agency shall be made by any one of the following procedures:

(a) The board of supervisors of the county may designate the enforcement agency to carry out this chapter in the county. The designation is subject to the approval by a majority of the cities within the county which contain a majority of the population of the incorporated areas of the county, except in those counties which have only two cities, in which case the designation shall be subject to approval by the city which contains the majority of the population of the incorporated area of the county.

(b) The county and the cities within the county may enter into a joint exercise of powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code for the purpose of establishing an enforcement agency to carry out this chapter in the jurisdiction of the joint powers agency.

(c) A city council may, at any time, designate an enforcement agency to carry out this chapter in the city.

(d) The board of supervisors of the county may designate an enforcement agency to carry out this chapter in the unincorporated area of the county.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 2494 (Sher), Stats. 1992, c. 1292.

43204. No enforcement agency may exercise the powers and duties of an enforcement agency until the designation is approved by the board. After August 1, 1992, the board shall not approve a designation unless it finds that the designated enforcement agency is capable of fulfilling its responsibilities under the enforcement program and meets the certification requirements adopted by the board pursuant to Section 43200.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355.

43205. (a) Except as provided in subdivision (b), if no enforcement agency is designated and certified, the board shall be the enforcement agency and shall assume all the powers and duties of an enforcement agency pursuant to this chapter, subject to the agreement required pursuant to Section 43212.1 or 43310.1. If the board is the enforcement agency and an enforcement agency is then designated and certified by the board, the board shall continue to act as the enforcement agency for the remainder of the fiscal year, with those responsibilities terminating as of June 30, unless otherwise specified by the board.

(b) Notwithstanding subdivision (a), if no enforcement agency is designated and certified for Stanislaus County or Santa Cruz County, the board shall be the enforcement agency, and shall assume all of the powers and duties of an enforcement agency for that county, but shall not be required to enter into the agreement required pursuant to Sections 43212.1 or 43310.1.

(c) The board and the enforcement agency shall not, at any time, impose duplicative fees or charges on the owner or operator of a solid waste facility.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 59 (Sher), Stats. 1995, c. 952.

43206. A designation made pursuant to this article may be withdrawn in the same manner in which it was made.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43207. No local governmental department or agency, or any employee thereof, which is the operating unit for a solid waste handling or disposal operation shall be the enforcement agency, or an employee thereof, for the types of solid waste handling or disposal operation it conducts unless authorized by the board to act in that capacity.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 59 (Sher), Stats. 1995, c. 952.

43208. Notwithstanding any other provision of law, except as provided in Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, and Section 731 of the Code of Civil Procedure, no local governing body may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit relating to a facility that accepts both hazardous wastes and other solid wastes and which meets any of the criteria enumerated in subdivision (a) of Section 25148 of the Health and Safety Code, and was operating as of May 1, 1981, pursuant to a valid solid waste facility permit, so as to prohibit or unreasonably regulate the operation of, or the disposal, treatment, or recovery of resources from solid wastes at any such facility. However, nothing in this section authorizes an operator of such a facility to violate any term or condition of a local land use or facility permit or any other provision of law not in conflict with this section.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43209. The enforcement agency, within its jurisdiction and consistent with its certification by the board, shall do all of the following:

(a) Enforce applicable provisions of this part, regulations adopted under this part, and terms and conditions of permits issued pursuant to Chapter 3 (commencing with Section 44001).

(b) Request enforcement by appropriate federal, state, and local agencies of their respective laws governing solid waste storage, handling, and disposal.

(c) File with the board, upon its request, information the board determines to be necessary.

(d) Develop, implement, and maintain inspection, enforcement, permitting, and training programs.

(e) Establish and maintain an enforcement program consistent with regulations adopted by the board to implement this chapter, the standards adopted pursuant to this chapter, and the terms and conditions of permits issued pursuant to Chapter 3 (commencing with Section 44001). The enforcement agency may establish specific local standards for solid waste handling and disposal subject to approval by a majority vote of its local governing body, by resolution or ordinance. Any such standard shall be consistent with this division and all regulations adopted by the board.

(f) Keep and maintain records of its inspection, enforcement, permitting, training, and regulatory programs, and of any other official action in accordance with regulations adopted by the board.

(g) Consult, as appropriate, with the appropriate local health agency concerning all actions which involve health standards. The consultation shall include affording the health agency adequate notice and opportunity to conduct and report the evaluation as it reasonably determines is appropriate.

(h) Establish and maintain an inspection program. The inspection program shall be designed to determine whether any solid waste facility is operating without a permit, or in violation of state minimum standards, or in violation of the terms and conditions of its solid waste facilities permit, or may pose a significant threat to public health and safety or to the environment, based on any relevant information. The inspection program shall also ensure frequent inspections of solid waste facilities that have an established pattern of noncompliance with this division, regulations adopted pursuant to this division, or the terms and conditions of a solid waste facilities permit.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1220 (Eastin), Stats. 1993, c. 656, and AB 59 (Sher), Stats. 1995, c. 952.

43209.1. (a) Notwithstanding any other provision of law, if an enforcement agency receives a complaint, pursuant to subdivision (b) of Section 41705 of the Health and Safety Code, from an air pollution control district or an air quality management district pertaining to an odor emanating from a compost facility under its jurisdiction, the enforcement agency shall, in consultation with the district, take appropriate enforcement actions pursuant to this part.

(b) On or before April 1, 1998, the board shall convene a working group consisting of enforcement agencies and air pollution control districts and air quality management districts to assist in the implementation of this section and Section 41705 of the Health and safety Code. On or before April 1, 1999, the board and the working group shall develop recommendations on odor measurement and thresholds, complaint response procedures, and enforcement tools and ace any other action necessary to ensure that enforcement agencies respond in a timely and effective manner to complaints of odors emanating from composting facilities. On or before January 1, 2000, the board shall implement the recommendations of the working group that the board determines to be appropriate.

(c) On or before April 1, 2003, the board shall adopt and submit to the Office of Administrative Law, pursuant to Section 11346.2 of the Government Code, regulations governing the operation of organic composting sites that include, but are not limited to, any of the following:

(1) Odor management and threshold levels.

(2) Complaint investigation and response procedures.

(3) Enforcement tools.

(d) This section shall become inoperative on April 1, 2003, unless the board adopts and submits regulations governing the operation of organic composting sites to the Office of Administrative Law pursuant to subdivision (c) on or prior to that date.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by SB 88 (Costa), Stats. 2001, c. 424.

43209.1. (a) Notwithstanding any other provision of law, if an enforcement agency receives a complaint, pursuant to subdivision (b) of Section 41705 of the Health and Safety Code, from an air pollution control district or an air quality management district pertaining to an odor emanating from a compost facility under its jurisdiction, the enforcement agency shall, in consultation with the district, take appropriate enforcement actions pursuant to this part.

(b) On or before April 1, 1998, the board shall convene a working group consisting of enforcement agencies and air pollution control districts and air quality management districts to assist in the implementation of this section and Section 41705 of the Health and Safety Code. On or before April 1, 1999, the board and the working group shall develop recommendations on odor measurement and thresholds, complaint response procedures, and enforcement tools and take any other action necessary to ensure that enforcement agencies respond in a timely and effective manner to complaints of odors emanating from composting facilities. On or before January 1, 2000, the board shall implement the recommendations of the working group that the board determines to be appropriate.

(c) This section shall become inoperative on the date that is four years from the effective date of the amendments to this section enacted in 1997, and, as of January 1, 2002, is repealed, unless a later enacted statute, that becomes operative on or before that date, deletes or extends the dates on which it becomes inoperative and is repealed.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by SB 675 (Costa), Stats. 1997, c. 788.

43210. For those facilities that accept only hazardous wastes, or accept only low-level radioactive wastes, or facilities that accept only both, and to which Chapter 6.5 (commencing with Section 25100) of Division 20 or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code applies, the board and the enforcement agency have no enforcement or regulatory authority. All enforcement activities for the facilities relative to the control of hazardous wastes shall be performed by the Department of Toxic Substances Control pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20 of the Health and Safety Code, and all enforcement activities relative to the control of low-level radioactive waste shall be performed by the State Department of Health Services pursuant to Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and the Gov. Reorg. Plan No. 1 of 1991, and AB 1497 (Senate Health and Human Services Committee), Stats. 1996, c. 1023, and SB 947 (Senate Judiciary Committee), Stats. 1997, c. 17.

43211. (a) For those facilities that accept both hazardous wastes and other solid wastes, the Department of Toxic Substances Control shall exercise enforcement and regulatory powers relating to the control of the hazardous wastes at the facility pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The board and the enforcement agency shall, at solid waste disposal facilities, exercise enforcement and regulatory powers relating to the control of solid wastes and asbestos-containing waste, as provided in Section 44820.

(b) For purposes of this section, "asbestos containing waste" means waste that contains more than 1 percent by weight, of asbestos that is either friable or nonfriable.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1641 (Mojonnier), Stats. 1990, c. 1614, and the Gov. Reorg. Plan No. 1 of 1991, and AB 59 (Sher), Stats. 1995, c. 952, and SB 1497 (Senate Health and Human Services Committee), Stats. 1996, c. 1023, and SB 947 (Senate Judiciary Committee), Stats. 1997, c. 17.

43212. (a) If the board is the enforcement agency, the board may impose fees to recover its costs of operation on the local governing body, a solid waste facility operator, or a solid waste enterprise that operates within the jurisdiction of the enforcement agency, and shall collect those fees in a manner determined by the board and developed in consultation with the local governing body. Any fees imposed pursuant to this section shall bear a direct relationship to the reasonable and necessary costs, as determined by the board, of providing for the efficient operation of the activities or programs for which the fee is imposed.

(b) If the board is the enforcement agency for a county and all of the cities within that county, the local governing body shall be the county board of supervisors for purposes of this section.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 59 (Sher), Stats. 1995, c. 952.

43212.1. If the board is the enforcement agency, the local governing body and the board shall enter into an agreement which shall identify the jurisdictional boundaries of the enforcement agency; address the powers and duties to be performed by the board as the enforcement agency, and identify an estimated workload and anticipated costs to the board.

As amended by AB 59 (Sher), Stats. 1995, c. 952.

43213. The enforcement agency may, upon a majority vote of its local governing body, prescribe, revise, and collect fees or other charges from each operator of a solid waste facility or from any person who conducts solid waste handling if the local governing body having ratesetting authority has approved rate adjustments to compensate the solid waste hauler or solid waste facility operator for the amount of the fee or charges imposed pursuant to this section. The fee or other charge shall be based on the weight, volume, or type of solid waste which is received or handled by any such operator or person or on any other appropriate basis or any combination of the foregoing. In no case shall the fee or other charge imposed by the enforcement agency under this section exceed the actual cost of the solid waste enforcement authorized under this title.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3987 (Katz), Stats. 1990, c. 305.

43214. (a) The board shall develop performance standards for evaluating certified local enforcement agencies and shall periodically review each certified enforcement agency and its implementation of the permit, inspection, and enforcement program. The board's review shall include periodic inspections of solid waste facilities within the jurisdiction of each enforcement agency for the purpose of evaluating whether the enforcement agency is appropriately applying and enforcing state minimum standards at solid wastesites within its jurisdiction.

(b) Following initial certification of an enforcement agency by the board, the board shall conduct a performance review of the enforcement agency every three years, or more frequently as determined by the board.

(c) In conducting performance reviews of enforcement agencies, the board shall, based on the performance standards developed pursuant to subdivision (a), determine whether each enforcement agency is in compliance with the requirements of this article and the regulations adopted to implement this article. If the board finds that an enforcement agency is not fulfilling its responsibilities pursuant to this article and if the board also finds that this lack of compliance has contributed to significant noncompliance with state minimum standards at solid waste facilities within the jurisdiction of the enforcement agency, the board shall withdraw its approval of designation pursuant to Sections 43215 and 43216. Notwithstanding Sections 43215 and 43216, if the board finds that conditions at solid waste facilities within the jurisdiction of the enforcement agency threaten public health and safety or the environment, the board shall, within 10 days of notifying the enforcement agency, become the enforcement agency until another enforcement agency is designated locally and certified by the board.

(d) The board shall find that an enforcement agency is not fulfilling its responsibilities pursuant to this article, and may take action as prescribed by subdivision (c), if the board, in conducting its performance review, makes one or more of the following findings with regard to compliance with this part and Part 5 (commencing with Section 45000):

(1) The enforcement agency has failed to exercise due diligence in the inspection of solid waste facilities and disposal sites.

(2) The enforcement agency has intentionally misrepresented the results of inspections.

(3) The enforcement agency has failed to prepare, or cause to be prepared, permits, permit revisions, or closure and postclosure maintenance plans.

(4) The enforcement agency has approved permits, permit revisions, or closure and postclosure maintenance plans which are not consistent with this part and Part 5 (commencing with Section 45000).

(5) The enforcement agency has failed to take appropriate enforcement actions.

(6) The enforcement agency has failed to comply with, or has taken actions that are inconsistent with, or that are not authorized by, this division or the regulations adopted by the board pursuant to this division. However, nothing in this paragraph is intended to affect the authority of enforcement agencies pursuant to subdivision (e) of Section 43209.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1220 (Eastin), Stats. 1993, c. 656, and AB 59 (Sher), Stats. 1995, c. 952.

43215. (a) If the board, in conducting the inspection and performance review required pursuant to Section 43214 or this section, finds that the enforcement agency is not fulfilling one or more of its responsibilities, the board shall notify the enforcement agency of the particular reasons for finding that the enforcement agency is not fulfilling its responsibilities and of the board's intention to withdraw its approval of the designation if, within a time to be specified in that notification, but in no event less than 30 days, the enforcement agency does not take the corrective action specified by the board.

(b) The board shall adopt regulations that establish a process for notice, public hearing, the admission of evidence, and final action by the board for partial or full withdrawal of the approval of designation pursuant to this chapter.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 59 (Sher), Stats. 1995, c. 952.

43215.1. The board may, upon the written request of an enforcement agency, provide legal counsel for purposes of compliance with this part.

As added by AB 59 (Sher), Stats. 1995, c. 952.

43216. If the board withdraws its approval of the designation of an enforcement agency, another enforcement agency shall be designated pursuant to Section 43203 within 90 days and approved by the board. If no designation is made within 90 days, the board shall become the enforcement agency within the jurisdiction of the former enforcement agency.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43216.5. In addition to the procedures for board withdrawal of its approval of a local enforcement agency's designation pursuant to Sections 43214, 43215, and 43216, the board may take any actions which are determined by the board to be necessary to ensure that local enforcement agencies fulfill their obligations under this chapter. To ensure that a local enforcement agency is appropriately fulfilling its obligations under this chapter and implementing regulations, the board may conduct more frequent inspections and evaluations within a local enforcement agency's jurisdiction, establish a schedule and probationary period for improved performance by a local enforcement agency, assume partial responsibility for specified local enforcement agency duties, and implement any other measures which may be determined by the board to be necessary to improve local enforcement agency compliance.

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

43217. The board shall provide ongoing training, technical assistance, and guidance to enforcement agencies to assist in their decisionmaking processes. This assistance shall include, but is not limited to, providing all of the following:

(a) Technical studies and reports.

(b) Copies of innovative solid waste facility operation plans.

(c) Investigative findings and analyses of new solid waste management practices and procedures.

(d) A program for loaning technical and scientific equipment, to the extent that funds are available to the board to purchase that equipment.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1220 (Eastin), Stats. 1993, c. 656.

43218. Each enforcement agency shall inspect each solid waste facility within its jurisdiction at least one time each month and shall file, within 30 days of the inspection, a written report in a format prescribed by the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43219. (a) The board may, at its discretion, conduct inspections and investigations of solid waste facilities in order to evaluate the local enforcement agency and to ensure that state minimum standards are met.

(b) Except as otherwise provided by Section 43220, the board, in conjunction with an inspection conducted by the local enforcement agency, shall conduct inspections of solid waste facilities within the jurisdiction of each local enforcement agency. The board shall inspect the types and number of solid waste facilities which are determined by the board to be necessary to adequately evaluate whether the local enforcement agency is ensuring compliance by solid waste facilities with state minimum standards. A written inspection report shall be prepared and submitted within 30 days of the inspection to the local enforcement agency.

(c) If the board identifies any significant violation of state minimum standards that were not identified and resolved through previous inspections by the local enforcement agency, the board shall take appropriate action as authorized by Sections 43215 and 43216.5.

(d) Notwithstanding any other provision of this section and Sections 43215 and 43216, if, as a result of a facility inspection conducted pursuant to subdivision (b), the board finds that conditions at a solid waste facility within the jurisdiction of a local enforcement agency threaten public health and safety or the environment, the board shall, within 10 days of notifying the local enforcement agency, become the enforcement agency until another local enforcement agency is designated locally and certified by the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 1220 (Eastin), Stats. 1993, c. 656.

43220. The board, in conjunction with an inspection conducted by the local enforcement agency, shall conduct at least one inspection every 18 months of each solid waste landfill and transformation facility in the state. A written inspection report shall be prepared and submitted within 30 days of the inspection to the local enforcement agency. If the board identifies any significant violation of state minimum standards that was not resolved through previous inspections by the local enforcement agency, the board shall take appropriate action as authorized by Sections 43215 and 43216.5 and subdivision (d) of Section 43219.

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

43221. REPEALED.

As added by AB 1220 (Eastin), Stats. 1993, c. 656, and repealed by AB 626 (Sher), Stats. 1996, c. 1038.

43222. Any fees or charges imposed pursuant to this part by any enforcement agency shall bear a direct relationship to the reasonable and necessary cost, as determined by the enforcement agency, of providing the efficient operation of the activities or programs for which the fee is assessed.

As added by AB 59 (Sher), Stats. 1995, c. 952.

ARTICLE 1.5. LOCAL ENFORCEMENT AGENCY GRANTS

(Article 1.5 as added by AB 1220 (Eastin), Stats. 1993, c. 656)

43230. The board shall expend funds from the account, upon appropriation by the Legislature, for the making of grants to local enforcement agencies to carry out the solid waste facilities permit and inspection program pursuant to Chapter 3 (commencing with Section 44001). The total amount of grants made by the board pursuant to this section shall not exceed, in any one fiscal year, one million five hundred thousand dollars ($1,500,000).

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

43231. The board shall adopt regulations for the implementation of this article.

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

43232. All expenses which are incurred by the board in carrying out this article are payable solely from the account. No liability or obligation is imposed upon the state pursuant to this part, and the board shall not incur a liability or obligation beyond the extent to which money is provided in the account for the purposes of this article.

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

ARTICLE 2. POWERS AND DUTIES OF THE BOARD

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

43300. The board, when acting in its capacity as an enforcement agency, may enforce all provisions of this division, and the regulations adopted thereto, for the protection of the environment and the public health and safety, and from nuisance.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1220 (Eastin), Stats. 1993, c. 656.

43300.5. The enforcement policies of this division shall be applied equally and without distinction to publicly owned or operated, and to privately owned or operated, solid waste facilities.

As added by AB 2558 (Alby), Stats. 1996, c. 732.

43301. The board shall coordinate action in solid waste handling and disposal with other federal, state, and local agencies and private persons.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43302. The board may request enforcement by appropriate federal, state, and local agencies of their respective laws governing solid waste storage, handling, and disposal.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43303. The board shall develop, implement, and maintain inspection, enforcement, and training programs.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43304. The board shall adopt an enforcement program consisting of regulations necessary to implement this division and the standards adopted pursuant thereto. The enforcement program shall include a description for carrying out the permit and inspection program pursuant to Chapter 3 (commencing with Section 44001).

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43305. The board may, as it deems necessary, establish specific local standards for solid waste handling and disposal after consultation with the local governing body. However, the standards shall be consistent with this division and all regulations adopted by the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43306. The board shall keep and maintain records of its inspection, enforcement, training, and regulatory programs and of any other official action in accordance with regulations adopted by the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43307. The board shall consult with the appropriate local health agency concerning all actions which involve health standards. The consultation shall include granting the health agency adequate notice and opportunity to conduct and report any evaluation that it reasonably deems appropriate.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43308. For those facilities that accept only hazardous wastes and to which Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code applies, or that accept only low-level radioactive wastes and to which Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code applies, or for those facilities that accept both, the board shall have no enforcement or regulatory authority. Except as otherwise provided in Section 40052, all enforcement activities for those facilities relative to the control of hazardous wastes shall be performed by the Department of Toxic Substances Control pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20 of the Health and Safety Code, and all enforcement activities for those facilities relative to low-level radioactive wastes shall be performed by the State Department of Health Services of Part 9 of Division 104 of the Health and Safety Code.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 1641 (Mojonnier), Stats. 1990, c. 1614, and the Gov. Reorg. Plan No. 1 of 1991, and SB 1497 (Senate Health and Human Services Committee), Stats. 1996, c. 1023, and SB 2035 (Senate Environmental Quality Committee), Stats. 2000, c. 343.

43309. The board may adopt regulations specifying the operations subject to the exception in paragraph (3) of subdivision (b) of Section 40200. The regulations shall prohibit the storing of more than 90 cubic yards of waste in covered containers during any 72-hour period and the transfer of uncontainerized refuse from smaller refuse hauling motor vehicles to larger refuse transfer motor vehicles for transport to the point of ultimate disposal.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43310. If the board becomes the enforcement agency, it may charge reasonable fees to the local governing body to recover operation costs.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43310.1. (a) If the board becomes the enforcement agency, on or after January 1, 1995, the local governing body and the board shall enter into an agreement which shall identify the jurisdictional boundaries of the enforcement agency; address the powers and duties to be performed by the board as the enforcement agency, and identify an estimated workload and anticipated costs to the board. The agreement shall also identify the cost recovery procedures to be followed by the board pursuant to Section 43310.

(b) If, after a good faith effort by the board and the local governing body, no agreement is reached between the local governing body and the board within the 90-day period specified in Section 43216, or within 90 days after a local governing body notifies the board of its intent not to designate an enforcement agency pursuant to Section 43203, the board shall make the determinations specified in subdivision (a) that would have been the subject of the agreement.

(c) If the board becomes the enforcement agency for Stanislaus County or Santa Cruz County, the board shall impose fees authorized pursuant to this section directly on the solid waste facilities in those counties, and shall not require the local governing body to impose or collect those fees.

As added by AB 59 (Sher), Stats. 1995, c. 952.

ARTICLE 3. CLOSURE PLANS

(Article 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

43500. The Legislature hereby finds and declares that the long-term protection of air, water, and land from pollution due to the disposal of solid waste is best achieved by requiring financial assurances of the closure and postclosure maintenance of solid waste landfills.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 1852 (Committee on Judiciary), Stats. 2006, c. 538.

43501. (a) A person owning or operating a solid waste landfill, as defined in Section 40195.1, shall do both of the following:

(1) Upon application to become an operator of a solid waste facility pursuant to Section 44001, certify to the board and the local enforcement agency that all of the following have been accomplished:

(A) The owner or operator has prepared an initial estimate of closure and postclosure maintenance costs.

(i) The board shall adopt regulations that provide for an increase in the initial closure and postclosure maintenance cost estimates to account for cost overruns due to unforeseeable circumstances, and to provide a reasonable contingency comparable to that which is built into cost estimates for other, similar public works projects.

(ii) The board shall adopt regulations on or before January 1, 2008, that require closure and postclosure maintenance cost estimates to be based on reasonably foreseeable costs the state may incur if the state would have to assume responsibility for the closure and postclosure maintenance due to the failure of the owner or operator. Cost estimates shall include, but not be limited to, estimates in compliance with Sections 1770, 1773, and 1773.1 of the Labor Code, and the replacement and repair costs for longer lived items, including, but not limited to, repair of the environmental control systems.

(B) The owner or operator has established a trust fund or equivalent financial arrangement acceptable to the board, as specified in Article 4 (commencing with Section 43600).

(C) The amounts that the owner or operator will deposit annually in the trust fund or equivalent financial arrangement acceptable to the board will ensure adequate resources for closure and postclosure maintenance.

(2) Submit to the regional water board, the local enforcement agency, and the board a plan for the closure of the solid waste landfill and a plan for the postclosure maintenance of the solid waste landfill.

(b) Notwithstanding subparagraph (C) of paragraph (1) of subdivision (a) or any other provision of law, if the owner or operator is a county with a population of 200,000 or less, as determined by the 1990 decennial census, the county shall not be required to make annual deposits in excess of the amount required by the federal act or any other applicable federal law, or by any board-approved formula that meets the requirements of the federal act.

(c) If not in conflict with federal law or regulations, a county or city may, with regard to a solid waste landfill owned or operated by the county or city, base its estimate of closure and postclosure maintenance costs on the costs of employing county or city employees or persons under contract with the county or city in performing closure and postclosure maintenance. However, even if, to meet federal requirements, the cost estimate is based on the most expensive costs of closure and postclosure maintenance performed by a third party, the county or city may, to effect cost savings, employ county or city employees or employ persons under contract to actually perform closure operations or postclosure maintenance operations.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1515 (Sher), Stats. 1991, c. 717, and AB 337 (Statham), Stats. 1993, c. 922, and AB 3358 (Ackerman), Stats. 1996, c. 1041, and AB 2296 (Montañez), Stats. 2006, c. 504.

43501.5. (a) In addition to the requirements of this article, and Section 21780 of Title 27 of the California Code of Regulations, a person who is required to file a final closure

plan shall also file with the enforcement agency a Labor Transition Plan that includes all of the following:

(1) Provisions that ensure, subject to any requirements already established pursuant to a collective bargaining agreement, preferential reemployment and transfer rights of displaced employees to comparable available employment with the same employer for a period of no less than one year following the closure of the solid waste facility.

(2) Provisions to provide displaced employees assistance in finding comparable employment with other employers.

(3) Provisions to ensure compliance with all applicable provisions of Chapter 4 (commencing with Section 1400) of Part of 4 of Division 2 of the Labor Code.

(b) When submitting the final closure plan, the operator shall submit, in addition to the requirements of subdivision (a), a certification to the board and the enforcement agency that the provisions described in paragraphs (1) to (3), inclusive, of subdivision (a), will be implemented, subject to any requirements already established under a collective bargaining agreement.

(c) For the purposes of this section, "comparable employment" means the same or a substantially similar job classification at equal or greater wage and benefit levels in the same geographic region of the state.

As added by AB 337 (Statham), Stats. 1993, c. 922, and repealed by its own terms on January 1, 1997, and added by AB 1497 (Moñtanez), Stats. 2003, c. 823.

43502. All documentation relating to the preparation of the closure and postclosure maintenance costs shall be retained by the owner or operator and shall be available for inspection by the board or the enforcement agency at reasonable times.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43503. The closure plan and the postclosure maintenance plan shall be submitted not later than the first date after July 1, 1990, that the solid waste facilities permit is required to be reviewed or revised pursuant to Section 44015. The closure plans and postclosure maintenance plans shall be included in that review. If the owner or operator intends to close the solid waste landfill on or before September 28, 1992, or if the solid waste landfill does not have sufficient permitted capacity to operate after September 28, 1992, the owner or operator shall submit the plans on or before July 1, 1990, or upon application to become an operator of a solid waste facility pursuant to Section 44001.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1515 (Sher), Stats. 1991, c. 717, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

43504. Pursuant to the procedural requirements in Chapter 3 (commencing with Section 44001), the enforcement agency or the board may suspend or revoke a permit if the applicant fails within a reasonable period of time to submit an acceptable plan for the closure of the landfill and an acceptable plan for postclosure maintenance of the landfill.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43505. The closure plan and the postclosure maintenance plan may be revised only upon the filing of a written application therefor by the owner or operator, and the approval, or amendment and approval, by the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

43506. (a) After receiving a complete closure plan and postclosure maintenance plan, the regional water board shall approve or disapprove the plans pursuant to the authority and time schedules specified in Division 7 (commencing with Section 13000) of the Water Code. The board shall incorporate the action of the regional water board and shall only approve plans that include an acceptable mechanism for providing the necessary funds to implement the plans.

(b) In reviewing closure plans and postclosure maintenance plans pursuant to this section, the regional water boards shall review and take action on those portions of the plans which are related to the protection of the waters of the state and the board shall review and take action on the remaining portions of the plans.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1220 (Eastin), Stats. 1993, c. 656.

43507. The owner and operator shall, regardless of any changes occurring during the continued operation of the landfill, close and maintain the landfill during postclosure in accordance with the most recent closure plan and the most recent postclosure maintenance plan approved by the board pursuant to this article. Upon receipt of the final shipment of solid waste, the most recent closure and postclosure maintenance plan shall become the governing document for the disposal site.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and as amended by AB 59 (Sher), Stats. 1995, c. 952.

43508. The board or the enforcement agency may recover any costs incurred in meeting the requirements of this article by charging a fee pursuant to Chapter 8 (commencing with Section 41900) of Part 2.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

43509. (a) The board, in consultation with the state water board and in compliance with Section 40055, shall adopt and amend regulations specifying closure plan and postclosure maintenance plan adoption procedures and uniform standards to implement Section 4360l. Regulations adopted pursuant to this section shall not include standards and requirements contained in regulations adopted by the State Water Resources Control Board pursuant to Division 7 (commencing with Section 13000) of the Water Code. The regulations shall also require solid waste landfill owners or operators to calculate, and periodically revise, cost estimates for closure and for postclosure maintenance, for as long as the solid waste could have an adverse effect on the quality of the waters of the state, but not less than 30 years after closure unless all wastes are removed in accordance with federal and state law.

(b) The board may adopt regulations that authorize the adoption of both preliminary and final closure and postclosure maintenance plans. Regulations for preliminary closure and postclosure maintenance plans may require less specificity and engineering detail than final closure and postclosure maintenance plans, and these regulations shall apply only in those cases in which there is reasonable certainty that the solid waste landfill will not close for at least one year following approval of the plans. Preliminary closure and postclosure maintenance plans shall provide sufficient detail to enable the owner or operator and the board to accurately estimate the costs for closure and postclosure maintenance.

(c) If a solid waste landfill owner or operator has submitted a closure plan and postclosure maintenance plan which satisfies the requirements of this chapter, and which has been approved by the local enforcement agency, the board, and the appropriate regional water board, the plans shall be deemed to have satisfactorily complied with all state requirements for the adoption of a closure plan and postclosure maintenance plan.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1220 (Eastin), Stats. 1993, c. 656.

43510. (a) The regulations adopted by the board pursuant to this article and Article 4 (commencing with Section 43600) shall not duplicate or conflict with the regulations imposing closure and postclosure maintenance requirements adopted by the state water board which are found in Chapter 15 (commencing with Section 2510) of Chapter 3 of Title 23 of the California Code of Regulations.

(b) On or before June 30, 1995, the board and the state water board shall revise the regulations adopted pursuant to this article and Article 4 (commencing with Section 43600) of this chapter and Section 13172 of the Water Code for the purpose of consolidating the requirements of the board and the state water board for closure and postclosure maintenance into one set of regulations.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1220 (Eastin), Stats. 1993, c 656.

ARTICLE 4. FINANCIAL ABILITY

(Article 4 as added by AB 939 (Sher), Stats. 1989, c. 1095)

43600. (a) Except as otherwise provided in subdivision (b), any person owning or operating a solid waste landfill, as defined in Section 40195.1, shall, with the closure plan and postclosure maintenance plan submitted pursuant to subdivision (b) of Section 43501, submit to the board evidence of financial ability to provide for the cost of closure and postclosure maintenance, in an amount that is equal to the estimated cost of closure and 15 years of postclosure maintenance, contained in the closure plan and the postclosure maintenance plan submitted.

(b) On and after the effective date of the federal regulations set forth in Subpart G (commencing with Section 258.70) of Part 258 of Title 40 of the Code of Federal Regulations, any person owning or operating a solid waste landfill, shall, with the closure plan and postclosure maintenance plan submitted pursuant to subdivision (b) of Section 43501, submit to the board evidence of financial ability to provide for closure and postclosure maintenance, in an amount that is equal to the estimated cost of closure and 30 years of postclosure maintenance, contained in the closure plan and the postclosure maintenance plan submitted.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 610 (Calderon), Stats. 1992, c. 1062, and AB 1827 (Sher), Stats. 1993, c. 289, and AB 440 (Sher), Stats. 1993, c. 1169, and AB 3358 (Ackerman), Stats. 1996, c. 1041.

43601. (a) The evidence of financial ability shall be sufficient to meet the closure and postclosure maintenance costs when needed.

(b) The owner or operator of a solid waste landfill shall provide evidence of financial ability through the use of any of the mechanisms set forth in Part 258 (commencing with Section 258.1) of Title 40 of the Code of Federal Regulations or through the use of any other mechanisms approved by the board. However, the board may adopt regulations that reasonably condition the use of one or more of those mechanisms to ensure adequate protection of public health and safety and the environment, but shall not exclude the use of any mechanism permitted under federal law. In addition, the evidence of financial ability submitted pursuant to Section 43600 shall provide that funds shall be available to the regional water boards upon the issuance of any order under Chapter 5 (commencing with Section 13300) of Division 7 of the Water Code to implement closure and postclosure activities.

(c) The state water board or the appropriate regional water board shall have access to the financial assurance funds for closure and postclosure activities, and to financial assurance funds for corrective action, as necessary, to address water quality problems, if the owner or operator of the solid waste landfill has failed to implement the required closure and postclosure activities or corrective action activities.

(d) The owner or operator may request disbursement for expenditures to conduct closure, postclosure maintenance, or corrective actions from the financial assurance mechanism established for that activity. Requests for disbursement shall be granted by the board only if sufficient funds are remaining in the financial assurance mechanism to cover the remaining approved total costs of closure, postclosure maintenance, or corrective actions, as appropriate.

(e) If the evidence of financial ability for closure, postclosure, or corrective action is demonstrated by use of insurance, the board may approve the insurance mechanism if it is in compliance with either paragraph (1) or (2) as follows:

(1) The issuer of the insurance policy is either:

(A) Licensed by the Department of Insurance to transact the business of insurance in the State of California as an admitted carrier.

(B) Eligible to provide insurance as an excess and surplus lines insurer in California through a surplus lines broker currently licensed under the regulations of the

Department of Insurance and upon the terms and conditions prescribed by the Department of Insurance.

(2) If the insurance carrier is established by a solid waste facility operator to meet the financial assurance obligations of operator, insurance may be approved by the board that meets all of the following requirements:

(A) The insurance mechanism is in full compliance with the requirements for insurance that are specified in subdivision (d) of Section 258.74 of Title 40 of the Code of Federal Regulations.

(B) The insurance carrier is an insurer domiciled in the United States and licensed in its state of domicile to write that insurance.

(C) The insurance carrier only provides financial assurance to the operator that has established the insurance carrier as a form of self-insurance and does not engage in the business of marketing, brokering, or providing insurance coverage to other parties.

(D) The insurance carrier shall maintain a rating of A- or better by A.M. Best, or other equivalent rating by any other agency acceptable to the board.

(E) If requested by the board, an independent financial audit report evaluating the assets and liabilities of the insurance carrier and confirming compliance with the statutory and regulatory requirements of the state of domicile and an independent actuarial opinion on the independence and financial soundness of the insurance carrier by an actuary in good standing with the Casualty Actuarial Society or the American Academy of Actuaries regarding the adequacy of the loss reserves maintained by the insurance carrier shall be submitted to the board upon application and annually thereafter.

(f) A solid waste facility operator using or proposing to use an insurance company to demonstrate financial assurance may be required by the board to pay a fee for the actual and necessary cost of reviewing information submitted by the operator pursuant to paragraph (2) of subdivision (e) up to an amount not to exceed ten thousand dollars ($10,000), unless a higher amount is mutually agreed to by the operator and the board.

(g) The funds collected pursuant to subdivision (f) shall be deposited in the Integrated Waste Management Account and shall be available, upon appropriation by the Legislature, for expenditure by the board to fund the review specified in subdivision (f).

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 610 (Calderon), Stats. 1992, c. 1062, and AB 1781 (Knowles), Stats 1993, c. 95, and AB 1827 (Sher), Stats. 1993, c. 289, and AB 1220 (Eastin), Stats. 1993, c. 656, and AB 626 (Sher), Stats. 1996, c. 1038, and AB 715 (Figueroa), Stats. 1998, c. 978.

43601.5. (a) On or before March 1, 1994, the board shall review and revise regulations affecting solid waste landfill closure and postclosure financial assurances adopted in accordance with this article to make the regulations consistent with the requirements established pursuant to Subpart G (commencing with Section 258.1) of Part 258 of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations, as amended on October 9, 1991.

(b) In reviewing and revising regulations pursuant to subdivision (a), the board shall, consistent with this division, and with federal law and regulations, endeavor to minimize the costs of compliance with those regulations by the owners and operators of public solid waste landfills and to provide flexible mechanisms for those owners and operators to comply with closure and postclosure financial assurance requirements, in order to ensure that adequate funding will be available for programs and projects that are necessary to comply with the diversion requirements of Section 41780.

As added by AB 1569 (Harvey), Stats. 1993, c. 360.

43602. (a) Except as provided in subdivision (b), evidence of financial ability required of an owner or operator of a solid waste landfill, as defined in Section 40195.1, shall be adjusted to equal the estimated costs of closure and 15 years of postclosure maintenance in the approved plans. Revisions in the plans prior to closure shall be accompanied by corresponding revisions in cost estimates and financial assurances.

(b) On and after the effective date of the federal regulations set forth in Subpart G (commencing with Section 258.70) of Part 258 of Title 40 of the Code of Federal Regulations, the evidence of financial ability required of an owner or operator of a solid waste landfill shall be adjusted to equal the estimated costs of closure and 30 years of postclosure maintenance in the approved plans. Revisions in the plans prior to closure shall be accompanied by corresponding revisions in cost estimates and financial assurances.

As added by AB 939 (Sher), Stats. 1993, c. 1095, and amended by AB 1827 (Sher), Stats. 1993, c. 289, and AB 440 (Sher), Stats. 1993, c. 1169, and AB 3358 (Ackerman), Stats. 1996, c. 1041.

43603. The board shall not require an owner or operator of a disposal site to revise or amend a closure plan submitted pursuant to this section or former Section 66796.22 of the Government Code after closure of the landfill in order to reflect subsequent changes in any standards and regulations adopted by the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 610 (Calderon), Stats. 1992, c. 1062.

43604. (a) During the closure and postclosure maintenance period, a solid waste landfill owner or operator shall maintain evidence of financial ability sufficient to pay postclosure maintenance costs, except that the owner or operator may request reimbursement for costs of postclosure maintenance as they are incurred if the remaining amount of funds is at least equal to the remaining postclosure maintenance cost.

(b) Notwithstanding the effective date of this section, owners and operators shall be required to comply with this section on the effective date of those regulations set forth in

Part 258 (commencing with Section 258.1) of Title 40 of the Code of Federal Regulations.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 610 (Calderon), Stats. 1992, c. 1062, and AB 1827 (Sher), Stats. 1993, c. 289, and repealed and added by AB 440 (Sher), Stats. 1993, c. 1169.

43605. Nothing in this division affects the authority of the State Water Resources Control Board to impose closure and postclosure maintenance requirements on disposal sites.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 610 (Calderon), Stats. 1992, c. 1062.

43606. (a) Except for financial arrangements approved by the board pursuant to this article, no indemnification, hold harmless, or similar agreement or conveyance is effective to transfer from the owner or operator of a disposal site to any other person any obligations imposed on the owner or operator under this article.

(b) Notwithstanding subdivision (a), nothing in this section prohibits any agreement between the owner and the operator regarding their respective obligations for closure and postclosure maintenance of a disposal site, and nothing in this section prohibits a cause of action that an owner or operator has or would have against the other party by reason of that agreement.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 610 (Calderon), Stats. 1992, c. 1062.

43610. (a) Notwithstanding Article 3 (commencing with Section 43500) or this article, a small city which operates a solid waste landfill, as defined in Section 40195.1, in Kings County, that is operational and, as of January 1, 1991, has been granted all required permits, is not required to submit a postclosure maintenance plan or to provide a fund for postclosure maintenance pursuant to Article 3 (commencing with Section 43500) or this article, if all of the following conditions are met:

(1) The city has a population of less than 20,000 persons.

(2) The solid waste landfill receives less than 20,000 tons of solid waste per year.

(3) The water table of the highest aquifer under the solid waste landfill is 250 or more feet below the base of the solid waste landfill and the water in the highest aquifer is not potable.

(4) The solid waste landfill receives less than an average of 12 inches of rainfall per year.

(5) The solid waste landfill is closed in compliance with all state closure testing requirements at the time of closure.

(b) The exemption in subdivision (a) from the requirement to submit a postclosure maintenance plan shall become inoperative on the effective date of the federal regulations set forth in Subpart F (commencing with Section 258.60) of Part 258 of Title 40 of the Code of Federal Regulations, and the exemption in subdivision (a) from the requirement to provide a fund for postclosure maintenance shall become inoperative on the effective date of the federal regulations set forth in Subpart G (commencing with Section 258.70) of Part 258 of Title 40 of the Code of Federal Regulations..

As added by SB 2486 (Rogers), Stats. 1990, c. 1361, and amended by AB 1827 (Sher), Stats. 1993, c. 289, and amended by AB 3358 (Ackerman), Stats. 1996, c. 1041.

43610.1. A disposal site owner or operator who meets the requirements of this article and its implementing regulations shall be deemed to have satisfactorily complied with all state requirements for financial ability to provide for closure and postclosure maintenance costs.

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

Chapter 3. Permit and Inspection Program

(Chapter 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. SOLID WASTE FACILITY PERMITS

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

44001. Any person who proposes to become an operator of a solid waste facility shall file with the enforcement agency having jurisdiction over the facility, or the board if there is no designated and certified enforcement agency, an application for a solid waste facilities permit at least 150 days in advance of the date on which it is desired to commence operation, unless the enforcement agency issues a permit to the applicant to commence operations prior to that time.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 59 (Sher), Stats. 1995, c. 952.

44002. (a) (1) No person shall operate a solid waste facility without a solid waste facilities permit if that facility is required to have a permit pursuant to this division.

(2) The prohibition specified in paragraph (1) includes, but is not limited to, the operation of a solid waste facility without a required solid waste facilities permit or the operation of a solid waste facility outside the permitted boundaries specified in a solid waste facilities permit.

(b) If the enforcement agency determines that a person is operating a solid waste facility in violation of subdivision (a), the enforcement agency shall immediately issue a cease and desist order pursuant to Section 45005 ordering the facility to immediately cease all activities for which a solid waste facilities permit is required and desist from those activities until the person obtains a valid solid waste facilities permit authorizing the activities or has obtained other authorization pursuant to this division.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by AB 626 (Sher), Stats. 1996, c. 1038, and AB 2159 (Reyes), Stats. 2004, c. 448.

44003. When the operator of the disposal site is not the disposal site owner, the disposal site operator's application for a solid waste facilities permit shall contain any information that the enforcement agency or the board may require

regarding the disposal site owner's interest in the real property utilized as the disposal site.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292.

44004. (a) An operator of a solid waste facility may not make a significant change in the design or operation of the solid waste facility that is not authorized by the existing permit, unless the change is approved by the enforcement agency, the change conforms with this division and all regulations adopted pursuant to this division, and the terms and conditions of the solid waste facilities permit are revised to reflect the change.

(b) If the operator wishes to change the design or operation of the solid waste facility in a manner that is not authorized by the existing permit, the operator shall file an application for revision of the existing solid waste facilities permit with the enforcement agency. The application shall be filed at least 180 days in advance of the date when the proposed modification is to take place unless the 180-day time period is waived by the enforcement agency.

(c) The enforcement agency shall review the application to determine all of the following:

(1) Whether the change conforms with this division and all regulations adopted pursuant to this division.

(2) Whether the change requires review pursuant to Division 13 (commencing with Section 21000).

(d) Within 60 days from the date of the receipt of the application for a revised permit, the enforcement agency shall inform the operator, and if the enforcement agency is a local enforcement agency, also inform the board, of its determination to do any of the following:

(1) Allow the change without a revision to the permit.

(2) Disallow the change because it does not conform with the requirements of this division or the regulations adopted pursuant to this division.

(3) Require a revision of the solid waste facilities permit to allow the change.

(4) Require review under Division 13 (commencing with Section 21000) before a decision is made.

(e) The operator has 30 days within which to appeal the decision of the enforcement agency to the hearing panel, as authorized pursuant to Article 2 (commencing with Section 44305) of Chapter 4. The enforcement agency shall provide notice of a hearing held pursuant to this subdivision in the same manner as notice is provided pursuant to subdivision (h).

(f) Under circumstances that present an immediate danger to the public health and safety or to the environment, as determined by the enforcement agency, the 180-day filing period may be waived.

(g) (1) A permit revision is not required for the temporary suspension of activities at a solid waste facility if the suspension meets either of the following criteria:

(A) The suspension is for the maintenance or minor modifications to a solid waste unit or to solid waste management equipment.

(B) The suspension is for temporarily ceasing the receipt of solid waste at a solid waste management facility and the owner or operator is in compliance with all other applicable terms and conditions of the solid waste facilities permit and minimum standards adopted by the board.

(2) An owner or operator of a solid waste facility who temporarily suspends operations shall remain subject to the closure and postclosure maintenance requirements of this division and to all other requirements imposed by federal law pertaining to the operation of a solid waste facility.

(3) The enforcement agency may impose any reasonable conditions relating to the maintenance of the solid waste facility, environmental monitoring, and periodic reporting during the period of temporary suspension. The board may also impose any reasonable conditions determined to be necessary to ensure compliance with applicable state standards.

(h) (1) (A) Before making its determination pursuant to subdivision (d), the enforcement agency shall submit the proposed determination to the board for comment and hold at least one public hearing on the proposed determination. The enforcement agency shall give notice of the hearing pursuant to Section 65091 of the Government Code, except that the notice shall be provided to all owners of real property within a distance other than 300 feet of the real property that is the subject of the hearing, if specified in the regulations adopted by the board pursuant to subdivision (i). The enforcement agency shall also provide notice of the hearing to the board when it submits the proposed determination to the board.

(B) The enforcement agency shall mail or deliver the notice required pursuant to subparagraph (A) at least 10 days prior to the date of the hearing to any person who has filed a written request for the notice with a person designated by the enforcement agency to receive these requests. The enforcement agency may charge a fee to the requester in an amount that is reasonably related to the costs of providing this service and the enforcement agency may require each request to be annually renewed.

(C) The enforcement agency shall consider environmental justice issues when preparing and distributing the notice to ensure that the notice is concise and understandable for limited-English-speaking populations.

(2) If the board comments pursuant to paragraph (1), the board shall specify whether the proposed determination is consistent with the regulation adopted pursuant to subdivision (i).

(i) (1) The board shall, to the extent resources are available, adopt regulations that implement subdivision (h) and define the term "significant change in the design or operation of the solid waste facility that is not authorized by the existing permit."

(2) While formulating and adopting the regulations required pursuant to paragraph (1), the board shall consider recommendations of the Working Group on Environmental

Justice and the advisory group made pursuant to Sections 71113 and 71114 and the report required pursuant to Section 71115.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293, and AB 54 (Sher), Stats. 1993, c. 663, and AB 59 (Sher), Stats. 1995, c. 952, and AB 1497 (Moñtanez), Stats. 2003, c. 823.

44005. (a) Any owner or operator of a solid waste facility who plans to encumber, sell, transfer, or convey the ownership or operations of a solid waste facility or disposal site to a new owner or operator, shall notify the enforcement agency and the board, 45 days prior to the date of the anticipated transfer. The notification shall be in writing and shall include information as determined by the board, including any financial assurances, if applicable.

(b) The enforcement agency and the board shall review the notification documentation and any available records of enforcement actions taken against the proposed transferee, and shall determine, within 30 days of receipt, whether the facility will be operated in compliance with the terms and conditions of an approved permit and any other applicable requirements, including, but not limited to, the requirements of Division 13 (commencing with Section 21000). If the solid waste facility will not be operated in compliance with the terms and conditions of an approved permit, or any other applicable requirements of Division 13 (commencing with Section 21000), the new owner or operator shall be required to file an application for a revised or modified solid waste facilities permit.

(c) If the enforcement agency or the board determines that the facility will be operated in compliance with the terms and conditions of the existing permit, the enforcement agency may change the name of the owner or operator on the permit.

As added by AB 939 (Sher), Stats. 1989, c. 1095 and as added by AB 59 (Sher), Stats. 1994, c. 952.

44006. (a) Each report or application filed under this article shall be submitted under oath or under penalty of perjury.

(b) Each report, notice, or application filed under this article shall be submitted on a form approved by the board.

(c) Each application required to be filed under this article shall be accompanied by a filing fee according to a fee schedule established by the enforcement agency to reflect the cost of processing the application and to recover costs incurred in meeting the requirements of Article 3 (commencing with Section 43500) and Article 4 (commencing with Section 43600) of Chapter 2. This fee is in addition to the fees authorized by Chapter 8 (commencing with Section 41900) of Part 2.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2596 (Tanner), Stats. 1990, c. 231.

44007. The enforcement agency shall not issue or revise a solid waste facilities permit unless it has, at least 65 days in advance, provided the board and the applicant with a copy of the proposed permit, which shall contain the terms and conditions the enforcement agency proposes to establish.

As added by AB 939 (Sher), Stats. 1989, c. 1095. Another 44007 was also added by AB 939 (Sher), Stats. 1989, c. 1095, and renumbered by AB 3992 (Sher), Stats. 1990, c. 1355.

44008. (a) A decision to issue or not issue the permit shall be made by the enforcement agency within 120 days from the date that the application is deemed complete pursuant to Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, unless waived by the applicant.

(b) The enforcement agency may only issue the permit pursuant to subdivision (a) if it finds that the proposed solid waste facilities permit is consistent with this division and any regulations adopted by the board pursuant to this division applicable to solid waste facilities.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 59 (Sher), Stats. 1995, c. 952.

44009. (a) (1) The board shall, in writing, concur or object to the issuance, modification, or revision of any solid waste facilities permit within 60 days from the date of the board's receipt of any proposed solid waste facilities permit submitted under Section 44007 after consideration of the issues in this section.

(2) If the board determines that the permit is not consistent with the state minimum standards adopted pursuant to Section 43020, or is not consistent with Sections 43040, 43600, 44007, 44010, 44017, 44150, and 44152 or Division 31 (commencing with Section 50000), the board shall object to provisions of the permit and shall submit those objections to the local enforcement agency for its consideration.

(3) If the board fails to concur or object in writing within the 60-day period specified in paragraph (1), the board shall be deemed to have concurred in the issuance of the permit as submitted to it.

(b) Notwithstanding subdivision (a), the board is not required to concur in, or object to, and shall not be deemed to have concurred in, the issuance of a solid waste facilities permit for a disposal facility if the owner or operator is not in compliance with, as determined by the regional water board, an enforcement order issued pursuant to Chapter 5 (commencing with Section 13300) of Division 7 of the Water Code, or if all of the following conditions exist:

(1) Waste discharge requirements for the disposal facility issued by the applicable regional water board are pending review in a petition before the state water board.

(2) The petition for review of the waste discharge requirements includes a request for a stay of the waste discharge requirements.

(3) The state water board has not taken action on the stay request portion of the pending petition for review of waste discharge requirements.

(c) In objecting to the issuance, modification, or revision of any solid waste facilities permit pursuant to this section, the board shall, based on substantial evidence in the record as to the matter before the board, state its reasons for

objecting. The board shall not object to the issuance, modification, or revision of any solid waste facilities permit unless the board finds that the permit is not consistent with the state minimum standards adopted pursuant to Section 43020, or is not consistent with Section 43040, 43600, 44007, 44010, 44017, 44150, or 44152 or Division 31 (commencing with Section 50000).

(d) Nothing in this section is intended to require that a solid waste facility obtain a waste discharge permit from a regional water board prior to obtaining a solid waste facilities permit.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2296 (Cortese), Stats. 1990, c. 1617, and AB 1220 (Eastin), Stats. 1993, c. 656, and AB 59 (Sher), Stats. 1995, c. 952, and AB 2009 (Cortese), Stats. 1996, c. 271, and AB 3358 (Ackerman), Stats. 1996 c. 1041.

44010. The enforcement agency shall issue the permit only if it finds that the proposed solid waste facilities permit is consistent with the standards adopted by the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

44011. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 1515 (Sher), Stats. 1991, c. 717.

44012. When issuing or revising any solid waste facilities permit, the enforcement agency shall ensure that primary consideration is given to protecting public health and safety and preventing environmental damage, and that the long-term protection of the environment is the guiding criterion, and that any terms and conditions of the solid waste facilities permit are consistent with subdivision (e) of Section 43209 and this division.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 59 (Sher), Stats. 1995, c. 952.

44013. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952

44014. (a) Upon compliance with Sections 44007, 44008, and 44009, and after any necessary hearing, the local enforcement agency shall issue, modify, or revise a solid waste facilities permit if the board has concurred in that issuance, modification, or revision of the permit pursuant to Section 44009.

(b) The permit shall contain all terms and conditions which the enforcement agency determines to be appropriate for the operation of the solid waste facility. The operator shall comply with all terms and conditions of the permit.

(c) Within 15 days of issuing, modifying, or revising a solid waste facilities permit, the enforcement agency shall transmit to the permittee a copy of the solid waste facilities permit.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293, and AB 59 (Sher), Stats. 1995, c. 952.

44015. A solid waste facilities permit issued or revised under this chapter shall be reviewed and, if necessary, revised at least once every five years.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 59 (Sher), Stats. 1995, c. 952, and AB 2159 (Reyes), Stats. 2004, c. 448.

44016. (a) The enforcement agency may, in accordance with Chapter 4 (commencing with Section 44300), suspend or revoke the permit of any solid waste facility designed to convert solid waste from offsite sources into energy or synthetic fuels if the facility utilizes recyclable materials for conversion to energy and if the local agency in whose jurisdiction the materials are collected requires, by ordinance, contract, or otherwise, that recyclable materials within the jurisdiction of that local agency be converted into energy at that facility. This subdivision does not otherwise restrict the ability of a solid waste facility to purchase, collect, transport, or process recyclable materials.

(b) As used in this section, "local agency" means any county, city, or district authorized to collect, dispose, or collect and dispose of solid waste, or any joint powers authority formed pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code which is authorized to construct and operate a facility for the conversion of solid waste into energy, synthetic fuel, or reusable materials.

(c) As used in this section, "recyclable materials" means discarded paper, glass, cardboard, plastic, ferrous metal, or aluminum which has been segregated from other solid waste materials for the purpose of reuse or recycling, except that recyclable materials do not include materials which a local agency, having jurisdiction over the locations where these materials exist, determines could be potentially harmful to the public health, or materials which create a public nuisance, as defined in Section 3480 of the Civil Code.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 59 (Sher), Stats. 1995, c. 952.

44017. The enforcement agency shall include, in the permit of any solid waste facility designed to convert solid waste into energy or synthetic fuels, a provision which requires the use of operating procedures at the facility to prevent hazardous waste from entering the conversion process.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 59 (Sher), Stats. 1995, c. 952.

44018. The board shall establish, by regulation, a program to be implemented by the board and by local enforcement agencies that provides for the expedited review of permits issued pursuant to this article. The program shall be designed to reduce unnecessary delay in the issuance of these permits and to protect the public health and safety and the environment.

As added by AB 3322 (Sher), Stats. 1992, c. 1293, and amended by AB 59 (Sher), Stats. 1995, c. 952.

ARTICLE 2. FACILITY INSPECTIONS

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

44100. (a) The enforcement agency, in issuing or reviewing any solid waste facilities permit or in connection with any action relating thereto or authorized by this division, may investigate the operation by any person of a transfer or processing station, disposal site, collection or handling equipment, or storage area for solid wastes.

(b) In the investigation, the enforcement agency may require any person, who is, or proposes to become, an operator of a transfer or processing station, disposal site, collection or handling equipment, or storage area for solid wastes, or any person which the enforcement agency believes may have information concerning a suspected violation of this division, to furnish, under penalty of perjury, any nonprivileged technical or monitoring program or other reports that the enforcement agency may specify.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and SB 1092 (Killea), Stats. 1993, c. 1283.

44101. (a) In the investigation, the enforcement agency may inspect the facility, equipment, or vehicle used for storage, collection, transportation, processing, or disposal of solid waste, as necessary to ensure compliance with this division and to determine that the terms and conditions of solid waste facilities permits are being complied with.

(b) The inspection shall be made with the consent of the owner or possessor of the solid waste facilities permit or, if consent is refused, with a warrant duly issued pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be made without consent or the issuance of a warrant.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

44102. Renumbered as PRC 40062.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended and renumbered by AB 2696 (Wright), Stats. 1992, c. 301.

44103. (a) For those facilities that accept only hazardous wastes, or that accept only low-level radioactive wastes, or that accept both, a solid waste facilities permit issued by the enforcement agency is not required. A single hazardous waste facilities permit or low-level radioactive waste facilities permit issued by the Department of Toxic Substances Control pursuant to Article 9 (commencing with Section 25200) of Chapter 6.5 of Division 20 of the Health and Safety Code, or by the State Department of Health Services pursuant to Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code shall be the only waste facilities permit or permits necessary for the use and operation of hazardous waste or low-level radioactive waste disposal facilities.

(b) For those facilities that accept both hazardous wastes and other solid wastes, two permits shall be required, as follows:

(1) The hazardous waste facilities permit issued by the Department of Toxic Substances Control pursuant to Article 9 (commencing with Section 25200) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(2) The solid waste facilities permit issued by the enforcement agency pursuant to this chapter.

(c) Nothing in this section limits or supersedes any other permit or licensing requirements imposed by other provisions of law.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and the Gov. Reorg. Plan No. 1 of 1991, and SB 1497 (Senate Health and Human Services Committee), Stats. 1996, c. 1023, and SB 2035 (Senate Environmental Quality Committee), Stats. 2000, c. 343.

44104. (a) The board shall maintain an inventory of solid waste facilities which violate state minimum standards. To the extent it is practicable to do so, the board hall incorporate in this inventory existing information collected in the course of previous surveys of this type and similar information made available to the board by state and local agencies.

(b) Whenever a solid waste facility is proposed to be included in the inventory, the board shall give notice thereof by certified mail to the disposal site owner and the operator of the solid waste facility. If, within 90 days of that notice, the violation has not been corrected, the solid waste facility shall be included in the inventory. The board shall update and publish the inventory twice annually.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

44105. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2211 (Sher), Stats. 1992, c. 280, and AB 1220 (Eastin), Stats. 1993, c. 656, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

44106. (a) The enforcement agency shall develop a compliance schedule for a solid waste facility included in the inventory prepared pursuant to Section 44104. The compliance schedule shall ensure that diligent progress will be made to bring the solid waste facility into compliance.

(b) Except as provided in subdivision (d), if the solid waste facility is not in compliance with the schedule established by the enforcement agency, the enforcement agency may revoke the operating permit of the solid waste facility until the violations of state minimum standards are remedied. If a closed or abandoned disposal site is not in compliance within the one-year period, the unremedied condition is prima facie evidence of negligence; and, in any action for damages against the owner of the property for injury caused by the unremedied condition, the burden of proving that the injury was not caused by the unremedied condition shall be on the owner of the property.

(c) The enforcement agency may recover any costs incurred pursuant to this section by charging the fee authorized by Section 43213.

(d) The enforcement agency shall refer violations of a waste discharge requirement adopted under Section 13263 of the Water Code to the appropriate regional water board.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1515 (Sher), Stats. 1991, c. 717, and AB 1220 (Eastin), Stats. 1993, c. 656, and AB 3358 (Ackerman), Stats. 1996, c. 1041.

ARTICLE 3. OTHER REQUIREMENTS

(Article 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

44150. (a) The enforcement agency shall not issue or revise a solid waste facilities permit for any proposed project which proposes to use transformation, as defined in Section 40201, unless the project complies with all of the following conditions:

(1) The proposed project meets all of the requirements specified in this chapter.

(2) The proposed project is consistent with state solid waste management policy as set forth in Section 40051.

(3) The proposed project has a defined source of waste, including waste available from existing solid waste transfer and processing stations.

(4) The proposed project is guaranteed, by contract or other commitments, more than sufficient quantities of waste to maintain the project's economic feasibility for the life of the bonded indebtedness of the project. This guarantee shall not include any materials which will be recycled pursuant to paragraph (5).

(5) The proposed project, and any contracts or commitments the project has entered into for the provision of waste, uses front-end recycling methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent feasible.

(6) If the proposed project is a thermal powerplant, the thermal powerplant has been specifically included in an adopted and approved revision of the countywide integrated waste management plan prepared pursuant to Chapter 5 (commencing with Section 41750) of Part 2.

(7) The ash or other residue generated from the transformation project is routinely tested at least once a month, and, notwithstanding Section 25143.5 of the Health and Safety Code, if hazardous wastes are present, the ash or residue is sent to a Class 1 hazardous waste disposal facility.

(b) Facilities for the recovery of methane gas are not subject to this section.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

44151. Any solid waste facility, located outside of any city, shall be maintained in compliance with the flammable clearance provisions of Chapter 5 (commencing with Section 4371) of Part 2 of Division 4.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

44152. No enforcement agency shall issue or revise a permit for a solid waste facility which exclusively uses transformation until the board has concluded in writing that the proposed permit is consistent with the state's minimum standards for solid waste facilities.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355.

ARTICLE 4. DEVELOPMENT OF SOLID WASTE MANAGEMENT FACILITIES ON INDIAN COUNTRY

(Article 4 as added by AB 240 (Peace), Stats. 1991, c. 805)

44201. As used in this article, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Indian country" has the same meaning as set forth in Section 1151 of Title 18 of the United States Code.

(b) "Tribe" means an Indian tribe, band, nation, or other organized group or community, or a tribal agency authorized by a tribe as defined herein, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and is identified on pages 52829 to 52835, inclusive, of Number 250 of Volume 53 (December 29, 1988) of the Federal Register, as that list may be updated or amended from time to time.

(c) "Solid waste" has the same meaning as set forth in Section 40191.

(d) "Solid waste facility" has the same meaning as set forth in Section 40194.

(e) "Operator" means a person who operates a solid waste facility.

(f) "Owner" means a person who owns a solid waste facility.

(g) "Secretary" means the Secretary for Environmental Protection.

(h) "State" means the State of California and any agency or instrumentality thereof.

(i) "Siting" means the physical suitability of a location proposed for a solid waste facility.

As added by AB 240 (Peace), Stats. 1991, c. 805, and by AB 3355 (Assembly Judiciary Committee on Maintenance of the Codes), Stats. 1992, c. 427.

44202. (a) Upon receipt of a written request from any tribe considering a proposal to construct each solid waste facility in that tribe's Indian country within this state, the secretary shall convene negotiations for purposes of reaching a cooperative agreement pursuant to this article, which will define the respective rights, duties, and obligations of the state and the tribe concerning the approval, development, and operation of the facility. In convening the negotiations, the secretary shall consult with the California Integrated Waste Management Board, the State Water Resources Control Board, the appropriate California regional water quality control board, the State Air Resources Board, and the appropriate air pollution control district or air quality management district.

(b) This article does not apply to any facility located on Indian country within the state if it meets all of the following requirements:

(1) The facility is owned and operated solely by a tribe.

(2) All solid waste accepted by the facility is generated by that particular tribe.

(3) Appropriate federal agencies have approved the facility.

As added by AB 240 (Peace), Stats. 1991, c. 805.

44203. (a) The secretary may enter into any cooperative agreement which meets the requirements of this article.

(b) Each cooperative agreement shall include, but shall not be limited to, all requirements determined to be necessary to meet the requirements of subdivision (e) to do all of the following:

(1) Protect water quality, as determined by the State Water Resources Control Board or the appropriate California regional water quality control board.

(2) Protect air quality, as determined by the State Air Resources Board or the appropriate air pollution control officer.

(3) Provide for proper management of solid wastes, as determined necessary by the California Integrated Waste Management Board.

(4) In making these determinations, the state agencies shall consider any applicable federal environmental and public health and safety laws.

(c) A decision by the secretary whether to enter into a cooperative agreement shall be based on a good faith determination concerning whether a proposed cooperative agreement meets the requirements of this article. The secretary shall take this action within 130 days of a written request by the tribe that the secretary approve a draft cooperative agreement. At least 60 days prior to determining whether to enter into a cooperative agreement, the secretary shall provide notice, and make available for public review and comment, drafts of his or her proposed action and drafts of the findings and determinations that are required by this section. The secretary shall hold a public hearing in the affected area on the proposed action within the time period for taking that action, as specified in this section. Within 10 days after the close of the public review and comment period, the agencies shall complete the determinations required by this section and the secretary shall issue a final decision.

(d) The findings and determinations of the secretary and relevant agencies made pursuant to this section shall explain material differences between state laws and regulations and the proposed tribal or federal functionally equivalent provisions. The findings and determinations do not need to explain each difference between the state and tribal or federal requirements as long as they identify and evaluate whether the material differences meet the requirements of this article, including, but not limited to, providing at least as much protection for public health and safety and the environment as would the state requirements.

(e) Any cooperative agreement executed pursuant to this article shall provide for regulation of the solid waste facility through inclusion in the agreement of design, permitting, construction, siting, operation, monitoring, inspection, closure, postclosure, liability, enforcement, and other regulatory provisions applicable to a solid waste facility, or which relate to any environmental consequences that may be caused by facility construction or operation, that are functionally equivalent to all of the following:

(1) Article 4 (commencing with Section 13260) of Chapter 4 of, Chapter 5 (commencing with Section 13300) of, and Chapter 5.5 (commencing with Section 13370) of, Division 7 of the Water Code.

(2) Chapter 3 (commencing with Section 41700) of, Chapter 4 (commencing with Section 42300) of, and Chapter 5 (commencing with Section 42700) of, Part 4 of, and Part 6 (commencing with Section 44300) of, Division 26 of the Health and Safety Code.

(3) This division.

(4) All regulations adopted pursuant to the statutes specified in this section.

(5) Any other provision of state environmental, public health, and safety laws and regulations germane to the solid waste facility proposed by the tribe.

(f) The tribal organizational structures or other means of implementing the requirements specified in subdivision (e) are not required to be the same as the state organizational structures or means of implementing its system of regulation.

(g) Neither the approval of any cooperative agreement nor amendments to the agreement, nor any determination of sufficiency provided in Section 44205, shall constitute a "project" as defined in Section 21065 and shall not be subject to review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000).

(h) Each cooperative agreement shall provide for the incorporation of the standards and requirements germane to the protection of the environment, public health, and safety listed in subdivision (e), as enacted, or as those provisions may be amended after January 1, 1992, or after the effective date of any cooperative agreement, if those standards and requirements meet both of the following requirements:

(1) The standards and requirements do not discriminate against a tribe which has executed a cooperative agreement, or a lessee of the tribe, and are applicable to, or not more stringent than, other rules applicable to other similar or analogous facilities or operations outside Indian country.

(2) Adequate notice and opportunity for comment on the incorporation of new and amended standards or requirements are provided to the tribe, facility owner, and operator to facilitate any physical or operational changes in the facility in accordance with state law.

As added by AB 240 (Peace), Stats. 1991, c. 805, and amended by AB 3355 (Assembly Committee on Judiciary), Stats. 1992, c. 427.

44204. (a) A tribe shall be eligible for technical assistance to the extent feasible, from the agencies specified in subdivision (b) of Section 44203, for the design, establishment, and implementation of a permit system, cooperative monitoring programs, a tribal enforcement system, and implementation of any other regulatory requirement.

(b) Each cooperative agreement shall provide for reasonable compensation to relevant state agencies for costs and expenses incurred by the state in connection with technical assistance provided to the tribe for the regulatory activities provided in this article, including, but not limited to, monitoring, enforcement, permitting, review, and other activities described in this article, and the reviews required by Section 44203, on a nondiscriminatory basis when compared with similar services to similar projects outside of Indian country.

(c) Each cooperative agreement shall provide for the sharing of appropriate data and other information between any tribal regulatory body, any federal agency, the owner or operator, and applicable state agencies, including, but not limited to, all monitoring data collected respecting the solid waste facility. The agreement shall provide for confidentiality of privileged, proprietary, or trade secret information.

(d) Each cooperative agreement shall include a dispute resolution mechanism for addressing issues of contract interpretation arising out of the cooperative agreement.

(e) The parties to a cooperative agreement executed pursuant to this article may mutually agree to modifications of time periods for actions which are required by this article, except the time periods provided for public notice, review, and comment shall not be eliminated or reduced.

(f) Each cooperative agreement shall require the relevant state agencies to provide detailed comments regarding completeness within 30 days after receiving copies of applications filed for tribal and applicable federal permits with respect to the deficiencies, if any, of the application with respect to the state standards identified in Section 44203. The failure of any of these state agencies to provide those comments within that period shall be deemed a finding of completeness of the respective applications.

(g) Each cooperative agreement shall provide for reasonable access by state agency personnel to Indian country governed by a tribe which has executed a cooperative agreement pursuant to this article for purposes of assistance with permit application review, inspection, and monitoring of operation of a solid waste facility. The cooperative agreement shall also provide for reasonable access for purposes of permit application review and inspection, to the extent the state can provide that access, by tribal regulatory authorities to transfer stations, or similar facilities, located outside of Indian country and handling waste to be transferred to tribal lands.

As added by AB 240 (Peace), Stats. 1991, c. 805.

44205. (a) Each cooperative agreement shall require the public agencies specified in subdivision (b) of Section 44203 to review any draft tribal permit and any applicable federal permit to determine whether it contains all conditions sufficient to do all of the following:

(1) Meet the functionally equivalent standards provided in the cooperative agreement, as required by subdivision (e) of Section 44203.

(2) Provide not less than the level of protection for public health, safety, and the environment that would have been the case if that state agency had issued the permit.

(3) Implement all feasible mitigation measures. For purposes of this paragraph, "feasible" has the same meaning as in Sections 21001, 21002.1, and 21004, and any regulations adopted pursuant to those sections.

(b) Each cooperative agreement shall provide that the tribal or federal permits issued for the solid waste facility meet the requirements of this section.

(c) The failure of a party to a cooperative agreement to meet the requirements of this section shall be determined to be an actionable breach of the cooperative agreement.

(d) The election by a party to a cooperative agreement to pursue a contractual remedy shall not limit the ability of a party to assert its respective claims of jurisdiction or sovereign immunity.

(e) Entering into a cooperative agreement shall not be a basis for denying any remedy to which a party is otherwise entitled.

(f) Within 10 days of issuance of a final federal permit or tribal permit, a copy of that permit shall be provided to the California Environmental Protection Agency and the tribe having jurisdiction over the facility.

As added by AB 240 (Peace), Stats. 1991, c. 805, and amended by AB 3355 (Assembly Judiciary Committee on Maintenance of the Codes), Stats. 1992, c. 427.

44206. (a) Nothing in this article shall limit or expand, or be construed to limit or expand, the jurisdiction of any state agency specified in subdivision (b) of Section 44203 or any tribal agency with respect to any solid waste facility located in Indian country, including, but not limited to, the enforcement powers and procedures available to the state or any tribe with respect to those facilities to the extent not preempted by federal law, including, but not limited to, powers and procedures contained in state or tribal statutes or regulations.

(b) The cooperative agreement shall provide that the state may exercise its enforcement powers over any solid waste facility project on Indian country where a cooperative agreement has been executed, subject to all of the following requirements:

(1) A violation or threatened violation of any standard or requirement set forth in Section 44203 or its functional equivalent in the cooperative agreement, or any condition set forth in a cooperative agreement or permit for the facility, has occurred or is occurring. For purposes of this paragraph, "threatened violation" means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources.

(2) The violation or violations have been brought to the attention of the tribe and to the owner and operator of the solid waste facility, through written notice from the appropriate agency. The notice shall identify the specific violation or violations which are occurring or have occurred and a specific

corrective or enforcement action or range of actions, including sufficient penalties. The notice shall include a specific and reasonable timeframe in which to take appropriate corrective or enforcement action.

(3) The tribe, after receiving the notice, has failed to take the action or actions, or to take other reasonable action to abate or correct the violation or violations, in a reasonable time.

(c) The functionally equivalent provisions of tribal or federal permits, as determined sufficient pursuant to Section 44205, together with any cooperative agreement approved pursuant to this article, shall collectively be deemed to constitute permits issued under state law for all purposes of enforcing state law.

(d) Notwithstanding subdivision (b), each of the public agencies specified in subdivision (b) of Section 44203 may immediately exercise its enforcement powers over any solid waste facility project on Indian country where a cooperative agreement has been executed, if, in the judgment of the public agency, immediate state action is required to avoid an imminent and substantial threat to public health and safety or to the environment. The state shall notify the tribe prior to taking any action pursuant to this subdivision.

As added by AB 240 (Peace), Stats. 1991, c. 805, and amended by AB 2618 (Peace), Stats. 1992, c. 113.

44207. (a) The cooperative agreement shall provide that the state or tribe may bring an appropriate civil action in a court of competent jurisdiction to enforce the terms of the cooperative agreement as a contract, and shall not limit the availability to either party of any remedy at law or in equity otherwise available under California law.

(b) The cooperative agreement shall require that the tribe waive its sovereign immunity from any action brought by the state in any court otherwise having jurisdiction over the subject matter, and that the state shall waive its sovereign immunity from any action brought by the tribe, in any court otherwise having jurisdiction over the subject matter, to enforce the terms of the cooperative agreement.

As added by AB 240 (Peace), Stats. 1991, c. 805.

44208. A cooperative agreement executed pursuant to this article shall be executed for the express benefit of the citizens of this state.

As added by AB 240 (Peace), Stats. 1991, c. 805.

44209. Any person may commence a civil action on the person's own behalf against any of the public agencies specified in subdivision (b) of Section 44203, or against the secretary, who is alleged to have approved or certified the sufficiency of any cooperative agreement or permit in violation of this article. No action may be commenced under this section more than 60 days after the agency or secretary has approved or certified the sufficiency of any cooperative agreement or permit under this article.

As added by AB 240 (Peace), Stats. 1991, c. 805.

44210. Notwithstanding this article, a cocomposting facility located in Indian country with a memorandum of agreement adopted November 29, 1989, with the California Regional Water Quality Control Board, Colorado River Basin Region 7, shall be allowed to continue to operate under the terms of that agreement until January 1, 1993, or the date the project complies with this article, whichever date is earlier.

As added by AB 240 (Peace), Stats. 1991, c. 805.

Chapter 4. Denial, Suspension or Revocation of Permits

(Chapter 4 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952)

ARTICLE 1. DENIAL OF PERMITS

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952)

44300. An enforcement agency may, after holding a public hearing before a hearing panel or a hearing officer appointed pursuant to Section 44308 or 44309, in accordance with the procedures set forth in Section 44310, deny a solid waste facilities permit in any of the following cases:

(a) The application is incomplete or otherwise inadequate.

(b) The applicant has not complied with Division 13 (commencing with Section 21000).

(c) The applicant has failed to demonstrate that the facility will meet minimum regulatory standards.

(d) The application contains significant false or misleading information or significant misrepresentations.

(e) The agency determines the applicant has, during the previous three years, been convicted of, or been issued a final order for, one or more violations of this division, or regulations adopted pursuant to this division, or the terms and conditions of the permit, and the violation meets both of the following criteria:

(1) The violation demonstrates a chronic recurring pattern of noncompliance that has posed, or may pose, a significant risk to public health and safety or to the environment.

(2) The violation has not been corrected or reasonable progress toward correction has not been achieved.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952, and amended AB 2159 (Reyes), Stats. 2004, c. 448.

44301. REPEALED.

As added by AB 939 (Sher), Stats. 1089, c 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

ARTICLE 2. SUSPENSION OR REVOCATION

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952)

44305. (a) An enforcement agency may, after holding a public hearing before a hearing panel or a hearing officer appointed pursuant to Section 44308 or 44309, in accordance with the procedures set forth in Section 44310, temporarily

suspend a solid waste facilities permit if the enforcement agency determines that changed conditions at the facility necessitate a permit revision or modification to eliminate a significant threat to public health and safety or to the environment.

(b) Notwithstanding subdivision (a), the enforcement agency may suspend a solid waste facilities permit prior to holding a hearing if the enforcement agency determines that changed conditions at the facility necessitate a permit revision or modification to prevent or mitigate an imminent and substantial threat to the public health and safety or to the environment. However, any person aggrieved by an action by an enforcement agency to suspend a permit pursuant to this subdivision may appeal the action to a hearing panel or hearing officer appointed pursuant to Section 44308 or 44309. The hearing panel or hearing officer shall, at the request of the aggrieved party, hear the appeal within three business days of the date when the permit was suspended, or the first day thereafter requested by the aggrieved party in compliance with Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code. The hearing panel or hearing officer shall render its decision on the day the hearing concludes. The hearing panel or hearing officer may affirm, modify, or rescind the permit suspension. A decision of a hearing panel or hearing officer appointed pursuant to Section 44308 or 44309 may be appealed pursuant to Section 45030.

(c) The enforcement agency shall lift the permit suspension as soon as the changed conditions that necessitated the suspension pursuant to subdivision (b) have been corrected.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by AB 2159 (Reyes), Stats. 2004, c. 448.

44306. The enforcement agency may, after holding a hearing in accordance with the procedures set forth in Section 44310, revoke a solid waste facilities permit if the enforcement agency determines any of the following:

(a) The permit was obtained by a material misrepresentation or failure to disclose relevant factual information.

(b) The operator has, during the previous three years, been convicted of, or been issued a final order for, one or more violations of this division, regulations adopted pursuant to this division, or the terms and conditions of the permit, and the violation meets both of the following criteria:

(1) The violation demonstrates a chronic recurring pattern of noncompliance which has posed, or may pose, a significant risk to public health and safety or to the environment.

(2) The violation has not been corrected or reasonable progress toward correction has not been achieved.

As added by AB 59 (Sher), Stats. 1995, c. 952.

44307. From the date of issuance of a permit that imposes conditions that are inappropriate, as contended by the applicant, or after the taking of any enforcement action pursuant to Part 5 (commencing with Section 45000) by the enforcement agency, the enforcement agency shall hold a hearing, if requested to do so, by the person subject to the action. The enforcement agency shall also hold a hearing upon a petition to the enforcement agency from any person requesting the enforcement agency to review an alleged failure of the agency to act as required by law or regulation. A hearing shall be held in accordance with the procedures specified in Section 44310.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by AB 2159 (Reyes), Stats. 2004, c. 448.

44308. (a) All hearings conducted pursuant to this chapter by the enforcement agency shall be conducted by a hearing officer appointed pursuant to subdivision (d) or a hearing panel appointed pursuant to either of the following procedures:

(1) The governing body may appoint three of its members as the hearing panel.

(2) The chairperson of the governing body may appoint an independent hearing panel consisting of three members.

(b) (1) If an independent hearing panel is appointed pursuant to paragraph (2) of subdivision (a), not more than one member of the governing body shall serve on the hearing panel.

(2) Members of the independent hearing panel shall be selected for their legal, administrative, or technical abilities in areas relating to solid waste management.

(3) At least one member of the independent hearing panel shall be a technical expert with knowledge of solid waste management methods and technology.

(4) At least one member of the independent hearing panel shall be a representative of the public at large.

(5) A member of an independent hearing panel shall serve for a term of four years, and may not serve more than two consecutive terms.

(6) If a member of an independent hearing panel does not complete the member's term, the chairperson of the governing body shall appoint a replacement to serve out the remainder of the unexpired term.

(c) Members of the hearing panel may receive per diem and necessary expenses while conducting the hearing.

(d) The governing body of an enforcement agency may appoint a hearing officer only if the governing body has adopted procedures for making that appointment and has adopted qualifications that the hearing officer is required to meet.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by AB 2159 (Reyes), Stats. 2004, c. 448.

44309. All hearings conducted by the board acting as the enforcement agency pursuant to Section 43205 shall be conducted by a hearing panel of three board members appointed by the chairperson of the board.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by AB 2159 (Reyes), Stats. 2004, c. 448.

44310. All hearings conducted pursuant to this chapter shall be based on the following procedures:

(a) (1) The hearing shall be initiated by the filing of a written request for a hearing with a statement of the issues.

(A) If the hearing request is made by the person subject to the action, the request shall be made within 15 days from the date that person is notified, in writing, of the enforcement agency's intent to act in the manner specified.

(B) If the hearing request is made by a person alleging that the enforcement agency failed to act as required by law or regulation pursuant to Section 44307, the person shall file a request for a hearing within 30 days from the date the person discovered or reasonably should have discovered, the facts on which the allegation is based.

(2) The enforcement agency shall, within 15 days from the date of receipt of a request for a hearing, provide written notice to the person filing the request notifying the person of the date, time, and place of the hearing.

(3) If that person fails to request a hearing or to timely file a statement of issues, the enforcement agency may take the proposed action without a hearing or may, at its discretion, proceed with a hearing before taking the proposed action.

(4) The enforcement agency shall file its written response to the statement of issues filed by the person requesting the hearing with the hearing panel or the hearing officer, and provide a copy to the person requesting the hearing, not less than 15 days prior to the date of the hearing.

(b) The hearing shall be held no later than 30 days after receiving the request for a hearing on the merits of the issues presented, in accordance with the procedures specified in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Within five days from the conclusion of the hearing, the hearing panel or hearing officer shall issue its decision. The decision shall become effective as provided in Section 45017.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by AB 2159 (Reyes), Stats. 2004, c. 448.

44500-44507. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

ARTICLE 3. HEARINGS (REPEALED)

(Article 3 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952)

44800. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 1515 (Sher), Stats. 1991, c. 717, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

44800.5. REPEALED.

As added by AB 1515 (Sher), Stats. 1991, c. 717, and amended by AB 54 (Sher), Stats. 1993, c. 663, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

44801-44817. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095. and repealed by AB 59 (Sher), Stats. 1995, c. 952.

Chapter 5. Asbestos Containing Waste

(Chapter 5 as added by AB 688 (Sher), Stats. 1994, c. 1227)

44820. (a) Except as provided in subdivision (c), the board shall adopt, by regulation, a permitting, inspection, and enforcement program for the disposal of asbestos containing waste, as specified in Section 25143.7 of the Health and Safety Code, at any solid waste facility or disposal site subject to regulation pursuant to this part. The program may include, but is not limited to, standards and certification requirements for local enforcement agencies, pursuant to which the board may delegate authority for the regulation of asbestos containing waste to local enforcement agencies.

(b) On or before March 1, 1995, or the earliest feasible date thereafter, the board and the Department of Toxic Substances Control shall enter into a memorandum of understanding that defines the enforcement responsibilities of each agency for the disposal of asbestos containing waste at any solid waste disposal facility or disposal site subject to regulation pursuant to this part. The memorandum of understanding shall be periodically updated to be consistent with each agency's responsibilities pursuant to this section and Chapter 6.5 (commencing with Section 25100) of Division 30 of the Health and Safety Code.

(c) Until the board has adopted regulations pursuant to subdivision (a), the Department of Toxic Substances Control shall regulate asbestos containing waste at a solid waste facility or disposal site.

(d) Any regulations adopted pursuant to this section shall be deemed emergency regulations and shall be adopted in accordance with the Administrative Procedures Act (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.) The adoption of these regulations shall be deemed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare.

As added by AB 688 (Sher), Stats. 1994, c. 1227, and amended by SB 1852 (Committee on Judiciary), Stats. 2006, c. 538..

PART 5. ENFORCEMENT

(Part 5 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952)

Chapter 1. Administrative Enforcement

(Chapter 1 as added by AB 939 (Sher), Stats. 1989, c. 1095, and renumbered from Chapter 10 by AB 3992, Stats. 1990, c. 1355 and repealed and added by AB 59 (Sher), Stats. 1995, c. 952)

ARTICLE 1. CORRECTIVE ACTION ORDERS

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952)

45000. (a) Except as provided in subdivision (b), the enforcement agency may issue an administrative order requiring the owner or operator of a solid waste facility to take corrective action as necessary to abate a nuisance, or to protect human health and safety or the environment.

(b) An administrative order shall not be issued for any minor violation that is corrected immediately in the presence of the inspector. Immediate compliance in that manner shall be noted in the inspection report.

(c) The enforcement agency or the board may contract for corrective action after an order issued pursuant to subdivision (a) becomes final and the owner or operator fails to comply with the order by the date specified in the order.

(d) If an enforcement agency or the board expends any funds pursuant to subdivision (b), the owner or operator of the solid waste facility shall reimburse the enforcement agency or the board for the amount expended, including, but not limited to, a reasonable amount for contract administration, and an amount equal to the interest that would have been earned on the expended funds. The amount expended shall be recoverable in a civil action by the Attorney General, upon request of the local enforcement agency or the board.

(e) Any contract for corrective action entered into by the board is exempt from approval by the Department of General Services pursuant to Section 10295 of the Public Contract Code.

(f) Any corrective action shall incorporate by reference any applicable waste discharge requirements issued by the state water board or a regional water board, and shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of, and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of, the Water Code, and state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, existing at the time of the corrective action or proposed corrective action.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952, and amended by AB 3082 (Assembly JudiciaryCommitte), Stats. 2004, c. 183.

45001. Nothing in this division affects the authority of the state water board or a regional water board to issue enforcement orders or take corrective actions with regard to solid waste facilities.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952.

45002. An order issued pursuant to this part or Part 4 (commencing with Section 43000) shall provide the person subject to that order with a notice of that person's right to appeal pursuant to Part 4 (commencing with Section 43000) and Part 6 (commencing with Section 45030).

As added by AB 2159 (Reyes), Stats. 2004, c. 448.

45002. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1515 (Sher), Stats. 1991, c. 717, and AB 1487 (Horcher), Stats. 1991, c. 1091, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45002.1. REPEALED.

As added by AB 240 (Peace), Stats. 1991, c. 805, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45003. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45004. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1089, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45005. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45006. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1515 (Sher), Stats. 1991, c. 717, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45007. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and renumbered and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

ARTICLE 2. CEASE AND DESIST ORDERS

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952)

45005. A person who is operating, or proposes to operate, a solid waste facility, or who is disposing of solid waste in an unauthorized manner, or who owns a solid waste facility and causes or permits the operator to operate the facility (1) in violation of a solid waste facilities permit or in violation of this division, or any regulation adopted pursuant to this division, or (2) without a solid waste facilities permit, or (3) in a manner that causes or threatens to cause a condition of hazard, pollution, or nuisance shall, upon order of the enforcement agency, cease and desist any prohibited activities.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by AB 2159 (Reyes), Stats. 2004, c. 448.

ARTICLE 3. CIVIL PENALTIES

(Article 3 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 59 (Sher), Stats. 1995, c. 952)

45010. (a) It is the intent of the Legislature that administrative civil penalties should be imposed on the operators of solid waste facilities in a judicious manner and should only be imposed after all feasible efforts have been made by enforcement agencies to provide proper notice of violations to alleged violators as well as a reasonable opportunity to bring solid waste facilities into compliance with this division.

(b) Any funds collected through the imposition of civil penalties pursuant to this article shall not be deposited in the General Fund of the local enforcement agency, but instead shall be deposited in a segregated account and used exclusively for the purpose of bringing a solid waste facility into compliance with this division or to remediate an abandoned solid waste disposal site.

(c) Any civil penalties paid to the board pursuant to this article shall be deposited in the Solid Waste Disposal Site Cleanup Trust Fund created pursuant to Section 48027.

As added by AB 59 (Sher), Stats. 1995, c. 952 and amended by AB 3082 (Assembly Judiciary Committee), Stats. 2004, c. 183.

45011. (a) If an enforcement agency determines that a solid waste facility or disposal site, is in violation of this division, any regulations adopted pursuant to this division, any corrective action or cease and desist order, or any other order issued under this division, or poses a potential or actual threat to public health and safety or the environment, the enforcement agency may issue an order establishing a time schedule according to which the facility or site shall be brought into compliance with this division. The order may also provide for a civil penalty, to be imposed administratively by the enforcement agency, in an amount not to exceed five thousand dollars ($5,000) for each day on which a violation occurs, if compliance is not achieved in accordance with that time schedule.

(b) Before issuing an order that imposes a civil penalty pursuant to subdivision (a), an enforcement agency shall do both of the following:

(1) Notify the operator of the solid waste facility that the facility is in violation of this division.

(2) Upon the request of the operator of the solid waste facility, meet with the operator of the solid waste facility to clarify regulatory requirements and to determine what actions, if any, that the operator may voluntarily take to bring the facility into compliance by the earliest feasible date.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by AB 1497 (Moñtanez), Stats. 2003, c. 823.

45012. (a) The board shall not take any enforcement action specified in this part without providing notice to the local enforcement agency and the violator of the board's intent to take that action, allowing the local enforcement agency and the violator a reasonable opportunity to correct the violation, and conducting a public hearing on the matter. In taking any such enforcement action, the board is vested, in addition to its other powers, with all of the powers of a local enforcement agency under this division.

(b) Notwithstanding subdivision (a), if the board finds that a local enforcement agency's failure to take enforcement action constitutes an imminent threat to public health or safety or to the environment, the board may take the enforcement action, as the board determines is necessary.

As added by AB 59 (Sher), Stats. 1995, c. 952.

45013. The board shall, upon the request of the local enforcement agency, provide guidance to the enforcement agency regarding the inspection and investigation of illegal, abandoned, or inactive closed sites, to ensure that public health and safety and the environment are protected.

As added by AB 59 (Sher), Stats. 1995, c. 952.

45014. (a) Upon the failure of any person to comply with any final order issued by a local enforcement agency or the board, the Attorney General, upon request of the board, shall petition the superior court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining the person or persons from continuing to violate the order or complaint.

(b) Any attorney authorized to act on behalf of the local enforcement agency or the board may petition the superior court for injunctive relief to enforce this part, any term or condition in any solid waste facilities permit, or any standard adopted by the board or the local enforcement agency.

(c) In addition to the administrative imposition of civil penalties pursuant to this part and Article 6 (commencing with Section 42850) of Chapter 16 of Part 3, any attorney authorized to act on behalf of the local enforcement agency or the board may apply, to the clerk of the appropriate court in the county in which the civil penalty was imposed, for a judgment to collect the penalty. The application, which shall include a certified copy of the decision or order in the civil penalty action, constitutes a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered shall include the amount of the court filing fee which would have been due from an applicant who is not a public agency, and has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered, provided that the amount of the unpaid court filing fee shall be paid to the court prior to satisfying any of the civil penalty amount. Thereafter, any civil penalty or judgment recovered shall be paid, to the maximum extent allowed by law, to the board or to the local enforcement agency, whichever is represented by the attorney who brought the action.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by AB 1672 (Assembly Judiciary Committee), Stats. 1999, c. 892.

45015. Remedies under this part are in addition to, and do not supersede or limit, any other applicable remedies provided by law.

As added by AB 59 (Sher), Stats. 1995, c. 952.

45016. In making a determination regarding the allegations in, and the amount of any liability that may be imposed pursuant to, an order, petition, or complaint and determining the appropriate outcome, and when determining whether to deny, suspend, or revoke a permit or to deny a permit application, the issuing agency, the board, or a court, as the case may be, shall take into consideration:

(a) The nature, circumstances, extent, and gravity of any violation or any condition giving rise to the violation and the various remedies and penalties that are appropriate in the given circumstances, with primary emphasis on protecting the public health and safety and the environment.

(b) Whether the violations or conditions giving rise to the violation have been corrected in a timely fashion or reasonable progress is being made.

(c) Whether the violations or conditions giving rise to the violation demonstrate a chronic pattern of noncompliance with this division, the regulations adopted pursuant to this

division, or with the terms and conditions of a solid waste facilities permit, or pose, or have posed, a serious risk to the public health and safety or to the environment.

(d) Whether the violations or conditions giving rise to the violation were intentional.

(e) Whether the violations or conditions giving rise to the violation were voluntarily and promptly reported to appropriate authorities prior to the commencement of an investigation by the enforcement agency.

(f) Whether the violations or conditions giving rise to the violation were due to circumstances beyond the reasonable control of the violator or were otherwise unavoidable under the circumstances.

(g) Whether in the case of violations of this division, or the regulations adopted pursuant to this division, the violator has established one or more of the following programs prior to committing the violation that will help to prevent violations of the type committed in the future:

(1) A comprehensive compliance program designed to prevent violations of this division, the regulations adopted pursuant to this division, and of the terms and conditions of the solid waste facilities permit.

(2) Employee training programs designed to educate the employees regarding their responsibilities under this division, the regulations adopted pursuant to this division, and the terms and conditions of the solid waste facilities permit.

(3) Regular internal audits to monitor the effectiveness of the comprehensive compliance programs described in paragraph (1).

(4) Confidential systems for employee reporting of potential statutory, regulatory, or solid waste facilities permit violations and for protecting persons so reporting from retaliatory employment actions.

(5) Special incentive programs that promote and reward statutory, regulatory, and permit compliance.

As added by AB 59 (Sher), Stats. 1995, c. 952.

45017. (a) (1) Except as provided in paragraphs (2) and (3), all orders and determinations issued pursuant to this part or Part 4 (commencing with Section 43000) shall take effect immediately upon service, except that a request for a hearing pursuant to Section 44307 shall stay the effect of any or all provisions of the order until the date of the completion of all administrative appeals.

(2) Any provision of an order issued under this part or Part 4 (commencing with Section 43000) shall take effect upon service on the affected person if the enforcement agency finds that the actions or inactions associated with that provision may pose an imminent and substantial threat to the public health and safety or to the environment, and a request for a hearing shall not stay the effect of that provision of the order pending completion of all administrative appeals.

(3) A cease and desist order issued pursuant to Section 44002 shall take effect upon service on the affected person and a request for a hearing shall not stay the effect of the order, not withstanding the completion of any administrative appeal, if the cease and desist order is issued to a person operating a solid waste facility on a property for which a solid waste facilities permit is required, and one of the following applies:

(A) The person has not applied for any solid waste facilities permit for that property before the date of the issuance of the cease and desist order.

(B) The person has been denied a solid waste facilities permit for the operation on that property for which a solid waste facilities permit is required.

(b) For purposes of this section, service may be effected by any of the following:

(1) Personal delivery.

(2) First-class United States mail, if it is made by certified mail with a return receipt requested.

(3) Express delivery by a national express mail service that provides evidence of delivery.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by AB 2159 (Reyes), Stats. 2004, c. 448.

45018. The payment of civil liability assessed in any order issued under this chapter shall be made within 30 days of the date the order becomes final. Any penalties recovered shall be sent to the board or to the enforcement agency, whichever brought the action, as provided in subdivision (c) of Section 45014.

As added by AB 59 (Sher), Stats. 1995, c. 952.

45019. At least 10 days prior to the date of issuance of an enforcement order which is not for an emergency, or within five days from the date of issuance of an enforcement order for an emergency, or within 15 days from the date of discovery of a violation of a state law, regulation, or term or condition of a solid waste facilities permit for a solid waste facility, which is likely to result in an enforcement action, the following agencies shall, to the extent that the enforcement action involves a violation that may also be under the jurisdiction of another state regulatory agency, provide a written statement providing an explanation of, and justification for, the enforcement order or a description of the violation in the following manner:

(a) The local enforcement agency shall, as appropriate, provide the statement to the regional water board, the board, the air pollution control district or air quality management district, and the Department of Toxic Substances Control.

(b) A regional water board shall, as appropriate, provide the statement to the local enforcement agency, the board, the air pollution control district or air quality management district, and the Department of Toxic Substances Control.

(c) An air pollution control district or an air quality management district shall, as appropriate, provide the statement to the local enforcement agency, the board, the regional water board, and the Department of Toxic Substances Control.

(d) The Department of Toxic Substances Control shall, as appropriate, provide the report of inspection required by paragraph (1) of subdivision (c) of Section 25185 of the Health and Safety Code to the local enforcement agency, the

board, the regional water board, and the air pollution control district or air quality management district.

As added by AB 59 (Sher), Stats. 1995, c. 952.

45020. (a) Within 30 days from the date of receipt of a notice of the issuance of, or the proposal to issue, an enforcement order pursuant to Section 45022, the regional water board, the enforcement agency, or the air pollution control district or the air quality management district, and the Department of Toxic Substances Control shall, as appropriate, inspect the solid waste facility to determine whether any state law, regulation, or term or condition of a permit, which that board or agency is authorized to enforce, is being violated.

(b) Each agency shall, to the maximum extent allowed by law, do all of the following with respect to enforcement activities at solid waste facilities:

(1) Coordinate enforcement activities to eliminate duplication and facilitate compliance.

(2) Notify the facility operator of any violation before imposing an administrative civil penalty.

(3) Prior to imposing any administrative penalty, and upon the request of the operator of the solid waste facility, meet with the operator to clarify the regulatory requirements and to determine what actions, if any, the operator could voluntarily take to bring the facility into compliance by the earliest feasible date. If a contemporaneous enforcement action or investigation dealing with the same violation or with similar violations is being pursued by another regulatory agency, a city attorney, a district attorney, or the Attorney General, the operator may request a meeting with all those investigating and enforcement entities.

(4) Consider the factors prescribed in Section 45016 in determining appropriate enforcement actions.

As added by AB 59 (Sher), Stats. 1995, c. 952.

45021. If any board or agency specified in Section 45019 receives a complaint concerning a solid waste facility and the board or agency determines that it is not authorized to take action concerning the complaint, the board or agency shall refer the complaint within 30 days from the date of receipt to another state agency which it determines is authorized to take action.

As added by AB 59 (Sher), Stats. 1995, c. 952.

45022. If any agency or board specified in Section 45019 receives a complaint concerning a solid waste facility which the agency or board does not refer to another state agency pursuant to Section 45021, or if the agency or board receives such a complaint referred to it by another agency or board pursuant to Section 45021, the agency or board shall either take appropriate enforcement action concerning the facility pursuant to this part, or refer the complaint to the Attorney General, the district attorney, or city attorney, whichever is applicable, or, at the earliest feasible date, not to exceed 60 days, provide the person who filed the complaint with a written statement explaining why an enforcement action would not be appropriate.

As added by AB 59 (Sher), Stats. 1995, c. 952.

45022.5. An enforcement agency shall maintain a record of, and take any action that the enforcement agency is authorized to take regarding, a complaint, referral, or inspection relating to the operation of a solid waste facility, solid waste disposal site, or solid waste handling activity, including, but not limited to, those activities that do not require a solid waste facilities permit, within its jurisdiction.

As added by AB 2159 (Reyes), Stats. 2004, c. 448.

45023. Any person who (a) owns or operates a solid waste facility and who intentionally or negligently violates or causes or permits another to violate the terms and conditions of a solid waste facilities permit, (b) operates a solid waste facility without a solid waste facilities permit, or (c) intentionally or negligently violates any standard adopted by the board, is subject to a civil penalty not to exceed ten thousand dollars ($10,000) for each day the violation or operation occurs.

As added by AB 59 (Sher), Stats. 1995, c. 952.

45024. Any attorney authorized to act on behalf of the board or a local enforcement agency may petition the superior court to impose, assess, and recover the civil penalties authorized by Section 45023. Any penalties recovered pursuant to this section shall be paid, to the maximum extent allowed by law, to the board or to the local enforcement agency, whichever is represented by the attorney bringing the action.

As added by AB 59 (Sher), Stats. 1995, c. 952.

Chapter 2. Judicial Review (REPEALED)

(Chapter 2 (Sections 45800-45802) as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952.)

PART 6. APPEALS

(Part 6 as added by AB 939 (Sher), Stats. 1989, c. 1095, repealed by AB 1220 (Eastin), Stats. 1993, c. 656, and added by AB 59 (Sher), Stats. 1995, c. 952)

Chapter 1. Enforcement Agency Action

(Chapter 1 as added by AB 59 (Sher), Stats. 1995, c. 952)

45030. (a) A party to a hearing held pursuant to Chapter 4 (commencing with Section 44300) of Part 4 may appeal to the board to review the written decision of the hearing panel or hearing officer or to review the petitioner's request in the instance of a failure of a hearing panel or hearing officer to render a decision or consider the request for review, or a determination by the governing body not to direct the hearing panel or hearing officer to hold a public hearing, under the following circumstances:

(1) Within 10 days from the date of issuance of a written decision by a hearing panel or hearing officer.

(2) If no decision is issued, within 45 days from the date a request for a hearing was received by the enforcement agency for which there was a failure of a hearing panel or hearing officer to render a decision or consider a petitioner's request pursuant to Section 44310.

(b) An appellant shall commence an appeal to the board by filing a written request for a hearing together with a brief summary statement of the legal and factual basis for the appeal.

(c) Within five days from the date the board receives the request for a hearing, the board shall schedule a hearing on the appeal and notify the appellant and all other parties to the underlying proceeding of the date of the board hearing.

(d) The board shall hear the appeal within 60 days from the date the board received the request for the appeal.

(e) The board shall conduct the hearing on the appeal in accordance with the procedures specified in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of the Government Code.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by AB 2159 (Reyes), Stats. 2004, c. 448.

45031. Within 30 days from the date that an appeal is filed with the board, the board may do any of the following:

(a) Determine not to hear the appeal if the appellant fails to raise substantial issues.

(b) Determine not to hear the appeal if the appellant failed to participate in the administrative hearing before the hearing panel, except that the board shall hear the appeal if the appellant shows good cause for the appellant's failure to appear.

(c) Determine to accept the appeal and to decide the matter on the basis of the record before the hearing panel, or based on written arguments submitted by the parties, or both.

(d) Determine to accept the appeal and hold a hearing, within 60 days, unless all parties stipulate to extending the hearing date.

As added by AB 59 (Sher), Stats. 1995, c. 952

45032. (a) In the board's hearing on the appeal, the evidence before the board shall consist of the record before the hearing panel or hearing officer, relevant facts as to any actions or inactions not subject to review by a hearing panel or hearing officer, the record before the local enforcement agency, written and oral arguments submitted by the parties, and any other relevant evidence that, in the judgment of the board, should be considered to effectuate and implement the policies of this division.

(b) The board may only overturn an enforcement action, and any administrative civil penalty, by a local enforcement agency if it finds, based on substantial evidence, that the action was inconsistent with this division. If the board overturns the decision of the local enforcement agency, the hearing panel, or the hearing officer, or finds that the enforcement agency has failed to act as required, the board may do both of the following:

(1) Direct that the appropriate action be taken by the local enforcement agency.

(2) If the local enforcement agency fails to act by the date specified by the board, take the appropriate action itself.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by AB 2159 (Reyes), Stats. 2004, c. 448.

45033. A failure to appeal to the hearing panel, the hearing officer, or the board for review, or the refusal of the local enforcement agency, a hearing panel, the hearing officer, or the board to hear an appeal does not preclude a person from filing an action with the superior court to contest any action or inaction of the local enforcement agency or the board.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by AB 2159 (Reyes), Stats. 2004, c. 448.

Chapter 2. Judicial Review

(Chapter 2 as added by AB 59 (Sher), Stats. 1995, c. 952)

45040. Within 30 days from the date of service of a copy of a decision and order issued by a local enforcement agency or the board, except as provided in subdivision (a) of Section 45032, under Chapter 1 (commencing with Section 45000), any aggrieved party may file with the superior court a petition for a writ of mandate for review thereof.

As added by AB 59 (Sher), Stats. 1995, c. 952.

45041. The evidence before the court shall consist of the records before the hearing panel or hearing officer and the board, if any, including the enforcement agency's records, and any other relevant evidence that, in the judgment of the court, should be considered to effectuate and implement the policies of this division.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by AB 2159 (Reyes), Stats. 2004, c. 448.

45042. Except as otherwise provided in this chapter, Section 1094.5 of the Code of Civil Procedure shall govern proceedings pursuant to this article.

As added by AB 59 (Sher), Stats. 1995, c. 952.

45200. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by AB 2211 (Sher), Stats. 1992, c. 280, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45201. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 2211 (Sher), Stats. 1992, c. 1293, and AB 54 (Sher), Stats. 1993, c. 663, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45202. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45300. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45301. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and the Gov. Reorg. Plan No. 1 of 1991, and amended by AB 1220 (Eastin), Stats. 1993, c. 656, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45302. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and the Gov. Reorg. Plan No. 1 of 1991, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45303. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 1761 (Vuich), Stats. 1990, c 586, and AB 3992 (Sher), Stats. 1990, c. 1355, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45304. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

ARTICLE 4. CORRECTIVE ACTIONS (REPEALED)

(Article 4 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952)

45400. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1220 (Eastin), Stats. 1993, c. 656, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45401. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 1515 (Sher), Stats. 1991, c. 717, and AB 1220 (Eastin), Stats. 1993, c. 656, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45402–45404. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1220 (Eastin), Stats. 1993, c. 656, and repealed by AB 59 (Sher), Stats.

45405. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1515 (Sher), Stats. 1991, c. 717, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45406. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1220 (Eastin), Stats. 1993, c. 656, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45407. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 1220 (Eastin), Stats. 1993, c. 656.

ARTICLE 5. ADMINISTRATIVE APPEALS (REPEALED)

(Article 5 as added by AB 939 (Sher), Stats. 1989, c. 1095, and as repealed by AB 59 (Sher), Stats. 1995, c. 952)

45500–45504. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45505. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 2211 (Sher), Stats. 1992, c. 280, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45506–45508. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

ARTICLE 6. JURISDICTIONAL DISPUTES (REPEALED)

(Article 6 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952)

45600. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 59 (Sher), Stats. 1995, c. 952.

45601. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 1515 (Sher), Stats. 1991, c. 717.

ARTICLE 7. REPORTS TO THE LEGISLATURE (REPEALED)

(Article 7 as added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 1220 (Eastin), Stats. 1993, c. 656)

45700. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 1220 (Eastin), Stats. 1993, c. 656.

PART 7. OTHER PROVISIONS

(Part 7 as added by AB 939 (Sher), Stats. 1989, c. 1095)

Chapter 1. Household Hazardous Substance Information and Collection

(Chapter 1 as added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 937 (Vuich), Stats. 1990, c. 35, and AB 3992 (Sher), Stats. 1990, c. 1355)

ARTICLE 1. LEGISLATIVE FINDINGS AND DEFINITIONS

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

47000. The Legislature finds and declares that, because hazardous substances are an integral part of daily life, it would benefit the public to have access to practical and consistent information concerning chemicals in daily life, products which contain hazardous substances, and proper procedures for the disposal of hazardous substances. This information would improve the ability of all Californians to assist in protecting the state's natural resources from environmental degradation.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by SB 937 (Vuich), Stats. 1990, c. 35.

47001. The Legislature also finds that the disposal of hazardous substances by households can be injurious to sanitation workers, the general public, and wildlife and domestic animals, and can pose a threat to the environment.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by SB 937 (Vuich), Stats. 1990, c. 35.

47002. The Legislature further finds and declares that each household in the state should have reasonable access to legal, convenient, and environmentally safe methods for the disposal of hazardous substances commonly found in and around homes.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by SB 937 (Vuich), Stats. 1990, c. 35.

47003. The Legislature, therefore, declares that the state should assist the efforts of local governments and other agencies to provide safer disposal methods for household hazardous waste and to provide public information on the

proper disposal of hazardous substances commonly found in and around homes.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by SB 937 (Vuich), Stats. 1990, c. 35.

47004. For purposes of this chapter, "hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code, and "hazardous substance" has the same meaning as defined in Section 25316 of the Health and Safety Code.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by SB 937 (Vuich), Stats. 1990, c. 35.

ARTICLE 2. PUBLIC INFORMATION PROGRAM

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

47050. The board shall, in consultation with the Department of Toxic Substances Control, develop and implement a public information program to provide uniform and consistent information on the proper disposal of hazardous substances found in and around homes. The program may include information, consistent with product labeling, on the proper use and storage of products which contain hazardous substances and on safer substitutes for products which contain hazardous substances.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by SB 1143 (Killea), Stats. 1992, c. 1346.

47051. The public information program shall be designed to provide uniform responses to public inquiries about household hazardous substances, and to assist the efforts of counties required to provide household hazardous waste collection, recycling, and disposal programs pursuant to Sections 47100 and 47101, and local agencies authorized to provide these programs.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by SB 937 (Vuich), Stats. 1990, c. 35.

47052. The public information program shall include the development of pamphlets or other written materials which could be used by local agencies in conjunction with household hazardous waste collection or other programs which these agencies may or are required to offer. The written materials shall be prepared with the intent of promoting consistency in how these local programs define and handle household hazardous wastes.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by SB 937 (Vuich), Stats. 1990, c. 35.

ARTICLE 3. HOUSEHOLD HAZARDOUS WASTE MANAGEMENT

(Article 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

47100. After a countywide integrated waste management plan has been revised pursuant to Section 41770, and the revision has been approved pursuant to Sections 41760 and 41800, the county shall implement that portion of the household hazardous waste collection, recycling, and disposal program identified in the plan which serves the population of the unincorporated area of the county, and the cities or other appropriate local agencies within the county shall implement, for their respective jurisdictions, that portion of the household hazardous waste collection, recycling, and disposal program identified in the plan which serves the population of the incorporated area of the county.

As added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by SB 1143 (Killea), Stats. 1992, c. 1346.

47101. Section 47100 does not prohibit a city or county from jointly implementing the household hazardous waste collection, recycling, and disposal program, or another local agency from implementing the program in the county pursuant to the mutual agreement of the local agencies involved in implementing the program.

As added by SB 937 (Vuich), Stats. 1990, c. 35.

47102. The board shall designate a household hazardous waste coordinator to advise and assist local governments and other agencies which offer programs for household hazardous waste management.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and renumbered by SB 937 (Vuich), Stats. 1990, c. 35.

47103. The board shall provide technical assistance to local governments and other agencies which establish household hazardous waste management programs.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and renumbered by SB 937 (Vuich), Stats. 1990, c. 35.

47104. The board shall prepare, in consultation with the Department of Toxic Substances Control, guidelines and a state policy to guide the efforts of local agencies to provide household hazardous waste collection, recycling, and disposal programs pursuant to this article. The guidelines required by this section shall allow adequate flexibility to local agencies in meeting their individual needs, to the extent that the local agency's program does not conflict with the state policy prepared pursuant to this subdivision.

As added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by SB 1143 (Killea), Stats. 1992, c. 1346.

47105. The guidelines required by this article shall include all the following elements:

(a) Development of a model operation plan for community household hazardous waste collection, recycling, and disposal programs required to be identified pursuant to this article. The model operation plan shall include a description of proper procedures for hazardous waste handling, storage, transportation, and personnel training.

(b) The establishment of guidelines on the generic types of household hazardous substances which should be disposed of as hazardous waste, and guidelines on the safe management of hazardous wastes generated by households which may be excluded from household hazardous waste collection programs but which may require some special handling.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by SB 937 (Vuich), Stats. 1990, c. 35.

47106. In establishing guidelines on which products should be disposed of as hazardous waste, the board shall consider such factors as toxicity, concentration of toxic ingredients in a product, and other appropriate factors. The board shall also consider the appropriateness of excluding from any listing of household hazardous wastes specific categories of household products, such as products intended for human consumption, personal hygiene products, and other categories of household products intended for general consumer use.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by SB 937 (Vuich), Stats. 1990, c. 35.

47107. The guidelines and operation plan prepared pursuant to subdivision (a) shall, upon request, be made available to local agencies and the public. The board shall advise county health offices of the availability of these materials and of the informational materials developed pursuant to Article 1 (commencing with Section 47051).

As added by SB 937 (Vuich), Stats. 1990, c. 35.

47108. In developing the guidelines required by this article, the board shall, to the extent feasible, consult existing sources of information, including household hazardous waste collection programs which have been operated in the state and in other states, and industry and academia.

As added by SB 937 (Vuich), Stats. 1990, c. 35.

47109. Any city or county may, upon a vote of the governing body of the city or county, authorize an increase in solid waste collection fees to offset the cost to the city or county of establishing, publicizing, and maintaining a household hazardous waste collection, recycling, and disposal program implemented pursuant to this article. Any increase in garbage collection fees authorized by this section shall be set at a level to bring in revenues not higher than is necessary to fund the reasonable cost of the household hazardous waste collection, recycling, and disposal program. Where an appropriately licensed private entity is utilized by a city or county, under a permit or existing franchise, to undertake a household hazardous waste collection, recycling, and disposal program, the costs of handling, hauling, and disposing of household hazardous wastes shall be paid through fees or rates charged for service.

As added by SB 937 (Vuich), Stats. 1990, c. 35.

ARTICLE 3.5. HOUSEHOLD HAZARDOUS WASTE GRANTS

(Article 3.5 as added by AB 1220 (Eastin), Stats. 1993, c. 656)

47200. (a) The board shall expend funds from the account, upon appropriation by the Legislature, for the making of grants to cities, counties, or other local agencies with responsibility for solid waste management, and for local programs to help prevent the disposal of hazardous wastes at disposal sites, including, but not limited to, programs to expand or initially implement household hazardous waste programs. In making grants pursuant to this section, the board shall give priority to funding programs that provide for the following:

(1) New programs for rural areas, underserved areas, and for small cities.

(2) Expansion of existing programs to provide for the collection of additional waste types, innovative or more cost-effective collection methods, or expanded public education services.

(3) Regional household hazardous waste programs.

(b) (1) The total amount of grants made by the board pursuant to this section shall not exceed, in any one fiscal year, three million dollars ($3,000,000).

(2) Notwithstanding paragraph (1), the total amount of grants made by the board pursuant to this section may exceed three million dollars ($3,000,000) but shall not exceed five million dollars ($5,000,000), in any one fiscal year, if sufficient funds are appropriated from the Integrated Waste Management Account for this purpose.

As added by AB 1220 (Eastin), Stats. 1993, c. 656, and amended by AB 1187 (Simitian), Stats. 2001, c. 316.

47200.5. (a) If the city, county, or local agency with responsibility for solid waste management has already funded the type of program described in Section 47200 locally during the 1992-93 fiscal year, the board shall award the minimum amount of the funds in the account to reimburse that city, county, or local agency for the actual cost of the local program in that fiscal year or an amount from the account which is based upon the proportion that the population of the city, county, or local agency bears to the statewide population, whichever is less. This section does not limit the authority of the board to award grants of funds from the account in excess of, or in addition to, the minimum grants set forth in this section, in accordance with the grant criteria.

(b) The total amount of grants made by the board pursuant to this section shall not exceed four million dollars ($4,000,000).

(c) The board shall advise cities, counties, and local agencies with responsibility for solid waste management of the application period and final filing deadline for the grants authorized to be awarded by the board pursuant to this section.

(d) This section shall become inoperative on July 1, 1994, and as of January 1, 1995, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1995, deletes or extends the dates on which it becomes inoperative and is repealed.

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

47201. The board shall adopt regulations for implementation of this article, including, but not limited to, criteria for selecting grant recipients.

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

47202. All expenses incurred by the board in carrying out this article shall be payable from the account. No liability or obligation is imposed upon the state pursuant to this part, and the board shall not incur any liability or obligation beyond the extent to which money is provided in the account for the purposes of this article.

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

47203. Upon appropriation by the Legislature, the board shall allocate, from the account, an amount not to exceed sixty thousand dollars ($60,000), to the Hazardous Waste Control Account, for expenditure for the 1993-94 fiscal year, to the Department of Toxic Substances Control, for the development and maintenance, jointly with the board, of a data base of all household hazardous waste collection events, facilities, and programs within the state. On and after July 1, 1994, upon appropriation by the Legislature, the board shall allocate an amount from the account of not more than sixteen thousand three hundred dollars ($16,300) in each fiscal year for that purpose.

As added by AB 1220 (Eastin), Stats. 1993, c. 656.

47500 to 47506. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed and added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed by SB 1143 (Killea), Stats. 1992, c. 1346.

ARTICLE 4. LIABILITY

(Article 4 as added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by SB 1143 (Killea), Stats. 1992, c. 1346)

47550. A city, county, or local agency operating a household hazardous waste collection, recycling, and disposal program in accordance with Article 3 (commencing with Section 47100), and in accordance with Article 10.8 (commencing with Section 25218) of Chapter 6.5 of Division 20 of the Health and Safety Code, is not liable for any damage or injury caused by an action taken by the city, county, or local agency, or an employee or authorized agency of the city, county, or local agency, in the course of the operation of the program, unless the action is performed in bad faith or in a negligent manner. For purposes of this section, it shall be presumed that the action is performed in good faith and without negligence, and this presumption shall affect the burden of proof.

As added by SB 937 (Vuich), Stats. 1990, c. 35, and amended by AB 2202 (Baca), Stats. 1996, c. 647.

Chapter 2. Finances

(Chapter 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. THE INTEGRATED WASTE MANAGEMENT FUND

(Article 1 as added by SB 937 (Vuich), Stats. 1990, c. 35), and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293)

47900. REPEALED.

As added by SB 937 (Vuich), Stats. 1990, c. 35, and repealed by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

47901. (a) All revenues received by the board shall be deposited in the specified account in the fund. Any revenue received by the board for which no account is specified shall be deposited in the Integrated Waste Management Account created by Section 4800l in the fund. The board may establish or modify other subaccounts in the account, as appropriate and necessary for proper administration.

(b) Any funds remaining in the Solid Waste Disposal Site Cleanup and Maintenance Account in the Integrated Waste Management Fund shall be transferred to the Integrated Waste Management Account in the Integrated Waste Management Fund, consistent with Section 16346 of the Government Code.

(c) Any expenditures charged to the Solid Waste Disposal Site Cleanup and Maintenance Account in the fund shall be transferred to the Integrated Waste Management Account.

As added by AB 3992 (Sher), Stats. 1990, c. 1355, and amended by AB 1220 (Eastin), Stats. 1993, c. 656.

47902. Notwithstanding Section 16475 of the Government Code, all interest earned and other increment derived from the investment of revenues in an account in the Integrated Waste Management Fund shall be deposited in that account.

As added by AB 3992 (Sher), Stats. 1990, c. 1355, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

47902. Notwithstanding Section 16475 of the Government Code, all interest earned and other increment derived from the investment of revenues in an account in the Integrated Waste Management Fund shall be deposited in that account.

As added by AB 3992 (Sher), Stats. 1990, c. 1355, and amended by AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

ARTICLE 2. MANAGEMENT OF THE FUND

(Article 2 as added by SB 937 (Vuich), Stats. 1990, c. 35)

48000. (a) Each operator of a disposal facility shall pay a fee quarterly to the State Board of Equalization which is based on the amount, by weight or volumetric equivalent, as determined by the board, of all solid waste disposed of at each disposal site.

(b) The fee for solid waste disposed of shall be one dollar and thirty-four cents ($1.34) per ton. Commencing with the 1995-96 fiscal year, the amount of the fee shall be established by the board at an amount that is sufficient to generate revenues equivalent to the approved budget for that fiscal year, including a prudent reserve, but shall not exceed one dollar and forty cents ($1.40) per ton.

(c) The board shall notify the State Board of Equalization on the first day of the period in which the rate shall take effect of any rate change adopted pursuant to this section.

(d) The board and the State Board of Equalization shall ensure that all the fees for solid waste imposed pursuant to this section that are collected at a transfer station are paid to the State Board of Equalization in accordance with this article.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1820 (Sher), Stats. 1990, c. 145, and AB 3992 (Sher), Stats. 1990, c. 1355, and AB 1220 (Eastin), Stats. 1993, c. 656, and AB 688 (Sher), Stats. 1994, c. 1227, and SB 50 (Sher), Stats. 2004, c. 863.

48001. The revenue from the fees paid pursuant to Section 48000 shall, after payment of refunds and administrative costs of collection, be deposited in the Integrated Waste Management Account, which is hereby created in the fund.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

48002. The state board shall adopt rules and regulations to carry out Section 48000, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

48003. The state board may not spend more than 1/2 percent of the total revenues deposited, or anticipated to be deposited, in the account during a fiscal year for the administration of this chapter during that fiscal year.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 1074 (Senate Environmental Quality Committee), Stats. 2003, c. 742.

48004. (a) The money in the account shall be used by the board upon appropriation by the Legislature, for the following purposes.

(1) The administration and implementation of this division by the board.

(2) The state water board's and regional water board's administration and implementation of Division 7 (commencing with Section 13000) of the Water Code at solid waste disposal sites.

(b) It is the intent of the Legislature that an amount which is sufficient to fund state water board and regional water board regulatory activities for solid waste landfills be appropriated from the account by the Legislature in the annual Budget Act. Those persons who are required to pay the fee imposed pursuant to Section 48000 shall not be required to pay the annual fee imposed pursuant to subdivision (d) of Section 13260 of the Water Code with regard to the same discharge.

(c) Notwithstanding subdivisions (a) and (b), if the fee established pursuant to Section 48000 does not generate revenues sufficient to fund the programs specified in this section, or if the amount appropriated by. the Legislature for these purposes is reduced, those reductions shall be equally and proportionally distributed between funding for the solid waste programs of the state water board and the regional water boards and the board.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 1220 (Eastin), Stats. 1993, c. 656.

48005. Unless otherwise specified, all money received by the board shall be deposited in the Integrated Waste Management Account and shall be used by the board, upon appropriation by the Legislature, for the purposes for which it was collected or, if not expressly specified for a particular purpose, for the purposes of this division, except Part 6 (commencing with Section 46000), which shall be funded by fees pursuant to Section 46801.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

48006. The board may exempt from all fees any operator of a solid waste landfill that receives less than a monthly average of five tons per operating day of solid waste.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

48007. (a) Recycled materials and inert waste removed from the waste stream and not disposed of in a solid waste landfill shall not be included for the purpose of assessing fees imposed pursuant to Section 48000.

(b) For purposes of this section, and only for the purpose of determining whether fees shall be imposed pursuant to Section 48000, "inert waste removed from the waste stream and not disposed of in solid waste landfills" includes the use, disposal, or placement of solely inert waste on property where surface mining operations, as defined in Section 2735, are being conducted, or have been conducted previously, as long as the use, disposal, or placement is for purposes of reclamation, as defined in Section 2733, pursuant to either of the following:

(1) A reclamation plan approved pursuant to Section 2774.

(2) For surface mining operations conducted prior to January 1, 1976, an agreement with a city or county, or a permit issued by a city or county, that provides for a fill appropriately engineered for the planned future use of the reclaimed mine site.

(c) For purposes of this section, "inert waste" means rock, concrete, brick, sand, soil, and cured asphalt only. In addition, inert waste does not include any waste that meets the definition of "designated waste" as defined in Section 13173 of the Water Code or "hazardous waste" as defined by Section 40141.

(d) This section shall remain operative until the operative date of the regulations adopted by the board pursuant to Section 48007.5 and, as of the January 1 following that operative date, this section is repealed, unless a later enacted statute deletes or extends the dates on which it becomes inoperative and is repealed.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 515 (Chesbro), Stats.1999, c. 600, and AB 173 (Chavez), Stats. 2001, c. 811.

48007. (a) Recycled materials and inert waste removed from the waste stream and not disposed of in a solid waste landfill shall not be included for the purpose of assessing fees imposed pursuant to Section 48000.

(b) This section shall become operative on the operative date of the regulations adopted by the board pursuant to Section 48007.5.

As added by SB 515 (Chesbro), Stats. 1999, c. 600, and amended by AB 173 (Chavez), Stats. 2001, c. 811.

48007.5. (a) On or before January 1, 2004, the board shall adopt and file with the Secretary of State, pursuant to Section 11346.2 of the Government Code, regulations that

establish an appropriate level of oversight of the management of construction and demolition waste, and the management of inert waste at mine reclamation sites.

(b) For purposes of this section, "inert waste" has the same meaning as defined in subdivision (c) of Section 48007, as that section read on January 1, 2002.

As added by AB 173 (Chavez), Stats. 2001, c. 811.

48008. (a) Any operator of a solid waste landfill that pays a fee pursuant to this chapter may impose on its users an administrative fee of not more than 5 percent of the fees paid to the State Board of Equalization during the previous quarter pursuant to Section 48000.

(b) Administrative fees imposed pursuant to subdivision (a) shall reflect, to the extent feasible, the actual costs of collecting and accounting for fees paid to the State Board of Equalization.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by AB 3992 (Sher), Stats. 1990, c. 1355.

48009-48010. REPEALED.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and repealed by AB 1515 (Sher), Stats. 1991, c. 717.

ARTICLE 2.5. SOLID WASTE DISPOSAL AND CODISPOSAL CLEANUP PROGRAM

(Article 2.5 as added by AB 2136 (Eastin), Stats. 1993, c. 655)

48020. (a) For purposes of this article, the following terms have the following meaning:

(1) "Codisposal site" means a hazardous substance release site listed pursuant to Section 25356 of the Health and Safety Code, where the disposal of hazardous substances, hazardous waste, and solid waste has occurred.

(2) "Trust fund" means the Solid Waste Disposal Site Cleanup Trust Fund created pursuant to Section 48027.

(b) The board shall, on January 1, 1994, initiate a program for the cleanup of solid waste disposal sites and for the cleanup of solid waste at codisposal sites where the responsible party either cannot be identified or is unable or unwilling to pay for timely remediation, and where cleanup is needed to protect public health and safety or the environment.

(c) The board shall not expend more than 5 percent of the funds appropriated for the purpose of the program by a statute other than the Budget Act to administer that program, unless a different amount is otherwise appropriated to administer the program in the annual Budget Act. If a different amount is appropriated to administer the program in the annual Budget Act, it shall be set forth in a separate line item. All remaining funds appropriated for the purposes of the program shall be expended on direct cleanup pursuant to subdivision (b) or emergency actions at solid waste facilities, disposal sites, sites involving solid waste handling, and for solid waste at codisposal sites.

As added by AB 2136 (Eastin), Stats. 1993, c. 655, and amended by AB 992 (Wayne), Stats. 1999, c. 496, and AB 2211 (Karnette), Stats. 2006, c. 762.

48021. (a) In prioritizing the sites for cleanup pursuant to Section 48020, the board shall consider the degree of risk to public health and safety and the environment posed by conditions at a site, the ability of the site owner to clean up the site without monetary assistance, the ability of the board to clean up the site adequately with available funds, maximizing the use of available funds, and other factors as determined by the board.

(b) (1) In administering the program authorized by Section 48020, the board may expend funds directly for cleanup, provide loans to parties who demonstrate the ability to repay state funds, and provide partial grants to public entities, to assist in site cleanup.

(2) The board may expend funds directly for the cleanup of a publicly owned site only if the board determines that the public entity lacks resources or expertise to timely manage the cleanup itself.

(3) In addition to the criteria specified in subdivision (a), in considering partial grants that provide greater than 50 percent of the funds directly for cleanup, the board shall consider the amount of contributions of moneys or in-kind services from the applicant; the availability of other appropriate funding sources to remediate the site; the degree of public benefit; the presence of innovative and cost-effective programs to abate or prevent solid waste problems to be addressed by the grants; and other factors as determined by the board.

(c) (1) In addition to the expenditures specified in subdivision (b), the board may expend a portion of the funds appropriated for the program to abate illegal disposal sites.

(2) For the purposes of this subdivision, the board may provide grants to public entities.

(3) Where funds are provided by the board to address illegal disposal sites within a jurisdiction, the local enforcement agency shall provide ongoing enforcement to prevent recurring illegal disposal at the site.

(4) For the purposes of this subdivision, an activity to remove or abate solid waste disposed into a municipal storm sewer is eligible to receive a partial grant, if the grant is used for solid waste cleanup, solid waste abatement, or any other activity that mitigates the impact of solid waste, and an ongoing program is established to prevent recurring solid waste disposal into the municipal storm sewer.

(d) In developing and implementing the program, the board shall consult with certified local enforcement agencies and the regional water boards.

As added by AB 2136 (Eastin), Stats. 1993, c. 655, and amended by AB 992 (Wayne), Stats. 1999, c. 496, and AB 2211 (Karnette), Stats. 2006, 762.

48022. The Legislature finds and declares all of the following:

(a) Pursuant to the legal framework and definitions pertaining to solid waste contained in this division, the board and the local enforcement agencies have general authority and responsibility for responding to environmental conditions at solid waste disposal sites to ensure protection of the public health and safety and the environment.

(b) The definitions of "solid waste," "solid waste disposal," and "solid waste landfill" establish some of the

parameters for the general authority and responsibility of the board and the local enforcement agencies.

(c) The Solid Waste Disposal and Codisposal Site Cleanup Program established under this article establishes a mechanism for funding the cleanup of solid waste disposal sites and the solid waste at codisposal sites under specified conditions and circumstances.

(d) A burn dump site is a solid waste disposal site and, as such, is a site that is eligible for funding pursuant to the program, provided all other criteria for program eligibility are met.

(e) Pursuant to the Health and Safety Code, the Department of Toxic Substances Control has general jurisdiction, authority, and responsibility regarding hazardous substance release sites.

(f) Pursuant to the Water Code, the State Water Resources Control Board and the regional water quality control boards have general jurisdiction, authority, and responsibility regarding protection of the waters of the state, including, but not limited to, solid waste and hazardous waste discharges.

(g) Most burn dump sites impact multiple media. Burn dump sites usually contain hazardous substances and, therefore, most can be characterized generally as hazardous substance release sites. Burn dump sites also contain predominantly solid waste and, therefore, can be characterized generally as solid waste disposal sites. Some burn dump sites impact, or have the potential to impact, waters of the state.

(h) Burn dump sites are presumed to be solid waste disposal sites, subject to the general authority and responsibility of the board and the local enforcement agencies. In addition to this general presumption, it is the intent of the Legislature to require that the procedures set forth in Section 48022.5 be followed to ensure that hazardous substances and hazardous wastes at burn dump sites are adequately characterized and safely managed and remediated in consultation with, or under the direct oversight of, the department or the appropriate regional water quality control board, or both.

As added by AB 2136 (Eastin), Stats. 1993, c. 655, and repealed by AB 626 (Sher), Stats. 1996, c. 1038. As added by AB 709 (Chavez), Stats. 2002, c. 589.

48022.5. (a) For the purposes of this section, the following terms have the following meanings, unless the context clearly requires otherwise:

(1) "Burn dump site" means a solid waste disposal site that meets all of the following conditions:

(A) Was operated prior to 1972.

(B) Is closed.

(C) Prior to closure, was a site where open burning was conducted.

(2) "Department" means the Department of Toxic Substances Control.

(3) "Regional board" means a California regional water quality control board.

(4) "Remediation oversight agency" means the entity responsible for environmental oversight on a burn dump site remediation project.

(5) "Sensitive land use" means either of the following:

(A) Use for residences, schools, day care facilities, hospitals and hospices, and other facilities or structures that have a high density of occupation on a daily basis.

(B) Use as a park, golf course, or any other, similar open-space area that is made available for public use, when the park, golf course, or open-space area has a potential for human exposure to hazardous substances.

(b) On or before June 30, 2003, the department, in consultation with the board and the State Water Resources Control Board, shall develop protocols to be utilized by the board and the local enforcement agencies for site investigation and characterization of hazardous substances at burn dump sites.

(1) The protocols shall include, but need not be limited to, both of the following items:

(A) Sampling and analysis protocols to be utilized by the board and the local enforcement agencies for site investigation and characterization of hazardous substances at burn dump sites.

(B) Appropriate abatement measures for nonsensitive land uses.

(2) In addition, the protocols may include either or both of the following items:

(A) Cleanup guidelines, levels, or thresholds for one or more typical constituents of concern based on nonsensitive land uses.

(B) Specifications for confirmation sampling on partial and complete clean-closed sites.

(c) Whenever the board receives an application for funding under this article for a burn dump site, the board shall use the protocols developed by the department under subdivision (b) to investigate and characterize hazardous substances at the site.

(d) Once sufficient site information is available, the board shall notify the department and the appropriate regional board of the board's interest in providing funding and remediation oversight for the site.

(e) For a nonsensitive land use site, the board shall proceed as the remediation oversight agency, following the notification required under subdivision (d), unless the department or regional board requests a site consultation meeting under subdivision (g).

(f) For an existing or proposed sensitive land use site, the board shall request a site consultation meeting under subdivision (g).

(g) For sites with existing or proposed sensitive land uses or water quality impacts, or where otherwise requested by the department or a regional board, the board, the department, the State Water Resources Control Board, and the appropriate regional board shall hold a site consultation meeting to determine which agency will provide remediation oversight. If, following a review of the site information, the department or a regional board requests to provide remediation oversight,

that request shall be granted. If the department or a regional board does not request to provide remediation oversight, remediation oversight of the site shall remain with the board. In cases where the board requested the meeting, the determination of remediation oversight agency shall be made within 30 days of the board's request for the meeting.

(h) The board may require the imposition of an environmental restriction on any burn dump site where solid waste or residuals from the burning of solid waste is left in place. The environmental restriction shall meet the requirements described in Section 1471 of the Civil Code, and the restrictions shall run with the land.

(i) On or before March 30, 2003, the board and the department shall enter into an agreement relating to the funding of any activities of the department appropriately conducted pursuant to this section.

(j) Nothing in this section is intended to limit the authority of the board, the department, the State Water Resources Control Board, or a regional board pursuant to other provisions of law.

(k) Nothing in this section is intended to preclude any qualifying entity from applying for and receiving funding assistance under any other provision of law.

As added by AB 709 (Chavez), Stats. 2002, c. 589.

48023. If the board expends any funds pursuant to this article, the board shall, to the extent feasible, seek repayment from responsible parties in an amount equal to the amount expended, a reasonable amount for the board's cost of contract administration, and an amount equal to the interest that would have been earned on the expended funds.

(b) In implementing this article, the board is vested, in addition to its other powers, with all the powers of an enforcement agency under this division.

(c) The amount of any cost incurred by the board pursuant to this article shall be recoverable from responsible parties in a civil action brought by the board or, upon the request of the board, by the Attorney General pursuant to Section 40432.

As added by AB 2136 (Eastin), Stats. 1993, c. 655, and amended by AB 2211 (Karnette), Stats. 2006, c. 762.

48023.5. (a) In addition to the remedies authorized under Section 48023, any costs or damages incurred under this article by the board constitute a lien upon the real property owned by any responsible party that is subject to the remedial action. The lien shall attach regardless of whether the responsible party is insolvent. A lien imposed under this section shall arise at the time costs are first incurred by the board with respect to a remedial action at the site.

(b) A lien established under this section shall be subject to the notice and hearing procedures required by due process of the law. Prior to imposing the lien, the board shall send the property owner via certified mail a "Notice of Intent to Place A Lien" letter. This letter shall provide that the owner, within 14 calendar days from the date of receipt of the letter, may object to the imposition of the lien either in writing or through an informal proceeding before a neutral official. This neutral official shall be the board's executive director or his or her designee, who may not have had any prior involvement with the site. The issue before the neutral official shall be whether the board has a reasonable basis for its determination that the statutory elements for lien placement under this section are satisfied. During this proceeding the property owner may present information or submit documents, or both, to establish that the board should not place a lien as proposed. The neutral official shall assure that a record of the proceeding is made, and shall issue a written decision. The decision shall state whether the property owner has established any issue of fact or law to alter the board's intention to file a lien, and the basis for the decision.

(c) The board may not be considered a responsible party for a remediated site merely because a lien is imposed under this section.

(d) A lien imposed under this section shall continue until the liability for the costs or damages incurred under this article, or a judgment against the responsible party, is satisfied. However, if it is determined by a court that the judgment against the responsible party will not be satisfied, the board may exercise its rights under the lien.

(e) A lien imposed under this section shall have the force and effect of, and the priority of, a judgment lien upon its recordation in the county in which the property subject to the lien is located. The lien shall contain a legal description of the real property that is subject to, or affected by, the remedial action, the assessor's parcel number, and the name of the owner of record, as shown on the latest equalized assessment roll.

(f) All funds recovered under this section on behalf of the board's solid waste disposal and codisposal site cleanupprogram shall be deposited in the Solid Waste Disposal Site Cleanup Trust Fund established under Section 48027.

As added by SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

48024. Any contract entered into by the board pursuant to Section 48021 or 48022 is exempt from approval by the Department of General Services pursuant to Section l0295 of the Public Contract Code.

As added by AB 2136 (Eastin), Stats. 1993, c. 655.

48025. The board may adopt regulations for the implementation of this article.

As added by AB 2136 (Eastin), Stats. 1993, c. 655.

48026. All expenses which are incurred by the board in carrying out this article shall be payable solely from the trust fund. No liability or obligation is imposed upon the state pursuant to this part, and the board shall not incur a liability or obligation beyond the extent to which money is provided in the trust fund for the purposes of this article.

As added by AB 2136 (Eastin), Stats. 1993, c. 655.

48027. (a) (1) The Legislature hereby finds and declares that effective response to cleanup at solid waste

disposal and codisposal sites requires that the state have sufficient funds available in the trust fund created pursuant to subdivision (b).

(2) The Legislature further finds and declares that the maintenance of the trust fund is of the utmost importance to the state and that it is essential that any money in the trust fund be used solely for the purposes authorized in this article and not be used, loaned, or transferred for any other purpose.

(b) The Solid Waste Disposal Site Cleanup Trust Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the money in the trust fund is hereby continuously appropriated to the board for expenditure, without regard to fiscal years, for the purposes of this article.

(c) The following money shall be deposited into the trust fund:

(1) Funds appropriated by the Legislature from the Integrated Waste Management Account to the board for solid waste disposal or codisposal site cleanup.

(2) Any interest earned on the money in the trust fund.

(3) Any cost recoveries from responsible parties for solid waste disposal or codisposal site cleanup and loan repayments pursuant to this article.

(d) If this article is repealed, the trust fund shall be dissolved and all money in the fund shall be distributed to solid waste landfill operators who have paid into the trust fund during effective life of the trust fund.

(e) Any trust fund distributions received by solid waste landfill operators pursuant to subdivision (c) may be used for only any of the following activities, as related to solid waste landfills:

(1) Solid waste landfill closure and postclosure maintenance operations.

(2) Implementation of Part 258 (commencing with Section 258.1) of Title 40 of the Code of Federal Regulations.

(3) Corrective actions at the solid waste landfill.

(f) The balance in the trust fund each July 1 shall not exceed thirty million dollars ($30,000,000).

As added by AB 2136 (Eastin), Stats. 1993, c. 655, and amended by AB 626 (Sher), Stats. 1996, c. 1038.

48028. Any funds appropriated for the purpose of the program that are not expended shall remain in the trust fund for future expenditure by the board for the purposes of this article or until this article is repealed.

As added by AB 2136 (Eastin), Stats. 1993, c. 655, and amended by AB 992 (Wayne), Stats. 1999, c. 496.

Chapter 2.5. Farm and Ranch Solid Waste Cleanup and Abatement Grant Program

(Chapter 2.5 as added by SB 1330 (Lockyer), Stats. 1997, c. 875)

48100. (a) The Legislature hereby finds and declares that illegal disposal of solid waste on property owned by innocent parties is a longstanding problem needing attention and that grants provided under this chapter will support the cleanup of farm and ranch property.

(b) The board shall establish a farm and ranch solid waste cleanup and abatement grant program for the purposes of cleaning up and abating the effects of illegally disposed solid waste pursuant to this chapter.

(c) (1) The Farm and Ranch Solid Waste Cleanup and Abatement Account is hereby created in the General Fund and may be expended by the board, upon appropriation by the Legislature in the annual Budget Act, for the purposes of this chapter.

(2) The following funds shall be deposited into the account:

(A) Money appropriated by the Legislature from the Integrated Waste Management Fund or the California Used Oil Recycling Fund to the board for the grant program, or from the California Tire Recycling Management Fund to the board for the purposes set forth in subdivision (j) of Section 42889.

(B) Notwithstanding Section 16475 of the Government Code, any interest earned on the money in the account.

(3) The board may expend the money in the account for both of the following purposes:

(A) To pay the costs of implementing this chapter, which costs shall not exceed 7 percent of the funds available for the grant program.

(B) To make payments for grants authorized by this chapter.

(4) Upon authorization by the Legislature in the annual Budget Act, the sum of all funds transferred into the account from other funds or accounts shall not exceed one million dollars ($1,000,000) annually.

(5) Notwithstanding any other provision of law, the grant program shall be funded from the following funds:

(A) The Integrated Waste Management Fund.

(B) The California Tire Recycling Management Fund, for the purposes set forth in subdivision (j) of Section 42889.

(C) The California Used Oil Recycling Fund.

(d) For purposes of this chapter, the following definitions shall apply:

(1) "Native American tribe" has the same meaning as tribe, as defined in subdivision (b) of Section 44201.

(2) "Public entity" means a city, county, or resource conservation district.

As added by SB 1330 (Lockyer), Stats. 1997, c. 875, and amended by SB 876 (Escutia), Stats. 2000, c. 838, and SB 1328 (Chesbro), Stats. 2002, c. 628.

48101. (a) The grant program shall be established to make grants available to public entities and Native American tribes for the purposes described in subdivision (b) of Section 48100 in an amount not to exceed the sum of two hundred thousand dollars ($200,000) per year for any single public entity or Native American tribe, and not to exceed fifty thousand dollars ($50,000) for any single cleanup or abatement project. A Native American tribe or public entity may not expend more than 7 percent of the grant for administrative costs.

(b) The board shall give priority to the provision of grants to public entities and Native American tribes that have

established innovative and cost-effective programs designed to discourage the illegal disposal of solid waste and to encourage the proper disposal of solid waste in permitted solid waste disposal facilities.

(c) A grant agreement between the board and a public entity or Native American tribe may provide for, but is not limited to, all of the following provisions:

(1) Site-specific cleanup and removal of solid waste that is illegally disposed on farm or ranch property.

(2) Comprehensive, ongoing enforcement programs for the cleanup and removal of solid waste that is illegally disposed of on farm or ranch property.

(3) Waiver of tipping fees or other solid waste fees at permitted solid waste facilities for solid waste that was illegally disposed of on farm or ranch property.

(d) On and after the adoption of grant program regulations by the board, any fines levied on, or abatement orders issued against, a farm or ranch owner by the local enforcement agency or other local agency as the result of solid waste disposed of on the owner's farm or ranch property, regarding which the owner has made application to a public entity or Native American tribe for a grant under this chapter, shall be stayed, upon the owner's written request to the local enforcement agency or other local agency, if (1) the local agency makes a decision that the property owner was not responsible for the dumping or (2) the property owner has filed a written appeal of the local agency's decision to the board and the board's decision on the matter is pending.

As added by SB 1330 (Lockyer), Stats. 1997, c. 875, and amended by SB 1328 (Chesbro), Stats. 2002, c. 628.

48102. No farm or ranch property is eligible for a grant pursuant to this chapter if it is determined by the public entity or Native American tribe that the owner was responsible for the illegal disposal of the solid waste.

As added by SB 1330 (Lockyer), Stats. 1997, c. 875, and amended by SB 1328 (Chesbro), Stats. 2002, c. 628.

48103. (a) The board shall adopt regulations to implement this chapter.

(b) The regulations adopted pursuant to this section shall include criteria for grant eligibility and shall establish a process that is open and accessible to the public under which grant applications may be reviewed, ranked, and awarded. The regulations shall also develop a process for a farm or ranch property owner to appeal a public entity's or Native American tribe's determination of responsibility pursuant to Section 48102.

(c) The regulations adopted under this section shall require the applicant public entity or Native American tribe to certify to both of the following:

(1) That the public entity or Native American tribe is the only applicant for funding under the program for any particular farm or ranch property.

(2) That the owner of the farm or ranch property is not responsible for the illegal disposal of the solid waste.

(3) That the public entity or Native American tribe has in place a program that is sufficient to prevent future incidents of illegal solid waste disposal.

(d) If a public entity or Native American tribe denies a grant application, it shall notify the farm or ranch property owner in writing as to why the application was denied.

(e) Nothing in this section is intended to prevent a farm or ranch property owner from receiving reimbursement for solid waste cleanup or abatement costs under the grant program or pursuant to any other law.

As added by SB 1330 (Lockyer), Stats. 1997, c. 875. and amended by SB 1328 (Chesbro), Stats. 2002, c. 628.

48104. Each year, as part of the annual report required to be submitted pursuant to Section 40507, the board shall report to the Governor and the Legislature on all of the following:

(a) Actions the board has taken under the grant program.

(b) The costs and effectiveness in cleaning up and abating solid waste illegally disposed of on farm and ranch property.

(c) The number of sites cleaned up and abated in each county.

(d) The number of participant cities, counties, districts, and Native American tribes, and the sites cleaned up and abated through those cities, counties, districts, and Native American tribes.

(e) The types of solid waste cleaned up and abated.

(f) The number of sites not approved for the grant program, and the reasons for that disapproval.

(g) The types of property on which solid waste has been cleaned up and abated.

As added by SB 1330 (Lockyer), Stats. 1997, c. 875, and amended by SB 1328 (Chesbro), Stats. 2002, c. 628.

48105. All solid waste collected as a result of cleanup or abatement under the grant program shall be recycled or reused to the maximum extent feasible and cleanup or abatement activities shall be conducted in compliance with existing laws governing the handling of solid wastes, hazardous wastes, liquid wastes, or medical wastes, as appropriate.

As added by SB 1330 (Lockyer), Stats. 1997, c. 875, and amended by SB 1328 (Chesbro), Stats. 2002, c. 628.

48106. Nothing in this chapter is intended to relieve any party who is responsible for the generation or illegal deposition of the solid waste from liability for removal costs if the party can be identified. Farm or ranch property owners whose property is the subject of solid waste cleanup or abatement under this chapter and who are not responsible for the generation or deposition of the solid waste shall not be subject to any cost recovery action for cleanup or abatement costs borne by public entities or Native American tribes or the board under this chapter.

As added by SB 1330 (Lockyer), Stats. 1997, c. 875, and amended by SB 1328 (Chesbro), Stats. 2002, c. 628.

Chapter 2.6. Landfill Closure Loan Program

(Chapter 2.6 as added by AB 467 (Strom-Martin), Stats. 2002, c. 587)

48200. The Legislature hereby finds that some solid waste landfill operators, particularly those of older-technology, unlined landfills located in rural areas, want to pursue early landfill closure as it is not economically feasible to upgrade their landfills to current environmental design standards, even though there may be significant landfill capacity remaining. The Legislature declares that it is necessary to establish a financial assistance program to assist these operators in early closure of their landfills.

As added by AB 467 (Strom-Martin), Stats. 2002, c. 587.

48201. For the purposes of this chapter, "program" means the Landfill Closure Loan Program.

As added by AB 467 (Strom-Martin) Stats. 2002, c. 587.

48202. (a) The Legislature hereby establishes the Landfill Closure Loan Program to provide financial assistance to operators of older-technology, unlined landfills, who want to pursue early landfill closure in order to mitigate potential environmental problems.

(b) The board may expend funds from the Integrated Waste Management Fund, upon appropriation by the Legislature, to make loans to operators of solid waste landfills to assist them in the early closure of their landfills. In granting loans, the board shall give highest priority to operators of small, rural, unlined landfills that, if not closed, would represent the most serious potential threat to the public health and safety, or the environment, in the opinion of the board.

(c) The board may expend money in the fund, upon appropriation by the Legislature, for program administration.

(d) All funds received from the operation of the program, including, but not limited to, principal repayments, recovery of collection costs, income earned on any asset recovered pursuant to loan default, and funds collected through foreclosure actions, shall be deposited in the fund and may be used for purposes authorized by this chapter.

(e) The board may set aside moneys in the fund for the purposes of paying costs necessary to protect the state's position as a lender-creditor. These costs shall include, but not be limited to, foreclosure expenses, environmental reports, auction fees, title searches, appraisals, real estate brokerage fees, attorney fees, mortgage payments, insurance payments, utility costs, repair costs, removal and storage costs for repossessed equipment and inventory, and expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

As added by AB 467 (Strom-Martin), Stats. 2002, c. 587.

48204. Loans made pursuant to this chapter shall be subject to all of the following requirements:

(a) The terms of any approved loan shall be specified in a loan agreement between the borrower and the board. All money received as repayment on a loan shall be deposited in the fund.

(b) The board shall approve only those loan applications that demonstrate the applicant's financial ability to repay the loan.

(c) Loans may be made only to applicants who are using trust funds or enterprise funds as financial assurance mechanisms to finance landfill closure and postclosure maintenance and who are in compliance with financial assurance requirements for landfill closure and post-closure maintenance.

(d) The term of any loan made pursuant to this section shall be not more than 10 years.

(e) The interest rate of any loan made pursuant to this section may be zero percent.

(f) The board may not finance more than five hundred thousand dollars ($500,000) for each landfill closure project.

(g) The Department of Finance may audit the expenditure of the proceeds of any loan made pursuant to this chapter.

As added by AB 467 (Strom-Martin), Stats. 2002, c. 587.

48205. The board, the California Pollution Control Financing Authority, the Treasurer, and other appropriate state officers and agencies shall, to the extent feasible and as appropriate, coordinate activities that will leverage financing for the program and encourage joint activities to protect the public health and the environment.

As added by AB 467 (Strom-Martin), Stats. 2002, c. 587.

48206. The board shall adopt regulations to implement this chapter.

As added by AB 467 (Strom-Martin), Stats. 2002, c. 587.

48207. (a) (1) Except as provided in paragraph (2), this chapter shall become inoperative on July 1, 2012, and as of January 1, 2013, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2013, deletes or extends the dates when it becomes inoperative and is repealed.

(2) The repeal of this chapter pursuant to paragraph (1) does not extinguish any loan obligation or the authority of the state to pursue appropriate action for the collection of a loan.

As added by AB 467 (Strom-Martin), Stats. 2002, c. 587.

Chapter 3. Other Provisions

(Chapter 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

48500. If any provisions of this division or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this division which can be given effect without the invalid provision or application thereof, and to this end the provisions of this division are severable.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

48501. In any civil action brought pursuant to this division in which injunctive relief is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunctive relief is not granted, or that the remedy at law is inadequate, and any form

of injunctive relief shall be granted without those allegations and without that proof.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

48502. Notwithstanding any other provision of law, the powers and duties of the Department of Toxics Substances Control pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, including those concerning the issuance of permits for hazardous waste disposal sites, enforcement activities related to the handling, transportation, storage, use, processing, and disposal of hazardous wastes, and the development of programs for the recycling and recovery of resources from hazardous wastes, shall not be assumed or duplicated by the board pursuant to its responsibilities, powers, and duties provided in this division.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by the Gov. Reorg. Plan No. 1 of 1991, and AB 2494 (Sher), Stats. 1992, c. 1292, and AB 3322 (Sher), Stats. 1992, c. 1293.

Chapter 4. California Oil Recycling Enhancement

(Chapter 4 as added by AB 2076 (Sher), Stats. 1991, c. 817)

ARTICLE 1. LEGISLATIVE FINDINGS

(Article 1 as added by AB 2076 (Sher), Stats. 1991, c. 817)

48600. (a) The problem posed by used oil disposal requires a comprehensive, statewide response, including, but not limited to, eliminating illegal disposal, reducing landfill disposal of used oil, reducing pollution from stormwater runoff, recycling of used oil into new uses, and the promotion of secondary markets for recycled oil products.

(b) That the improper or illegal disposal of used oil, often mixed with other solid waste, is a potential source of stormwater pollution and that environmental education and mitigation efforts regarding proper management of used oil and oil byproducts is within the purposes of this chapter.

(c) California currently generates about 161 million gallons of used lubricating and industrial oil each year, and only about 50 percent of that oil is recycled.

(d) The scarcity of used oil collection centers and programs, and the charges imposed on consumers for recycling used oil, create economic disincentives for recycling that could be addressed through a recycling incentive program.

(e) Used oil represents a valuable state resource that should be reclaimed and recycled whenever possible. An abundance of used oil recycling alternatives exist that have been demonstrated to be environmentally safe. These alternatives need to be promoted in order to achieve the maximum use of used oil and prevent damage to the environment.

(f) It is the intent of the Legislature to reduce the illegal disposal of used oil and recycle and reclaim used oil to the greatest extent possible in order to recover valuable natural resources and to avoid damage to the environment and threats to public health.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 1201 (Pavley), Stats. 2001, c. 317.

ARTICLE 2. SHORT TITLE

(Article 2 as added by AB 2076 (Sher), Stats. 1991, c. 817)

48601. This chapter shall be known and may be cited as the California Oil Recycling Enhancement Act.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

ARTICLE 3. DEFINITIONS

(Article 3 as added by AB 2076 (Sher), Stats. 1991, c. 817)

48610. Unless the context otherwise requires, the following definitions govern the construction of this chapter.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48610.5. "Bulk oil" means oil sold and delivered in a single transaction in an amount greater than 55 gallons

regardless of the size of the container or containers in which the oil is delivered.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 2762 (Sher), Stats. 1994, c. 1147, and by AB 1103 (Sher), Stats. 1995, c. 822.

48611. "Container" means a drum, can, or other receptacle used primarily for storage or transportation of oil. "Container" does not mean the equipment in which oil is used.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48612. "Department" means the Department of Toxic Substances Control.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48613. "Fund" means the California Used Oil Recycling Fund created pursuant to Section 48653.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48614. "Industrial generator" means an entity which buys and uses lubricating oil only for equipment owned or used by the entity. "Industrial generator" includes state or local governmental entities, as defined by Section 5902 of the Government Code. "Industrial generator" does not include motor carriers which have received oil for which a payment has not been made pursuant to Section 48650.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 3073 (Sher), Stats. 1992, c. 1101.

48616. "Industrial oil" includes, but is not limited to, any compressor, turbine, or bearing oil, hydraulic oil, metal-working oil, or refrigeration oil. Industrial oil does not include dielectric fluids.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48617. "Local government" has the same meaning as defined in Section 30109.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48618. "Lubricating oil" includes, but is not limited to, any oil intended for use in an internal combustion engine crankcase, transmission, gearbox, or differential in an automobile, bus, truck, vessel, plane, train, heavy equipment, or other machinery powered by an internal combustion engine.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48618.4. "Mitigation" is the prevention of stormwater pollution from used oil and oil byproducts and the reduction or alleviation of the effect of stormwater pollution from used oil and oil byproducts by means of action taken on public property. Mitigation includes the installation of devices and implementation of practices that prevent used oil and oil byproducts from causing stormwater pollution. Mitigation does not include the cleanup or restoration of polluted areas.

As added by AB 1201 (Pavley), Stats. 2001, c. 317.

48619. "Oil manufacturer" means the first person or entity in the state to take title to lubricating or industrial oil for sale, use, or transfer in the state.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 3073 (Sher), Stats. 1992, c. 1101.

48620. "Recycled oil" means recycled oil, as defined in Section 25250.1 of the Health and Safety Code.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by SB 1824 (Calderon), Stats. 1998, c. 675, and AB 2067 (Cunneen), Stats. 1998, c. 880.

48620.5. "Stormwater pollution" for purposes of mitigation does not include runoff at a specific facility even if there is no point source at the facility. This pollution is from used oil and oil by products, often mixed with other solid waste, and is typically dispersed by urban stormwater and marina or boating activities, or both.

As added by AB 1201 (Pavley), Stats. 2001, c. 317.

48621. "Used oil" means used oil, as defined in subdivision (a) of Section 25250.1 of the Health and Safety Code. Used oil does not include articles contaminated with de minimis quantities of used oil, such as used oil filters, oily rags, and scrap metal.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48622. "Used oil collection center" means a business, governmental entity, or nonprofit organization which accepts used lubricating oil from the public and which is exempt from hazardous waste facility permit requirements pursuant to subdivision (a) of Section 25250.11 of the Health and Safety Code.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48623. "Used oil hauler" means a hazardous waste hauler registered pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code who transports used oil to a used oil recycling facility, certified pursuant to Article 7 (commencing with Section 48660), to a used oil storage facility, to a used oil transfer facility, or to an out-of-state recycling facility registered with the Environmental Protection Agency and operated in substantial compliance with applicable regulatory standards of the state in which the recycling facility is located.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 2762 (Sher), Stats. 1994, c. 1147.

48624. "Used oil recycling facility" means a facility which is issued a hazardous waste facilities permit or grant of interim status by the department pursuant to Section 25200 or 25200.5 of the Health and Safety Code to convert used oil into recycled oil.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48625. The following terms have the following meaning:

(a) "Used oil storage facility" has the same meaning as defined in subdivision (g) of Section 25250.1 of the Health and Safety Code.

(b) "Used oil transfer facility" has the same meaning as defined in subdivision (h) of Section 25250.1 of the Health and Safety Code.

As added by AB 2762 (Sher), Stats. 1994, c. 1147.

ARTICLE 4. USED OIL RECYCLING

(Article 4 as added by AB 2076 (Sher), Stats. 1991, c. 817)

48630. On or before October 1, 1992, the board shall adopt a used oil recycling program which promotes and develops alternatives to the illegal disposal of used oil.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48631. The used oil recycling program shall include, but is not limited to, the following:

(a) A recycling incentive system as described in Article 6 (commencing with Section 48650).

(b) Grants or loans, as specified in Section 48632.

(c) Development and implementation of an information and education program for the promotion of alternatives to the illegal disposal of used oil.

(d) A reporting, monitoring, and enforcement program to ensure that all statutes and regulations relating to used oil are properly carried out.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48632. The board may issue grants or loans pursuant to subdivision (b) of Section 48631 for only the following purposes:

(a) To local governments for providing opportunities for used lubricating oil collection, which are in addition to those included in the local used oil collection programs adopted pursuant to Article 10 (commencing with Section 48690). Grants or loans under this subdivision may also be for those purposes identified in subdivision.

(b) To nonprofit entities for projects, which may include one or more of the following programs or activities:

(1) Establishing used lubricating oil collection centers.

(2) Providing containers and other materials and supplies that the public can utilize in an environmentally

sound manner to store used lubricating oil for pickup or return to a used oil collection center.

(3) Obtaining equipment and establishing procedures to comply with federal, state, and local law regarding the collection, handling, and storage of used oil.

(4) For the purposes identified in subdivision (d).

(c) For either or both of the following purposes:

(1) Research, testing, and demonstration projects for collection technologies and to develop uses for products resulting from the recycling of used oil.

(2) The purposes identified in subdivision (d).

(1) For education and mitigation projects relating to stormwater pollution from used oil and oil byproducts, including, but not limited to, use of storm drain inlet filter devices.

(2) A local government shall not receive a grant or loan pursuant to this section for any purpose identified in paragraph (1) unless the local government certifies that it has a stormwater management program that is approved by the appropriate California regional water quality control board and that the project approved for funding under paragraph (1) is consistent with that approved stormwater management program.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 3073 (Sher), Stats. 1992, c. 1101, and AB 2762 (Sher), Stats. 1994, c. 1147, and SB 1979 (O'Connell), Stats. 1996, c. 901, and AB 1201 (Pavley), Stats. 2001, c. 317.

48633. The grants to nonprofit organizations and governmental entities authorized by subdivisions (a) and (b) of Section 48632 may include grants to offset operational expenses.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48634. In adopting the program required by this article, the board shall consider information developed pursuant to the Used Oil Collection Demonstration Grant Program Act of 1990 (Chapter 1.5 (commencing with Section 3475) of Division 3).

As added by AB 2076 (Sher), Stats. 1991, c. 817.

ARTICLE 5. ADMINISTRATION

(Article 5 as added by AB 2076 (Sher), Stats. 1991, c. 817)

48640. The board shall administer this chapter. For organizational purposes, the board may create a new division, bureau, office, or unit to administer this chapter.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48641. In addition to any other regulations which the board is required by statute to adopt, the board may adopt any other rules and regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code which the board determines may be necessary or useful to carry out this chapter or any of the board's duties or responsibilities imposed pursuant to this chapter.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48642. The board may prepare, publish, or issue printed pamphlets, which the board determines to be necessary, for the dissemination of information concerning the activities of the board pursuant to this chapter.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48643. In carrying out this chapter, the board may solicit and use any and all expertise available in other state agencies, including, but not limited to, the State Board of Equalization, and, where an existing state agency performs functions of a similar nature to the board's functions, the board may contract with or cooperate with that agency in carrying out this chapter.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48644. The board shall maintain access to a toll-free telephone number which is to be used for the purpose of informing callers of the following:

(a) The permissible methods of recycling or disposing of used oil.

(b) Specific establishments located in the area of the caller that have notified the board that they accept used oil.

As added by AB 2762 (Sher), Stats. 1994, c. 1147.

48645. Final approval of applicant and project eligibility standards, scoring and evaluation processes, and awarding of loans or grants under this chapter shall be made in a public meeting of, and pursuant to a vote of, the board.

As added by AB 1201 (Pavley), Stats. 2001, c. 317.

ARTICLE 6. FINANCIAL PROVISIONS

(Article 6 as added by AB 2076 (Sher), Stats. 1991, c. 817)

48650. (First of two; operative until January 1, 2000)

(a) Every oil manufacturer shall pay to the board, on or before the last day of the month following each quarter, an amount equal to four cents ($0.04) for every quart, or sixteen cents ($0.16) for every gallon, of lubricating oil sold or transferred in the state, or imported into the state for use in the state in that quarter. For lubricating oil sold by weight, a weight to volume conversion factor of 7.5 pounds per gallon shall be used to determine the fee. Except as provided in subdivision (b) no payment is required for oil which meets any of the following:

(1) Oil for which a payment has already been made to the board pursuant to this section.

(2) Oil exported or sold for export from the state.

(3) Oil sold for use in vessels operated in interstate or foreign commerce.

(4) Oil imported into the state in the engine crankcase, transmission, gear box, or differential of an automobile, bus, truck, vessel, plane, train, or heavy equipment or machinery.

(5) Bulk oil imported into, transferred in, or sold in the state to a motor carrier, as defined in Section 408 of the Vehicle Code, and used in a vehicle designated in subdivisions (a) and (b) of Section 34500 of the Vehicle Code.

(6) The oil otherwise subject to payment pursuant to this subdivision has a total volume of 500 gallons or less for each quarter.

(b) If oil exempted from payment pursuant to subdivision (a) is subsequently sold or transferred for use, or is used, in this state, and the use does not qualify for exemption pursuant to subdivision (a), the entity which sells, transfers, or uses the oil for a purpose which is not exempt from payment, shall make the payment specified in subdivision (a).

(c) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 3073 (Sher), Stats. 1992, c. 1101, and AB 2762 (Sher), Stats. 1994, c. 1147, operative until January 1, 2000, and AB 1103 (Sher), Stats. 1995, c. 822.

48650. (Second of two; operative January 1, 2000)

(a) Every oil manufacturer shall pay to the board, on or before the last day of the month following each quarter, an amount equal to four cents ($0.04) for every quart, or sixteen cents ($0.16) for every gallon, of lubricating oil sold or transferred in the state, or imported into the state for use in the state in that quarter. For lubricating oil sold by weight, a weight to volume conversion factor of 7.5 pounds per gallon shall be used to determine the fee. Except as provided in subdivision (b), no payment is required for oil which meets any of the following:

(1) Oil for which a payment has already been made to the board pursuant to this section.

(2) Oil exported or sold for export from the state.

(3) Oil sold for use in vessels operated in interstate or foreign commerce.

(4) Oil imported into the state in the engine crankcase, transmission, gear box, or differential of an automobile, bus, truck, vessel, plane, train, or heavy equipment or machinery.

(5) Bulk oil imported into, transferred in, or sold in the state to a motor carrier, as defined in Section 408 of the Vehicle Code, and used in a vehicle designated in subdivisions (a) and (b) of Section 34500 of the Vehicle Code.

(6) The oil otherwise subject to payment pursuant to this subdivision has a volume of five gallons or less.

(b) If oil exempted from payment pursuant to subdivision (a) is subsequently sold or transferred for use, or is used, in this state, and the use does not qualify for exemption pursuant to subdivision (a), the entity which sells, transfers, or uses the oil for a purpose which is not exempt from payment, shall make the payment specified in subdivision (a).

(c) This section shall become operative on January 1, 2000.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 3073 (Sher), Stats. 1992, c. 1101, and AB 2762 (Sher), Stats. 1994, c. 1147, and AB 1103 (Sher), Stats. 1995, c. 822.

48650.2. For the purposes of this chapter, the board may collect the fees pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

As added by AB 3073 (Sher), Stats. 1992, c. 1101.

48650.5. (a) Any person who has made a payment pursuant to Section 48650 on lubricating oil exempted from payment pursuant to subdivision (a) of Section 48650, and the payment was made either directly to the board, or indirectly to a vendor from whom it was purchased, by the adding of the amount of the payment to the price of the lubricating oil, shall be reimbursed and repaid the amount of the payment made on that oil, except as otherwise provided in this section.

(b) The claimant of a refund shall present to the board a claim supported by the original invoice showing the purchase. The claim shall state the total amount of the lubricating oil purchased by the claimant and the manner and the equipment in which the claimant has used the lubricating oil. The claim shall not be under oath but shall contain, or be accompanied by, a written declaration that it is made under the penalty of perjury.

(c) The board, upon the presentation of the claim and the invoice, shall pay the claimant from the payments collected under Section 48650 an amount equal to the payments collected on the lubricating oil in respect to which the refund is claimed.

(d) Any person who willfully makes or subscribes to a claim for refund under this section which the person does not believe to be true and correct as to every material matter is guilty of a felony, and upon conviction thereof shall be subject to the penalties prescribed for perjury by the Penal Code. All applications for refund under this section based upon the exportation of lubricating oil from this state shall be filed with the board within the three months after the close of the calendar month in which the lubricating oil is exported or 13 months from the date of the purchase of the lubricating oil, whichever is later. Any application filed after the prescribed time shall not be considered by the board or any other agency or officer of the state for any purpose.

(e) In lieu of the collection and refund of the payment on lubricating oil used by a manufacturer in a manner that entitles a purchaser to claim a refund under this section, the board may give a credit to the manufacturer upon the filing of a return and the determination of the amount of the fee.

(f) In lieu of the collection and refund of the payment on lubricating oil exported by a licensed manufacturer for use outside the state in a manner that entitles a manufacturer to claim a refund pursuant to this section, the board may give a credit to the distributor upon his or her payment return and the determination of the amount of his or her payment, in accordance with such rules and regulations as the board may prescribe.

(g) When an amount represented by a person to a customer as constituting reimbursement for fees due under this chapter is computed upon an amount that is not subject to that fee, or is in excess of that fee amount due, and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer, upon notification by the board or by the customer that the excess has been ascertained. If the person fails or refuses to return that amount, the person shall remit to the board the amount so paid, if the amount was knowingly or mistakenly computed by the

person upon an amount that is not subject to the fee, or is in excess of the fee due.

As added by AB 3073 (Sher), Stats. 1992, c. 1101, and amended by AB 1103 (Sher), Stats. 1995, c. 822.

48650.7. In any transaction involving a total volume of oil subject to payment pursuant to Section 48650 in excess of 10 gallons, the invoice or other form of accounting of the transaction shall identify the amount of the payment separately from the cost of the oil.

As added by AB 3073 (Sher), Stats. 1992, c. 1101.

48651. (a) The board shall pay a recycling incentive to every industrial generator, curbside collection program, and certified used oil collection center, for used lubricating oil collected from the public, or generated by the certified used oil collection center or the industrial generator, and transported by a used oil hauler to the facilities specified in Section 48623.

(b) The board shall pay a recycling incentive to an electric utility, as defined in Section 25108, for used lubricating oil generated and used by the electric utility for electrical generation if the electric utility's use of the used lubricating oil meets the requirements of subparagraph (C) of paragraph (2) of subdivision (d) of Section 25143.2 of the Health and Safety Code and the used oil is in compliance with the standards for recycled oil established in paragraph (3) of subdivision (a) of Section 25250.1 of the Health and Safety Code.

(c) A person or entity that generates used industrial oil or a used oil storage facility or a used oil transfer facility that accepts used oil shall cause that oil to be transported by a used oil hauler to a certified used oil recycling facility or an out-of-state recycling facility registered with the Environmental Protection Agency and operating in substantial compliance with applicable regulatory standards of the state in which the recycling facility is located.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 3073 (Sher), Stats. 1992, c. 1102, and AB 2762 (Sher), Stats. 1994, c. 1147, and SB 1979 (O'Connell), Stats. 1996, c. 901.

48652. The board shall set the recycling incentive amount at not less than four cents ($0.04) per quart. The amount may be set at an amount higher than four cents ($0.04) if the board determines that a higher amount is necessary to promote recycling of used lubricating oil and sufficient funds are available in the fund. The board shall not change the amount of the recycling incentive until at least one year has passed since the amount was last set. The board shall continue providing recycling incentives to certified used oil collection centers at the previous rate for one month after setting the recycling incentive at a different rate. The board shall not raise the recycling incentive amount unless it finds that the raise will not adversely affect funding required pursuant to Sections 48631, 48653, and 48660.5.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 3073 (Sher), Stats. 1992, c. 1101.

48653. The board shall deposit all amounts paid pursuant to Section 48650 by manufacturers, civil penalties, or fines paid pursuant to this chapter, and all other revenues received pursuant to this chapter into the California Used Oil Recycling Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the money in the fund is to be appropriated solely as follows:

(a) Continuously appropriated to the board for expenditure for the following purposes:

(1) To pay recycling incentives pursuant to Section 48651.

(2) To provide a reserve for contingencies, as may be available after making other payments required by this section, in an amount not to exceed one million dollars ($1,000,000).

(3) To make block grants for the implementation of local used oil collection programs adopted pursuant to Article 10 (commencing with Section 48690) to cities, based on the city's population, and counties, based on the population of the unincorporated area of the county, in a total annual amount equal to ten million dollars ($10,000,000) or half of the amount which remains in the fund after the expenditures are made pursuant to paragraphs (1) to (3), inclusive, and subdivision (b), whichever amount is greater, multiplied by the fraction equal to the population of cities and counties which are eligible for block grants pursuant to Section 48690, divided by the population of the state. The board shall use the latest population estimates of the state generated by the Population Research Unit of the Department of Finance in making the calculations required by this paragraph.

(4) For expenditures pursuant to Section 48656.

(b) The money in the fund may be expended by the board for the administration of this chapter and by the department for inspections and reports pursuant to Section 48661, only upon appropriation by the Legislature in the annual Budget Act.

(c) The money in the fund may be transferred to the Farm and Ranch Solid Waste Cleanup and Abatement Account in the General Fund, upon appropriation by the Legislature in the annual Budget Act, to pay the costs associated with implementing and operating the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program established pursuant to Chapter 2.5 (commencing with Section 48100).

(d) Appropriations to the board to pay the costs necessary to administer this chapter, including implementation of the reporting, monitoring, and enforcement program pursuant to subdivision (d) of Section 48631, shall not exceed three million dollars ($3,000,000) annually.

(e) The Legislature hereby finds and declares its intent that the sum of two hundred fifty thousand dollars ($250,000) should be annually appropriated from the California Used Oil Recycling Fund in the annual Budget Act to the board, commencing with fiscal year 1996-97, for the purposes of Section 48655.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 3073 (Sher), Stats. 1992, c. 1101, and AB 1103 (Sher), Stats. 1995, c. 822, and SB 1330 (Lockyer), Stats. 1997, c. 875.

48654. REPEALED.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 712 (Sher), Stats. 1993, c. 675, and repealed by AB 1103 (Sher), Stats. 1995, c. 822.

48655. The board may enter into a contract with the department that will utilize the resources of the department to provide for greater investigation and enforcement efforts for used lubricating oil handling and storage and transfer facility operations. The department shall assist the board in developing the used oil program and providing assistance to local governments in removing barriers to the establishment of used oil collection programs.

As added by AB 2076 (Sher), Stats. 1991, c. 817, repealed by AB 712 (Sher), Stats. 1993, c. 675, and added by AB 1103 (Sher), Stats. 1995, c. 822.

48656. After all of the expenditures pursuant to Section 48653 have been made, notwithstanding paragraph (4) of subdivision (a) of Section 48653, the balance remaining in the fund shall be available to the board for expenditure solely for the implementation of subdivisions (b) and (c) of Section 48631 and Sections 48632 and 48660.5. The board shall not expend more than two hundred thousand dollars ($200,000) to implement Section 48660.5 and at least 40 percent of the money remaining in the fund shall be expended for the purposes of subdivision (a) of Section 48632, at least 10 percent shall be expended for the purposes of subdivision (b) of Section 48632, at least 20 percent shall be expended for the purposes of subdivision (c) of Section 48631, and at least 10, but not more than 15, percent shall be expended for the purposes of subdivision (c) of Section 48632.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 712 (Sher), Stats. 1993, c. 675, and amended by SB 1979 (O'Connell), Stats. 1996, c. 901.

48657. The board shall keep accurate books, records, and accounts of all of its dealings, and these books, records, and accounts, and any amounts paid into or from the fund, are subject to an annual audit by an auditing firm selected by the board. The auditing firm or the board shall also conduct a selective audit of entities making payments to, or receiving payments from, the board to determine whether payments required by Section 48650 are being paid to the board on all lubricating oil sold in California, and that grants and recycling incentives are being paid out properly by the board.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and as amended by AB 1103 (Sher), Stats. 1995, c. 822, and AB 626 (Sher), Stats. 1996, c. 1038.

ARTICLE 7. CERTIFICATION

(Article 7 as added by AB 2076 (Sher), Stats. 1991, c. 817)

48660. (a) No used oil collection center shall be eligible for the payment of recycling incentives until the board has certified that the center is in compliance with the requirements specified in subdivision (b). Before certification, the board may require the center to submit any information that the board determines is necessary to find that the center is in compliance with those requirements. A center shall reapply for certification every two years. The board may cancel the certification of a center if the board finds, after a public hearing, that the center is not, or has not been, in compliance with subdivision (b). The board may withhold the payment of recycling incentives for used lubricating oil collected by a center if the board finds that the center was not in compliance with subdivision (b) during the time in which the used lubricating oil was collected.

(b) To be eligible for certification by the board and for the payment of recycling incentives, the used oil collection center shall do all of the following:

(1) (A) Accept used lubricating oil from the public at no charge during the hours between 8 a.m. and 8 p.m. that the entity operating as the center is open for business.

(B) The board may approve alternative hours for the acceptance of used lubricating oil by an individual center if either of the following conditions is met:

(i) The center accepts used lubricating oil for 12 continuous hours daily.

(ii) The center demonstrates that compliance with Section 279.31 of Title 40 of the Code of Federal Regulations prevents the center from complying with subparagraph (A).

(2) Pay to any person an amount equal to the recycling incentive which the center will receive for used lubricating oil brought to the center in containers by the person. Nothing in this chapter prohibits any person from donating used lubricating oil to a center. With the exception of centers that generate used lubricating oil by servicing motor vehicles, the recycling incentive may be in the form of a credit that may be applied toward the purchase of goods or services offered by the center, as determined by the board. The credit shall be in the form of a voucher or coupon with a value of at least twice the incentive amount to be paid pursuant to Section 48652 and have no other limits for use, unless prescribed by the board.

(3) Provide information to the board for informing the public of the center's acceptance of used lubricating oil.

(4) Provide notice to the public, through onsite signs and periodic advertising in local media, of the center's acceptance of used lubricating oil from the public.

(A) Onsite signs shall be of a design prescribed by the board and exterior signs shall be posted in a location that is easily visible from a public street.

(B) A certified center shall post a combined symbolic and information exterior sign of at least two feet by three feet in size, or shall post an exterior symbolic sign of at least two feet by 18 inches in size. If the exterior symbolic sign is posted, the combined symbolic and informational sign shall be concurrently posted so that it is easily readable from the location where the used oil is received from the public. The exterior symbolic sign shall include the following words in a manner specified by the board: "Used Oil Collection Center."

(C) The informational portion of the combined signs shall include the following words, in a manner specified by the board: "Used Oil Collection Center–Recycling Incentive Paid for Used Lubricating Oil in Containers During Business Hours from Members of the Public Who Change Their Own Oil."

(D) A center that does not accept used lubricating oil from the public during all of its business hours, but meets the requirements of paragraph (1), shall indicate on the exterior sign the hours when that used oil is accepted at no charge from the public and these hours shall be posted instead of the business hours.

(E) If local zoning ordinances prevent signs of a size consistent with this paragraph, the exterior symbolic sign shall be of the maximum allowable size.

(c) Notwithstanding subdivision (b), a used oil collection center may refuse to accept used lubricating oil, which has been contaminated in a manner other than that which would occur through normal use.

(d) Notwithstanding subdivision (b), no used oil collection center shall knowingly accept used lubricating oil for which a payment has not been made pursuant to Section 48650.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 3073 (Sher), Stats. 1992, c. 1101, and AB 2762 (Sher), Stats. 1994, c. 1147, and AB 1103 (Sher), Stats. 1995, c. 822, and AB 1187 (Simitian), Stats. 2001, c. 316.

48660.5. (a) If the board finds that a shipment of used oil from a certified used oil collection center or a curbside collection program is contaminated by hazardous materials in excess of that which generally occurs in normal use, which renders the used oil infeasible for recycling, and requires that the used oil be destroyed at a substantially higher cost than the cost generally to recycle used oil, the board shall, upon application by the used oil collection center or curbside collection program, reimburse the center or program for the additional disposal cost, subject to the eligibility requirements of subdivision (b), except as provided in subdivision (c).

(b) A certified used oil collection center or curbside collection program is eligible for reimbursement only if it demonstrates to the satisfaction of the board all of the following:

(1) The center or program has established procedures to ensure that the used oil it generates and accepts from the public will not be mixed with other hazardous wastes, especially halogenated wastes. These procedures shall include, but not be limited to, instructing the public and employees that used oil shall not be mixed with other hazardous waste. The board shall not require a center or program to test used oil received from the public as part of these procedures.

(2) The shipment contains not more than five gallons or pounds of contaminants combined, based on the contaminant concentrations and the total volume or weight of the shipment.

(c) In any calendar year, a used oil collection center or curbside collection program shall be reimbursed for not more than one shipment and for not more than five thousand dollars ($5,000) in disposal costs, subject to the availability of funds pursuant to Section 48656.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 712 (Sher), Stats. 1993, c. 675, and AB 1103 (Sher), Stats. 1995, c. 822.

48661. (a) On and after July 1, 1992, the department shall annually inspect used oil recycling facilities.

(b) Within 135 days following inspection, the department shall submit a report to the board, describing all of the following:

(1) Any violations of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(2) Any corrective actions ordered or agreed to by the department.

(3) Progress by the facility in correcting violations identified in previous inspections.

(c) In the report required by subdivision (b), the department shall specifically state whether any of the following occurred:

(1) The department has identified violations of subdivision (c) of Section 25250.1 of the Health and Safety Code regarding achievement of minimum standards of purity for recycled oil.

(2) The department has identified violations of regulations requiring financial responsibility assurance for liability, closure, and postclosure obligations.

(3) Where prior contamination has been identified, the facility has an approved corrective action plan and has not been found to be in violation of its requirements.

(4) The department has identified violations that meet the criteria for class 1 violations, as defined in Section 66260.10 of Title 22 of the California Code of Regulations.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 2762 (Sher), Stats. 1994, c. 1147.

48662. The board shall certify or recertify any used oil recycling facility for which the board has received a report from the department pursuant to Section 48661, unless the board determines that the facility is engaged in a repeating or recurring pattern of noncompliance that poses a significant threat to public health and safety or the environment. If the board denies certification, the board may subsequently certify a facility if it determines that the facility meets the standards for certification.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

ARTICLE 8. REPORTING

(Article 8 as added by AB 2076 (Sher), Stats. 1991, c. 817)

48670. To be eligible for payment of a recycling incentive, an industrial generator of used lubricating oil, a used oil collection center, or a curbside collection program shall report to the board, for each quarter, the amount of lubricating oil purchased and the amount of used lubricating oil that is transported to a certified used oil recycling facility, or to a used oil storage facility or to a used oil transfer facility, or that is transported to an out-of-state recycling facility registered with the Environmental Protection Agency and permitted to operate by the applicable regulatory agency of the state in which the facility is located, or that is used to generate electricity pursuant to subdivision (b) of Section 48651. The reports shall be submitted on or before the 45th day following each quarter, in the form and manner which the board may

prescribe, and shall include copies of manifests or modified manifest receipts from used oil haulers. The board may delegate to the executive officer of the board the authority to accept reports submitted after the 45th day and to reduce, eliminate, or approve the amount of incentive fee to be paid due to the late submission of the report. The board may provide, by regulation, for a longer reporting period for industrial generators that generate less than 1,000 gallons of used oil annually.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 3073 (Sher), Stats. 1992, c. 1101, and AB 2762 (Sher), Stats. 1994, c. 1147, and AB 3358 (Ackerman), Stats. 1996, c. 1041.

48671. Every oil manufacturer who sells, or offers to sell, lubricating or industrial oil in this state shall report to the board for each month the amount of lubricating or industrial oil sold. The reports shall be submitted by the day when payment required by Section 48650 is or would be due, in the form and manner which the board may prescribe. However, an oil manufacturer is not required to report to the board when the total volume of oil to be reported is five gallons or less.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 3073 (Sher), Stats. 1992, c. 1101.

48671.5. The manufacturer of every container that contains lubricating oils or industrial oils, and which is intended for sale to consumers in California, shall do either of the following:

(a) Label the containers in at least seven-point typeface as follows:

"Used oil is generally classified as a hazardous waste in California. Do not dispose of used oil in garbage, sewers, or the ground. To find out how to properly recycle used oil in your area, call (800)_____."

The toll-free telephone number on the label shall be the number maintained by the board pursuant to Section 48644.

(b) Provide signs or other written material to retailers appropriate for informing consumers of the information that would otherwise be contained in the label set forth in paragraph (a).

As added by AB 2762 (Sher), Stats. 1994, c. 1147.

48672. Beginning May 1, 1992, every used oil hauler shall report to the board for each quarter the amount of used oil transported, the location to which it is transported, and the source of the used oil. The hauler shall provide estimates, where feasible, of the amount which is used lubricating oil and the amount which is used industrial oil. The reports shall be submitted on or before the last day of the month following each quarter, in the form and manner which the board may prescribe.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 3073 (Sher), Stats. 1992, c. 1101.

48673. Beginning July 1, 1992, every used oil recycling facility shall report to the board for each quarter the amount of used oil received and the amount of recycled oil produced. The facility shall provide estimates, where feasible, of the amount which is used lubricating oil and the amount which is used industrial oil. The reports shall be submitted on or before the last day of the month following each quarter, in the form and manner which the board may prescribe.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 3073 (Sher), Stats. 1992, c. 1101.

48674. After receiving a block grant pursuant to paragraph (4) of subdivision (a) of Section 48653, each local government shall submit an annual report to the board, on or before the date specified by the board, which includes any amendments to the local used oil collection program adopted pursuant to Section 48690, a description of all measures taken to implement the program, and a description of how the block grant was expended.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 2762 (Sher), Stats. 1994, c. 1147, and AB 1103 (Sher), Stats. 1995, c. 822.

48675. The board shall establish procedures to protect any proprietary information concerning sales, purchases, and operations obtained while collecting information for carrying out this chapter.

As added by AB 2076 (Sher), Stats. 1991, c. 817.

48676. The board shall establish reporting periods for the reporting of accumulated industrial and lubricating oil sales and used oil recycling rates, and each reporting period shall be six months. The board shall issue a report based on the information received within 120 days of the end of each reporting period.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 712 (Sher), Stats. 1993, c. 675, and AB 626 (Sher), Stats. 1996, c. 1038.

ARTICLE 9. ENFORCEMENT

(Article 9 as added by AB 2076 (Sher), Stats. 1991, c. 817)

48680. (a) Except as provided in subdivision (b), in addition to any other civil or criminal penalties, any person convicted of a violation of this chapter is guilty of an infraction, which is punishable by a fine of not more than one hundred dollars ($100) per day for each day the violation occurs.

(b) (1) Every person who, with intent to defraud, does not accurately report the amount of oil sold, collected, or transferred pursuant to Article 8 (commencing with Section 48670), who, with intent to defraud, does not make payments as required by Section 48650, or who knowingly receives or pays a recycling incentive for oil upon which a payment has not been made pursuant to Section 48650 is guilty of fraud. If the money obtained or withheld is four hundred dollars ($400) or less, the fraud is punishable by imprisonment in the county jail for not more than six months, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment. If the money obtained or withheld is more than four hundred dollars ($400), the fraud is punishable by imprisonment in the county jail for not more than one year or imprisonment in the state prison, by a fine not exceeding ten thousand dollars ($10,000), or twice the late or unmade

payments plus interest, whichever is greater, or by both that fine and imprisonment.

(2) Any person who claims an exemption pursuant to this chapter which the person knows to be false, and makes that claim for the purpose of willfully evading the payment of any fee imposed pursuant to this chapter, is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one year. The person shall also be subject to payment of a fine not to exceed five thousand dollars ($5,000). The fine shall be distributed as follows:

(A) Fifty percent to the local jurisdiction which undertook the prosecution.

(B) Fifty percent to the General Fund.

(C) Any person who violates this chapter may be assessed a civil penalty by the board of not more than one hundred dollars ($100) per day for each day the violation occurs or continues, pursuant to a hearing and notice.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 712 (Sher), Stats. 1993, c. 675.

ARTICLE 10. LOCAL USED OIL COLLECTION PROGRAM

(Article 10 as added by AB 2076 (Sher), Stats. 1991, c. 817)

48690. A local government is eligible for a block grant pursuant to paragraph (3) of subdivision (a) of Section 48653, if it develops and submits a local used oil collection program to the board pursuant to Section 48691 and files a report pursuant to Section 48674. The board shall make a grant to every local government that submits a program and files a report unless the board finds that the program or its implementation does not comply with criteria contained in this article. The board may make a block grant to another entity that will implement the program of a local government in lieu of making a block grant to that local government with the concurrence of that local government.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 3073 (Sher), Stats. 1992, c. 1101, and AB 1103 (Sher), Stats. 1995, c. 822, and AB 560 (Jackson), Stats. 2001, c. 500.

48691. (a) A local used oil collection program shall provide for used lubricating oil collection by either of the following or a combination of the two:

(1) Ensuring that at least one certified used oil collection center is available for every 100,000 residents not served by curbside used oil collection, which accepts oil from the public at no charge, at least 20 hours each week, on four days each week, of which three hours each week are outside the weekday hours of 8 a.m. through 5:30 p.m.

(2) Providing used oil curbside collection at least once a month.

(b) A local used oil collection program shall include a public education program which shall inform the public of locally available used oil recycling opportunities.

(c) A local government may implement its used oil collection program in conjunction with other similar programs in order to improve used oil recycling efficiency.

(d) (1) A local government that has implemented the used oil collection and education elements of subdivisions (a) and (b) may also include, in the local used oil collection program, provisions for the mitigation and the collection of oil and oil byproducts, including other solid waste that may be mixed with oil or oil byproducts from storm water runoff, including devices to capture that storm water runoff, such as the use of storm drain inlet filter devices.

(2) A local government shall not receive a block grant pursuant to Section 48690 for the purposes identified pursuant to paragraph (1) unless the local government certifies that it has a storm water management program that is approved by the appropriate California regional water quality control board and that the provisions in the local used oil collection program approved for funding under paragraph (1) are consistent with that approved storm water management program.

As added by AB 2076 (Sher), Stats. 1991, c. 817, and amended by AB 560 (Jackson), Stats. 2001, c. 500.

48695. REPEALED.

As added by AB 2762 (Sher), Stats. 1994, c. 1147, and amended by AB 1103 (Sher), Stats. 1995, c. 822, and repealed by SB 153 (Knight), Stats. 2001, c. 115.

PART 8. GARBAGE AND REFUSE DISPOSAL

(Part 8 as added by AB 939 (Sher), Stats. 1989, c. 1095)

Chapter 1. Garbage Disposal Districts

(Chapter 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. DEFINITIONS

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49000. "District," as used in this chapter, means a district formed pursuant to this chapter or pursuant to any law which it supersedes.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 2. FORMATION

(Article 2 as added by AB 939 (Sher), State. 1989, c. 1095)

49005. Any portion or portions of a county, whether contiguous or noncontiguous, and whether the portion or portions include incorporated or unincorporated territory, may be formed into a garbage disposal district in the manner and under the proceedings set forth in this chapter, except that less than the whole of any city shall not be included in the district without unanimous consent of the governing body of the city and no parcel of noncontiguous territory which is less than a full subdivision or which contains less than 10 privately owned acres may be included in any district.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49006. (a) The board of supervisors may determine, by resolution, that a portion of the county is in need of facilities for the disposal of garbage and should be formed into a district.

(b) Upon making the determination under subdivision (a), the board of supervisors shall fix a time and a place for a hearing on the matter of the formation of the district, which time shall be not less than three weeks after the adoption of the resolution, and shall direct the clerk of the board to publish a

notice once a week for three successive weeks in a newspaper which is circulated in the territory that is proposed to be organized into a district and which the board deems most likely to give notice to the inhabitants of the territory.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49007. The notice shall state the fact that the board of supervisors has fixed the time and place, which shall be stated in the notice, for a hearing on the matter of the formation of a garbage disposal district.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49008. The notice shall describe the territory or shall specify the exterior boundaries of the territory proposed to be organized into a district. So far as practicable, the boundaries shall be the center lines of highways.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49009. At any time prior to the time fixed for a hearing of the matter, any person interested may file with the clerk of the board written objections to the formation of the district.

At the time and place fixed for the hearing or at any time to which the hearing may be continued, the board of supervisors shall consider and pass on all objections to the creation of the district, or to the inclusion of any territory in the district.

At the hearing, the board of supervisors may exclude any territory that, in the opinion of the board of supervisors, would not be benefited by inclusion in the district.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49010. At the conclusion of the hearing, the board of supervisors shall either adopt an order abandoning the creation of the proposed district or shall, by resolution, order the matter of the creation of the district, within the boundary lines determined upon at the hearing, to be submitted to the voters registered in the proposed district at an election to be called for that purpose.

At the election only voters registered in the proposed district shall be permitted to vote.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49011. Election precincts shall be established by the board of supervisors, and election boards composed of one inspector, one judge, and one clerk shall be named. At least one week prior to the election, notice of the election shall be given by publication in a newspaper of general circulation in the proposed district. In other matters, the election shall be conducted in the manner ordered by the board of supervisors.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49012. (a) Within five days after the district formation election has been called, the board of supervisors shall transmit, by registered mail, a written notification of the election call to the executive officer of the local agency formation commission of the county or principal county in which the territory or major portion of the territory of the proposed district is located. The written notice shall include the name and a description of the proposed district and may be in the form of a certified copy of the resolution adopted by the board of supervisors.

(b) The executive officer of the local agency formation commission, within five days after being notified that a district formation election has been called, shall submit to the local agency formation commission, for its approval or modification, an impartial analysis of the proposed district formation.

(c) The impartial analysis shall not exceed 500 words in length and shall include a specific description of the boundaries of the district proposed to be formed.

(d) The local agency formation commission, within five days after the receipt of the executive officer's analysis, shall approve or modify the analysis and submit it to the officials in charge of conducting the district formation election.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49013. (a) The board of supervisors or any member or members of the board authorized by the board, or any individual voter or bona fide association of citizens entitled to vote on the district formation proposition, or any combination of those voters and associations of citizens, may file a written argument for or a written argument against the proposed district formation.

(b) Arguments shall not exceed 300 words in length and shall be filed with the officials in charge of conducting the election not less than 54 days prior to the date of the district formation election.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49014. (a) If more than one argument for or more than one argument against the proposed district formation is filed with the election officials within the time prescribed, the election officials shall select one of the arguments for printing and distribution to the voters.

(b) In selecting the arguments, the election officials shall give preference and priority in the order named to the arguments of the following:

(1) The board of supervisors or any member or members of the board authorized by the board.

(2) Individual voters or bona fide associations of citizens or a combination of those voters and associations.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49015. (a) The officials in charge of conducting the election shall cause a ballot pamphlet concerning the district formation proposition to be voted on to be printed and mailed to each voter entitled to vote on the district formation question.

(b) The ballot pamphlet shall contain all of the following in the order prescribed:

(1) The complete text of the proposition.

(2) The impartial analysis of the proposition prepared by the local agency formation commission.

(3) The argument for the proposed district formation.

(4) The argument against the proposed district formation.

(c) The election officials shall mail a ballot pamphlet to each voter entitled to vote in the district formation election at

least 10 days prior to the date of the election. The ballot pamphlet is "official matter" within the meaning of Section 13303 of the Elections Code.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 1546 (Senate Elections and Reapportionment Committee), Stats. 1994, c. 923.

49016. If at the election a majority of all those voting upon the question of creation of the district, and a majority of those voting thereon in each city is in favor of the formation of the district, the board of supervisors shall make an order forming the district and thereupon it is formed.

The order shall contain the name of the district and a description of the boundaries, or otherwise indicate its territorial extent.

The order is conclusive evidence of the regularity of all prior proceedings, except the adoption and publication in full of the resolution of intention, and of the fact of the holding of the hearing on formation.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49017. (a) A district may be formed for the exclusive purpose of providing, maintaining, and operating a garbage and refuse disposal site. In forming a district for this limited purpose, the determination of the board of supervisors required by Section 44006 shall be that this is the exclusive purpose of the district. In all other matters a district shall be formed in the same manner as other districts under this chapter. On formation, the district shall have only those powers granted to districts by this chapter that are reasonably necessary to carry out the exclusive purpose.

(b) A district formed for the exclusive purpose of providing, maintaining, and operating a garbage and refuse disposal site may issue bonds and levy taxes therefor in the same manner as provided for bonds of garbage and refuse disposal districts pursuant to Article 7 (commencing with Section 44160) of Chapter 2, and may issue revenue bonds pursuant to the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code).

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 3. ADMINISTRATION

(Article 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49018. The board of supervisors is the governing body of the district and may do any or all of the following:

(a) Make and enforce all rules and regulations necessary for the administration and government of the district, and for the collection and disposal of garbage and other refuse matter in the district.

(b) Appoint agents and employees for the district sufficient to maintain and operate the property acquired for the purposes of the district.

(c) Acquire in the name of the county, by gift, purchase, condemnation, or otherwise, and own, control, manage, and dispose of, any interest in real or personal property necessary or convenient for the collection and disposal of the garbage or other refuse matter of the district.

(d) Perform all of the acts necessary or proper to accomplish the purposes of this chapter.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49019. (a) The board of supervisors may enter into contracts for the disposal of garbage and other refuse matter. Whenever the board enters into, or renews such a contract, it shall advertise for bids for the performance of the work in a newspaper of general circulation in the county. The advertisement shall be published pursuant to Section 6062 of the Government Code. If there is no newspaper of general circulation published in the county, the notice shall be given by posting in three public places for at least two weeks.

(b) All bidders shall be granted an opportunity to ascertain the details of the nature of the work to be done under the contract. The contract shall be let to the lowest responsible bidder. If no satisfactory bid is obtained, the board may reject all bids. If all bids are rejected, the board of supervisors may readvertise for bids or, without the necessity of readvertising, may enter into contracts for the disposal of garbage and other refuse for a term not to exceed six months on terms that are necessary or proper in the exercise of the district's powers.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49020. If an emergency occasioned by default of a contractor or other circumstances which would be detrimental to the public health, safety, or welfare of the inhabitants of the district, the board of supervisors may, without the necessity of advertising for bids, enter into contracts for the disposal of garbage and other refuse for a term not to exceed six months on terms that are necessary or proper, in the exercise of the districts' power.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 4. TAXATION

(Article 4 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49030. The board of supervisors shall levy a tax each year upon the taxable property in the district sufficient to defray the cost of the disposal of garbage and other refuse in the district, and of the maintenance of the district, and to meet other expenditures authorized by this chapter.

The tax shall be levied and collected at the same time, and in the same manner, as general county taxes levied for county purposes and, when collected, shall be paid into the county treasury and used in furtherance of the purposes of this chapter.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49031. For any district in a county with a population of six million or more, the board of supervisors may prescribe and collect garbage and refuse collection and disposal service fees for the purpose of defraying the cost of the disposal of garbage and refuse in the district, maintaining the district, and meeting other expenditures authorized by this chapter.

Subject to the additional requirements of Section 49032, fees and charges prescribed, revised, and collected pursuant to this section shall be prescribed, revised, and collected pursuant

to Article 4 (commencing with Section 5470) of Chapter 6 of Part 3 of the Health and Safety Code.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49032. (a) Prior to adoption of the initial ordinances prescribing the fees provided for in Section 49031, the board of supervisors shall place before the voters of the district the question whether the district shall be authorized to prescribe fees. If the voters do not approve that authorization, a subsequent election to secure that approval shall not be held within one year of the date of the prior authorization election.

(b) The approval of the voters may be secured at a district or countywide election or by a ballot mailed to each registered voter of the district.

(c) The board of supervisors shall determine what majority of the voters voting on the proposition shall be required to approve the proposition.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 5. CLAIMS

(Article 5 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49040. All claims for money or damages against the district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided therein, or by other statutes or regulations expressly applicable thereto.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 6. ANNEXATION

(Article 6 added by AB 939 (Sher), Stats. 1989, c. 1095)

49050. The boundaries of any district may be altered, and outlying districts or territory, whether incorporated or unincorporated, and whether contiguous or noncontiguous, may be annexed pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code). However, no parcel of noncontiguous territory that contains less than 10 privately owned acres may be annexed to any district.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 66 (Senate Local Government Committee), Statutes of 2003, c. 296.

Chapter 2. Garbage and Refuse Disposal Districts

(Chapter 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. DEFINITIONS

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49100. "District," as used in this chapter, means a district formed pursuant to this chapter or pursuant to any law which it supersedes.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 2. FORMATION

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49110. Any contiguous portion or portions of a county, whether the portion or portions include incorporated or unincorporated territory, may be formed into a garbage and refuse disposal district in the manner and under the proceedings specified in this chapter. However, no city, or any portion thereof, shall be included in the district without the consent of the governing body of the city adopted by a favorable vote of two-thirds or more of its members.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49111. (a) The board of supervisors may determine, by resolution, that a portion of the county is in need of a site for the disposal of garbage and refuse and should be formed into a district.

(b) Upon making the determination under subdivision (a), the board of supervisors shall fix a time and a place for a hearing on the matter of the formation of the district, which time shall be not less than three weeks after the adoption of the resolution. The board of supervisors shall also direct the clerk of the board to publish a notice once a week for three successive weeks in a newspaper which is circulated in the territory that is proposed to organize into a district and which the board deems most likely to give notice to the inhabitants of the territory.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49112. The notice shall state the fact that the board of supervisors has fixed the time and place, which shall be stated in the notice, for a hearing on the matter of the formation of a garbage and refuse disposal district.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49113. The notice shall describe the territory, or shall specify the exterior boundaries of the territory, proposed to be organized into a district.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49114. At any time prior to the time fixed for a hearing on the matter, any person interested may file with the clerk of the board of supervisors written objections to the formation of the district. At the time and place fixed for the hearing or at any time to which the hearing may be continued, the board of supervisors shall consider and pass on all objections to the formation of the district or to the inclusion of any territory in the district. At the hearing, the board of supervisors may exclude any territory that, in the opinion of the board of supervisors, would not be benefited by inclusion in the district.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49115. At the final hearing the board of supervisors shall make those changes in the proposed boundaries that are advisable and shall define and establish the boundaries.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49116. If, from the testimony given before the board of supervisors, it appears to the board of supervisors that the

public necessity or welfare requires the formation of the district, it shall, by an order entered on its minutes, declare that to be its finding, and shall further declare and order that the territory within the boundaries so fixed and determined be organized as a district, under an appropriate name to be selected by the board of supervisors. The name shall be descriptive of the functions of the district.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49117. The county clerk shall immediately file for record in the office of the county recorder of the county in which the land embraced in the district is situated, and also shall file with the Secretary of State, a certified copy of the order of the board of supervisors. From and after the date of the filing of the certified copy with the Secretary of State, the district named therein is organized as a district, with all the rights, privileges, and powers set forth in this chapter or necessarily incident thereto.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49118. No district shall be formed under this chapter after October 1, 1961*.

**Former Health and Safety Code Section 4178.5, from which this section was derived, contained this date.*

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 3. BOARD OF DIRECTORS

(Article 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49120. (a) Within 30 days after the filing with the Secretary of State of the certified copy of the order of formation, a governing board of trustees for the district shall be appointed.

(b) The governing board of a district is a board of directors of not less than three members. The district board shall be appointed as follows:

(1) If the district includes only one city, two members of the governing body shall be selected by the board of supervisors and one member of the governing body shall be selected by the city council.

(2) If the district includes two or more cities, only one member of the governing body of the district shall be selected by the board of supervisors to represent the unincorporated area. The legislative body of each city within the district shall appoint one member to represent each incorporated city within the district. If the selection of members pursuant to this subdivision results in the governing body having an even number of members, those members may appoint an additional member from the district at large.

(c) A vacancy shall be filled in the same manner as an original appointment. The person appointed shall reside within the area he or she represents.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

49121. Any governing body authorized by Section 49120 to appoint a member to the district board may make the appointment from its own members.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49122. The members of the district board in office on September 15, 1961, shall, as soon as practicable thereafter, so classify themselves, by lot, that a majority of the members serve until January 1, 1963, and a minority of the members of the district board shall serve until January 1, 1965, or until the appointment of their successors or their resignation or termination of residence within the area they represent. Thereafter, the term of office of each succeeding member of the district board shall be four years and each shall hold office until the appointment of his or her successor or his or her resignation or termination of residence within the area he or she represents.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49123. (a) Members of the district board may be reimbursed for their actual and necessary expenses incurred in the performance of official business of the district as approved by the district board.

(b) Members of the district board may also receive not more than fifty dollars ($50) per diem for each day of actual attendance at the meetings of the board, with the per diem to be established by order of the board and entered upon its minutes. No member of the district board shall, however, receive more than one hundred dollars ($100) per diem in any calendar month.

(c) In addition to any other compensation received pursuant to this section, the chairperson of the district board and the secretary of the district board, if the secretary is a member of the district board, shall each receive monthly compensation as established by the district board.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 4. POWERS AND DUTIES

(Article 4 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49130. The district board may do all of the following:

(a) Make and enforce all rules and regulations necessary for the administration and government of the district and for the operation and maintenance of the garbage and refuse disposal site acquired by the district.

(b) Appoint agents, employees, and experts for the district sufficient to maintain and operate the property acquired for the purposes of the district.

(c) Enter into contracts with other public agencies which may be necessary or proper to accomplish the purposes of the district.

(d) Acquire, in the name of the district, by gift, purchase, condemnation, or otherwise and own, control, manage, dispose of, and exchange, any interest in real or personal property.

(e) Perform all acts necessary or proper to accomplish the purposes of this chapter.

(f) Maintain and operate a garbage disposal site and facilities and fix and collect fees for the use thereof.

(g) Borrow money and incur indebtedness and guarantee the performance of its legal or contractual obligations.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49131. The district board may designate any depository for the custody of any or all the money collected or received for district purposes pursuant to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code. A depository shall give security sufficient to secure the district against possible loss and shall pay the warrants drawn by the district for demands against the district under the rules that the district board prescribes.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 5. TAXATION

(Article 5 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49140. At least 15 days before the first day of the month in which the board of supervisors of the county in which the district is situated is required by law to levy the amount of taxes required for county purposes, the district board shall furnish the board of supervisors and county auditor of the county an estimate in writing of the amount of money necessary for district's purposes during the next ensuing fiscal year.

The county tax collector shall collect the district taxes at the same time and in the same manner as the county taxes are collected. Unless the governing board has designated any depository pursuant to Section 49131, all money collected for district purposes shall be paid into the county treasury and paid out on warrants of the county auditor drawn on the county treasurer, upon order of the district board. The amount of money necessary for the district's purposes may include a cash-basis fund.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49141. The district board may also include in its estimate prepared pursuant to Section 49140 an unappropriated reserve to cover expenditures that have not been provided for, or that have been insufficiently provided for, or for unforeseen requirements. The money in any unappropriated reserve fund so established may be made available for appropriation by a four-fifths vote of the members of the district board at any regular or special meeting of which all members have had reasonable notice. In addition, the district board may further provide, by resolution, for transfers or revisions of unencumbered funds within the general district expenditures provided for during any fiscal year where, in the opinion of the district board, the transfer or revision is necessary for purposes of the district.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49142. The board of supervisors of the county in which the district is situated shall, at the time of levying county taxes, levy a tax to be known as the "____ garbage and refuse disposal district tax," sufficient to raise the amount reported to it by the district board, upon property of the district in the county.

The board of supervisors shall determine the rate of the tax by deducting 5 percent for anticipated delinquencies from the total assessed value of the taxable property of the district within the county as it appears on the assessment roll of the county, and then dividing the sum reported to it by the district board by the remainder of the total assessed value.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49143. For purposes of the district, the board of supervisors shall levy a tax of not more than fifteen cents ($0.15) on each one hundred dollars ($100) of taxable property of the district in the county.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49144. The district board may establish and maintain a cash-basis fund for the purpose of defraying district expenses between the beginning of a fiscal year and the time of distribution of tax receipts in a fiscal year. The cash-basis fund shall not exceed 60 percent of the estimated expenditures for a fiscal year.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 6. CLAIMS

(Article 6 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49150. All claims for money or damages against the district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code except as provided therein, or by other statutes or regulations expressly applicable thereto.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 7. BONDS

(Article 7 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49160. No general obligation bonds shall be issued by the district unless the issuance thereof is approved by the electors of the district at a special election as provided in this article. If the district board finds that it is necessary to incur a bonded indebtedness to obtain funds with which to carry out the purposes of the district, it may submit the proposition to the voters of the district. For that purpose, a special election shall be called by resolution.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49161. The resolution shall state all of the following:

(a) The general objectives and purposes for which it is proposed to incur an indebtedness.

(b) A general description of all property to be acquired or damaged and work to be executed through the expenditure of the funds secured by the issuance and sale of the bonds.

(c) An estimate of the cost of the proposed work.

(d) The amount of the bonds proposed to be issued.

(e) The number of years beyond which the bonds are to run.

(f) The rate of interest or a maximum rate of interest to be paid.

(g) The date of the election.

(h) The election precincts, polling places, and election officers.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 1852 (Senate Judiciary Committee), Stats. 2006, c. 538.

49162. For purposes of the bond election, the district board may consolidate into one precinct several precincts established for general election purposes and describe the precinct by reference to the general election precincts.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49163. An election board consisting of one inspector, one judge and one clerk shall be appointed by the district board for each precinct.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49164. Only voters registered in the district are eligible to vote at the bond election.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49165. A resolution calling the election shall be published once a week for three successive weeks in a newspaper having a general circulation in the district and designated by the district board. No other notice of the election is required.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49166. If two-thirds of the votes cast are in favor of incurring the bonded indebtedness as proposed, bonds of the district for the amount stated in the resolution calling the election shall be issued and sold.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49167. The validity of the bonds after their issuance shall not be questioned in any court except on the ground that the provisions of this chapter authorizing their issuance are unconstitutional, or that the required hearing regarding the formation of the district was not regularly held or proper notice of it was not given.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49168. The district board shall prescribe, by resolution, the form of the bonds and interest coupons. The bonds shall be payable at the times and at a place to be fixed by the district board and designated in the bonds, together with interest on all sums unpaid on that date until all of the indebtedness has been paid. The term of the bonds issued shall not exceed 40 years.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49169. The bonds shall be issued in the denominations that the district board determines, except that no bond shall be of a denomination less than one hundred dollars ($100) or greater than one thousand dollars ($1,000). The bonds shall be payable on the day and at the place fixed in the bonds, and with interest at the rate specified in the bonds, which rate shall not be in excess of 8 percent per annum and shall, after the first year, be payable semiannually.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49170. The bonds shall be signed by the chairperson of the district board and countersigned by the county auditor, and the seal of the district board shall be affixed. The interest coupons of the bonds shall be numbered consecutively and signed by the county auditor by his or her engraved or lithographed signature.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49171. If any officer whose signature or countersignature appears on the bonds ceases to be an officer before the delivery of the bonds to the purchaser, his or her signature or countersignature shall be as valid as if he or she had remained in office until the delivery of the bonds.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49172. The district board may issue and sell bonds of the district at not less than par value, and the proceeds shall be placed in the treasury of the county.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49173. All premiums and accrued interest received shall be paid into the fund to be used for the payment of principal of, and interest on, the bonds and the remainder of the proceeds of the sale shall be paid into the construction fund of the district. Proper records of the transactions shall be placed upon the books of the county treasurer.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49174. (a) The funds in the construction fund shall be applied exclusively to the purposes and objects mentioned in the resolution calling the bond election.

(b) Payments from the construction fund shall be made upon demands authorized by the district board, and shall be prepared, presented, and audited in the same manner as demands upon funds of the county.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49175. If the proposition of issuing bonds submitted at the bond election fails to receive the requisite number of votes, the district board may, after expiration of six months after that election, call or order another bond election, either for the same objects and purposes, or for any other object or purpose of the district.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49176. If bonds have been issued by the district and the proceeds of the sale have been expended and the district board, by resolution passed by a vote of two-thirds of all its members, determines that the public interest or necessity of the district demands the issuance of additional bonds for carrying out any of the objects of the district, the district board may again submit to the voters the question of issuing additional bonds in the same manner as for a first issue. All provisions of this chapter for the issuance and sale of bonds, and for the expenditure of proceeds, apply to the issuance of additional bonds.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49177. Bonds and interest thereon shall be paid by revenue derived from an annual tax upon the property in the district, and all the property in the district shall be and remain liable to be taxed for those payments.

The bonds and the interest thereon shall not be taxable in this state.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49178. (a) An issue of bonds is hereby defined to be the aggregate principal amount of all of the bonds authorized to be issued in accordance with a proposal submitted to and approved by the electors of the district, but no indebtedness is deemed to have been contracted until bonds have been sold and delivered and then only to the extent of the principal amount of the bonds so sold and delivered.

(b) The district board issuing bonds may, in its discretion, divide the aggregate principal amount of the issue into two or more divisions or series and fix different dates for the bonds of each separate division or series. If any authorized issue is divided into two or more divisions or series, the bonds of each division or series may be made payable at the time or times fixed by the district board, separate and distinct from the time or times for the payment of bonds of any other division or series of the same issue.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49179. Whenever a district has issued bonds, in its annual statement to the board of supervisors as to the amount of money needed for district purposes during the next ensuing fiscal year pursuant to Section 44140, the district board shall include, in addition thereto, the amount necessary to pay the principal of, and interest on, those bonds that will become due before the time for making the next general tax levy.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49180. If the district board fails to furnish to the board of supervisors a statement of the amount of money necessary to pay the principal of, and interest on, the bonds as required by Section 49179, the board of supervisors shall ascertain that amount and shall levy it and cause it to be collected.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49181. The principal of, and interest on, the bonds shall be paid by the treasurer of the county in the manner prescribed by law for the principal of, and interest on, the bonds of the county.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 8. REVENUE BONDS

(Article 8 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49190. A district formed pursuant to this chapter is a local agency within the meaning of the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code), and the provisions of that law are applicable to that district.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 9. CHANGE OF BOUNDARIES

(Article 9 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49195. The boundaries of any district may be altered, and outlying contiguous territory, whether incorporated or unincorporated, may be annexed pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code).

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 66 (Senate Local Government Committee), Statutes of 2003, c. 296.

Chapter 3. Franchise by Counties

(Chapter 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49200. Every franchise or permit for the collection, disposal, or destruction, or any combination thereof, of garbage, waste, offal, and debris, shall be granted by the board of supervisors only under the terms and conditions of this chapter.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49201. (a) Any county may, by resolution adopted by the board of supervisors, call for bids for the granting of a franchise or permit, exclusive or otherwise, for the collection, disposal, or destruction, or any combination thereof, of garbage, waste, offal, and debris, according to the terms and conditions set forth in the resolution, for a period of time not to exceed 25 years.

(b) After adoption of the resolution pursuant to subdivision (a), the board of supervisors shall cause to be published once a week for two successive weeks a notice which shall set forth all of the terms and conditions in the resolution and the time, date, and place for the receiving and opening of sealed bids, which shall not be sooner than four full weeks from date of the first publication of the notice.

(c) Upon examination by the board of supervisors of the bids, the franchise or permit may be awarded to the lowest qualified bidder. The board of supervisors may postpone the granting of the franchise or permit from time to time until it has had a full and complete opportunity to examine the merits of each bid.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49202. The successful bidder shall file with the board of supervisors, upon grant of the franchise or permit, a bond in favor of the county in an amount and under the terms and conditions prescribed by the board of supervisors.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49203. The county may, in the resolution and advertised notice, impose terms and conditions other than those specified in this chapter if they are not in conflict with this chapter.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49204. A bidder may in his or her franchise or permit bid set forth any propositions, terms, and conditions that the bidder may desire to offer, or receive the benefit from, which may be in addition to, or in conflict with, those specified in the resolution or advertised notice calling for bids, if they are not in conflict with this chapter.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49205. The board of supervisors which, prior to July 1, 1980, adopted an ordinance governing the granting of franchises or permits for the collection, disposal, or destruction, or any combination thereof, of garbage, waste, offal, and debris, and which granted franchises or permits pursuant to that ordinance covering defined zones or areas of the county, may extend the term of any of those franchises or permits for only one additional period not exceeding 25 years without advertising or calling for bids as required by Section 49201, if all of the following conditions exist:

(a) (1) The county franchise or permit ordinance contains rules and regulations for the protection of the public health and welfare and provides that the board of supervisors may control the rates to be charged customers by the franchise or permitholders.

(2) Notwithstanding any provision in a county ordinance, the board of supervisors shall not increase the rates to be charged to customers by franchise or permitholders without first calling and holding a public hearing on the proposed increase in rates. Publication of notice of the hearing required by this paragraph shall be made by the board of supervisors pursuant to Section 6066 of the Government Code.

(b) The franchise or permit proposed to be extended was granted in strict compliance with the requirements for calling and advertising for bids and award to the lowest qualified bidder pursuant to Section 49201, and was otherwise granted in strict compliance with this chapter.

(c) The franchise or permit proposed to be extended was granted on a nonexclusive basis so that the board of supervisors is not precluded from granting additional franchises or permits to cover the same areas if, in the judgment and discretion of the board of supervisors, the public interest will be served thereby.

(d) The county franchise or permit ordinance authorizes the county auditor or any other qualified public accountant to audit periodically the books and records of the franchise or permit holders.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

Chapter 4. City Garbage Disposal Contract

(Chapter 4 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49300. The legislative body of a city may contract for the collection or disposal, or both, of garbage, waste, refuse, rubbish, offal, trimmings, or other refuse matter under the terms and conditions that are prescribed by the legislative body of the city by resolution or ordinance.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 1106, (Senate Environmental Quality Committee),Stats. 2005, c. 590.

Chapter 5. Garbage and Refuse Dumps

(Chapter 5 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49400. No city, county, district, or public or municipal corporation shall acquire and operate, or cause to be acquired and operated, a dump or site for the disposal of garbage or refuse, or a transfer station or collection point for garbage or refuse, within a city without the consent of the city council or within the unincorporated area of a county without the consent of the board of supervisors.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

Chapter 6. Solid Waste Enterprises

(Chapter 6 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. DEFINITIONS

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49500. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49501. "Exclusive solid waste handling services" means any action by a local agency, whether by franchise, contract, license, permit, or otherwise, whereby the agency itself or one or more other local agencies or solid waste enterprises has the exclusive right to provide solid waste handling services of any class or type within all or any part of the territory of the local agency.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49501.3. "Lawfully provided" means the services of the solid waste enterprise are in substantial compliance with the terms and conditions of its franchise, contract, license, or permit.

As added by SB 2241 (Brulte), Stats. 1998, c. 811.

49501.5. "License" means a solid waste license issued by a local agency or a business license issued by a local agency if the local agency has not established any other form of authorization for the lawful provision of solid waste handling services.

As added by SB 2241 (Brulte), Stats. 1998, c. 811

49502. "Local agency" means any county, city, or district having the authority to provide solid waste handling services either by the agency itself or by authorizing orpermitting other local agencies or solid waste enterprises to provide solid waste handling services.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49503. "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid wastes, and other discarded solid and semisolid wastes.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49504. "Solid waste enterprise" means any individual, partnership, joint venture, unincorporated private organization, or private corporation regularly engaged in the business of providing solid waste handling services.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49505. "Solid waste handling services" means the collection, transportation, storage, transfer, or processing of solid wastes for residential, commercial, institutional, or industrial users or customers.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 2. LEGISLATIVE FINDINGS

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49510. The Legislature finds and declares as follows:

(a) Although local agencies are authorized to furnish solid waste handling services, in extensive parts of the state solid waste enterprises are furnishing all or substantial portions of necessary solid waste handling services.

(b) It is in the public interest to foster and encourage solid waste enterprises so that, at all times, there will continue to be competent enterprises willing and financially able to furnish needed solid waste handling services.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 3. CONTINUATION SERVICES

(Article 3 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49520. If a local agency has authorized, by franchise, contract, license, or permit, a solid waste enterprise to provide solid waste handling services and those services have been lawfully provided for more than three previous years, the solid waste enterprise may continue to provide those services up to five years after mailed notification to the solid waste enterprise by the local agency having jurisdiction that exclusive solid waste handling services are to be provided or authorized, unless the solid waste enterprise has an exclusive franchise or contract.

If the solid waste enterprise has an exclusive franchise or contract, the solid waste enterprise shall continue to provide those services and shall be limited to the unexpired term of the contract or franchise or five years, whichever is less.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 2241 (Brulte), Stats. 1998, c. 811.

49521. A solid waste enterprise providing continuation solid waste handling services pursuant to Section 49520 is subject to the following conditions:

(a) The services of the solid waste enterprise shall be in substantial compliance with the terms and conditions of the franchise, contract, license, or permit, and meet the quality and frequency of services required by the local agency in other areas not served by the solid waste enterprise.

(b) If the local agency has established rates for solid waste handling services, the solid waste enterprise may be required by the local agency to adhere to rates that are comparable to those established by the local agency.

As added by AB 939 (Sher), Stats. 1989, c. 1095, and amended by SB 2241 (Brulte), Stats. 1998, c. 811.

49522. Nothing in this chapter affects the right of a city following annexation to terminate for cause a franchise, contract, license, or permit held by a solid waste enterprise authorized by the county.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49523. Any local agency or solid waste handling enterprise may contract, upon mutually satisfactory terms, for the termination of all or any part of the business of the solid waste enterprise before the expiration of the period specified in Section 49520.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49524. Notwithstanding Section 49523, a solid waste enterprise may not waive the right to continue to provide solid waste handling services as provided in this chapter.

As added by SB 2241 (Brulte), Stats. 1998, c. 811.

Chapter 7. Burning Garbage

(Chapter 7 as added by AB 939 (Sher), Stats. 1989, c. 1095)

ARTICLE 1. GENERAL PROVISIONS

(Article 1 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49600. No person shall operate in any city or town any crematory for the destruction by fire heat of garbage, ashes, offal, or other refuse matter, except as provided in this chapter.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49601. No crematory described in Section 49600 shall be operated in this state except in a manner which will prevent the propagation of disease through contamination of the atmosphere of any city or town by the gases or fumes arising from the fires or ovens of the crematory.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

49602. Every person who burns by fire heat or destroys by cremation any garbage, ashes, offal, or other refuse matter in violation of this article is guilty of a misdemeanor.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

ARTICLE 2. CREMATION OF ANIMAL REFUSE

(Article 2 as added by AB 939 (Sher), Stats. 1989, c. 1095)

49620. Any person who destroys, or who attempts to destroy, the carcass of any dead animal, or the offal from any slaughter pen, corral, or butcher shop by fire within one-fourth of a mile of any city, town, or village, except in a crematory whose construction and operation are satisfactory to the board of health of the city or the health officer of the town, is guilty of a misdemeanor, punishable by imprisonment in the county jail for not more than one year or by fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

As added by AB 939 (Sher), Stats. 1989, c. 1095.

DIVISION 31. WASTE MANAGEMENT FACILITIES

(Division 31 as added by AB 2295 (Cortese), Stats. 1989, c. 1247)

50000. (a) Until an integrated waste management plan has been approved by the California Integrated Waste

Management Board pursuant to Division 30 (commencing with Section 40000), no person shall establish a new solid waste facility or transformation facility or expand an existing solid waste facility or transformation facility that will result in a significant increase in the amount of solid waste handled at the facility without a certification by the enforcement agency that one of the following has occurred:

(1) The facility is identified and described in, or found to conform with, a county solid waste management plan that was in compliance with statutes and regulations in existence on December 31, 1989, adopted pursuant to former Title 7.3 (commencing with Section 66700) of the Government Code as that former statute read on December 31, 1989. The conformance finding with that plan shall be in accordance with the procedure for a finding of conformance that was set forth in the plan prior to January 1, 1990.

(2) The facility is identified and described in the most recent county solid waste management plan that has been approved by the county and by a majority of the cities within the county that contain a majority of the population of the incorporated area of the county, except in those counties that have only two cities, in which case, the plan has been approved by the county and by the city that contains a majority of the population of the incorporated area of the county.

(3) Pursuant to the procedures in subdivision (b), the facility has been approved by the county and by a majority of the cities within the county that contain a majority of the population of the incorporated area of the county, except in those counties that have only two cities, in which case, the facility has been approved by the county and by the city that contains a majority of the population of the incorporated area of the county.

(4) The facility is a material recovery facility and the site identification and description of the facility have been submitted to the task force created pursuant to Section 40950 for review and comment, pursuant to the procedures set forth in subdivision (c). For purposes of this paragraph, "material recovery facility" means a transfer station that is designed to, and, as a condition of its permit, shall, recover for reuse or recycling at least 15 percent of the total volume of material received by the facility.

(5) The facility is identified and described in the countywide siting element that has been approved pursuant to Section 41721.

(b) (1) The review and approval of a solid waste facility or transformation facility that has not been identified or described in a county solid waste management plan shall be initiated by submittal by the person or agency proposing the facility of a site identification and description to the county board of supervisors.

(2) The county shall submit the site identification and description to each city within the county within 20 days from the date that the site identification and description is submitted to the county board of supervisors. The county and each city shall approve or disapprove by resolution the site identification and description within 90 days from the date that the site identification and description are initially submitted to the county or city. Each city shall notify the county board of supervisors of its decision within that 90-day period. If the county or a city fails to approve or disapprove the site identification and description within 90 days, the city or county shall be deemed to have approved the site identification and description as submitted.

(3) If a city or county disapproves the site identification and description, the city or county shall mail notice of its decision by first-class mail to the person or agency requesting the approval within 10 days of the disapproval by the city or county, stating its reasons for the disapproval.

(4) No county or city shall disapprove a proposed site identification and description for a new solid waste facility or transformation facility or an expanded solid waste facility or transformation facility that will result in a significant increase in the amount of solid waste handled at the facility unless it determines, based upon substantial evidence in the record, that there will be one or more significant adverse impacts within its boundaries from the proposed project.

(5) Within 45 days from the date of a decision by a city or county to disapprove a site identification and description, or a decision by the board not to concur in the issuance of a permit pursuant to Section 44009, any person may file with the superior court a writ of mandate for review of the decision. The evidence before the court shall consist of the record before the city or county that disapproved the site identification and description or the record before the board in its determination not to concur in issuance of the permit. Section 1094.5 of the Code of Civil Procedure shall govern the proceedings conducted pursuant to this subdivision.

(c) To initiate the review and comment by the task force required by paragraph (4) of subdivision (a) and subdivision (d), the person or agency proposing the facility shall submit the site identification and description of the facility to the task force. Within 90 days after the site identification and description are submitted to the task force, the task force shall meet and comment on the facility in writing. Those comments shall include, but are not limited to, the relationship between the proposed new or expanded material recovery facility and the requirements of Section 41780. The task force shall transmit those comments to the applicant, to the county, and to all of the cities in the county.

(d) On or before February 1, 1991, each county, by vote of the board of supervisors and the majority of the cities in the county containing a majority of the population of the incorporated area of the county, except in those counties that have only two cities, in which case the vote is subject to approval of the city that contains a majority of the population of the incorporated area of the county, shall adopt two resolutions after holding a public hearing. One resolution shall address solid waste transfer facilities that are designed to, and, as a condition of their permits, shall, recover for reuse or recycling less than 15 percent of the total volume of material received by the facility and that serve more than one jurisdiction. The second resolution shall address solid waste transfer facilities that are designed to, and, as a condition of their permits, shall, recover for reuse or recycling less than 15

percent of the total volume of material received by the facility and that serve only one jurisdiction. These resolutions shall specify whether the facilities shall be subject to the review and approval process described in subdivision (b) or the review and comment process described in subdivision (c). If the resolutions required by this subdivision are not adopted on or before February 1, 1991, those facilities shall be subject to the review process described in subdivision (c). For purposes of this subdivision, a facility serves only one jurisdiction if it serves only one city, only the unincorporated area of one county, or only one city and county.

As added by AB 2295 (Cortese), Stats. 1989, c. 1247, and repealed and added by AB 2296 (Cortese), Stats. 1990, c. 1617, and amended by AB 626 (Sher), Stats. 1996, c. 1038, and by AB 3082 (Assembly Judiciary Committee), Stats. 2004, c. 183.

50000.5. (a) Until a countywide integrated waste management plan has been approved by the California Integrated Waste Management Board pursuant to Division 30 (commencing with Section 40000), no person shall establish or expand a solid waste facility or transformation facility unless the city or county in which the site is located makes a finding that the establishment or expansion of the facility is consistent with the applicable general plan of the city or county. This finding shall not be made unless the city or county has adopted a general plan which complies with the provisions of Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(b) In addition to the requirements in subdivision (a), any new or expanded solid waste disposal facility or transformation facility shall be deemed to be consistent with the general plan only if both of the following requirements are met:

(1) The facility is located in a land use area designated or authorized for solid waste facilities in the applicable city or county general plan.

(2) The land uses which are authorized adjacent to, or near, the facility are compatible with the establishment, or expansion of, the solid waste disposal facility or transformation facility.

As added by AB 2296 (Cortese), Stats. 1990, c. 1617.

50001. (a) Except as provided by subdivision (b), after a countywide or regional agency integrated waste management plan has been approved by the California Integrated Waste Management Board pursuant to Division 30 (commencing with Section 40000), no person shall establish or expand a solid waste facility, as defined in Section 40194, in the county unless the solid waste facility meets one of the following criteria:

(1) The solid waste facility is a disposal facility or a transformation facility, the location of which is identified in the countywide siting element or amendment thereto, which has been approved pursuant to Section 41721.

(2) The solid waste facility is a facility which is designed to, and which as a condition of its permit, will recover for reuse or recycling at least 5 percent of the total volume of material received by the facility, and which is identified in the nondisposal facility element or amendment thereto, which has been approved pursuant to Section 41800 or 41801.5.

(b) Solid waste facilities other than those specified in paragraphs (1) and (2) of subdivision (a) shall not be required to comply with the requirements of this section.

(c) The person or agency proposing to establish a solid waste facility shall prepare and submit a site identification and description of the proposed facility to the task force established pursuant to Section 40950. Within 90 days after the site identification and description is submitted to the task force, the task force shall meet and comment on the proposed solid waste facility in writing. These comments shall include, but are not limited to, the relationship between the proposed solid waste facility and the implementation schedule requirements of Section 41780 and the regional impact of the facility. The task force shall transmit these comments to the person or public agency proposing establishment of the solid waste facility, to the county, and to all cities within the county. The comments shall become part of the official record of the proposed solid waste facility.

(d) The review and comment by the local task force required by subdivision (c) for amendment to an element may be satisfied by the review required by subdivision (a) of Section 41734 for an amendment to an element.

As added by AB 2295 (Cortese), Stats. 1989, c. 1247, and repealed and added by AB 3001 (Cortese), Stats. 1992, c. 1291, and amended by AB 626 (Sher), Stats. 1996, c. 1038.

50001.2. Nothing in this division is intended to limit the ability of a city or county to enter into a joint exercise of powers agreement to establish procedures, plans, policies, and criteria to which solid waste facilities shall conform.

As added by AB 3001 (Cortese), Stats. 1992, c. 1291.

50001.5. At the request of the board or any local governmental entity, the Attorney General shall bring an action to enforce this division.

As added by AB 3001 (Cortese), Stats. 1992, c. 1291.

50002. (a) The California Integrated Waste Management Board may, by regulation, specify classifications of solid waste facilities that are exempt from the requirements of Sections 50000, 50000.5, and 50001. The regulation may be adopted only if the board makes all of the following findings:

(1) The exemption is not contrary to the public interest.

(2) The quantity of solid wastes to be disposed of at each site is insignificant.

(3) The nature of the solid wastes poses no significant threat to the public health, the public safety, or the environment.

(b) The application to land of agricultural products derived from municipal sewage sludge for use as a fertilizer material, based on a finding by the board that the nature of the solid waste poses no significant threat to the public health, the

public safety, or the environment, is exempt from the requirements of Sections 50000 and 50000.5.

As added by AB 2295 (Cortese), Stats. 1989, c. 1247, and amended by AB 2296 (Cortese), Stats. 1990, c. 1617.

DIVISION 32. SACRAMENTO REGIONAL COUNTY SOLID WASTE MANAGEMENT DISTRICT ACT (REPEALED)

(Division 32 as added by SB 855 (Greene), Stats. 1993, c. 1129, and repealed by SB 66 (Committee on Local Government), Statutes of 2003, c. 296)

DIVISION 32.5. VENTURA COUNTY WASTE MANAGEMENT AUTHORITY (REPEALED)

(Division 32.5 as added by SB 817 (Wright), Stats. 1993, c. 1074, and repealed by SB 66 (Committee on Local Government), Statutes of 2003, c. 296)

DIVISION 34. ENVIRONMENTAL PROTECTION

(Division 34 as added by SB 1185 (Bergeson), Stats. 1993, c. 419, and the heading was amended by AB 3537 (Sher), Stats. 1994, c. 1112)

PART 1. PERMITS

(Part 1 heading as added by AB 3537 (Sher), Stats. 1994, c. 1112)

Chapter 1. Legislative Findings and Intent

(Chapter 1 as added by SB 1185 (Bergeson), Stats. 1994, c. 419)

71000. This part shall be known, and may be cited, as the Environmental Protection Permit Reform Act of 1993.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419, and amended by SB 1706 (Wright), Stats. 1996, c. 962.

71001. The Legislature hereby finds and declares all of the following:

(a) California's environmental protection programs have established strict standards to reduce pollution and protect the public health and safety and the environment. The single purpose programs instituted to achieve these standards have been among the most successful efforts in the world, and have produced significant gains in protecting California's environment in the face of substantial population growth.

(b) Continued progress to achieve the environmental standards in face of continued population growth will require greater coordination between the single purpose environmental programs and more efficient operation of these programs overall. Pollution must be prevented and controlled and not simply transferred to another media or another place. This goal can only be achieved by maintaining the current environmental protection standards and by greater integration of the existing programs.

(c) As the number of environmental laws and regulations have grown in California, so have the number of permits required of business and government. This regulatory burden has significantly added to the cost and time needed to obtain essential operating permits in California. The increasing number of individual permits and permit authorities has generated the continuing potential for conflict, overlap, and duplication between the various state, local, and federal environmental permits.

(d) To ensure that local needs and environmental conditions receive the proper attention, the issuance of environmental permits should continue to be made, to the extent feasible, at the regional and local levels of the environmental programs. To establish the framework for coordination among the regional offices of the environmental protection programs, consistency in regional boundaries should be achieved to the maximum extent practicable.

(e) The purpose of this division is to require the Secretary for Environmental Protection to institute new, efficient procedures which will assist businesses and public agencies in complying with the environmental quality laws in an expedited fashion, without reducing protection of public health and safety and the environment.

(f) Those procedures need to provide a permit process that promotes effective dialogue and ensures ease in the transfer and clarification of technical information, while preventing duplication. It is necessary that the procedures establish a process for preliminary and ongoing meetings between the applicant, the consolidated permit agency, and the participating permit agencies, but do not preclude the applicant or participating permit agencies from individually coordinating with each other.

(g) It is necessary, to the maximum extent practicable, that the procedures established in this division ensure that the consolidated permit agency process and applicable permit requirements and criteria are integrated and run concurrently, rather than consecutively.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

Chapter 2. Definitions

(Chapter 2 as added by SB 1185 (Bergeson), Stats. 1993, c. 419)

71010. "Secretary" means the Secretary for Environmental Protection.

As added by SB 1185 (Bergeson), Stats. 1994, c. 419.

71011. "Environmental agency" means any of the following:

(a) The Department of Toxic Substances Control, the Department of Pesticide Regulation, the State Air Resources Board, the State Water Resources Control Board, the California Integrated Waste Management Board, and the Office of Environmental Health Hazard Assessment.

(b) A California regional water quality control board.

(c) A district, as defined in Section 39025 of the Health and Safety Code.

(d) An enforcement agency, as defined in Section 40130 of the Public Resources Code.

(e) A county agricultural commissioner with respect to his or her administration of Divisions 6 (commencing with

Section 11401) and 7 (commencing with Section 12501) of the Food and Agricultural Code.

(f) The local agency responsible for administering Chapter 6.7 (commencing with Section 25280) of the Health and Safety Code concerning underground storage tanks and any underground storage tank ordinance adopted by a city or county.

(g) The local agency responsible for the administration of the requirements imposed pursuant to Section 13370.5 of the Water Code.

(h) A certified unified program agency as provided in Chapter 6.11 (commencing with Section 25404) of Division 20 of the Health and Safety Code.

(i) Any other state, regional, or local permit agency for the project that participates at the request of the permit applicant upon the permit agency's agreement to be subject to this division.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419, and amended by AB 1943 (Bordonaro), Stats. 1996, c. 367.

71012. "Environmental permit" means any license, certificate, registration, permit, or other form of authorization required by an environmental agency to engage in a particular activity. "Environmental permit" includes, but is not limited to, activities subject to Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, if the activities are under the jurisdiction of an environmental agency. "Environmental permit" does not include any certification or decision pursuant to Division 13 (commencing with Section 21000).

As added by SB 1185 (Bergeson), Stats. 1993, c. 419,

71013. "Project" means an activity, the conduct of which requires an environmental permit from two or more environmental agencies.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

71014. "Consolidated permit" means a permit incorporating the environmental permits granted by environmental agencies for a project and issued in a single permit document by the consolidated permit agency.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

71015. "Consolidated permit agency" means the environmental agency that has the greatest overall jurisdiction over a project, as determined pursuant to Section 71020.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

71016. "Participating permit agency" means an environmental agency, other than the consolidated permit agency, that is responsible for the issuance of an environmental permit for a project.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

71017. (a) "Council" means the California Environmental Policy Council.

(b) The council is hereby created and consists of the following members or their designees:

(1) The Secretary for Environmental Protection.

(2) The Director of Pesticide Regulation.

(3) The Director of Toxic Substances Control.

(4) The Chairperson of the State Air Resources Board.

(5) The Chairperson of the State Water Resources Control Board.

(6) The Director of the Office of Environmental Health Hazard Assessment.

(7) The Chairperson of the California Integrated Waste Management Board.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

Chapter 3. Consolidated Permits

(Chapter 3 as added by SB 1185 (Bergeson), Stats. 1993, c. 419)

71020. (a) On or before January 1, 1995, the secretary shall establish an administrative process which may be used, at the request of a permit applicant for a project pursuant to Section 71021, for the designation of a consolidated permit agency for the project.

(b) That administrative process shall consist of the establishment of guidelines for designating the consolidated permit agency for the project. The guidelines shall be adopted as regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. In those cases where an environmental agency is the lead agency for purposes of Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, or Division 13 (commencing with Section 21000), that environmental agency shall be the consolidated permit agency. In other cases, the guidelines shall require that at least the following factors be considered in determining which environmental agency has the greatest overall jurisdiction over the project:

(1) The types of facilities or activities that make up the project.

(2) The types of public health and safety and environmental concerns that should be considered in issuing environmental permits for the project.

(3) The environmental medium that may be affected by the project, the extent of those potential effects, and the environmental protection measures that may be taken to prevent the occurrence of, or to mitigate, those potential effects.

(4) The regulatory activity that is of greatest importance in preventing or mitigating the effects that the project may have on public health and safety or the environment.

(5) The statutory and regulatory requirements that apply to the project and the complexity of those requirements.

(c) The secretary shall also establish a procedure for referring projects to the council for the designation of a consolidated permit agency in any of the following circumstances:

(1) Because of the nature of the project, the guidelines adopted pursuant to subdivision (a) do not provide clear guidance concerning which environmental agency should be designated the consolidated permit agency.

(2) The consolidated permit agency or a participating permit agency disagrees with the designation of the consolidated permit agency.

(3) The environmental agency designated as the consolidated permit agency under the guidelines declines the designation and participating permit agencies are not willing to accept designation as the consolidated permit agency.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

71021. (a) A permit applicant for a project may request the secretary to designate a consolidated permit agency to administer the processing and issuance of a consolidated permit for the project pursuant to this division. The secretary, in accordance with the guidelines and procedures adopted pursuant to Section 71020, shall, within 30 days of the date that the request is received, either designate a consolidated permit agency for the project or refer the designation to the council.

(b) A permit applicant who requests the designation of a consolidated permit agency shall provide the secretary with a description of the project, a preliminary list of the environmental permits that the project may require, the identity of any public agency that has been designated the lead agency for the project pursuant to Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code or Division 13 (commencing with Section 21000) of the Public Resources Code, and the identity of the participating permit agencies. The secretary may request any information from the permit applicant that is necessary to make the designation under subdivision (a), and may convene a scoping meeting of the likely consolidated permit agency and participating permit agencies in order to make that designation.

(c) The consolidated permit agency shall serve as the main point of contact for the permit applicant with regard to the processing of the consolidated permit for the project and shall manage the procedural aspects of that processing consistent with existing laws governing the consolidated permit agency and participating permit agencies, and with the procedures agreed to by those agencies in accordance with Section 71022. In carrying out these responsibilities, the consolidated permit agency shall ensure that the permit applicant has all the information needed to apply for all the component environmental permits that are incorporated in the consolidated permit for the project, coordinate the review of those environmental permits by the respective participating permit agencies, ensure that timely environmental permit decisions are made by the participating permit agencies, and assist in resolving any conflict or inconsistency among the environmental permit requirements and conditions that are to be imposed by the participating permit agencies with regard to the project.

(d) This division shall not be construed to limit or abridge the powers and duties granted to a participating permit agency pursuant to the law that authorizes or requires the agency to issue an environmental permit for a project. Each participating permit agency shall retain its authority to make all decisions on all nonprocedural matters with regard to the respective component environmental permit that is within its scope of its responsibility, including, but not limited to, the determination of environmental permit application completeness, environmental permit approval or approval with conditions, or environmental permit denial. The consolidated permit agency may not substitute its judgment for that of a participating permit agency on any such nonprocedural matters.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

71022. (a) Within 15 working days of the date that the consolidated permit agency is designated, the consolidated permit agency shall convene a meeting with the permit applicant for the project and the participating permit agencies. The meeting agenda shall include at least all of the following matters:

(1) A determination of the environmental permits that are required for the project.

(2) A review of the environmental permit application forms and other application requirements of the agencies that are participating in the consolidated permit

(3) A discussion of the option available to the permit applicant to use the consolidated permit application form that is authorized by subdivision (e) or (f) of Section 15399.56 of the Government Code in lieu of the separate application forms for each component environmental permit that would be provided by the consolidated permit agency and the participating permit agencies.

(4) A determination of the time lines that will be used by the consolidated permit agency and each participating permit agency to make environmental permit decisions, including the time periods required to determine if the environmental permit applications are complete or the consolidated permit application is complete, to review the application or applications, and to process the component environmental permits, and the timelines that will be used by the consolidated permit agency to aggregate the component environmental permits into, and to issue, the consolidated permit. Notwithstanding Chapter 3 (commencing with Section 15374) of Part 6.7 of Division 3 of Title 2 of the Government Code and Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, the timelines established pursuant to this paragraph may, with the assent of the consolidated permit agency and each participating permit agency, commit the consolidated permit agency and each participating permit agency to act on the component environmental permit within time periods that are different than those required by Sections 65950 and 65952 of the Government Code, subdivisions (a) and (b) of Section 15376 of the Government Code, or other applicable provisions of law. However, no accelerated time period for the consideration of an environmental permit application may be set if that accelerated time period would be inconsistent with, or in conflict with, any time period or series of time periods set by statute for that consideration, or with any statute, rule, or

regulation, or adopted state policy, standard, or guideline, which require any of the following:

(A) Other agencies, interested persons, or the public to be given adequate notice of the application.

(B) Other agencies to be given a role in, or be allowed to participate in, the decision to approve or disapprove the application.

(C) Interested persons or the public to be provided the opportunity to challenge, comment on, or otherwise voice their concerns regarding the application.

(5) The scheduling of any public hearings that are required to issue environmental permits for the project and a determination of the feasibility of coordinating or consolidating any of those required public hearings.

(6) A discussion of fee arrangements for the consolidated permit process, including an estimate of the fee required under Section 71026 and the billing schedule.

(b) The consolidated permit agency may request any information from the applicant that is necessary to comply with its obligations under this section, consistent with the timelines set pursuant to this section.

(c) A summary of the decisions made pursuant to this section shall be made available for public review upon the filing of the consolidated environmental permit application or environmental permit applications.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

71023. (a) The permit applicant may withdraw from the consolidated permit process by submitting to the consolidated permit agency a written request that the process be terminated. Upon receipt of the request, the consolidated permit agency shall notify the secretary and each participating permit agency that a consolidated permit is no longer applicable to the project.

(b) The permit applicant may submit a written request to the consolidated permit agency that the permit applicant wishes a participating permit agency to withdraw from participation on the basis of a reasonable belief that the issuance of the consolidated permit would be accelerated if the participating permit agency withdraws. In that event, the participating permit agency shall withdraw from participation if the consolidated permit agency approves the request.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

71024. The consolidated permit agency shall ensure that the participating permit agencies make all the environmental permit decisions that are necessary for the incorporation of the environmental permits into the consolidated permit and act on the component environmental permits within the time periods established pursuant to paragraph (4) of subdivision (a) of Section 71022.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

71025. Each environmental permit incorporated in the consolidated permit shall have the legal status and the regulatory effect that is specified in the statute and regulations under which the environmental permit would be separately issued and shall be administered and enforced by the environmental agency that would have separately issued it.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

71026. (a) A consolidated permit agency may charge and collect a reasonable fee from any person seeking a consolidated permit to recover the estimated costs incurred by the consolidated permit agency in carrying out the requirements of this division.

(b) The fees charged shall recover only the costs of performing those consolidated permit services and shall be either negotiated with the permit applicant in the meeting required pursuant to Section 71022, or shall be set by the environmental agency in advance of its designation as a consolidated permit agency for the project in a fee schedule adopted by the environmental agency for use in the event that the environmental agency is so designated. In addition, the billing process shall provide for accurate time and cost accounting and a billing cycle that provides for progress payments.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

71027. A petition by the permit applicant for review of an environmental agency action in issuing, denying, or amending an environmental permit, or any portion of a consolidated permit agency permit, shall be submitted by the permit applicant to the consolidated permit agency or the participating permit agency having jurisdiction over that portion of the consolidated permit and shall be processed in accordance with the procedures of that environmental agency. The environmental agency receiving the petition shall, within 30 days, notify the other environmental agencies participating in the original consolidated permit.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

71028. If an applicant petitions for a significant amendment or modification to a consolidated permit application or any of its component environmental permit applications, the consolidated permit agency shall reconvene a meeting of the participating permit agencies, conducted in accordance with Section 71022.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

71029. If an applicant fails to provide information required for the processing of the component environmental permit applications for a consolidated permit or for the designation of a consolidated permit agency, the time requirements of this division shall be tolled until such time as the information is provided.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

Chapter 4. Time Limit Appeals

(Chapter 4 as added by SB 1185 (Bergeson), Stats. 1993, c. 419)

71030. (a) On or before December 31, 1994, the secretary shall adopt regulations establishing an expedited appeals process by which a petitioner or applicant may appeal any failure by an environmental agency to take timely action on the issuance or denial of an environmental permit in

accordance with the time limits established pursuant to Section 71022 or Section 25199.6 of the Health and Safety Code.

(b) If the secretary finds that the time limits under appeal have been violated without good cause, the secretary shall establish a date certain by which the environmental agency shall act on the permit application with adequate provision for the requirements of subparagraphs (A) to (C), inclusive, of paragraph (4) of subdivision (a) of Section 71022, and provide for the full reimbursement of any filing or permit processing fees paid by the applicant to the environmental agency for the permit application under appeal. For purposes of this section, "good cause" shall have the same meaning as defined in subdivision (g) of Section 15376 of the Government Code.

(c) The determination of the secretary on an appeal shall be based only on procedural violations, including, but not limited to, the exceeding of time limits, not on any nonprocedural matter with regard to the environmental permit application or the environmental permit.

(d) In cases of a violation of time limits set pursuant to Section 71022, the determination of the secretary to order a reimbursement of any application filing fee pursuant to the regulations adopted pursuant to subdivision (a) shall only be applicable to the consolidated permit agency or to the participating permit agencies that are in violation of the time limits without showing good cause.

(e) Notwithstanding any other provision of this section, an appeal pursuant to subdivision (a) shall be only for violations of the time limits established pursuant to Section 71022 for those environmental agencies described in subdivisions (c) and (h) of Section 71011.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419, and amended by AB 2973 (Assembly Business and Professions Committee), Stats. 2002, c. 405..

71031. (a) Each state environmental agency, as defined in subdivisions (a) and (b) of Section 71011, in consultation and coordination with all interested parties, may adopt a process to precertify equipment and processes as being in compliance with any laws and regulations applicable to the state environmental agency. The secretary shall ensure that, to the extent one or more state environmental agencies adopt regulations pursuant to this section, the regulations are standardized and coordinated in the most efficient and effective manner feasible.

(b) If a state environmental agency adopts regulations pursuant to subdivision (a), it shall, to the extent feasible and appropriate, adopt standardized permits to incorporate equipment and processes precertified pursuant to subdivision (a). Where applicable, the state environmental agencies shall include, as part of their precertification, a model standardized permit ordinance that local environmental agencies may adopt.

(c) Local environmental agencies, as defined in subdivisions (c) to (h), inclusive, of Section 71011, may adopt standardized permits to incorporate equipment and processes precertified pursuant to subdivision (a). Nothing in this section shall limit the ability of a local environmental agency to adopt additional requirements as part of the standardized permit to meet local health and safety concerns.

(d) For purposes of this section, a "standardized permit" means a permit for pollution sources or activities that are the same or similar in their nature, and which require the submission of the same or similar information for purposes of issuing, monitoring, and enforcing permit requirements.

(e) Nothing in this section shall result in the reduction or elimination of environmental or public health protection or public participation, as provided under all applicable laws, in the issuance of any permit authorized by this section.

(f) Any environmental agency may charge a reasonable fee for costs incurred pursuant to this section, not to exceed estimated reasonable costs. Any fee shall be subject to Section 57001 of the Health and Safety Code.

As added by AB 1943 (Bordonaro), Stats.1996, c. 367.

Chapter 5. Permit Consolidation Zone Pilot Program (REPEALED)

(Chapter 5 as added by SB 1299 (Peace), Stats. 1995, c. 872 and repealed by its own terms on January 1, 2002)

PART 1.5. PERMIT ASSISTANCE CENTERS

(Part 1.5 as added by AB 1102 (Jackson), Stats. 1999, c. 65)

71040. The Secretary for Environmental Protection shall establish an electronic online permit assistance center through the Internet. The electronic online permit assistance center shall be available for use by any business or other entity subject to a law or regulation implemented by a board, department, or office within the California Environmental Protection Agency, and shall provide a business or other entity with assistance in complying with those laws and regulations. The center, which shall be called the "California Government-On Line to Desktops" or "CALGOLD" program, shall provide special software, "hotlinks" and other online resources and tools that may be used by a business or other entity to streamline and expedite compliance with laws and regulations implemented by a board, department, or office within the California Environmental Protection Agency. The CALGOLD program shall, to the extent feasible, incorporate permit assistance activities of local and federal entities and of other entities of the state into its operations.

As added by AB 1102 (Jackson), Stats. 1999, c. 65, and amended by SB 1191 (Speier), Stats. 2001, c. 745, and AB 3034 (Assembly Judiciary Committee), Stats. 2002, c. 664, and AB 1756 (Assembly Budget Committee), Stats. 2003, c. 228.

71041. The CALGOLD program shall be reviewed periodically and, when necessary, updated to assist businesses in the state that would benefit from information on permitting and regulatory compliance, including emerging industries and life sciences industries.

As added by AB 2582 (Mullin), Stats. 2006, c. 283.

PART 1.6. ENVIRONMENTAL MANAGEMENT SYSTEMS (REPEALED)

(Part 1.6 as added by AB 1102 (Jackson), Stats. 1999, c. 65, and repealed by its own terms on January 1, 2002)

71045–71047. REPEALED.

As added by AB 1102 (Jackson), Stats. 1999, c. 65, and repealed by its own terms on January 1, 2002.

PART 2. ENVIRONMENTAL DATA REPORTING

(Part 2 as added by AB 3537 (Sher), Stats. 1994, c. 1112)

Chapter 1. Legislative Findings and Declarations

(Chapter 1 as added by AB 3537 (Sher), Stats. 1994, c. 1112)

71050. The Legislature hereby finds and declares all of the following:

(a) Environmental data is currently required by, and submitted to, a variety of public agencies with jurisdiction at the state, regional, and local levels of government. The same information is often submitted by the regulated community to different public agencies, almost always on one or more paper forms. Since a different format is now required for each such report, data items are required to be reformatted one or more additional times at a cost of time and money that brings no acompanying environmental benefit.

(b) The blizzard of incoming paper reports often exceeds the capacity of a public agency to digest the information. In some cases, the public agency cannot look at or evaluate all of the data received on paper. That problem of data utility is aggravated further by the current wasteful and error-laden practice of retyping data from paper forms into the public agency's computer data base.

(c) In many cases, reported data originates in a computer data base maintained by the company submitting the report. The retyping of data by the public agency could be completely eliminated if business entities were permitted to submit the data in a single electronic format which every public agency could then use. That standard approach would permit both business entities and public agencies to save time and money that is now spent in reformatting, reentering, and reediting data. The data would also be available more quickly to any member of the public interested in using the data.

(d) Business entities already use common, standardized electronic data formats and protocols to exchange commercial and technical information on materials to be transported and used in manufacturing. That application of electronic data interchange is an important factor in determining the competitiveness of business entities in this state. The imposition by government of barriers to, or multiple incompatible data format requirements on, those existing electronic interchanges impairs the competitiveness of business entities without bringing any accompanying environmental benefit.

(e) It is the policy of the state, for environmental and hazardous materials reporting purposes, to employ nonproprietary electronic data formats and transmission protocols that already function effectively for ongoing commercial and industrial data exchanges between business entities and across different computer operating systems instead of expending public funds to develop public agency-specific formats and protocols.

As added by AB 3537 (Sher), Stats. 1994, c. 1112.

Chapter 2. Definitions

(Chapter 2 as added by AB 3537 (Sher), Stats. 1994, c. 1112)

71053. "Advisory committee" means the Environmental Data Management Advisory Committee established pursuant to Section 71064.

As added by AB 3537 (Sher), Stats. 1994, c. 1112.

71054. "Agency" means the California Environmental Protection Agency.

As added by AB 3537 (Sher), Stats. 1994, c. 1112.

71055. "Secretary" means the Secretary for Environmental Protection.

As added by AB 3537 (Sher), Stats. 1994, c. 1112.

Chapter 3. Data Management

(Chapter 3 as added by AB 3537 (Sher), Stats. 1994, c. 1112)

71060. The secretary shall develop and adopt information technology standards by which public agencies and regulated business entities and the other members of the regulated community may use computers and other information technology to specify, request, report, collect, communicate, process, display, disseminate, or otherwise utilize data for environmental data reporting requirements that are imposed in the course of granting permits or other authorizations to operate issued pursuant to specified provisions of state and federal law and regulations.

As added by AB 3537 (Sher), Stats. 1994, c. 1112.

71061. The secretary shall establish a standardized electronic format and protocol for the exchange of electronic data for the purpose of meeting environmental data reporting or other usage requirements that are imposed pursuant to all of the following laws and regulations adopted pursuant to those laws:

(a) Chapter 6.5 (commencing with Section 25100), including, but not limited to, Article 6 (commencing with Section 25160), Chapter 6.7 (commencing with Section 25280), and Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

(b) Article 1 (commencing with Section 42300) of Chapter 4 of Part 4 of Division 26 of the Health and Safety Code.

(c) Division 7 (commencing with Section 13000) of the Water Code.

(d) The Solid Waste Disposal Act (42 U.S.C. Sec. 6901 et seq.).

(e) The Emergency Planning and Community Right-to-Know Act (42 U.S.C. Sec. 11001 et seq.).

(f) Any other law relating to environmental protection, including, but not limited to, hazardous waste, substances, and materials, as determined by the secretary.

As added by AB 3537 (Sher), Stats. 1994, c. 1112, and amended by AB 2067 (Cunneen), Stats. 1998, c. 880.

71062. The secretary shall identify the environmental data reporting or usage requirements imposed pursuant to the laws listed in Section 71061 and reflect those requirements in the elements of the standardized electronic format and protocol, develop a data dictionary that describes the characteristics of each format element and its relationship to each environmental data reporting or usage requirement, and develop evaluation criteria by which the successful use of the standardized electronic format and protocol may be measured.

As added by AB 3537 (Sher), Stats. 1994, c. 1112.

71063. (a) The proposed standardized electronic format and protocol required by Section 71061 and the alternative signature techniques required by Section 71066 shall be tested in the Counties of Santa Clara and San Mateo as a pilot program, for a period determined by the secretary, and at the initiative of business entity report submitters who have organized to implement electronic data interchange among themselves for other business purposes and who wish to employ the same technology for exchanging environmental data. Any of the participating business entities located within those counties who are required to comply with the environmental data reporting requirements imposed pursuant to the laws listed in Section 71061, may comply by submitting the data in the prescribed standardized electronic format.

(b) The secretary shall meet the requirements of Section 71063 using resources contributed exclusively by business participants. The secretary may accept and use computer hardware, software, and support services furnished by the industry or business participants at their own cost in order for the agency to participate in the pilot program. No public funds shall be encumbered in order to conduct, or pay for, any part of the pilot program originally undertaken or provided by any business participant. The brands of products employed shall not be identified in public, nor shall their use be deemed an endorsement of any particular brand or proprietary approach to electronic data interchange.

As added by AB 3537 (Sher), Stats. 1994, c. 1112.

71064. (a) There is in the agency the Environmental Data Management Advisory Committee. The advisory committee shall consist of not more than seven members appointed by the secretary. The secretary shall select members who represent business, government, and environmental groups, and who have proven expertise and current knowledge in the field of electronic data exchange.

(b) The advisory committee shall advise the secretary on the quickest, most effective, and least expensive alternative systems of electronic standards for formatting data.

(c) The meetings of the advisory committee shall be open to the public and shall provide an opportunity for the public to be heard on matters considered by the advisory committee.

As added by AB 3537 (Sher), Stats. 1994, c. 1112, and amended by SB 111 (Knight), Stats. 2004, c. 193.

71065. To the fullest extent practicable to public agencies and business entities, the secretary, in close consultation with the advisory committee, shall ensure that the standardized electronic format and protocol established pursuant to Section 71061 meets all of the following criteria:

(a) The format and protocol conforms with, or is compatible with, data interchange formats and protocols already in use in the regulated community for moving data from computer to computer, so that the format and pilot program may be implemented promptly, without the need for research and development into untried formats and protocols.

(b) The format and protocol works independently of the type of computer hardware, software, operating system, data storage device, and telecommunications equipment employed by prospective senders and receivers.

(c) The format and protocol accommodates the addition of new or revised data element specifications without requiring users to make costly modifications to the hardware or software that they employ to submit electronic data.

As added by AB 3537 (Sher), Stats. 1994, c. 1112.

71066. The secretary shall prescribe one or more techniques by which a report may be signed electronically by a person who would otherwise place a written signature on a paper version of the report. The prescribed electronic signature shall be binding on all persons and for all purposes under the law as if the signature had been made in ink on the equivalent paper document. The secretary may also prescribe a paper form for signature and certification of a report submitted in the prescribed file format on tangible magnetic media, including, but not limited to, floppy disks or magnetic tape.

As added by AB 3537 (Sher), Stats. 1994, c. 1112.

71067. Public agencies shall continue their current data auditing practices, and shall work with data submitters to correct all kinds of data error encountered. The pilot program shall require that each participant maintain an audit trail as part of the evaluation criteria so that inspectors and other evaluators may ensure that the data submitted comport with the data received along the electronic link.

As added by AB 3537 (Sher), Stats. 1994, c. 1112.

71068. (a) Upon the completion of a demonstration of any standardized electronic format and protocol and alternative signature technique pursuant to this part, to the satisfaction of the advisory committee, the secretary shall adopt that electronic format and protocol standard for use as an optional alternative to submitting environmental data on paper to any state or local agency.

(b) Any local agency requiring the submission of an element of environmental data not found in the data dictionary maintained by the secretary pursuant to Section 71062 may petition the secretary for inclusion of that data element. The secretary shall include an additional data item in the data dictionary only if the local agency demonstrates both of the following:

(1) One of the following applies:

(A) A specific requirement for that item in existing law or regulation.

(B) A principle of mathematics or science that requires the collection of that data item to meet another specific purpose under the applicable law.

(2) There is no other way to meet the local agency's needs using combinations of data elements already incorporated into the data dictionary.

(c) The electronic submission of environmental data to any state or local agency in accordance with the data standards adopted under this part constitutes compliance with the environmental data reporting or other usage requirements imposed pursuant to the laws specified in subdivisions (a) to (f), inclusive, of Section 71061, and has the same force and effect as if the data had been submitted in ink on paper.

(d) Notwithstanding any other provision of law, no person or state or local agency shall be required to submit or receive environmental data electronically, but every state or local agency that elects to engage in electronic data management with regard to environmental data shall employ the electronic reporting standards adopted by the secretary under this part.

(e) Nothing in this section limits any existing authority of a local agency to require the submission of environmental data.

As added by SB 1706 (Kopp), Stats. 1996, c. 962.

Chapter 3.5. Report and Information Management

(Chapter 4 as added by AB 2701 (Runner), Stats. 2004, c. 644, and amended and renumbered as Chapter 3.5 by SB 1108 (Senate Judiciary Committee), Stats. 2005, c. 22.)

71069. The Legislature finds and declares the following:

(a) It is the policy of the state to conserve and protect its natural resources.

(b) Over 1,400 reports are submitted annually to the Legislature and the Governor, costing up to ten thousand dollars ($10,000) per report for printing and distribution.

(c) The California Environmental Protection Agency has historically submitted over 60 reports annually to the Legislature and the Governor. The agency's boards, departments, and offices submit over 300 additional reports and studies, not including the hundreds of guidance documents, fact sheets and other printed materials produced.

(d) Submitting reports to the Legislature and Governor electronically, by compact disc, and posting the reports on state agency Web sites would greatly improve economic efficiency and environmental sustainability through minimized consumption of paper and printing materials, while reducing the economic and environmental costs associated with the production, distribution, and storage of printed reports.

(e) Access to the World Wide Web is continually expanding for the private sector and the general public. Providing reports electronically on state agency Web sites would grant greater accessibility to these reports and allow for greater sharing of knowledge and data with Californians and other information seekers. In some instances, a printed copy of a report is necessary. In those instances, economic efficiency and environmental sustainability can still be realized through various resource conservation efforts.

(f) Current law mandates state agencies to purchase recycled content products and materials, including printing and writing paper. There are also proven techniques and materials that are environmentally and economically preferable, and are widely available for use of all document production.

As added by AB 2701 (Runner), Stats. 2004, c. 644.

71069.5. For purposes of this chapter "board" means the California Integrated Waste Management Board.

As added by AB 2701 (Runner), Stats. 2004, c. 644.

71070. (a) On or before January 1, 2005, the board, in consultation with the state agencies affected by the changes made by the act of the 2003–04 Regular Session of the Legislature adding this chapter, shall develop and implement guidelines, to provide and produce reports and other documentation, including guidance documents, fact sheets, and other publications and written materials, in the most efficient and environmentally sustainable manner possible.

(b) The guidelines shall include all of the following:

(1) Distribution of reports and other documentation by electronic means and compact discs.

(2) Information on posting reports and other documentation on state agency Web sites.

(3) Techniques for the production of reports and other documentation that will reduce waste and encourage the use of recycled goods, materials, and supplies.

(4) The cost reduction options specified in Section 7550.1 of the Government Code.

(5) Distribution of a reasonable number of printed reports to ensure public access.

(c) On or before February 1, 2005, the board shall distribute the guidelines to each state agency.

As added by AB 2701 (Runner), Stats. 2004, c. 644.

71071. (a) On and after February 1, 2005, the California Environmental Protection Agency and its boards, departments, and offices shall provide and produce reports and other documentation pursuant to the guidelines established in Section 71070.

(b) On and after June 1, 2005, all state agencies not otherwise subject to subdivision (a) shall provide and produce reports and other documentation pursuant to the guidelines established in Section 71070.

As added by AB 2701 (Runner), Stats. 2004, c. 644.

71073. On or before April 30, 2005, each state agency shall conduct a thorough review of each report that the state agency is required to submit to the Legislature. During this review, the state agency shall identify whether the report is a completed one-time report, an obsolete report, or a duplicative report that can be eliminated or modified.

As added by AB 2701 (Runner), Stats. 2004, c. 644.

71074. Any reporting requirements imposed by this chapter do not supersede a reporting requirement in any other provision of law.

As added by AB 2701 (Runner), Stats. 2004, c. 644.

Chapter 4. Environmental Protection Indicators for California

(Chapter 4 as added by AB 1360 (Steinberg), Stats. 2003, c. 664)

71080. (a) Traditionally, many of California's environmental programs have assessed their performance using measures of activity, including, for example, the number of permits granted or regulatory standards adopted. Addressing the complex environmental challenges of the 21st century will require new approaches that rely on better information from objective and scientifically based environmental indicators. Over the years, substantial efforts have been devoted toward this end, yet historically there have been very few meaningful, objective measures with which to determine the environmental impacts of these efforts.

(b) The California Environmental Protection Agency has made a commitment to move away from measures of activity, and instead focus on measurable environmental results to judge program performance. To support this commitment, the California Environmental Protection Agency established the Environmental Protection Indicators for California (EPIC) Project in 2000, and charged EPIC with developing and maintaining a comprehensive set of environmental indicators, which are scientific measurements of environmental conditions and trends. To ensure that the development of indicators was based on sound science, the California Environmental Protection Agency designated its Office of Environmental Health Hazard Assessment to lead the effort. The California Environmental Protection Agency, working in partnership with the Resources Agency and in cooperation with the Department of Health Services, released a report containing the initial set of 84 environmental indicators in April 2002.

(c) Objective and scientifically based environmental indicators improve our understanding of the environment and how human activities and other factors can influence it. The indicators establish a scientific basis for evaluating the effectiveness of environmental programs and identifying the need for specific actions to improve environmental conditions throughout the state and the disproportionate impact on low-income communities and communities of color. Decisions to create, modify, or eliminate California Environmental Protection Agency policies and programs need to be driven by information reflected by environmental indicators; and, to the extent feasible, budget decisions should include a reference as to how the proposed change is intended to impact a relevant environmental indicator.

(d) To ensure the credibility of objective and scientifically based environmental indicators, a qualified scientific body with expertise in environmental and public health protection should provide input into the selection and development of the indicators.

(e) To ensure the relevance of the environmental indicators, input should be sought from a broad range of stakeholders.

(f) It is the intent of the Legislature that the Secretary for Environmental Protection, the Secretary of the Resources Agency, and the Director of the Department of Health Services in conjunction with the boards, departments, and offices in their respective agencies, use environmental indicators, where applicable, in the development of the budget proposals for the 2005-06 fiscal year and each fiscal year thereafter.

As added by AB 1360 (Steinberg), Stats. 2003, c. 664.

71081. (a) Beginning on July 1, 2004, to the extent that funds are appropriated by the Legislature for this purpose, the office, on behalf of the office of the secretary, shall develop and maintain a system of environmental indicators. The office shall develop and maintain the system to meet all of the following objectives for using environmental indicators:

(1) Provide policymakers and the public with an improved understanding of the condition of the state's environment and the effects of the release of contaminants on public health and the environment.

(2) Provide policymakers and the public with information to evaluate the effectiveness of the agency's programs in improving environmental quality and protecting public health throughout the state, including environmental quality and public health in low-income communities and communities of color.

(3) Assist in the development and modification of agency programs, plans, and policies as environmental conditions change over time.

(4) Assist the agency in making budget decisions that address the most significant environmental concerns.

(b) The following definitions apply to this section:

(1) “Agency” means the California Environmental Protection Agency.

(2) “Environmental indicator” means an objective and scientifically based measure that represents information on environmental conditions, releases of contaminants into the environment, or the effects of those releases.

(3) “Office” means the Office of Environmental Health Hazard Assessment.

(4) “Secretary” means the Secretary for Environmental Protection.

(c) The secretary shall submit a report on the environmental indicators developed pursuant to this chapter to the Governor and the Legislature on or before January 1, 2006, and by January 1 every two years thereafter. The report shall include a discussion as to the manner in which the environmental indicators are being used by the agency to meet

the objectives set forth in subdivision (a). The office shall make the report available to the public on its Internet Web site. The office shall include on its Internet Web site any additional relevant information in support of those environmental indicators and shall update that information posted on the Internet Web site as new information becomes available.

(d) The office shall be the lead agency for developing new environmental indicators, for modifying, deleting, and updating existing environmental indicators, and for developing and maintaining an environmental indicator database. The office shall lead an intra-agency workgroup, consisting of representatives from each of the boards, departments, and offices within the agency. The office shall consult with the intra-agency workgroup in developing and maintaining the environmental indicators, program planning, policy formulation, and other decisionmaking processes, and in drafting the report required under subdivision (c).

(e) In developing and maintaining the environmental indicators, the office shall consult with the Resources Agency, the State Department of Health Services, and other state agencies as appropriate.

(f) The office may utilize information for indicators that is not collected by other boards and departments within the agency and may identify and establish new indicators.

(g) In implementing this section, the office may hold public meetings to receive comments from a broad range of stakeholders, including, but not limited to, local government, the regulated community, nongovernmental organizations, and other groups with an interest in environmental issues.

(h) The office shall consult with the scientific review panel established pursuant to Section 50.8 of the Labor Code for the purpose of establishing, updating, and evaluating environmental indicators.

(i) The secretary shall periodically assess the ability of the environmental indicators system to meet each of the objectives cited in subdivision (a) and the ability of the system to support the development and implementation of the agencywide environmental justice strategy pursuant to Section 71113.

As added by AB 1360 (Steinberg), Stats. 2003, c. 664, and amended by SB 1852 (Senate Judiciary Committee), Stats. 2006, c. 538.

71082. (a) As appropriate, a budget change proposal submitted to the Legislature by a board, department, or office within the California Environmental Protection Agency or the Resources Agency shall describe how the proposal would affect any applicable "Type I" environmental indicator. To the extent that a budget change proposal relates to a "Type II" or "Type III" environmental indicator, the budget change proposal shall reference what data collection and further analysis is needed before the environmental status or trend that is the subject of the indicator may be presented.

(b) A board, department, or office within the California Environmental Protection Agency shall explain how its bond programs relate to or affect environmental indicators.

As added by AB 1360 (Steinberg), Stats. 2003, c. 664.

PART 3. ENVIRONMENTAL JUSTICE

(Part 3 as added by SB 115 (Solis), Stats. 1999, c. 690, and repealed and added by SB 828 (Alarcón) Stats. 2001, c. 765)

71110. The California Environmental Protection Agency, in designing its mission for programs, policies, and standards, shall do all of the following:

(a) Conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state.

(b) Promote enforcement of all health and environmental statutes within its jurisdiction in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations in the state.

(c) Ensure greater public participation in the agency's development, adoption, and implementation of environmental regulations and policies.

(d) Improve research and data collection for programs within the agency relating to the health of, and environment of, people of all races, cultures, and income levels, including minority populations and low-income populations of the state.

(e) Coordinate its efforts and share information with the United States Environmental Protection Agency.

(f) Identify differential patterns of consumption of natural resources among people of different socioeconomic classifications for programs within the agency.

(g) Consult with and review any information received from the Working Group on Environmental Justice established to assist theCalifornia Environmental Protection Agency in developing an agencywide strategy pursuant to Section 71113 in meeting the requirements of this section.

As added by SB 115 (Solis), Stats. 1999, c. 690, and amended by SB 89 (Escutia), Stats. 2000, c. 728, and renumbered and amended by SB 828 (Alarcón), Stats. 2001, c. 765.

71111. On or before January 1, 2001, the California Environmental Protection Agency shall develop a model environmental justice mission statement for boards, departments, and offices within the agency. For purposes of this section, environmental justice has the same meaning as defined in subdivision (e) of Section 65040.12 of the Government Code.

As added by SB 115 (Solis), Stats. 1999, c. 690, and renumbered and amended by SB 828 (Alarcón), Stats. 2001, c. 765, and SB 2055 (Sher), Stats. 2002, c. 1109.

71112. In developing the model environmental justice mission statement pursuant to Section 71111, the California Environmental Protection Agency shall consult with, review, and evaluate any information received from the Working Group on Environmental Justice established pursuant to Section 71113.

As added by SB 89 (Escutia), Stats. 2000, c. 728, and renumbered and amended by SB 828 (Alarcón), Stats. 2001, c. 765.

71113. (a) On or before January 1, 2002, the Secretary for Environmental Protection shall convene a Working Group on Environmental Justice to assist the California Environmental Protection Agency in developing, on or before July 1, 2002, an agencywide strategy for identifying and addressing any gaps in existing programs, policies, or activities that may impede the achievement of environmental justice.

(b) The working group shall be composed of the Secretary for Environmental Protection, the Chairs of the State Air Resources Board, the California Integrated Waste Management Board, and the State Water Resources Control Board, the Director of Toxic Substances Control, the Director of Pesticide Regulation, the Director of Environmental Health Hazard Assessment, and the Director of Planning and Research.

(c) The working group shall do all of the following on or before April 1, 2002:

(1) Examine existing data and studies on environmental justice, and consult with state, federal, and local agencies and affected communities.

(2) Recommend criteria to the Secretary for Environmental Protection for identifying and addressing any gaps in existing programs, policies, or activities that may impede the achievement of environmental justice.

(3) Recommend procedures and provide guidance to the California Environmental Protection Agency for the coordination and implementation of intraagency environmental justice strategies.

(4) Recommend procedures for collecting, maintaining, analyzing, and coordinating information relating to an environmental justice strategy.

(5) Recommend procedures to ensure that public documents, notices, and public hearings relating to human health or the environment are concise, understandable, and readily accessible to the public. The recommendation shall include guidance for determining when it is appropriate for the California Environmental Protection Agency to translate crucial public documents, notices, and hearings relating to human health or the environment for limited-English-speaking populations.

(6) Hold public meetings to receive and respond to public comments regarding recommendations required pursuant to this section, prior to the finalization of the recommendations. The California Environmental Protection Agency shall provide public notice of the availability of draft recommendations at least one month prior to the public meetings.

(7) Make recommendations on other matters needed to assist the agency in developing an intraagency environmental justice strategy.

As added by SB 89 (Escutia), Stats. 2000, c. 728, and renumbered and amended by SB 828 (Alarcón), Stats. 2001, c. 765.

71114. (a) The Secretary for Environmental Protection shall, on or before January 1, 2002, convene an advisory group to assist the working group described in Section 71113 by providing recommendations and information to, and serving as a resource for, the working group. The Secretary for Environmental Protection shall appoint members to the advisory group according to the following categories:

(1) Two representatives of local or regional land use planning agencies.

(2) Two representatives from air pollution control districts or air quality management districts.

(3) Two representatives from certified unified program agencies (CUPAs).

(4) Two representatives from environmental organizations.

(5) Four representatives from the business community, two from a small business and two from a large business, except that three of these representatives may be from an association that represents small or large businesses, and at least one of the small business representatives shall be from an association that represents small businesses. As used in this paragraph, "small business" has the meaning given that term by subdivision (c) of Section 1028.5 of the Code of Civil Procedure, and a large business is any business other than a small business.

(6) Two representatives from community organizations.

(7) One representative from a federally recognized Indian tribe.

(8) Two representatives from environmental justice organizations.

(b) The advisory group may form subcommittees to address specific types of environmental program areas. The California Environmental Protection Agency shall provide a reasonable per diem for attendance at advisory committee meetings by advisory committee members from nonprofit organizations.

As added by SB 89 (Escutia), Stats. 2000, c. 728, and renumbered and amended by SB 828 (Alarcón), Stats. 2001, c. 765, and SB 1542 (Escutia), Stats. 2002, c. 1003.

71114.1. After the California Environmental Protection Agency develops the strategy pursuant to Section 71113 and before December 31, 2003, each board, department, and office within the agency shall, in coordination with the Secretary for Environmental Protection and the Director of the Office of Planning and Research, review its programs, policies, and activities and identify and address any gaps in its existing programs, policies, or activities that may impede the achievement of environmental justice.

As added by SB 828 (Alarcón), Stats. 2001, c. 765.

71115. The Secretary for Environmental Protection shall, not later than January 1, 2004, and every three years thereafter, prepare and submit to the Governor and the Legislature a report on the implementation of this part.

As added by SB 89 (Escutia), Stats. 2000, c. 728, and as renumbered and amended by SB 828 (Alarcón), Stats. 2001, c. 765.

71116. (a) The Environmental Justice Small Grant Program is hereby established under the jurisdiction of the California Environmental Protection Agency. The California

Environmental Protection Agency shall adopt regulations for the implementation of this section. These regulations shall include, but need not be limited to, all of the following:

(1) Specific criteria and procedures for the implementation of the program.

(2) A requirement that each grant recipient submit a written report to the agency documenting its expenditures of the grant funds and the results of the funded project.

(3) Provisions promoting the equitable distribution of grant funds in a variety of areas throughout the state, with the goal of making grants available to organizations that will attempt to address environmental justice issues.

(b) The purpose of the program is to provide grants to eligible community groups, including, but not limited to, community-based, grassroots nonprofit organizations that are located in areas adversely affected by environmental pollution and hazards and that are involved in work to address environmental justice issues.

(c) (1) Both of the following are eligible to receive moneys from the fund.

(A) A nonprofit entity.

(B) A federally recognized tribal government.

(2) For the purposes of this section, "nonprofit entity" means any corporation, trust, association, cooperative, or other organization that meets all of the following criteria:

(A) Is operated primarily for scientific, educational, service, charitable, or other similar purposes in the public interest.

(B) Is not organized primarily for profit.

(C) Uses its net proceeds to maintain, improve, or expand, or any combination thereof, its operations.

(D) Is a tax-exempt organization under Section 501 (c)(3) of the federal Internal Revenue Code, or is able to provide evidence to the agency that the state recognizes the organization as a nonprofit entity.

(3) For the purposes of this section, "nonprofit entity" specifically excludes an organization that is a tax-exempt organization under Section 501 (c)(4) of the federal Internal Revenue Code.

(d) Individuals may not receive grant moneys from the fund.

(e) Grant recipients shall use the grant award to fund only the project described in the recipient's application. Recipients shall not use the grant funding to shift moneys from existing or proposed projects to activities for which grant funding is prohibited under subdivision (g).

(f) Grants shall be awarded on a competitive basis for projects that are based in communities with the most significant exposure to pollution. Grants shall be limited to any of the following purposes and no other:

(1) Resolve environmental problems through distribution of information.

(2) Identify improvements in communication and coordination among agencies and stakeholders in order to address the most significant exposure to pollution.

(3) Expand the understanding of a community about the environmental issues that affect their community.

(4) Develop guidance on the relative significance of various environmental risks.

(5) Promote community involvement in the decisionmaking process that affects the environment of the community.

(6) Present environmental data for the purposes of enhancing community understanding of environmental information systems and environmental information.

(g) (1) The agency shall not award grants for, and grant funding shall not be used for, any of the following:

(A) Other state grant programs.

(B) Lobbying or advocacy activities relating to any federal, state, regional, or local legislative, quasi-legislative, adjudicatory, or quasi-judicial proceeding involving development or adoption of statutes, guidelines, rules, regulations, plans or any other governmental proposal, or involving decisions concerning siting, permitting, licensing, or any other governmental action.

(C) Litigation, administrative challenges, enforcement action, or any type of adjudicatory proceeding.

(D) Funding of a lawsuit against any governmental entity.

(E) Funding of a lawsuit against a business or a project owned by a business.

(F) Matching state or federal funding.

(G) Performance of any technical assessment for purposes of opposing or contradicting a technical assessment prepared by a public agency.

(2) An organization's use of funds from a grant awarded under this section to educate a community regarding an environmental justice issue or a governmental process does not preclude that organization from subsequent lobbying or advocacy concerning that same issue or governmental process, as long as the lobbying or advocacy is not funded by a grant awarded under this section.

(h) The agency shall review, evaluate, and select grant recipients, and screen grant applications to ensure that they meet the requirements of this section.

(i) The maximum amount of a grant provided pursuant to this section may not exceed twenty thousand dollars ($20,000).

(j) For the purposes of this section, "environmental justice" has the same meaning as defined in Section 65040.12 of the Government Code.

(k) This section shall be implemented only during fiscal years for which an appropriation is provided for the purposes of this section in the annual Budget Act or in another statute.

As added by AB 2312 (Chu), Stats. 2002, c. 994.

PART 4. STATEWIDE ENVIRONMENTAL EDUCATION

(Part 4 as added by AB 1548 (Pavley), Stats. 2003, c. 665)

71300. (a) For purposes of this part "office" means the Office of Education and the Environment of the Integrated Waste Management Board, as established pursuant to this section.

(b) The Office of Education and the Environment is hereby established in the Integrated Waste Management Board. The office shall report to both the Secretary for Environmental Protection and the board. The office shall dedicate its effort to implementing the statewide environmental educational program prescribed pursuant to this part and the integrated waste management educational requirements of this division. The office, through staffing and resources, shall give a high priority to implementing the statewide environmental education program.

(c) The office, under the direction of the Secretary for Environmental Protection and the board, in cooperation with the State Department of Education, the State Board of Education, and the Secretary for Education, shall develop and implement a unified education strategy on the environment for elementary and secondary schools in the state. The office shall develop a unified education strategy to do all of the following:

(1) Coordinate instructional resources and strategies for providing active pupil participation with onsite conservation efforts.

(2) Promote service-learning opportunities between schools and local communities.

(3) Assess the impact to participating pupils of the unified education strategy on pupil achievement and resource conservation.

(4) On or before June 30, 2006, the office shall report to the Legislature and the Governor on its progress in developing, implementing, and assessing the unified education strategy.

(d) The State Department of Education, State Board of Education, and Secretary for Education, in cooperation with the board, shall develop and implement to the extent feasible, a teacher training and implementation plan, to guide the implementation of the unified education strategy, for the education of pupils, faculty, and administrators on the importance of integrating environmental concepts and programs in schools throughout the state. The strategy shall project the phased implementation of elementary, middle, and high school programs.

(e) In implementing this part, the office may hold public meetings to receive and respond to comments from affected state agencies, stakeholders, and the public regarding the development of resources and materials pursuant to this part.

(f) In implementing this part, the office shall coordinate with other agencies and groups with expertise in education and the environment, including, but not limited to, the California Environmental Education Interagency Network.

(g) Any instructional materials developed pursuant to this part shall be subject to the requirements of Chapter 1 (commencing with Section 60000) of Part 33 of the Education Code, including, but not limited to, reviews for legal and social compliance before the materials may be used in elementary or secondary public schools.

As added by AB 1548 (Pavley), Stats. 2003, c. 665.

71301. (a) As part of the unified education strategy, the office, under the direction of the Secretary for Environmental Protection and the board, in cooperation with the Resources Agency, the State Department of Education, the State Board of Education, and the Secretary for Education, shall develop education principles for the environment for elementary and secondary school pupils. The principles may be updated every four years beginning July 1, 2008. The principles shall be aligned to the academic content standards adopted by the State Board of Education pursuant to Section 60605 of the Education Code. The principles shall be used to do all of the following:

(1) To direct state agencies that include environmental education components for elementary and secondary education in regulatory decisions or enforcement actions.

(2) To align state agency environmental education programs and materials that are developed for elementary and secondary education.

(b) The education principles for the environment shall include, but not be limited to, concepts relating to the following topics:

(1) Environmental sustainability.
(2) Water.
(3) Air.
(4) Energy.
(5) Forestry.
(6) Fish and wildlife resources.
(7) Oceans.
(8) Toxics and hazardous waste.
(9) Integrated waste management.
(10) Integrated pest management.
(11) Public health and the environment.
(12) Pollution prevention.
(13) Resource conservation and recycling.
(14) Environmental justice.

(c) The principles shall be aligned to the applicable academic content standards adopted by the State Board of Education and shall not duplicate or conflict with any academic content standards.

(d) (1) The education principles for the environment shall be incorporated, as the State Board of Education determines to be appropriate, in criteria developed for textbook adoption required pursuant to Section 60200 or 60400 of the Education Code in Science, Mathematics, English/Language Arts, and History/Social Sciences.

(2) If the State Board of Education determines that the education principles for the environment are not appropriate for inclusion in the textbook adoption criteria cited in paragraph (1), the State Board of Education shall collaborate with the office to make the changes necessary to ensure that the principles are included in the textbook adoption criteria in Science, Mathematics, English/Language Arts, and History/Social Sciences.

(e) If the content standards required pursuant to Section 60605 of the Education Code are revised, the education principles for the environment shall be appropriately

considered for inclusion into part of the revised academic content standards.

As added by AB 1548 (Pavley), Stats. 2003, c. 665, and amended by AB 1721 (Pavley), Stats. 2005, c. 581.

71302. (a) Using the education principles for the environment required in Section 71301, the office, under the direction of the Secretary for Environmental Protection and the board, shall develop, in cooperation with the California Environmental Protection Agency, the Resources Agency, the State Department of Education and the State Board of Education, a model environmental curriculum that incorporates these education principles for the environment. The model curriculum shall be aligned with applicable State Board of Education adopted academic content standards in Science, Mathematics, English/Language Arts, and History/Social Sciences, to the extent that any of those content areas are addressed in the model curriculum.

(b) The model curriculum shall be submitted to the Curriculum Development and Supplemental Materials Commission for review. The commission shall submit its recommendation to the Secretary for Environmental Protection and to the Secretary of the Resources Agency by July 1, 2005.

(1) The Secretary for Environmental Protection and the Secretary of the Resources Agency shall review and comment on the model curriculum by January 1, 2006.

(2) The model curriculum along with the comments by the Secretary for Environmental Protection and the Secretary of the Resources Agency shall be submitted to the State Board of Education for its approval.

As added by AB 1548 (Pavley), Stats. 2003, c. 665, and amended by AB 1721 (Pavley), Stats. 2005, c. 581.

71303. (a) As determined appropriate by the Superintendent of Public Instruction, the State Department of Education shall incorporate into publications that provide examples of curriculum resources for teacher use, those materials developed by the office that provide information on the education principles for the environment required in Section 71300.

(b) If the Superintendent of Public Instruction determines that materials developed by the office that provide information on the education principles for the environment are not appropriate for inclusion in publications that provide examples of curriculum resources for teacher use, the Superintendent of Public Instruction shall collaborate with the office to make the changes necessary to ensure that the materials are included in that information.

(c) The model environmental curriculum approved by the State Board of Education, pursuant to Section 71302 shall be made available by the office to elementary and secondary schools to the extent that funds are available for this purpose. The State Department of Education shall make the model curriculum available electronically including posting on its Web site.

(d) The State Department of Education, to the extent feasible and to the extent that funds are available for this purpose, shall encourage the development and use of instructional materials and active pupil participation in campus and community environmental education programs. To the extent feasible, the environmental education programs should be considered in the development and promotion of after school programs for elementary and secondary school pupils and state and local professional development activities to provide teachers with content background and resources to assist in teaching about the environment.

(e) (1) The board shall assume costs associated with the printing of the approved model curriculum as set forth in subdivision (c). The board shall use, for these purposes, funds that are available for its administrative costs.

(2) From funds available for its administrative costs, the State Department of Education shall post and maintain the model curriculum on its Internet site and pay any costs associated with any related online questionnaire on its Internet site as set forth in subdivision (c).

(3) The State Department of Education shall explore implementation of this section from its baseline resources dedicated to this purpose and if funding is not available from that source, then funding may be provided to the department, pursuant to appropriation by the Legislature, under Section 71305.

As added by AB 1548 (Pavley), Stats. 2003, c. 665, and amended by AB 1721 (Pavley), Stats. 2005, c. 581.

71304. (a) The office, under the direction of the Secretary for Environmental Protection, shall be responsible for the statewide coordination of regulatory administrative decisions that require the development or encourage the promotion of environmental education for elementary and secondary school pupils.

(b) All California Environmental Protection Agency or Resources Agency boards, departments, or offices that take regulatory actions or take enforcement actions requiring the development of or encouraging the promotion of environmental education for elementary and secondary school pupils shall, prior to adoption or approval of the action, seek comments on the action from the office in order to promote consistency with this part and cross-media coordination.

(c) The office shall coordinate with all state agencies to develop and distribute environmental education materials.

As added by AB 1548 (Pavley), Stats. 2003, c. 665, and amended by AB 1721 (Pavley), Stats. 2005, c. 581.

71305. (a) The Environmental Education Account is hereby established within the State Treasury. Moneys in the account may, upon appropriation by the Legislature, be expended by the California Environmental Protection Agency, in consultation with the board, for the purposes of this part. The board shall provide recommendations to the Secretary for Environmental Protection regarding expenditures from the account. The Secretary for Environmental Protection shall administer this part, including, but not limited to, the account.

(b) Notwithstanding any other provision of law to the contrary, the agency may accept and receive federal, state, and local funds and contributions of funds from a public or private organization or individual. The account may also receive

proceeds from a judgment in state or federal court, when the funds are contributed or the judgment specifies that the proceeds are to be used for the purposes if this part. The account may receive those funds, contributions, or proceeds from judgments, that are specifically designated for use for environmental education purposes. Private contributors shall not have the authority to further influence or direct the use of their contributions.

(c) Notwithstanding any other provision of law, a state agency that requires the development of, or encourages the promotion of, environmental education for elementary and secondary school pupils, may contribute to the account.

(d) The agency shall immediately deposit any funds contributed pursuant to subdivision (b) into the account.

As added by AB 1548 (Pavley), Stats. 2003, c. 665, and amended by AB 1721 (Pavley), Stats. 2005, c. 581.

EXCERPTS FROM BUSINESS AND PROFESSIONS CODE

DIVISION 7. GENERAL BUSINESS REGULATIONS

PART 3. REPRESENTATIONS TO THE PUBLIC

Chapter 1. Advertising

ARTICLE 1. FALSE ADVERTISING IN GENERAL

17508.5. REPEALED.

As added by AB 3994 (Sher), Stats. 1990, c. 1413, amended by AB 1487 (Committee on Judiciary), Stats. 1991, c. 1091, and repealed by SB 426 (Leslie), Stats. 1995, c. 642.

ARTICLE 7. ENVIRONMENTAL REPRESENTATIONS

(Article 7 as added by AB 3994 (Sher), Stats. 1990, c. 1413)

17580. (a) Any person who represents in advertising or on the label or container of a consumer good that the consumer good that it manufactures or distributes is not harmful to, or is beneficial to, the natural environment, through the use of such terms as "environmental choice," "ecologically friendly," "earth friendly," "environmentally friendly," "ecologically sound," "environmentally sound," "environmentally safe," "ecologically safe," "environmentally lite," "green product," or any other like term, shall maintain in written form in its records the following information and documentation supporting the validity of the representation:

(1) The reasons why the person believes the representation to be true.

(2) Any significant adverse environmental impacts directly associated with the production, distribution, use, and disposal of the consumer good.

(3) Any measures that are taken by the person to reduce the environmental impacts directly associated with the production, distribution, and disposal of the consumer good.

(4) Violations of any federal, state, or local permits directly associated with the production or distribution of the consumer good.

(5) Whether or not, if applicable, the consumer good conforms with the uniform standards contained in the Federal Trade Commission Guidelines for Environmental Marketing Claims for the use of the terms "recycled," "recyclable," "biodegradable," "photodegradable," or "ozone friendly."

(b) Information and documentation maintained pursuant to this section shall be furnished to any member of the public upon request.

(c) For the purposes of this section, a wholesaler or retailer who does not initiate a representation by advertising or by placing the representation on a package shall not be deemed to have made the representation.

(d) It is the intent of the Legislature that the information and documentation supporting the validity of the representation maintained under this section shall be fully disclosed to the public, within the limits of all applicable laws.

As added by AB 3994 (Sher), Stats. 1990, c. 1413, and amended by SB 426 (Leslie), Stats. 1995, c. 642.

17580.5. (a) It is unlawful for any person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. For the purpose of this section, "environmental marketing claim" shall include any claim contained in the "Guides for the Use of Environmental Marketing Claims" published by the Federal Trade Commission.

(b) It shall be a defense to any suit or complaint brought under this section that the person's environmental marketing claims conform to the standards or are consistent with the examples contained in the "Guides for the Use of Environmental Marketing Claims" published by the Federal Trade Commission.

As added by SB 426 (Leslie), Stats. 1995, c. 642.

17581. Any violation of this article is a misdemeanor punishable by imprisonment in the county jail not to exceed six months, or by a fine not to exceed two thousand five hundred dollars ($2,500), or by both.

As added by AB 3994 (Sher), Stats. 1990, c. 1413.

ARTICLE 7.5. AUTOMOTIVE PRODUCTS

(Article 7.5 as added by AB 2474 (Simitian), Stats. 2002, c. 998, and amended by SB 600 (Senate Judiciary Committee), Chapter 62, Stats. 2003)

17582. (a) Any engine coolant or antifreeze sold in this state after January 1, 2004, that is manufactured after July 1, 2003, and that contains more than 10 percent ethylene glycol, shall include denatonium benzoate at a minimum of 30 parts per million as a bittering agent within the product so as to render it unpalatable. Another aversive agent may be used if it meets or exceeds the degree of aversion in test subjects obtained by utilizing the formulation of 30 parts per million of denatonium benzoate in antifreeze. Any manufacturer or packager of a product subject to this section shall maintain a record of the trade name, scientific name, and active ingredients of any bittering agent used pursuant to this chapter. Information and documentation maintained pursuant to this section shall be furnished to any member of the public upon request.

(b) (1) A manufacturer, distributor, recycler, or seller of an automotive product that is required to contain an aversive agent under this section is not liable to any person for any personal injury, death, or property damage that results from the inclusion of denatonium benzoate in ethylene glycol antifreeze.

(2) The limitation on liability provided by this subdivision is only applicable if denatonium benzoate is included in ethylene glycol antifreeze in concentrations mandated by this section.

(3) The limitation on liability provided by this subdivision does not apply if the personal injury, death, or property damage results from willful or wanton misconduct by the manufacturer, distributor, recycler, or seller of the ethylene glycol antifreeze.

(c) This section shall not be construed to apply to any of the following:

(1) The sale of a motor vehicle that contains engine coolant or antifreeze.

(2) Wholesale containers of antifreeze containing 55 gallons or more of the antifreeze.

As added by AB 2474 (Simitian), Stats. 2002, c. 998.

EXCERPTS FROM EDUCATION CODE

TITLE 1. GENERAL EDUCATION CODE PROVISIONS

DIVISION 1. GENERAL EDUCATION CODE PROVISIONS

PART 19. MISCELLANEOUS

Chapter 3. Miscellaneous

ARTICLE 8. RECYCLING PAPER

(Article 8 as added by AB 2636 (Lockyer), Stats. 1978, c. 885)

32370. The Legislature finds and declares that it is the policy of the state to conserve and protect its resources. The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.

The Legislature further finds and declares that the volume of solid waste generated within the state coupled with an increased rate in the consumption of paper products and the absence of adequate programs and procedures for the reuse of these materials threaten the quality of the environment and well-being of the people of California.

As added by AB 2636 (Lockyer), Stats. 1978, c. 885.

32371. The following definitions govern the interpretation of this article:

(a) "Educational agency" means any school district, county office of education, or campus of the California State University and Colleges.

(b) "Paper recycling program" means, (1) the provision of specially marked containers which are intended to receive either all grades or only some grades of postconsumer wastepaper but which are not intended to receive other forms of postconsumer waste, (2) publicity directed at all persons who frequent buildings with the containers encouraging those persons to deposit wastepaper in the containers, and (3) the collection of all paper deposited in the containers for the purpose of recycling.

(c) "Postconsumer waste" means a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(d) "Recycled paper" means all paper and woodpulp products with not less than 50 percent of its total weight consisting of secondary and postconsumer waste and with not less than 10 percent of its total weight consisting of postconsumer waste.

(e) "Secondary waste" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes postconsumer waste, but does not include mill broke, wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

As added by AB 2636 (Lockyer), Stats. 1978, c. 885, and amended by SB 1854 (Morgan), Stats. 1990, c. 1372.

32372. (a) Each school district may, and is encouraged to, establish and maintain a paper recycling program in all classrooms, administrative offices, and other areas owned or leased by the school district where a significant quantity of wastepaper is generated or may be collected.

(b) Each campus of the California State University and Colleges may, and is encouraged to, establish and maintain a paper recycling program in administration offices and other areas owned or leased by the campus, including areas frequented by students, where a significant quantity of wastepaper is generated or may be collected.

(c) In establishing paper recycling programs, school districts, and campuses of the California State University and Colleges shall attempt to cooperate with existing paper recycling programs.

(d) Nothing in this article shall limit or supersede any other requirement of law imposing a paper recycling program on school districts or the California State University and Colleges.

As added by AB 2636 (Lockyer), Stats. 1978, c. 885, and amended by SB 1854 (Morgan), Stats. 1990, c. 1372.

32373. (a) Each educational agency is encouraged to purchase recycled paper if the supplier of recycled paper offers the paper at a cost which does not exceed by more than 5 percent the lowest offer of nonrecycled paper of comparable quality.

(b) Whenever an educational agency purchases recycled paper, the educational agency shall purchase the paper with the highest percentage of postconsumer waste, if the price and quality of the recycled paper are otherwise equal.

(c) Whenever it is practical to do so, each educational agency shall revise its procurement specifications to eliminate discrimination against recycled paper and to give preference to the purchase of recycled paper.

(d) Each educational agency shall make all reasonable efforts to eliminate the purchase of paper and paper products which are deemed potential contaminants of the educational agency's paper recycling program.

(e) When contracting with any educational agency for the sale of a paper product, the contractor shall certify in writing to the contracting officer or the officer's representative the percentage of secondary and postconsumer waste in the paper product and whether or not such percentages meet the minimum percentages specified in subdivision (d) of Section 32371. Such certification shall be furnished under penalty of perjury.

As added by AB 2636 (Lockyer), Stats. 1978, c. 885.

32375. The State Solid Waste Management Board, in conjunction with the Department of Education and other state agencies which the board and the Department of Education deem appropriate in order to carry out the purposes of this article, shall coordinate the implementation of this article and

shall provide materials, technical assistance, and other resources as it deems necessary to aid and encourage educational agencies to establish paper recycling programs. The State Solid Waste Management Board may enter into agreements with other agencies for the purpose of the administration and implementation of this article.

As added by AB 2636 (Lockyer), Stats. 1978, c. 885.

32376. The State Solid Waste Management Board, in conjunction with the Department of Education and other agencies which the board and the Department of Education deem to be appropriate in order to carry out the purposes of this article, shall develop and distribute curriculum material relating to paper recycling, conservation of resources, and topics relating to the implementation of the program established by this article.

As added by AB 2636 (Lockyer), Stats. 1978, c. 885.

32377. REPEALED.

As added by AB 2636 (Lockyer), Stats. 1978, c. 885, and repealed by AB 2587 (Eastin), Stats. 1994, c. 922.

DIVISION 2. STATE ADMINISTRATION

PART 20. STATE EDUCATIONAL AGENCIES

Chapter 4. State Educational Commissions and Committees

ARTICLE 3. CURRICULUM DEVELOPMENT AND SUPPLEMENTAL MATERIALS COMMISSION

(Article 3 as added by Stats. 1976, c. 1010)

33541. (a) The State Board of Education and the department shall revise, as necessary, the framework in science to include the necessary elements to teach environmental education, including, but not limited to, all of the following topics:

(1) Integrated waste management.

(2) Energy conservation.

(3) Water conservation and pollution prevention.

(4) Air resources.

(5) Integrated pest management.

(6) Toxic materials.

(7) Wildlife conservation and forestry.

(b) The Office of Education and the Environment of the California Integrated Waste Management Board, established pursuant to Part 4 (commencing with Section 71300) of Division 34 of the Public Resources Code, shall provide the State Board of Education and the department with available environmental information and materials to aid in implementing subdivision (a).

(c) Any recommended revisions in reference to the course requirements in science shall not be implemented until the commencement of the appropriate curriculum framework adoption cycle subsequent to the revision.

As added by SB 373 (Torlakson), Stats. 2001, c. 926, and amended by AB 1548 (Pavley), Stats. 2003, c. 665.

DIVISION 4. INSTRUCTION AND SERVICES

PART 28. GENERAL INSTRUCTIONAL PROGRAMS

Chapter 2. Required Courses of Study

ARTICLE 3. COURSES OF STUDY, GRADES 7 TO 12

(Article 3 as added by Stats. 1976, c. 1010)

51226.4. (a) For purposes of this section, the following definitions shall apply:

(1) "Office" means the Office of Education and the Environment of the California Integrated Waste Management Board, established pursuant to Part 4 (commencing with Section 71300) of Division 34 of the Public Resources Code.

(2) "Pilot program" means the Environmental Ambassador Pilot Program established pursuant to this section.

(b) The office shall establish the Environmental Ambassador Pilot Program, which shall conclude June 30, 2005.

(c) The office shall establish the pilot program to facilitate the utilization of environmental education as a means to environmental action. The office shall include, in the pilot program, but is not limited to, the development, support, and promotion of all of the following:

(1) Development of sustainable elementary and secondary school programs for environmental systems and environmental science and technology, including school gardens using composted materials.

(2) Coordinated instructional resources and strategies with onsite conservation efforts with active pupil participation, including energy audits and conservation.

(3) Service-learning partnerships, in which schools and communities work to provide real world experiences to pupils in areas of the environment and resource conservation, including education projects developed and implemented by pupils to encourage others to utilize integrated waste management concepts.

(4) Assessment of the impact to participating pupils and schools of the pilot program, to the extent feasible, on pupil achievement and resource conservation.

(d) The office shall use findings and results of the pilot program to develop and further refine the unified education strategy established by the office pursuant to Part 4 (commencing with Section 71300) of Division 34 of the Public Resources Code.

(e) On or before June 30, 2005, the office shall prepare and submit a report to the Governor and the Legislature on the results of the pilot project.

(f) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted

statute, that is enacted before January 1, 2007, deletes or extends that date.

As added by SB 373 (Torlakson), Stats. 2001, c. 926, and amended by AB 1548 (Pavley), Stats. 2003, c. 665.

ARTICLE 8.5. SCHOOL INSTRUCTIONAL GARDENS

(Article 8.5 as added by AB 1014 (Cardoza), Stats. 1999, c. 713)

51795. The Legislature finds and declares all of the following:

(a) School gardens provide an interactive, hands-on learning environment in which pupils learn composting and waste management techniques, fundamental concepts about nutrition and obesity prevention, and the cultural and historical aspects of our food supply. School gardens also foster a better understanding and appreciation of where food comes from, how food travels from the farm to the table, and the important role of agriculture in the state, national, and global economy.

(b) Encouraging and supporting school gardens creates opportunities for children to learn to make healthier food choices, participate more successfully in their education experiences, and develop a deeper appreciation of their community.

(c) School garden programs can equally enhance any subject area including science, environmental education, mathematics, reading, writing, art, nutrition, physical education, history, and geography. School gardens provide a unique setting in which improved pupil performance can be achieved.

As added by AB 1014 (Cardoza), Stats. 1999, c. 713, and amended by AB 1535 (Núñez), Stats. 2006, c. 437.

51796. (a) The Instructional School Gardens Program is hereby established for the promotion, creation, and support of instructional school gardens through the allocation of grants, and through technical assistance provided, to school districts, charter schools, or county offices of education. The program shall be administered by the State Department of Education.

(b) The Superintendent shall convene an interagency working group on instructional school gardens that shall include, but not be limited to, representatives of the State Department of Education, the Department of Food and Agriculture, the State Department of Health Services, and the California Integrated Waste Management Board. The working group shall advise the Superintendent on all of the following:

(1) Effective and efficient means of encouraging school districts, charter schools, and county offices of education to develop and maintain a quality instructional school garden program.

(2) The availability of state and nonstate resources and technical assistance to help school districts, charter schools, and county offices of education in establishing and maintaining instructional school gardens.

(3) Public and private partnerships available to assist school districts, charter schools, and county offices of education in using instructional school gardens to complement the academic program of participating schools.

(c) The Superintendent may establish an advisory group involving other agencies and groups with expertise in instructional school gardens, including, but not limited to, the California Environmental Education Interagency Network. The purpose of the advisory group is to support program efforts through technical assistance, resources, in-kind support, site visits, and other related efforts.

(d) (1) The Superintendent shall use existing resources to comply with subdivisions (b) and (c).

(2) The Department of Food and Agriculture, the State Department of Health Services, and the California Integrated Waste Management Board shall use existing resources to comply with subdivision (b).

As added by AB 1014 (Cardoza), Stats. 1999, c. 713, and amended by AB 1535 (Núñez), Stats. 2006, c. 437.

51796.2. (a) A school district, charter school, or county office of education may apply to the Superintendent for funding for a three-year grant under this article in a manner determined by the Superintendent, in order to develop and maintain an instructional school garden. The application, at a minimum, shall indicate the school or schools at which the instructional school gardens are, or are to be, located; the grade level or grade levels to be targeted; the potential number of classes within the grade levels and number of pupils who would use the instructional school gardens; and the intended items of expenditure for any funds received. The application also shall include an explanation of the six-month reporting requirement specified in Section 51796.5.

(b) The Superintendent shall distribute the grants applied for pursuant to subdivision (a) to school districts, charter schools, or county offices of education as follows:

(1) Each grant shall be not more than two thousand five hundred dollars ($2,500) per schoolsite, except that a district, charter school, or county office of education that applies on behalf of at least one schoolsite with an enrollment of 1,000 or more pupils may receive a grant of not more than five thousand dollars ($5,000) per schoolsite with an enrollment of 1,000 or more pupils.

(2) The receipt of a grant during the period from the 2006−07 fiscal year to the 2008−09 fiscal year, inclusive, for instructional school garden equipment or supplies by a school district, charter school, or county office of education shall not be dependent on the receipt of a grant for instructional school garden professional development by the same district, charter school, or county office.

As added by AB 1535 (Núñez), Stats. 2006, c. 437.

51796.5. As a condition of the receipt of funds pursuant to this article, a school district, charter school, or county office of education, within six months of the final expenditure of funds received, shall report to the Superintendent, in conjunction with the interagency working group convened pursuant to subdivision (b) of Section 51796, in a manner prescribed by the Superintendent, regarding the use of funds and the manner in which the instructional school garden or gardens are used to complement the academic program of the participating school or schools. A school

district or county office of education may submit one report for all of the schools that have received grants that are under the jurisdiction of the district or county office.

As added by AB 1535 (Núñez), Stats. 2006, c. 437.

51797. During its annual discretionary grant funding process, the California Integrated Waste Management Board shall give preferential consideration to providing an appropriate level of funding to the program established pursuant to this article.

As added by AB 1014 (Cardoza), Stats. 1999, c. 713.

51798. REPEALED.

As added by AB 1014 (Cardoza), Stats. 1999, c. 713 and repealed by AB 1535 (Núñez), Stats. 2006, c. 437.

60041. When adopting instructional materials for use in the schools, governing boards shall include only instructional materials that accurately portray both of the following, whenever appropriate:

(a) Humanity's place in ecological systems and the necessity for the protection of our environment.

(b) The effects on the human system of the use of tobacco, alcohol, and narcotics and restricted dangerous drugs, as defined in Section 11032 of the Health and Safety Code, and other dangerous substances.

As added by Stats. 1976, c. 1010, and amended by Stats. 1989, c. 1181, and amended by AB 1548 (Pavley), Stats. 2003, c. 665, and amended by AB 1721 (Pavley), c. 581, Stats. 2005.

EXCERPTS FROM FOOD AND AGRICULTURAL CODE

DIVISION 1. STATE ADMINISTRATION

PART 3. AGRICULTURAL BIOMASS-TO-ENERGY INCENTIVE GRANT PROGRAM (REPEALED)

(Part 3 as added by AB 2872 (Shelley), Stats. 2000, c. 144, and amended by AB 2825 (Battin), Stats. 2000, c. 739, and repealed by SB 704 (Florez), Stats. 2003, c. 480)

DIVISION 7. AGRICULTURAL CHEMICALS, LIVESTOCK REMEDIES, AND COMMERCIAL FEEDS

Chapter 2. Pesticides

ARTICLE 18. CONTAMINATION OF COMPOST

(Article 18 as added by AB 2356 (Keeley), Stats. 2002, c. 591)

13190. (a) "Clopyralid" means 3,6-dichloro-2-pyridinecarboxylic acid.

(b) "Compost" means the product resulting from the controlled biological decomposition of organic wastes that are source separated from the municipal solid waste stream, or that are separated at a centralized facility.

(c) "Department" means the Department of Pesticide Regulation.

(d) "Herbicide" means a pesticide, as defined in Section 12753, that is intended to kill weeds.

(e) "Lawn and turf use" means a residential or nonresidential use of an herbicide on lawn and turf, including, but not limited to, lawn and turf located at schools, parks, office buildings and golf courses. Lawn and turf use does not include use of an herbicide on lawn and turf located in turf farms, uncultivated open space, agricultural rangeland or cultivated farmland.

(f) "Persistent residues in compost" means residues of an herbicide in compost at levels and in a form with the potential to be toxic or injurious to plants.

(g) "Plants" means desirable vegetation, except weeds.

(h) "Weed" means any plant that grows where not wanted, as defined in Section 12759.

As added by AB 2356 (Keeley), Stats. 2002, c. 591.

13191. (a) No person, except a pest control dealer licensed pursuant to Chapter 7 (commencing with Section 12101) of Division 6 of the Food and Agricultural Code, may sell a pesticide that contains the active ingredient clopyralid.

(b) Pesticides containing the active ingredient clopyralid that are labeled for use on lawns and turf, including golf courses, may only be sold to qualified applicators licensed pursuant to Chapter 8 (commencing with Section 12201) of Division 6 of the Food and Agricultural Code or issued a certificate pursuant to Chapter 3 (commencing with Section 14151) of Division 7 of the Food and Agricultural Code.

As added by AB 2356 (Keeley), Stats. 2002, c. 591.

13192. Not later than April 1, 2003, the department shall, pursuant to Sections 12824 and 12825, do both of the following:

(a) Determine in writing those lawn and turf uses of the herbicide clopyralid for which there is no reasonable likelihood that the specified use will result in persistent residues in compost.

(b) Take either of the following actions:

(1) Impose appropriate restrictions on the lawn and turf uses of the herbicide clopyralid that are not identified in the determination made pursuant to subdivision (a).

(2) Cancel any lawn and turf use that the department determines is likely to result in persistent residues in compost.

As added by AB 2356 (Keeley), Stats. 2002, c. 591.

EXCERPTS FROM GOVERNMENT CODE

TITLE 1. GENERAL

DIVISION 7. MISCELLANEOUS

Chapter 3.5. Inspection of Public Records

ARTICLE 1. GENERAL PROVISIONS

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

As added by AB 1014 (Papan), Stats. 2001, c. 355.

6253.1. (a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.

(d) This section shall not apply to a request for public records if any of the following applies:

(1) The public agency makes available the requested records pursuant to Section 6253.

(2) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254.

(3) The public agency makes available an index of its records.

As added by AB 1014 (Papan), Stats. 2001, c. 355.

6253.8. (a) Every final enforcement order issued by an agency listed in subdivision (b) under any provision of law that is administered by an entity listed in subdivision (b), shall be displayed on the entity's Internet website, if the final enforcement order is a public record that is not exempt from disclosure pursuant to this chapter.

(b) This section applies to the California Environmental Protection Agency and to all of the following entities within the agency:

(1) The State Air Resources Board.

(2) The California Integrated Waste Management Board.

(3) The State Water Resources Control Board, and each California regional water quality control board.

(4) The Department of Pesticide Regulation.

(5) The Department of Toxic Substances Control.

(c) (1) Except as provided in paragraph (2), for purposes of this section, an enforcement order is final when the time for judicial review has expired on or after January 1, 2001, or when all means of judicial review have been exhausted on or after January 1, 2001.

(2) In addition to the requirements of paragraph (1), with regard to a final enforcement order issued by the State Water Resources Control Board or a California regional water quality control board, this section shall apply only to a final enforcement order adopted by that board or a regional board at a public meeting.

(d) An order posted pursuant to this section shall be posted for not less than one year.

(e) The California Environmental Protection Agency shall oversee the implementation of this section.

(f) This section shall become operative April 1, 2001.

As added by AB 2282 (Davis), Stats. 2000, c. 783.

Chapter 20. Governmental Access to Financial Records

ARTICLE 4. EXCEPTIONS

7480. Nothing in this chapter shall prohibit any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, access cards, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) Surveillance photographs and video recordings of persons accessing the crime victim's financial account via an automated teller machine (ATM) or from within the financial institution for dates on which illegal acts involving the account were alleged to have occurred. Nothing in this paragraph does any of the following:

(A) Requires a financial institution to produce a photograph or video recording if it does not possess the photograph or video recording.

(B) Affects any existing civil immunities as provided in Section 47 of the Civil Code or any other provision of law.

(8) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, access cards, or other orders drawn upon any bank, credit union, or savings association doing business in this state, the police or sheriff's department or district attorney may request, with the consent of the accountholder, the bank, credit union, or savings association to furnish, and the bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) Surveillance photographs and video recordings of persons accessing the crime victim's financial account via an automated teller machine (ATM) or from within the financial institution for dates on which illegal acts involving this account were alleged to have occurred. Nothing in this paragraph does any of the following:

(A) Requires a financial institution to produce a photograph or video recording if it does not possess the photograph or video recording.

(B) Affects any existing civil immunities as provided in Section 47 of the Civil Code or any other provision of law.

(8) A bank, credit union, or savings association doing business in this state that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(d) For purposes of subdivision (c), consent of the accountholder shall be satisfied if an accountholder provides to the financial institution and the person or entity seeking

disclosure, a signed and dated statement containing all of the following:

(1) Authorization of the disclosure for the period specified in subdivision (c).

(2) The name of the agency or department to which disclosure is authorized and, if applicable, the statutory purpose for which the information is to be obtained.

(3) A description of the financial records that are authorized to be disclosed.

(e) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(f) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000), of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(g) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001), of the Revenue and Taxation Code.

(h) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001), of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(j) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(k) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(l) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, employees of the local child support agencies, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The local child support agency may request information pursuant to this subdivision only when the local child support agency has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

(7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected with the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.

(m) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to the owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

(n) The dissemination of financial information and records pursuant to any of the following:

(1) Compliance by a financial institution with the requirements of Section 2892 of the Probate Code.

(2) Compliance by a financial institution with the requirements of Section 2893 of the Probate Code.

(3) An order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11.

(A) The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation.

(B) The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner.

(C) The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution.

(D) Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

(E) Where a court has made an order pursuant to this paragraph to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for any of the following:

(A) Disclosing information to a probate court pursuant to Sections 2892 and 2893.

(B) Disclosing information in response to a court order pursuant to paragraph (3).

(C) Complying with a court order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the court order.

(o) Disclosure by a financial institution to a peace officer, as defined in Section 830.1 of the Penal Code, pursuant to the following:

(1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the Civil Code.

(2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the Financial Code.

(3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code, provided that any financial institution that is a finance lender has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 22470 of the Financial Code.

(p) When the governing board of the Public Employees' Retirement System or the State Teachers' Retirement System certifies in writing to a financial institution that a benefit recipient has died and that transfers to the benefit recipient's account at the financial institution from the retirement system occurred after the benefit recipient's date of death, the financial institution shall furnish the retirement system with the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of the benefit recipient's death, or if the account has been closed, the name and address of the person who closed the account.

(q) When the retirement board of a retirement system established under the County Employees Retirement Law of 1937 certifies in writing to a financial institution that a retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or beneficiary of a retired member, the financial institution shall furnish the retirement system with the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of death of the retired member or beneficiary of a retired member, or if the account has been closed, the name and address of the person who closed the account.

As added by Stats. 1976, c. 1320, and amended by Stats. 1977, c. 1164, and Stats. 1978, c. 1346, and Stats. 1978, c. 1347, and Stats. 1979, c. 1021, and Stats. 1981, c. 74, and Stats. 1982, c. 1589, and Stats. 1984, c. 1448, and Stats. 1985, c. 591, and Stats. 1986, c. 698, and Stats. 1987, c. 1453, and AB 2621 (Bates), Stats. 1992, c. 847, and AB 823 (Bates), Stats. 1993, c. 677, and SB 718 (Senate Rev. and Tax Committee), Stats. 1995, c. 555, and AB 3351 (Weggeland), Stats. 1996, c. 1064. and SB 1827 (Senate Rev and Tax Committee), Stats. 1996, c. 1087, and AB 433 (Hertzberg) Stats. 1997, c. 170, and AB 976 (Papan), Stats. 1998, c. 757, and AB 2452 (Leach), Stats. 1998, c. 771, and AB 1358 (Shelley), Stats. 2000, c. 808, and SB 125 (Alpert), Stats. 2001, c. 493, and AB 1286 (Rod Pacheco), Stats. 2001, c. 563, and SB 1018 (Simitian), Stats. 2005, c. 140, and AB 618 (Cogdill), Stats. 2006, c. 705.

8317. (a) Each state agency, as defined in subdivision (b), shall establish and maintain an index of the names or titles of all fees, license fees, fines, and penalties administered or collected by the agency.

(b) "State agency" for the purposes of this section means every state office, department, division, bureau, board, and commission, but shall not include the Legislature or any entity provided for under Article VI of the California Constitution.

(c) This section does not apply to any fee collected by a state agency from any other governmental agency.

As added by AB 3413 (Conroy), Stats. 1994, c. 784.

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA

DIVISION 1. GENERAL

Chapter 5.1. Citizen Complaint Act of 1997

(Chapter 5.1 as added by AB 206 (Hertzberg), Stats. 1997, c. 214)

8330. This chapter shall be known and may be cited as the Citizen Complaint Act of 1997. All state agencies that have Internet websites shall implement this act in a manner that is consistent with the statewide strategy for electronic commerce as established by the Department of Information Technology.

As added by AB 206 (Hertzberg), Stats. 1997, c. 214.

8331. (a) State agencies shall make available on the Internet, on or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, a plain-language form through which individuals can register complaints or comments relating to the performance of that agency. The agency shall provide instructions on filing the complaint electronically, or on the manner in which to complete and mail the complaint form to the state agency, or both, consistent with whichever method the agency establishes for the filing of complaints.

(b) Any printed complaint form used by a state agency as part of the process of receiving a complaint against any licensed individual or corporation subject to regulation by that agency shall be made available by the agency on the Internet on or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive

Order D-3-99. The agency shall provide instructions on filing the complaint electronically, or on the manner in which to complete and mail the complaint form to the state agency, or both, consistent with whichever method the agency establishes for the filing of complaints.

(c) State agencies making a complaint form available on the Internet shall, to the extent feasible:

(1) Advise individuals calling the state agency to lodge a complaint of both of the following:

(A) The availability of the complaint form on the Internet.

(B) That many public libraries provide Internet access.

(2) Include on the Internet the location at which this information may be accessed in the telephone directory in order that citizens will be aware that they may contact the state agency via the Internet or by telephone.

(d) Public libraries, to the extent permitted through donations and other means, may do each of the following:

(1) Provide Internet access to their patrons.

(2) Advertise that they provide Internet access.

(e) Notwithstanding subdivision (a) of Section 11000, state agency as used in this section includes the California State University.

As added by AB 206 (Hertzberg), Stats. 1997, c. 214, and amended by AB 724 (Dutra), Stats. 1999, c. 784.

8332. It is the intent of the Legislature that this chapter shall not apply to the Reporting of Improper Governmental Activities Act (Article 3 (commencing with Section 8547) of Chapter 6.5) or the procedures established to investigate citizens' complaints against peace officers as required by Section 832.5 of the Penal Code.

As added by AB 206 (Hertzberg), Stats. 1997, c. 214.

DIVISION 2. LEGISLATIVE DEPARTMENT

PART 1. LEGISLATURE

Chapter 7. Legislative Printing and Publications

ARTICLE 6. REPORTS TO THE LEGISLATURE

(Article 6 as added by AB 2458 (Figueroa), Stats. 1996, c. 818)

9795. (a) (1) Any report required or requested by law to be submitted by a state or local agency to the members of either house of the Legislature generally, shall instead be submitted to the Legislative Counsel, the Secretary of the Senate, and the Chief Clerk of the Assembly. Each report shall include a summary of its contents, not to exceed one page in length, a copy of which shall be provided to each member of the appropriate house or houses of the Legislature by the Legislative Counsel within two working days of its receipt. Notice of receipt of the report shall also be recorded in the journal of the appropriate house or houses of the Legislature by the secretary or clerk of that house.

(2) In addition to and as part of the information made available to the public in electronic form pursuant to Section 10248, the Legislative Counsel shall make available a list of the reports submitted by state and local agencies, as specified in paragraph (1). If the Legislative Counsel receives a request from a member of the public for a report contained in the list, the Legislative Counsel is not required to provide a copy of the report and may refer the requester to the state or local agency, as the case may be, that authored the report.

(b) (1) A local agency shall be deemed to have complied with paragraph (1) of subdivision (a) if the agency submits to the Legislative Counsel, the Secretary of the Senate, and the Chief Clerk of the Assembly each one hard copy of the report required or requested.

(2) A state agency shall be deemed to have complied with paragraph (1) of subdivision (a) if the agency submits to the Legislative Counsel, the Secretary of the Senate, and the Chief Clerk of the Assembly each one hard copy and one electronic copy of the report required or requested.

(c) This section shall not apply to reports required or requested by law to be directed to a committee or other specified entity within the Legislature.

(d) No report shall be distributed to a Member of the Legislature unless specifically requested by that member.

(e) Compliance with subdivision (a) shall be deemed to be full compliance with subdivision (c) of Section 10242.5.

(f) A state agency report and summary subject to this section shall include an Internet Web site where the report can be downloaded and telephone number to call to order a hard copy of the report. A report submitted by a state agency subject to this section shall also be posted at the agency's Internet Web site.

(g) For purposes of this section, "report" includes any study or audit.

As added by AB 2458 (Figueroa), Stats. 1996, c. 818, and amended by AB 2701 (Runner), Stats. 2004, c. 644.

DIVISION 3. EXECUTIVE DEPARTMENT

PART 1. STATE DEPARTMENTS AND AGENCIES

Chapter 1. State Agencies

ARTICLE 6.5. DISTRIBUTION OF STATE PUBLICATIONS

11095. REPEALED.

As added by Stats. 1982, c. 1632, and repealed by AB 2458 (Figueroa), Stats. 1996, c. 818.

ARTICLE 9. MEETINGS

(Article 9 as added by Stats. 1967, c. 1656)

11120. It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating

authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

As added by Stats. 1967, c. 1656, and amended by Stats. 1980, c. 1284, and Stats. 1981, c. 968.

11121. As used in this article, "state body" means each of the following:

(a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

(b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.

(c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

(d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

As added by Stats. 1967, c. 1656, and amended by Stats. 1980, c. 515, and Stats. 1981, c. 968, and Stats. 1984, c. 193, and SB 1497 (Senate Health and Human Services Committee), Stats. 1996, c. 1023, and AB 3351 (Weggeland), Stats. 1996, c. 1964, and AB 192 (Canciamilla), Stats. 2001, c. 243, and SB 600 (Senate Judiciary Committee), Stats. 2003, c. 62.

11121.1. As used in this article, "state body" does not include any of the following:

(a) State agencies provided for in Article VI of the California Constitution.

(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Article 2.2 (commencing with Section 9027) of Chapter 1.5 of Part 1 of Division 2 of Title 2).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.

(f) State agencies provided for in Section 11770.5 of the Insurance Code.

(g) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

As added by AB 192 (Canciamilla), Stats. 2001, c. 243.

11121.2. REPEALED.

As added by Stats. 1981, c. 968, and repealed by AB 192 (Canciamilla), Stats. 2001, c. 243.

11121.7. REPEALED.

As added by Stats. 1980, c. 1284, and amended by Stats. 1981, c. 968, and repealed by AB 192 (Canciamilla), Stats. 2001, c. 243.

11121.8. REPEALED.

As added by Stats. 1981, c. 968, and repealed by AB 192 (Canciamilla), Stats. 2001, c. 243..

11121.9. Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

As added by Stats. 1980, c. 1284, and amended by Stats. 1981, c. 714.

11121.95. Any person appointed or elected to serve as a member of a state body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this article and shall be treated for purposes of this article as if he or she has already assumed office.

As added by SB 95 (Ayala), Stats. 1997, c. 949.

11122. As used in this article "action taken" means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

As added by Stats. 1967, c. 1656, and amended by Stats. 1981, c. 968.

11122.5. (a) As used in this article, "meeting" includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

(b) Except as authorized pursuant to Section 11123, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the state body to develop a collective concurrence as to action to be taken on an item by the members of the state body is prohibited.

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person.

(2) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body. This paragraph is not intended to allow members of the public free admission to

a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency as defined by Section 54951, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, provided that the members of the state body who are not members of the standing committee attend only as observers.

As added by AB 192 (Canciamilla), Stats. 2001, c. 243.

11123. (a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

As added by Stats. 1967, c. 1656, and amended by Stats. 1981, c. 968, and AB 3467 (Murray), Stats. 1994, c. 1153, and AB 1097 (Assembly Governmental Organization Committee), Stats. 1997, c. 52, and AB 192 (Canciamilla), Stats. 2001, c. 243.

11123.1. All meetings of a state body that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec.12132), and the federal rules and regulations adopted in implementation thereof.

As added by AB 3035 (Assembly Judiciary Committee), Stats. 2002, c. 300.

11124. No person shall be required, as a condition to attendance at a meeting of a state body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

As added by Stats. 1967, c. 1656, and amended by Stats. 1981, c. 968.

11124.1. (a) Any person attending an open and public meeting of the state body shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the state body that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the state body shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but may be erased or destroyed 30 days after the taping or recording. Any inspection of an audio or video tape recording shall be provided without charge on an audio or video tape player made available by the state body.

(c) No state body shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

As added by Stats. 1980, c. 1284, and amended by Stats. 1981, c. 968, and SB 95 (Ayala), Stats. 1997, c. 949.

11125. (a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

(c) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(d) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(e) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

(f) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

As added by Stats. 1967, c. 1656, and amended by Stats. 1973, c. 1126, and Stats. 1975, c. 708, and Stats. 1979, C. 284, and Stats. 1981, c. 968, and SB 95 (Ayala), Stats. 1997, c. 949, and AB 1234 (Shelley), Stats. 1999, c. 393, and AB 192 (Canciamilla), Stats. 2001, c. 243, and AB 3035 (Assembly Judiciary Committee), Stats. 2002, c. 300.

11125.1. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by the Franchise Tax Board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125.

(3) Made available on the Internet.

(d) Prior to the State Board of Equalization taking final action on any item that does not involve a named tax or fee payer, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request or have requested copies of these writings.

(3) Made available on the Internet.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The writings

described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

As added by Stats. 1975, c. 959, and amended by Stats. 1980, c. 1284, and Stats. 1981, and SB 95 (Ayala), Stats. 1997, c. 968, and SB 445 (Burton), Stats. 2001, c. 670, and AB 1752 (Migden), Stats. 2002, c. 156, and AB 3035 (Assembly Judiciary Committee), Stats. 2002, c. 300, and AB 780 (Chu), Stats. 2005, c. 188.

11125.2. Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

As added by Stats. 1980, c. 1284, and amended by Stats. 1981, c. 968.

11125.3. (a) Notwithstanding Section 11125, a state body may take action on items of business not appearing on the posted agenda under any of the conditions stated below:

(1) Upon a determination by a majority vote of the state body that an emergency situation exists, as defined in Section 11125.5.

(2) Upon a determination by a two-thirds vote of the state body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that the need for action came to the attention of the state body subsequent to the agenda being posted as specified in Section 11125.

(b) Notice of the additional item to be considered shall be provided to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after a determination of the need to consider the item is made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet as soon as is practicable after the decision to consider additional items at a meeting has been made.

As added by AB 3467 (Murray), Stats. 1994, c. 1153, and amended by AB 192 (Canciamilla), Stats. 2001, c. 243.

11125.4. (a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes where compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or where immediate action is required to protect the public interest:

(1) To consider "pending litigation" as that term is defined in subdivision (e) of Section 11126.

(2) To consider proposed legislation.

(3) To consider issuance of a legal opinion.

(4) To consider disciplinary action involving a state officer or employee.

(5) To consider the purchase, sale, exchange, or lease of real property.

(6) To consider license examinations and applications.

(7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.

(8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.

(b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting has been made, but shall deliver the notice in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet within the time periods required by this section. The notice shall specify the time and place of the special meeting and the business to be transacted. The written notice shall additionally specify the address of the Internet Web site where notices required by this article are made available. No other business shall be considered at a special meeting by the state body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the state body a written waiver of notice. The waiver may be given by telegram, facsimile transmission, or similar means. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

(c) At the commencement of any special meeting, the state body must make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 would cause a substantial hardship on the body or that immediate action is required to protect the public interest. The finding shall set forth the specific facts that constitute the hardship to the body or the impending harm to the public interest. The finding shall be adopted by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present. The finding shall be made available on the Internet. Failure to adopt the finding terminates the meeting.

As added by SB 95 (Ayala), Stats. 1997, c. 949, and amended by AB 1234 (Shelley), Stats. 1999, c. 393, and AB 1827 (Cohn), Stats. 2004, c. 576.

11125.5. (a) In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4.

(b) For purposes of this section, "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(1) Work stoppage or other activity that severely impairs public health or safety, or both.

(2) Crippling disaster that severely impairs public health or safety, or both.

(c) However, newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. Notice shall also be made available on the Internet as soon as is practicable after the decision to call the emergency meeting has been made. If telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(d) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place, and also made available on the Internet for a minimum of 10 days, as soon after the meeting as possible.

As added by Stats. 1981, c. 968, and amended by Stats. 1982, c. 1346, and AB 2912 (Mays), Stats. 1992, c. 1312, and SB 95 (Ayala), Stats. 1997, c. 949, and AB 1234 (Shelley), Stats. 1999, c. 393.

11125.6. (a) An emergency meeting may be called at any time by the president of the Fish and Game Commission or by a majority of the members of the commission to consider an appeal of a closure of or restriction in a fishery adopted pursuant to Section 7710 of the Fish and Game Code. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of an established fishery, the commission may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4 if the delay necessitated by providing the 10-day notice of a public meeting required by Section 11125 or the 48-hour notice required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state.

(b) At the commencement of an emergency meeting called pursuant to this section, the commission shall make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 or 48 hours prior to a meeting as required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state. The finding shall set forth the specific facts that constitute the impact to the economic benefits of the fishery or the sustainability of the fishery. The finding shall be adopted by a vote of at least four members of the commission, or, if less than four of the members are present, a unanimous vote of those members present. Failure to adopt the finding shall terminate the meeting.

(c) Newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the commission, or a designee thereof, one hour prior to the emergency meeting by telephone.

(d) The minutes of an emergency meeting called pursuant to this section, a list of persons who the president of the commission, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at themeeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

As added by AB 1241 (Keeley), Stats. 1998, c. 1052.

11125.7. (a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public if no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) The state body shall not prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(d) This section is not applicable to closed sessions held pursuant to Section 11126.

(e) This section is not applicable to decisions regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(f) This section is not applicable to hearings conducted by the California Victim Compensation and Government Claims Board pursuant to Sections 13963 and 13963.1.

(g) This section is not applicable to agenda items that involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

As added by SB 367 (Kopp), Stats. 1993, c. 1289, and amended by SB 523 (Kopp), Stats, 1995, c. 938, and SB 95 (Ayala), Stats. 1997, c. 949, and SB 1852 (Committee on Judiciary), Stats. 2006, c. 538.

11125.8. (a) Notwithstanding Section 11131.5, in any hearing that the California Victim Compensation and Government Claims Board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, no notice, agenda, announcement, or report required under this article need identify the applicant.

(b) In any hearing that the board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, the board shall disclose that the hearing is being held pursuant to Section 13963.1. That disclosure shall be deemed to satisfy the requirements of subdivision (a) of Section 11126.3.

As added by SB 95 (Ayala), Stats. 1997, c. 949 and amended by SB 1852 (Senate Judiciary Committee), Stats. 2006, c. 538.

11125.9. Regional water quality control boards shall comply with the notification guidelines in Section 11125 and, in addition, shall do both of the following:

(a) Notify, in writing, all clerks of the city councils and county boards of supervisors within the regional board's jurisdiction of any and all board hearings at least 10 days prior to the hearing.

Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. Each clerk, upon receipt of the notification of a board hearing, shall distribute the notice to all members of the respective city council or board of supervisors within the regional board's jurisdiction.

(b) Notify, in writing, all newspapers with a circulation rate of at least 10,000 within the regional board's jurisdiction of any and all board hearings, at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting.

As added by AB 116 (Runner), Stats. 1997, c. 301.

11126. (a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or

administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of the Revenue and Taxation Code.

(12) Prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 8 (commencing with Section 60850) of, Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing of Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(18) (A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property,

buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

(B) Notwithstanding any other provision of law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.

(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.

(d) (1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B) (i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent an administrative committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This article does not prevent the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters relating to the development of rates and competitive strategy for plans offered pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2.

As added by Stats 1967, c. 1656, and amended by Stats. 1968, c. 1272, and Stats. 1970, c. 346, and Stats. 1972, c. 431, and Stats. 1972, c. 1010, Stats. 1974, c. 1254, and Stats. 1974, c. 1539, Stats. 1975, c. 197, and Stats. 1975, c. 959, and Stats. 1977, c. 730, and Stats. 1980, c. 1197, and Stats. 1980, c. 1284, and Stats. 1981, c. 180, and Stats. 1981, c. 968, and Stats. 1982, c. 454, and Stats. 1983, c. 143, and Stats. 1984, c. 678, and Stats. 1984, c. 1284, and Stats. 1985, c. 186, and Stats. 1985, c. 1091, and Stats. 1986, c. 575, and Stats. 1987, c. 1320, and Stats. 1988, c. 1448, and Stats. 1989, c. 177, and Stats. 1989, c. 882, and Stats. 1989, c. 1360, and Stats. 1989, c. 1427, and AB 1440 (Archie-Hudson), Stats. 1991, c. 788, and AB 2987 (Campbell), Stats. 1992, c. 1050, and AB 1807 (Bronshvag), Stats. 1994, c. 845, and AB 2589 (Bornstein), Stats. 1994, c. 422, and SB 1316 (Greene), Stats. 1994, c. 845, and AB 265 (Alpert), Stats. 1995, c. 975, and AB 3358 (Ackerman), Stats. 1996, c. 1041, and SB 95 (Ayala), Stats. 1997, c. 949, and SB 2008 (Kelley), Stats. 1998, c. 210, and SB 989 (Sher), Stats. 1998, c. 972, and SB 366 (Alpert), Stats. 1999, c. 735, and SB 1998 (Senate Public Employment and Retirement Committee), Stats. 2000, c. 1002, and AB 2889 (Assembly Consumer Protection, Governmental Efficiency, and Economic Development Committee), Stats. 2000, c. 1055, and SB 54 (Polanco), Stats. 2001, c. 21, and AB 192 (Canciamilla), Stats. 2001, c. 243, and AB 3034 (Assembly Judiciary Committee), Stats. 2002, c. 664, and AB 2072 (Mountjoy), Stats. 2002, c. 1113, and AB 277 (Mountjoy), Stats. 2005, c. 288.

11126. REPEALED

As added by AB 2072 (Mountjoy), Stats. 2002, c. 1113, and repealed by AB 277 (Mountjoy), Stats. 2005, c. 288.

11126.1. The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available to members of the state body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. Such minute book may, but need not, consist of a recording of the closed session.

As added by Stats. 1980, c. 1284, and amended by Stats. 1981, c. 968.

11126.2. (a) Nothing in this article shall be construed to prohibit a state body that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a state body meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

As added by AB 1827 (Cohn), Stats. 2004, c. 576.

11126.3. (a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. If the session is closed pursuant to paragraph (2) of subdivision (d) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the proceeding or disciplinary action contemplated. However, should the body determine that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties if the proceeding or disciplinary action is commenced or that to do so would fail to protect the private economic and business reputation of the person or entity if the proceeding or disciplinary action is not commenced, then the state body shall notice that there will be a closed session and describe in general terms the purpose of that session. If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(b) In the closed session, the state body may consider only those matters covered in its disclosure.

(c) The disclosure shall be made as part of the notice provided for the meeting pursuant to Section 11125 or pursuant to subdivision (a) of Section 92032 of the Education Code and of any order or notice required by Section 11129.

(d) If, after the agenda has been published in compliance with this article, any pending litigation (under subdivision (e) of Section 11126) matters arise, the postponement of which will prevent the state body from complying with any statutory, court-ordered, or other legally imposed deadline, the state body may proceed to discuss those matters in closed session and shall publicly announce in the meeting the title of, or otherwise specifically identify, the litigation to be discussed, unless the body states that to do so would jeopardize the body's ability to effectuate service of process supon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage. Such an announcement shall be deemed to comply fully with the requirements of this section.

(e) Nothing in this section shall require or authorize a disclosure of names or other information that would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session or the disclosure of which is prohibited by state or federal law.

(f) After any closed session, the state body shall reconvene into open session prior to adjournment and shall make any reports, provide any documentation, and make any other disclosures required by Section 11125.2 of action taken in the closed session.

(g) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcement.

As added by Stats. 1980, c. 1284, and amended by Stats. 1981, c. 968, and Stats. 1987, c. 1320, and SB 95 (Ayala), Stats. 1997, c. 949, and SB 2008 (Kelley), Stats. 1998, c. 210, and AB 192 (Canciamilla), Stats. 2001, c. 243.

11126.5. In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting**.** Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

As added by Stats. 1970, c. 1610, and amended by Stats. 1981, c. 968.

11126.7. No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

As added by Stats. 1980, c. 1284, and amended by Stats. 1981, c. 968.

11127. Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

As added by Stats. 1967, c. 1656, and amended by Stats. 1981, c. 968.

11128. Each closed session of a state body shall be held only during a regular or special meeting of the body.

As added by Stats. 1967, c. 1656, and amended by Stats. 1980, c. 1284, and Stats. 1981, c. 968.

11128.5. The state body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting**,** the clerk or secretary of the state body may declare the meeting adjourned to a stated time and place and he or she shall cause a written notice of the adjournment to be given in the same manner as provided in Section 11125.4 for special meetings, unless that notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by law or regulation.

As added by SB 95 (Ayala), Stats. 1997, c. 949.

11129. Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body in the same manner and to the same extent set forth in Section 11128.5 for the adjournment of meetings. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

As added by Stats. 1967, c. 1656, and amended by Stats. 1981, c. 968, and SB 95 (Ayala), Stats. 1997, c. 949.

11130. (a) The Attorney General, the district attorney, or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to past actions or threatened future action by members of the

state body or to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid orinvalid under the laws of this state or of the United States, or to compel the state body to tape record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 11126, order the state body to tape record its closed sessions and preserve the tape recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The tapes shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the tape is sought by the Attorney General, the district attorney, or the plaintiff in a civil action pursuant to this section or Section 11130.3 alleging that a violation of this article has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the tape recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in-camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this article, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications that are protected by the attorney-client privilege.

As added by Stats. 1967, c. 1653, and amended by Stats. 1969, c. 494, and Stats. 1981, c. 968, and SB 95 (Ayala), Stats. 1997, c. 968, and AB 1234 (Shelley), Stats. 1999, c. 393.

11130.3. (a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null and void under this section. Any action seeking such a judicial determination shall be commenced within 90 days from the date the action was taken. Nothing in this section shall be construed to prevent a state body from curing or correcting an action challenged pursuant to this section.

(b) An action shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement related thereto.

(2) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) The action taken was in substantial compliance with Sections 11123 and 11125.

(4) The action taken was in connection with the collection of any tax.

As added by Stats. 1985, c. 936, and amended by AB 1234 (Shelley), Stats. 1999, c. 393.

11130.5. A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 or 11130.3 where it is found that a state body has violated the provisions of this article. The costs and fees shall be paid by the state body and shall not become a personal liability of any public officer or employee thereof.

A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 or 11130.3 where the defendant has prevailed in a final determination of the action and the court finds that the action was clearly frivolous and totally lacking in merit.

As added by Stats. 1975, c. 959, and amended by Stats. 1981, c. 968, and Stats. 1985, c. 936.

11130.7. Each member of a state body who attends a meeting of that body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this article, is guilty of a misdemeanor.

As added by Stats. 1980, c. 1284, and amended by Stats. 1981, c. 968, and SB 95 (Ayala), Stats. 1997, c. 949.

11131. No state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex, or that is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. As used in this section, "state agency" means and includes every state body, office, officer, department, division, bureau, board, council, commission, or other state agency.

As added by Stats. 1970, c. 383, and amended by Stats. 1981, c. 968, and SB 95 (Ayala), Stats. 1997, c. 949.

11131.5. No notice, agenda, announcement, or report required under this article need identify any victim or alleged

victim of crime, tortious sexual conduct, or child abuse unless the identity of the person has been publicly disclosed.

As added by SB 95 (Ayala), Stats. 1997, c. 949.

11132. Except as expressly authorized by this article, no closed session may be held by any state body.

As added by Stats. 1987, c. 1320.

Chapter 3.5. Administrative Regulations and Rulemaking

ARTICLE 1. GENERAL

11340. The Legislature finds and declares as follows:

(a) There has been an unprecedented growth in the number of administrative regulations in recent years.

(b) The language of many regulations is frequently unclear and unnecessarily complex, even when the complicated and technical nature of the subject matter is taken into account. The language is often confusing to the persons who must comply with the regulations.

(c) Substantial time and public funds have been spent in adopting regulations, the necessity for which has not been established.

(d) The imposition of prescriptive standards upon private persons and entities through regulations where the establishment of performance standards could reasonably be expected to produce the same result has placed an unnecessary burden on California citizens and discouraged innovation, research, and development of improved means of achieving desirable social goals.

(e) There exists no central office in state government with the power and duty to review regulations to ensure that they are written in a comprehensible manner, are authorized by statute, and are consistent with other law.

(f) Correcting the problems that have been caused by the unprecedented growth of regulations in California requires the direct involvement of the Legislature as well as that of the executive branch of state government.

(g) The complexity and lack of clarity in many regulations put small businesses, which do not have the resources to hire experts to assist them, at a distinct disadvantage.

As added by Stats. 1979, c. 567, and amended by Stats. 1981, c. 865, and AB 1718 (Leonard), Stats. 1983, c. 874, and SB 726 (Hill), Stats. 1993, c. 870.

11340.5. (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in subdivision (g) of Section 11342, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

(b) If the office is notified of, or on its own, learns of the issuance, enforcement of, or use of, an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that has not been adopted as a regulation and filed with the Secretary of State pursuant to this chapter, the office may issue a determination as to whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, is a regulation as defined in subdivision (g) of Section 11342.

(c) The office shall do all of the following:

(1) File its determination upon issuance with the Secretary of State.

(2) Make its determination known to the agency, the Governor, and the Legislature.

(3) Publish its determination in the California Regulatory Notice Register within 15 days of the date of issuance.

(4) Make its determination available to the public and the courts.

(d) Any interested person may obtain judicial review of a given determination by filing a written petition requesting that the determination of the office be modified or set aside. A petition shall be filed with the court within 30 days of the date the determination is published.

(e) A determination issued by the office pursuant to this section shall not be considered by a court, or by an administrative agency in an adjudicatory proceeding if all of the following occurs:

(1) The court or administrative agency proceeding involves the party that sought the determination from the office.

(2) The proceeding began prior to the party's request for the office's determination.

(3) At issue in the proceeding is the question of whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that is the legal basis for the adjudicatory action is a regulation as defined in subdivision (g) of Section 11342.

As added by AB 2531 (Gotch), Stats. 1994, c. 1039, and amended by SB 523 (Kopp), Stats 1995, c. 938.

11340.6. Except where the right to petition for adoption of a regulation is restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute, any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation as provided in Article 5 (commencing with Section 11346). This petition shall state the following clearly and concisely:

(a) The substance or nature of the regulation, or repeal requested.

(b) The reason for the request.

(c) Reference to the authority of the state agency to take the action requested.

As added by AB 2531 (Gotch), Stats. 1994, c. 1039.

11340.7. (a) Upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346), a state agency shall notify the petitioner in writing of the receipt and shall within 30 days deny the petition indicating why the agency has reached its decision on the merits of the petition in writing or schedule the matter for public hearing in accordance with the notice and hearing requirements of that article.

(b) A state agency may grant or deny the petition in part, and may grant any other relief or take any other action as

it may determine to be warranted by the petition and shall notify the petitioner in writing of this action.

(c) Any interested person may request a reconsideration of any part or all of a decision of any agency on any petition submitted. The request shall be submitted in accordance with Section 11340.6 and include the reason or reasons why an agency should reconsider its previous decision no later than 60 days after the date of the decision involved. The agency's reconsideration of any matter relating to a petition shall be subject to subdivision (a).

(d) Any decision of a state agency denying in whole or in part or granting in whole or in part a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346) shall be in writing and shall be transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register at the earliest practicable date. The decision shall identify the agency, the party submitting the petition, the provisions of the California Code of Regulations requested to be affected, reference to authority to take the action requested, the reasons supporting the agency determination, an agency contact person, and the right of interested persons to obtain a copy of the petition from the agency.

As added by AB 2531 (Gotch), Stats. 1994, c. 1039.

11342. REPEALED.

As added by Stats. 1979, c. 567, and amended by AB 2305 (Katz), Stats. 1982, c. 1083, and SB 1527 (Robbins), Stats. 1982, c. 1080, and AB 990 (Katz), Stats. 1984, c. 1444, and SB 726 (Hill), Stats. 1993, c. 870, and AB 2531 (Gotch), Stats. 1994, c. 1039, and SB 523 (Kopp), Stats 1995, c. 938, and repealed by AB 505 (Wright), Stats. 2000, c. 1059, and AB 1822 (Wayne), Stats. 2000, c. 1060.

11342.5. REPEALED.

As added by SB 327 (Hill), Stats. 1991, c. 899 and repealed by AB 2531 (Gotch), Stats. 1994, c. 1039.

ARTICLE 3. FILING AND PUBLICATION

11343.2. The Secretary of State shall endorse on the certified copy of each regulation or order of repeal filed with or delivered to him or her, the time and date of filing and shall maintain a permanent file of the certified copies of regulations and orders of repeal for public inspection. No fee shall be charged by any state officer or public official for the performance of any official act in connection with the certification or filing of regulations pursuant to this article.

As added by SB 726 (Hill), Stats. 1993, c. 870, and repealed and added by AB 2531 (Gotch), Stats. 1994, c. 1039.

ARTICLE 5. PUBLIC PARTICIPATION: PROCEDURE FOR ADOPTION OF REGULATIONS

11346.3. (a) State agencies proposing to adopt, amend, or repeal any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision, assessing the potential for adverse economic impact shall require agencies, when proposing to adopt, amend, or repeal a regulation, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:

(1) The proposed adoption, amendment, or repeal of a regulation shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.

(2) The state agency, prior to submitting a proposal to adopt, amend, or repeal a regulation to the office, shall consider the proposal's impact on business, with consideration of industries affected including the ability of California businesses to compete with businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties.

It is not the intent of this section to impose additional criteria on agencies, above that which exists in current law, in assessing adverse economic impact on California business enterprises, but only to assure that the assessment is made early in the process of initiation and development of a proposed adoption, amendment, or repeal of a regulation.

(b) (1) All state agencies proposing to adopt, amend, or repeal any administrative regulations shall assess whether and to what extent it will affect the following:

(A) The creation or elimination of jobs within the State of California.

(B) The creation of new businesses or the elimination of existing businesses within the State of California.

(C) The expansion of businesses currently doing business within the State of California.

(2) This subdivision does not apply to the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.

(3) Information required from state agencies for the purpose of completing the assessment may come from existing state publications.

(c) No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

As added by AB 2531 (Gotch), Stats. 1994, c. 1039, and amended by AB 505 (Wright), Stats. 2000, c. 1059, and AB 1822 (Wayne), Stats. 2000, c. 1060.

11346.5. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific.

(3) An informative digest drafted in plain English in a format similar to the Legislative Counsel's digest on

legislative bills. The informative digest shall include the following:

(A) A concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and of the effect of the proposed action.

(B) If the proposed action differs substantially from an existing comparable federal regulation or statute, a brief description of the significant differences and the full citation of the federal regulations or statutes.

(C) A policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state. For purposes of this paragraph, "cost or savings" means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

(7) If a state agency, in proposing to adopt, amend, or repeal any administrative regulation, makes an initial determination that the action may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of businesses that would be affected.

(B) A description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: "The (name of agency) has made an initial determination that the (adoption/amendment/repeal) of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses."

(8) If a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this declaration, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support its initial determination. An agency's initial determination and declaration that a proposed adoption, amendment, or repeal of a regulation may have or will not have a significant, adverse impact on businesses, including the ability of California businesses to compete with businesses in other states, shall not be grounds for the office to refuse to publish the notice of proposed action.

(9) A description of all cost impacts, known to the agency at the time the notice of proposed action is submitted to the office, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. If no cost impacts are known to the agency, it shall state the following:

"The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action."

(10) A statement of the results of the assessment required by subdivision (b) of Section 11346.3.

(11) The finding prescribed by subdivision (c) of Section 11346.3, if required.

(12) A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action would have that effect. In addition, the agency officer designated in paragraph (14), shall make available to the public, upon request, the agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs.

(13) A statement that the adopting agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

(14) The name and telephone number of the agency representative and designated backup contact person to whom inquiries concerning the proposed administrative action may be directed.

(15) The date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the state agency before it adopts, amends, or repeals a regulation.

(16) Reference to the fact that the agency proposing the action has prepared a statement of the reasons for the proposed action, has available all the information upon which its

proposal is based, and has available the express terms of the proposed action, pursuant to subdivision (b).

(17) A statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

(18) A statement indicating that the full text of a regulation changed pursuant to Section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.

(19) A statement explaining how to obtain a copy of the final statement of reasons once it has been prepared pursuant to subdivision (a) of Section 11346.9.

(20) If the agency maintains an Internet Web site or other similar forum for the electronic publication or distribution of written material, a statement explaining how materials published or distributed through that forum can be accessed.

(b) The agency representative designated in paragraph (14) of subdivision (a) shall make available to the public upon request the express terms of the proposed action. The representative shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action. If the representative receives an inquiry regarding the proposed action that the representative cannot answer, the representative shall refer the inquiry to another person in the agency for a prompt response.

(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the alleged inadequacy or inaccuracy of the housing cost estimates, if there has been substantial compliance with those requirements.

As added by Stats. 1979, c. 567, and amended by Stats. 1979, c. 1023, and Stats. 1981, c. 865, and SB 1326 (Alquist), Stats. 1982, c. 327, and AB 1747 (Hill), Stats. 1983, c. 797, and SB 2002 (Russell), Stats. 1986, c. 879, and AB 2540 (Leonard), Stats. 1987, c. 1375, and AB 1144 (Goldsmith), Stats. 1993, c. 1046, and AB 2531 (Gotch), Stats. 1994, c. 1039, and AB 505 (Wright), Stats.2000, c. 1059, and AB 1822 (Wayne), Stats. 2000, c. 1060, and AB 1857 (Wayne), Stats. 2002, c. 389.

11346.53. REPEALED.

As added by AB 2305 (Katz), Stats. 1982, c. 1083, and amended by AB 1306 (Klehs), Stats. 1983, c. 797, and AB 990 (Katz), Stats. 1984, c. 1444, and AB 1442 (Wright), Stats. 1987, c. 551, and AB 2061 (Polanco), Stats. 1991, c. 794, and AB 3511 (Jones), Stats. 1992, c. 1306, and AB 969 (Jones), Stats. 1993, c. 1038 and repealed by AB 2531 (Gotch), Stats. 1994, c. 1039.

11346.54. REPEALED.

As added by SB 513 (Morgan), Stats. 1993, c. 1063, and repealed by AB 505 (Wright), Stats. 2000, c. 1059, and AB 1822 (Wayne), Stats. 2000, c. 1060.

11346.6. REPEALED.

As added by AB 1144 (Goldsmith), Stats. 1993, c. 1046, and repealed by SB 523 (Kopp), Stats 1995, c. 938.

11347.1. REPEALED.

As added by AB 1111 (McCarthy), Stats. 1979, c. 567, and amended by SB 1754 (Holmdahl), Stats. 1980, c. 1238, and SB 327 (Hill), Stats. 1991, c. 89, and repealed by AB 2531 (Gotch), Stats. 1994, c. 1039.

11347.3. (a) Every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. Commencing no later than the date that the notice of the proposed action is published in the California Regulatory Notice Register, and during all subsequent periods of time that the file is in the agency's possession, the agency shall make the file available to the public for inspection and copying during regular business hours.

(b) The rulemaking file shall include:

(1) Copies of any petitions received from interested persons proposing the adoption, amendment, or repeal of the regulation, and a copy of any decision provided for by subdivision (d) of Section 11340.7, which grants a petition in whole or in part.

(2) All published notices of proposed adoption, amendment, or repeal of the regulation, and an updated informative digest, the initial statement of reasons, and the final statement of reasons.

(3) The determination, together with the supporting data required by paragraph (5) of subdivision (a) of Section 11346.5.

(4) The determination, together with the supporting data required by paragraph (8) of subdivision (a) of Section 11346.5.

(5) The estimate, together with the supporting data and calculations, required by paragraph (6) of subdivision (a) of Section 11346.5.

(6) All data and other factual information, any studies or reports, and written comments submitted to the agency in connection with the adoption, amendment, or repeal of the regulation.

(7) All data and other factual information, technical, theoretical, and empirical studies or reports, if any, on which the agency is relying in the adoption, amendment, or repeal of a regulation, including any cost impact estimates as required by Section 11346.3.

(8) A transcript, recording, or minutes of any public hearing connected with the adoption, amendment, or repeal of the regulation.

(9) The date on which the agency made the full text of the proposed regulation available to the public for 15 days prior to the adoption, amendment, or repeal of the regulation, if required to do so by subdivision (c) of Section 11346.8.

(10) The text of regulations as originally proposed and the modified text of regulations, if any, that were made available to the public prior to adoption.

(11) Any other information, statement, report, or data that the agency is required by law to consider or prepare in connection with the adoption, amendment, or repeal of a regulation.

(12) An index or table of contents that identifies each item contained in the rulemaking file. The index or table of contents shall include an affidavit or a declaration under

penalty of perjury in the form specified by Section 2015.5 of the Code of Civil Procedure by the agency official who has compiled the rulemaking file, specifying the date upon which the record was closed, and that the file or the copy, if submitted, is complete.

(c) Every agency shall submit to the office with the adopted regulation, the rulemaking file or a complete copy of the rulemaking file.

(d) The rulemaking file shall be made available by the agency to the public, and to the courts in connection with the review of the regulation.

(e) Upon filing a regulation with the Secretary of State pursuant to Section 11349.3, the office shall return the related rulemaking file to the agency, after which no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of. The agency shall maintain the file unless it elects to transmit the file to the State Archives pursuant to subdivision (f).

(f) The agency may transmit the rulemaking file to the State Archives. The file shall include instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. Pursuant to Section 12223.5, the Secretary of State may designate a time for the delivery of the rulemaking file to the State Archives in consideration of document processing or storage limitations.

As added by AB 1111 (McCarthy), Stats. 1979, c. 567, and amended by AB 939 (Lehman), Stats. 1979, c. 1203, and AB 1014 (McCarthy), Stats. 1981, c. 865, and SB 1326 (Alquist), Stats. 1982, c. 327, and AB 1306 (Klehs), Stats. 1983, c. 797, and AB 627 (Tucker), Stats. 1984, c. 144, and AB 2540 (Leonard), Stats. 1987, c. 1375, and SB 327 (Hill), Stats. 1991, c. 899, and AB 2531 (Gotch), Stats. 1994, c. 1039, and SB 1507 (Petris), Stats. 1996, c. 928, and AB 1822 (Wayne), Stats. 2000, c. 1060.

ARTICLE 6. REVIEW OF PROPOSED REGULATIONS

11349.1. (a) The office shall review all regulations adopted, amended, or repealed pursuant to the procedure specified in Article 5 (commencing with Section 11346) and submitted to it for publication in the California Code of Regulations Supplement and for transmittal to the Secretary of State and make determinations using all of the following standards:

(1) Necessity.

(2) Authority.

(3) Clarity.

(4) Consistency.

(5) Reference.

(6) Nonduplication.

In reviewing regulations pursuant to this section, the office shall restrict its review to the regulation and the record of the rulemaking proceeding. The office shall approve the regulation or order of repeal if it complies with the standards set forth in this section and with this chapter.

(b) In reviewing proposed regulations for the criteria in subdivision (a), the office may consider the clarity of the proposed regulation in the context of related regulations already in existence.

(c) The office shall adopt regulations governing the procedures it uses in reviewing regulations submitted to it. The regulations shall provide for an orderly review and shall specify the methods, standards, presumptions, and principles the office uses, and the limitations it observes, in reviewing regulations to establish compliance with the standards specified in subdivision (a). The regulations adopted by the office shall ensure that it does not substitute its judgment for that of the rulemaking agency as expressed in the substantive content of adopted regulations.

(d) The office shall return any regulation subject to this chapter to the adopting agency if any of the following occur:

(1) The adopting agency has not prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5 and has not included the data used and calculations made and the summary report of the estimate in the file of the rulemaking.

(2) The agency has not complied with Section 11346.3.

(3) The adopting agency has prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5, the estimate indicates that the regulation will result in a cost to local agencies or school districts that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, and the adopting agency fails to do any of the following:

(A) Cite an item in the Budget Act for the fiscal year in which the regulation will go into effect as the source from which the Controller may pay the claims of local agencies or school districts.

(B) Cite an accompanying bill appropriating funds as the source from which the Controller may pay the claims of local agencies or school districts.

(C) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has approved a request by the agency that funds be included in the Budget Bill for the next following fiscal year to reimburse local agencies or school districts for the costs mandated by the regulation.

(D) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has authorized the augmentation of the amount available for expenditure under the agency's appropriation in the Budget Act which is for reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 to local agencies or school districts from the unencumbered balances of other appropriations in the Budget Act and that this augmentation is sufficient to reimburse local agencies or school districts for their costs mandated by the regulation.

(e) The office shall notify the Department of Finance of all regulations returned pursuant to subdivision (d).

(f) The office shall return a rulemaking file to the submitting agency if the file does not comply with subdivisions (a) and (b) of Section 11347.3. Within three state working days of the receipt of a rulemaking file, the office shall notify the submitting agency of any deficiency identified. If no notice of deficiency is mailed to the adopting agency within that time, a rulemaking file shall be deemed submitted as of the date of its original receipt by the office. A

rulemaking file shall not be deemed submitted until each deficiency identified under this subdivision has been corrected.

This subdivision shall not limit the review of regulations under this article, including, but not limited to, the conformity of rulemaking files to subdivisions (a) and (b) of Section 11347.3.

As added by AB 1111 (McCarthy), Stats. 1979, c. 567, and amended by AB 638 (Young), Stats. 1979, c. 1152, and AB 1586 (Berman), Stats. 1981, c. 865, and AB 2165 (Costa), Stats. 1982, c. 86, and AB 3322 (Berman), Stats. 1982, c. 1544, and SB 1289 (Davis), Stats. 1982, c. 1573, and AB 2028 (Areias), Stats. 1985, c. 1044, and AB 2028 (Areias), Stats. 1987, c. 1375, and AB 2061 (Polanco), Stats. 1991, c. 794, and AB 2531 (Gotch), Stats. 1994, c. 1039, and AB 1822 (Wayne), Stats. 2000, c. 1060.

11349.3. (a) The office shall either approve a regulation submitted to it for review and transmit it to the Secretary of State for filing or disapprove it within 30 working days after the regulation has been submitted to the office for review. If the office fails to act within 30 days, the regulation shall be deemed to have been approved and the office shall transmit it to the Secretary of State for filing.

(b) If the office disapproves a regulation, it shall return it to the adopting agency within the 30-day period specified in subdivision (a) accompanied by a notice specifying the reasons for disapproval. Within seven calendar days of the issuance of the notice, the office shall provide the adopting agency with a written decision detailing the reasons for disapproval. No regulation shall be disapproved except for failure to comply with the standards set forth in Section 11340.1 or 11349.1 or for failure to comply with this chapter.

(c) If an agency determines, on its own initiative, that a regulation submitted pursuant to subdivision (a) should be returned by the office prior to completion of the office's review, it may request the return of the regulation. All requests for the return of a regulation shall be memorialized in writing by the submitting agency no later than one week following the request. Any regulation returned pursuant to this subdivision shall be resubmitted to the office for review within the one-year period specified in subdivision (b) of Section 11346.4 or shall comply with Article 5 (commencing with Section 11346) prior to resubmission.

(d) The office shall not initiate the return of a regulation pursuant to subdivision (c) as an alternative to disapproval pursuant to subdivision (b).

As added by AB 1111 (McCarthy), Stats. 1979, c. 567, and amended by AB 1586 (Berman), Stats. 1981, c. 865, and SB 1780 (Rains), Stats. 1982, c. 1236, and AB 2028 (Areias), Stats. 1985, c. 1044, and AB 2540 (Leonard), Stats. 1987, c. 1375, and AB 2061 (Polanco), Stats. 1991, c. 794, and AB 3511 (Jones), Stats. 1992, c. 1306.

ARTICLE 8. JUDICIAL REVIEW

11350. (a) Any interested person may obtain a judicial declaration as to the validity of any regulation or order of repeal by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The right to judicial determination shall not be affected by the failure either to petition or to seek reconsideration of a petition filed pursuant to Section 11340.7 before the agency promulgating the regulation or order of repeal. The regulation or order of repeal may be declared to be invalid for a substantial failure to comply with this chapter, or, in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the finding of emergency prepared pursuant to subdivision (b) of Section 11346.1 do not constitute an emergency within the provisions of Section 11346.1.

(b) In addition to any other ground that may exist, a regulation or order of repeal may be declared invalid if either of the following exists:

(1) The agency's determination that the regulation is reasonably necessary to effectuate the purpose of the statute, court decision, or other provision of law that is being implemented, interpreted, or made specific by the regulation is not supported by substantial evidence.

(2) The agency declaration pursuant to paragraph (8) of subdivision (a) of Section 11346.5 is in conflict with substantial evidence in the record.

(c) The approval of a regulation or order of repeal by the office or the Governor's overruling of a decision of the office disapproving a regulation or order of repeal shall not be considered by a court in any action for declaratory relief brought with respect to a regulation or order of repeal.

(d) In a proceeding under this section, a court may only consider the following evidence:

(1) The rulemaking file prepared under Section 11347.3.

(2) The finding of emergency prepared pursuant to subdivision (b) of Section 11346.1.

(3) An item that is required to be included in the rulemaking file but is not included in the rulemaking file, for the sole purpose of proving its omission.

(4) Any evidence relevant to whether a regulation used by an agency is required to be adopted under this chapter.

As added by AB 1111 (McCarthy), Stats. 1979, c. 567, and amended by SB 726 (Beverly), Stats. 1981, c. 592, and AB 1014 (McCarthy), Stats. 1981, c. 865, and AB 2165 (Costa), Stats. 1982, c. 86, and SB 1289 (Davis), Stats. 1982, c. 1573, and AB 2061 (Polanco) Stats. 1991, c. 794 and AB 2531 (Gotch), Stats. 1994, c. 1039, and SB 523 (Kopp), Stats 1995, c. 938, and AB 1822 (Wayne), Stats. 2000, c. 1060, and AB 1302 (J. Horton), Stats. 2006, c. 713.

Chapter 4. Office of Administrative Hearings

ARTICLE 3. STATE AGENCY REPORTS AND FORMS APPEALS

11380. (a) (1) The office shall hear and render a decision on any appeal filed by a business, pursuant to subdivision (c) of Section 14775, in the event the business contests the certification by a state agency head that reporting requirements meet established criteria and shall not be eliminated.

(2) Before a business may file an appeal with the office pursuant to subdivision (c) of Section 14775, the business shall file a challenge to a form or report required by a state agency with that state agency. Within 60 days of filing the challenge with a state agency, the state agency shall either eliminate the form or report or provide written justification for its continued use.

(3) A business may appeal a state agency's written justification for the continued use of a form or report with the office.

(4) If a state agency fails to respond within 60 days to the filing of a challenge pursuant to paragraph (2), the business shall have an immediate right to file an appeal with the office.

(b) No later than January 1, 1996, the office shall adopt procedures governing the filing, hearing, and disposition of appeals. The procedures shall include, but shall not be limited to, provisions that assure that appeals are heard and decisions rendered by the office in a fair, impartial, and timely fashion.

(c) The office may charge appellants a reasonable fee to pay for costs it incurs in complying with this section.

Formerly Section 11530 as added by SB 1898 (Peace), Stats. 1994, c. 769. Repealed and renumbered by SB 523 (Kopp), Stats. 1995, c. 938.

11758. REPEALED.

As added by AB 2523 (Bowen), Stats. 1994, c. 925, and repealed by SB 1 (Alquist), Stats. 1995, c. 508.

Chapter 8.1. State Government Strategic Planning and Performance Review Act

(Chapter 8.1 commencing with Section 11810 as added by AB 2711 (V. Brown), Stats. 1994, c. 779)

ARTICLE 1. GENERAL PROVISIONS.

(Article 1 as added by AB 2711 (V. Brown), Stats. 1994, c. 779)

11810. This chapter shall be known, and may be cited, as the State Government Strategic Planning and Performance and Review Act.

As added by AB 2711 (V. Brown), Stats. 1994, c. 779.

ARTICLE 3. STRATEGIC PLANNING AND PERFORMANCE REVIEWS

(Article 3 as added by AB 2711 (V. Brown), Stats. 1994, c. 779)

11815. REPEALED.

As added by AB 2711 (V. Brown), Stats. 1994, c. 779, and repealed by SB 1191 (Speier), Stats. 2001, c. 745.

11816. Each agency, department, office or commission for which strategic planning efforts are recommended pursuant to Section 11815 shall develop a strategic plan and shall report to the Governor and to the Joint Legislative budget Committee by April 1, 1995, and by each April 1 thereafter on the steps being taken to develop and adopt a strategic plan. This report shall include a description of the elements to be included in the strategic plan, the process for developing and adopting the strategic plan and a timetable for the plan's completion. In developing its strategic plan, each agency, department, office or commission shall consult with at least the following affected parties: employee organizations, the Legislature, client groups served, suppliers, and contractors. The report shall also identify the steps being taken to develop performance measures that could be used for a performance budgeting system or a performance review.

As added by AB 2711 (V. Brown), Stats. 1994, c. 779.

11817. It is the intent of the Legislature that strategic plans developed pursuant to Section 11816 form the basis for conducting performance reviews pursuant to this article or for the implementation of performance budgeting systems pursuant to Chapter 8 (commencing with Section 11800).

As added by AB 2711 (V. Brown), Stats. 1994, c. 779.

11818. REPEALED.

As added by AB 2711 (V. Brown), Stats. 1994, c. 779, and repealed by SB 1191 (Speier), Stats. 2001, c. 745.

Chapter 3. Secretary of State of California

ARTICLE 4. STATE ARCHIVES

12223.5. The Secretary of State shall receive into the State Archives any official committee file transmitted pursuant to Section 9080 or rulemaking file transmitted pursuant to Section 11347.3. The Secretary of State may designate a time for the delivery of files in consideration of document processing or storage limitations. The Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in a file received pursuant to this section. Nothing in this section, or in Sections 9080 or 11347.3, shall prohibit the conversion of an official committee file or rulemaking file to another accessible format.

As added by SB 1507 (Petris), Stats. 1996, c. 928.

PART 5. DEPARTMENT OF TRANSPORTATION

Chapter 3. State Employee Telecommuting Program

14200.1 (a) The Legislature finds and declares the following:

(1) Telecommuting can be an important means to reduce air pollution and traffic congestion and to reduce the high costs of highway commuting.

(2) Telecommuting stimulates employee productivity while giving workers more flexibility and control over their lives.

(b) It is the intent of the Legislature to encourage state agencies to adopt policies that encourage telecommuting by state employees.

As added by AB 2672 (Cortese), Stats. 1994, c. 1209.

14201. Every state agency shall review its work operations to determine where in its organization telecommuting can be of practical benefit to the agency. On or before July 1, 1995, each agency shall develop and implement a telecommuting plan as part of its telecommuting program in work areas where telecommuting is identified as being both practical and beneficial to the organization.

Agencies that participated in the experimental studies described in Section 15276 may continue and expand those telecommuting programs in accordance with the policy, procedures, and guidelines developed by the Department of General Services in conjunction with those participating agencies. Those agencies not having participated in the initial experimental studies described in Section 15276 may comply with the policy, procedures, and guidelines developed by the

Department of General Services in conjunction with a multiagency group that participated in those studies.

As added by Stats. 1990, c. 1389, and amended by AB 2672 (Cortese), Stats. 1994, c. 1209.

PART 5.5. DEPARTMENT OF GENERAL SERVICES

Chapter 5. State Records

ARTICLE 4. DISPOSAL OF RECORDS

14755. (a) No record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the director that the record has no further administrative, legal, or fiscal value and the Secretary of State has determined that the record is inappropriate for preservation in the State Archives.

(b) The director shall not authorize the destruction of any record subject to audit until he or she has determined that the audit has been performed.

(c) The director shall not authorize the destruction of all or any part of an agency rulemaking file subject to Section 11347.3.

As added by Stats. 1965, c. 371, and amended by SB 1507 (Petris), Stats. 1996, c. 928.

14756. The public records of any state agency may be microfilmed, electronically data imaged, or otherwise photographically reproduced and certified upon the written authorization of the head of the agency. The microfilming, electronic data imaging, or photographic reproduction shall be made in compliance with the minimum standards or guidelines, or both, as recommended by the American National Standards Institute or the Association for Information and Image Management, and as adopted by the Department of General Services in consultation with the Secretary of State, for recording of permanent records or nonpermanent records.

The certification of each reproduction or set of reproductions shall be in accordance with the standards, or have the approval, of the Attorney General. The certification shall contain a statement of the identity, description, and disposition or location of the records reproduced, the date, reason, and authorization for the reproduction, and other information that the Attorney General requires.

The certified reproductions shall be deemed to be original public records for all purposes, including introduction in courts of law and state agencies.

As added by Stats. 1965, c. 371, and amended by AB 2027 (Condit), Stats. 1989, c. 257, and SB 849 (Bergeson), Stats. 1991, c. 1061, and AB 972 (Torlakson), Stats. 1998, c. 677, and SB 2067 (Bowen), Stats. 2000, c. 569.

Chapter 5.5. State Forms Management

14771. (a) The director, through the forms management center, shall do all of the following:

(1) Establish a State Forms Management Program for all state agencies, and provide assistance in establishing internal forms management capabilities.

(2) Study, develop, coordinate and initiate forms of interagency and common administrative usage, and establish basic state design and specification criteria to effect the standardization of public-use forms.

(3) Provide assistance to state agencies for economical forms design and forms art work composition and establish and supervise control procedures to prevent the undue creation and reproduction of public-use forms.

(4) Provide assistance, training, and instruction in forms management techniques to state agencies, forms management representatives, and departmental forms coordinators, and provide direct administrative and forms management assistance to new state organizations as they are created.

(5) Maintain a central cross index of public-use forms to facilitate the standardization of these forms, to eliminate redundant forms, and to provide a central source of information on the usage and availability of forms.

(6) Utilize appropriate procurement techniques to take advantage of competitive bidding, consolidated orders, and contract procurement of forms, and work directly with the Office of State Publishing toward more efficient, economical and timely procurement, receipt, storage, and distribution of state forms.

(7) Coordinate the forms management program with the existing state archives and records management program to ensure timely disposition of outdated forms and related records.

(8) Conduct periodic evaluations of the effectiveness of the overall forms management program and the forms management practices of the individual state agencies, and maintain records which indicate net dollar savings which have been realized through centralized forms management.

(9) Develop and promulgate rules and standards to implement the overall purposes of this section.

(10) Create and maintain by July 1, 1986, a complete and comprehensive inventory of public-use forms in current use by the state.

(11) Establish and maintain, by July 1, 1986, an index of all public-use forms in current use by the state.

(12) Assign, by January 1, 1987, a control number to all public-use forms in current use by the state.

(13) Establish a goal to reduce the existing burden of state collections of public information by 30 percent by July 1, 1987, and to reduce that burden by an additional 15 percent by July 1, 1988.

(14) Provide notice to state agencies, forms management representatives, and departmental forms coordinators, that in the usual course of reviewing and revising all public-use forms that refer to or use the terms spouse, husband, wife, father, mother, marriage, or marital status, that appropriate references to domestic partner, parent, or domestic partnership are to be included.

(15) Delegate implementing authority to state agencies where the delegation will result in the most timely and economical method of accomplishing the responsibilities set forth in this section. The director, through the forms management center, may require any agency to revise any public-use form which the director determines is inefficient.

(b) Due to the need for tax forms to be available to the public on a timely basis, all tax forms, including returns,

schedules, notices, and instructions prepared by the Franchise Tax Board for public use in connection with its administration of the Personal Income Tax Law, Senior Citizens Property Tax Assistance and Postponement Law, Bank and Corporation Tax Law, and the Political Reform Act of 1974 and the State Board of Equalization's administration of county assessment standards, state-assessed property, timber tax, sales and use tax, hazardous substances tax, alcoholic beverage tax, cigarette tax, motor vehicle fuel license tax, use fuel tax, energy resources surcharge, emergency telephone users surcharge, insurance tax, and universal telephone service tax shall be exempt from subdivision (a), and, instead, each board shall do all of the following:

(1) Establish a goal to standardize, consolidate, simplify, efficiently manage, and, where possible, reduce the number of tax forms.

(2) Create and maintain, by July 1, 1986, a complete and comprehensive inventory of tax forms in current use by the board.

(3) Establish and maintain, by July 1, 1986, an index of all tax forms in current use by the board.

(4) Report to the Legislature, by January 1, 1987, on its progress to improve the effectiveness and efficiency of all tax forms.

(c) The director, through the forms management center, shall develop and maintain, by December 31, 1995, an ongoing master inventory of all nontax reporting forms required of businesses by state agencies, including a schedule for notifying each state agency of the impending expiration of certain report review requirements pursuant to subdivision (b) of Section 14775.

As added by Stats. 1975, c. 398, and amended by SB 1499 (Rains), Stats. 1982, c. 1118, and AB 826 (Katz), Stats. 1985, c. 1263, and SB 1898 (Peace), Stats. 1994, c. 769, and AB 205 (Goldberg), Stats. 2003, c. 421.

14775. (a) By June 30, 1995, each state agency shall inventory all reports and forms it requires businesses to complete and submit in order to comply with agency requirements. As part of this inventory, each state agency shall eliminate all forms it determines are no longer needed to enable the agency, to carry out its statutory responsibilities. By June 30, 1995, each state agency shall submit this inventory to the Director of General Services in order to enable the director to carry out his or her responsibilities under subdivision (c) of Section 14771.

(b) Commencing December 31, l995, and annually thereafter, each state agency shall review one-third of the reports and forms it requires businesses to submit for compliance purposes, so that each report or form is reviewed on a triennial basis. Upon review, a report or form shall be eliminated unless the agency head certifies that each reporting requirement meets all of the following criteria:

(1) The continued reporting requirement is necessary for the agency to meet specifically identified statutory responsibilities.

(2) The agency has authority to require the report.

(3) The report is not duplicatory of, or in conflict with, other reports required of business by the agency or other agencies of state government.

(4) The information cannot be obtained in a more cost-effective manner.

(5) The agency actually reviewed, and is actively using, the information obtained in the previous reports required of business.

(c) If an agency head certifies that a reporting requirement meets the criteria specified in subdivision (b), any business required to comply with that requirement may, consistent with Section 8526, appeal that certification to the Office of Administrative Hearings.

(d) Notwithstanding Section 14l73, this section shall apply to all state agencies as defined in Section 11000.

(e) This section shall not apply to any report or form required by statute, any regulation adopted pursuant to the Administrative Procedure Act (Ch. 3.5 (commencing with Section 11340), Pt. 1), or any judicial or administrative order.

(f) This section shall not be construed to eliminate any requirement imposed on a state agency to comply with the rulemaking portion of the Administrative Procedure Act (Ch. 3.5 (commencing with Section 11340), Pt. 1).

As added by SB 1898 (Peace), Stats. 1994, c. 769.

PART 6.7. ECONOMIC AND BUSINESS DEVELOPMENT (REPEALED)

15338.5 REPEALED.

As added by AB 475 (Pringle), Stats. 1997, c. 719, and repealed by AB 1757 (Assembly Budget Committee), Stats. 2003. c. 229.

15338.6. REPEALED.

As added by AB 475 (Pringle), Stats. 1997, c. 719, and repealed by AB 1757 (Assembly Budget Committee), Stats. 2003, c. 229.

15363.6. REPEALED.

As added by SB 1909, Stats. 1992,c. 1364, and renumbered 15312 and amended by AB 1732, Stats. 1993, c. 1158, and SB 1082 (Calderon), Stats. 1993, c. 418, and AB 2889 (Assembly Consumer Protection, Governmental Efficiency, and Economic Development), Stats. 2000, c. 1055, and SB 1136 (Vasconcellos), Stats. 2000, c. 1056, and AB 968 (Chan), Stats. 2001, c. 189, and repealed by AB 1757 (Assembly Budget Committee), Stats. 2003, c. 229.

Chapter 3.2. Defense Installation Conversion (REPEALED)

(Chapter 3.2 commencing with Section 15378.5 as added by SB 1257 (Ayala) Stats. 1994, c. 34, and repealed by AB 1757 (Assembly Budget Committee), Stats. 2003, c. 229)

15378.5–15378.10. REPEALED.

As added by SB 1257 (Ayala), Stats. 1994, c. 34 and repealed by AB 1757 (Assembly Budget Committee), Stats. 2003, c. 229).

Chapter 12. Office of Permit Assistance (REPEALED)

ARTICLE 1. GENERAL PROVISIONS. (REPEALED)

15399.57. REPEALED.

As added by AB 1475 (Pringle), Stats. 1996, c. 1127, and repealed by AB 475 (Pringle), Stats. 1997, c. 719.

15399.58. REPEALED.

As added by AB 1475 (Pringle), Stats.1996, c. 1127, and repealed by AB 475 (Pringle), Stats. 1997, c. 719.

DIVISION 3. EXECUTIVE DEPARTMENT

PART 10B. STATE BUILDING CONSTRUCTION

Chapter 2.8 Energy Efficiency in Buildings

(Chapter 2.8 as added by AB 1273, Statutes of 1991, c. 962)

15814.40. (a) The Department of General Services shall define a life cycle cost analysis model that shall be used to evaluate the cost-effectiveness of state building design and construction decisions and their impact over a facility's life cycle, no later than July 1, 2007.

(b) (1) The State Energy Resources Conservation and Development Commission, in consultation with the Department of General Services and the Treasurer's office, shall identify and develop appropriate financing and project delivery mechanisms to facilitate state building energy and resource efficient projects. These mechanisms shall include the use of the life cycle cost analysis model as described in subdivision (a), and shall maximize the use of outside financing, including, but not limited to, loan programs, revenue bonds, municipal tax-exempt leases, and other financial instruments supported by project savings, and minimize the use of General Fund moneys for these purposes. In addition, the commission, in consultation with these entities and with representatives from the commercial building construction industry, shall do both of the following:

(A) Identify obstacles to private sector commercial building energy and resource efficient projects.

(B) Identify and recommend financial or other incentives to facilitate private sector commercial building energy and resource efficient projects.

(2) The commission shall report its findings and recommendations made pursuant to paragraph (1) to the Green Action Team by January 1, 2008.

(c) For purposes of this section, the "Green Action Team" means the interagency team established to further the goals of Executive Order S-20-04.

As added by AB 2160 (Lieu), Statutes of 2006, c. 742.

DIVISION 2. OFFICERS

PART 2. BOARD OF SUPERVISORS

Chapter 5. County Property

ARTICLE 1. GENERAL

25373. (a) The board of supervisors may acquire property for the preservation or development of a historical landmark. The board of supervisors may also acquire property for development for recreational purposes and for development of facilities in connection therewith.

(b) The board may, by ordinance, provide special conditions or regulations for the protection, enhancement, perpetuation, or use of places, sites, buildings, structures, works of art and other objects having a special character or special historical or aesthetic interest or value. These special conditions and regulations may include appropriate and reasonable control of the appearance of neighboring private property within public view.

(c) Until January 1, 1995, subdivision (b) shall not apply to noncommercial property owned by a religiously affiliated association or corporation not organized for private profit, whether incorporated as a religious or public benefit corporation, unless the owner of the property does not object to its application. Nothing in this subdivision shall be construed to infringe on the authority of the board of supervisors to enforce special conditions and regulations on any property designated prior to January 1, 1994.

(d) Subdivision (b) shall not apply to noncommercial property owned by any association or corporation that is religiously affiliated and not organized for private profit, whether the corporation is organized as a religious corporation, or as a public benefit corporation, provided that both of the following occur:

(1) The association or corporation objects to the application of the subdivision to its property.

(2) The association or corporation determines in a public forum that it will suffer substantial hardship, which is likely to deprive the association or corporation of economic return on its property, the reasonable use of its property, or the appropriate use of its property in the furtherance of its religious mission, if the application is approved.

(e) Nothing in this subdivision shall be construed to infringe on the authority of any legislative body to enforce special conditions and regulations on any property designated prior to January 1, 1994, or to authorize any legislative body to override the determination made pursuant to paragraph (2) of subdivision (d).

As added by Stats. 1963, c. 987, and amended by SB 1185 (Bergeson), Stats. 1994, c. 419, and AB 133 (W. Brown), Stats. 1994, c. 1199.

Chapter 8. Health and Safety

ARTICLE 2. DISPOSAL FACILITIES

25832. Notwithstanding any other provision of law, solid waste handling service provided by, or arranged for provision by, a county under Section 25827 or 25830, or under Section 40059 of the Public Resources Code, is not a public utility within the meaning of Section 10001 of the Public Utilities Code.

As added by AB 259 (Hancock), Stats. 2005, c. 564.

PART 3. OTHER OFFICERS

Chapter 6. Recorder

ARTICLE 4. RECORDING

27322.2. A system of microphotography, optical disk, or reproduction by any other technique that does not permit additions, deletions, or changes to the original document may be used by the recorder as a photographic reproduction process to record some or all instruments, papers, and notices that are required or permitted by law to be recorded or filed. All reproductions shall be made in compliance with Section

12168.7. A true copy of the document shall be kept in a safe and separate place that will reasonably assure its preservation for the duration of the retention prescribed by law against loss or destruction. A true copy of the document shall be arranged in a suitable place in the office of the recorder to facilitate public inspection.

As added by Stats. 1957, c. 1010, and amended by Stats. 1991, c. 1061, and SB 849 (Bergeson), Stats. 1991, c. 1061, and AB 972 (Torlakson), Stats. 1998, c. 677, and SB 2067 (Bowen), Stats. 2000, c. 569.

DIVISION 3. OFFICERS

PART 2. LEGISLATIVE BODY

Chapter 5. City Property

ARTICLE 1. GENERAL

37361. (a) The legislative body may acquire property for the preservation or development of a historical landmark. The legislative body may also acquire property for development for recreational purposes and for development of facilities in connection therewith.

(b) The legislative body may provide for places, buildings, structures, works of art, and other objects, having a special character or special historical or aesthetic interest or value, special conditions or regulations for their protection, enhancement, perpetuation or use, which may include appropriate and reasonable control of the use or appearance of neighboring private property within public view, or both.

(c) Until January 1, 1995, subdivision (b) shall not apply to noncommercial property owned by a religiously affiliated association or corporation not organized for private profit, whether incorporated as a religious or public benefit corporation, unless the owner of the property does not object to its application. This subdivision does apply to a charter city. Nothing in this subdivision shall be construed to infringe on the authority of the legislative body to enforce special conditions and regulations on any property designated prior to January 1, 1994. Subdivision (b) shall not apply to noncommercial property owned by any association or corporation that is religiously affiliated and not organized for private profit, whether the corporation is organized as a religious corporation, or as a public benefit corporation, provided that both of the following occur:

(1) The association or corporation objects to the application of the subdivision to its property.

(2) The association or corporation determines in a public forum that it will suffer substantial hardship, which is likely to deprive the association or corporation of economic return on its property, the reasonable use of its property, or the appropriate use of its property in the furtherance of its religious mission, if the application is approved.

(d) Nothing in this subdivision shall be construed to infringe on the authority of any legislative body to enforce special conditions and regulations on any property designated prior to January 1, 1994, or to authorize any legislative body to override the determination made pursuant to paragraph (2) of subdivision (c). This subdivision shall apply to a charter city.

As amended by SB 1185 (Bergeson), Stats. 1993, c. 419, and AB 133, Stats. 1994, c. 1199, and SB 275 (Senate Local Government Committee), Stats. 1999, c. 550.

TITLE 5. LOCAL AGENCIES

DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES

PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES

Chapter 2.9. Infrastructure Financing Districts in the Border Development Zone

ARTICLE 1. GENERAL PROVISIONS

53398.3. (a) A district may finance (1) the purchase, construction, expansion, improvement, seismic retrofit, or rehabilitation of any real or other tangible property with an estimated useful life of 15 years or longer that satisfies the requirements of subdivision (b), (2) the planning and design work that is directly related to the purchase, construction, expansion, or rehabilitation of that property, and (3) the costs described in Sections 53398.5 and 53398.31. A district may only finance the purchase of facilities for which construction has been completed, as determined by the legislative body. The facilities need not be physically located within the boundaries of the district. A district may not finance routine maintenance, repair work, or the costs of ongoing operation or providing services of any kind.

(b) The district shall finance only public capital facilities that provide significant benefits to the area of the border development zone, including, but not limited to, all of the following:

(1) Highways, interchanges, ramps and bridges, major and minor arterial streets, major and minor collector streets, parking facilities, and transit facilities. Phased road widening projects shall also be permitted.

(2) Sewage collection, pumping, treatment and water reclamation plants and interceptor pipes.

(3) Facilities for the collection and treatment of water for urban uses.

(4) Flood control levees and dams, retention basins, and drainage facilities.

(5) Child care facilities.

(6) Libraries.

(7) Parks, recreational facilities, and open space.

(8) Facilities for the transfer and disposal of solid waste, including transfer stations and vehicles.

(9) Public safety facilities.

(c) Any district that constructs dwelling units shall set aside not less than 20 percent of those units to increase and improve the community's supply of low- and moderate-income housing available at an affordable housing cost, as defined by Section 50052.5 of the Health and Safety Code, to persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code.

(d) A district may also finance the purchase of sewage treatment capacity that provides significant benefits to the area of the border development zone. The facility providing the sewage treatment capacity need not be physically located within the boundaries of the district.

As added by SB 207 (Peace), Stats. 1999, c. 773, and amended by AB 2314 (Ducheny), Stats. 2000, c. 595.

TITLE 7. PLANNING AND LAND USE

DIVISION 1. PLANNING AND ZONING

Chapter 1.5. Office of Planning and Research

ARTICLE 4. POWERS AND DUTIES

65040.12. (a) The office shall be the coordinating agency in state government for environmental justice programs.

(b) The director shall do all of the following:

(1) Consult with the Secretaries of the California Environmental Protection Agency, the Resources Agency, and the Business, Transportation and Housing Agency, the Working Group on Environmental Justice established pursuant to Section 72002 of the Public Resources Code, any other appropriate state agencies, and all other interested members of the public and private sectors in this state.

(2) Coordinate the office's efforts and share information regarding environmental justice programs with the Council on Environmental Quality, the United States Environmental Protection Agency, the General Accounting Office, the Office of Management and Budget, and other federal agencies.

(3) Review and evaluate any information from federal agencies that is obtained as a result of their respective regulatory activities under federal Executive Order 12898, and from the Working Group on Environmental Justice established pursuant to Section 72002 of the Public Resources Code.

(c) When it adopts its next edition of the general plan guidelines pursuant to Section 65040.2, but in no case later than July 1, 2003, the office shall include guidelines for addressing environmental justice matters in city and county general plans. The office shall hold at least one public hearing prior to the release of any draft guidelines, and at least one public hearing after the release of the draft guidelines. The hearings may be held at the regular meetings of the Planning Advisory and Assistance Council.

(d) The guidelines developed by the office pursuant to subdivision (c) shall recommend provisions for general plans to do all of the following:

(1) Propose methods for planning for the equitable distribution of new public facilities and services that increase and enhance community quality of life throughout the community, given the fiscal and legal constraints that restrict the siting of these facilities.

(2) Propose methods for providing for the location, if any, of industrial facilities and uses that, even with the best available technology, will contain or produce material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant hazard to human health and safety, in a manner that seeks to avoid over-concentrating these uses in proximity to schools or residential dwellings.

(3) Propose methods for providing for the location of new schools and residential dwellings in a manner that seeks to avoid locating these uses in proximity to industrial facilities and uses that will contain or produce material that because of its quantity, concentration, or physical or chemical characteristics, poses a significant hazard to human health and safety.

(4) Propose methods for promoting more livable communities by expanding opportunities for transit-oriented development so that residents minimize traffic and pollution impacts from traveling for purposes of work, shopping, schools, and recreation.

(e) For the purposes of this section, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

As added by SB 115 (Solis), Stats. 1999, and amended by SB 89 (Escutia), Stats. 2000, c. 728, and AB 1553 (Keeley), Stats. 2001, c. 762, and SB 1097 (Senate Budget and Fiscal Review Committee), Stats. 2004, c. 225.

Chapter 4.5. Review and Approval of Development Projects

ARTICLE 3. APPLICATION FOR DEVELOPMENT PERMITS

65943. (a) Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. If the written determination is not made within 30 days after receipt of the application, and the application includes a statement that it is an application for a development permit, the application shall be deemed complete for purposes of this chapter. Upon receipt of any resubmittal of the application, a new 30-day period shall begin, during which the public agency shall determine the completeness of the application. If the application is determined not to be complete, the agency's determination shall specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed to complete the application. The applicant shall submit materials to the public agency in response to the list and description.

(b) Not later than 30 calendar days after receipt of the submitted materials, the public agency shall determine in writing whether they are complete and shall immediately transmit that determination to the applicant. If the written determination is not made within that 30-day period, the application together with the submitted materials shall be deemed complete for purposes of this chapter.

(c) If the application together with the submitted materials are determined not to be complete pursuant to subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency.

A city or county shall provide that the right of appeal is to the governing body or, at their option, the planning commission, or both.

There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-day period. Notwithstanding a decision pursuant to subdivision (b) that the application and submitted materials are not complete, if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete for the purposes of this chapter.

(d) Nothing in this section precludes an applicant and a public agency from mutually agreeing to an extension of any time limit provided by this section.

(e) A public agency may charge applicants a fee not to exceed the amount reasonably necessary to provide the service required by this section. If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit.

As added by Stats. 1977, c. 1200, and amended by AB 1151 (Roos), Stats. 1979, c. 1207, AB 2622 (La Follette), Stats. 1984, c. 1723, SB 1355 (Campbell), Stats. 1987, c. 958, and AB 1838 (Sher), Stats. 1989, c. 612.

65943.5. (a) Notwithstanding any other provision of this chapter, any appeal pursuant to subdivision (c) of Section 65943 involving a permit application to a board, office, or department within the California Environmental Protection Agency shall be made to the Secretary for Environmental Protection.

(b) Notwithstanding any other provision of this chapter, any appeal pursuant to subdivision (c) of Section 65943 involving an application for the issuance of an environmental permit from an environmental agency shall be made to the Secretary for Environmental Protection under either of the following circumstances:

(1) The environmental agency has not adopted an appeals process pursuant to subdivision (c) of Section 65943.

(2) The environmental agency declines to accept an appeal for a decision pursuant to subdivision (c) of Section 65943.

(c) For purposes of subdivision (b), "environmental permit" has the same meaning as defined in Section 71012 of the Public Resources Code, and "environmental agency" has the same meaning as defined in Section 71011 of the Public Resources Code, except that "environmental agency" does not include the agencies described in subdivisions (c) and (h) of Section 71011 of the Public Resources Code.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

ARTICLE 5. APPROVAL OF DEVELOPMENT PERMITS

65956. (a) If any provision of law requires the lead agency or responsible agency to provide public notice of the development project or to hold a public hearing, or both, on the development project and the agency has not provided the public notice or held the hearing, or both, at least 60 days prior to the expiration of the time limits established by Sections 65950 and 65952, the applicant or his or her representative may file an action pursuant to Section1085 of the Code of Civil Procedure to compel the agency to provide the public notice or hold the hearing, or both, and the court shall give the proceedings preference over all other civil actions or proceedings, except older matters of the same character.

(b) In the event that a lead agency or a responsible agency fails to act to approve or to disapprove a development project within the time limits required by this article, the failure to act shall be deemed approval of the permit application for the development project. However, the permit shall be deemed approved only if the public notice required by law has occurred. If the applicant has provided seven days advance notice to the permitting agency of the intent to provide public notice, then no earlier than 60 days from the expiration of the time limits established by Sections 65950 and65952, an applicant may provide the required public notice using the distribution information provided pursuant to Section 65941.5. If the applicant chooses to provide public notice, that notice shall include a description of the proposed development substantially similar to the descriptions which are commonly used in public notices by the permitting agency, the location of the proposed development, the permit application number, the name and address of the permitting agency, and a statement that the project shall be deemed approved if the permitting agency has not acted within 60 days. If the applicant has provided the public notice required by this section, the time limit for action by the permitting agency shall be extended to 60 days after the public notice is provided. If the applicant provides notice pursuant to this section, the permitting agency shall refund to the applicant any fees which were collected for providing notice and which were not used for that purpose.

(c) Failure of an applicant to submit complete or adequate information pursuant to Sections 65943 to 65944, inclusive, may constitute grounds for disapproving a development project. (d) Nothing in this section shall diminish the permitting agency's legal responsibility to provide, where applicable, public notice and hearing before acting on a permit application.

As added by Stats. 1977, c. 1200, and amended by AB 2825 (McCarthy), Stats. 1978, c. 1113, SB 1974 (Dills), Stats. 1982, c. 460, and AB 1486 (Sher), Stats. 1987, c. 985, and SB 275 (Senate Local Government Committee), Stats. 1999, c. 550.

65956.5. (a) Prior to an applicant providing advance notice to an environmental agency of the intent to provide public notice pursuant to subdivision (b) of Section 65956 for action on an environmental permit, the applicant may submit an appeal in writing to the governing body of the environmental agency, or if there is no governing body, to the director of the environmental agency, as provided by the environmental agency, for a determination regarding the failure by the environmental agency to take timely action on the issuance or denial of the environmental permit in accordance with the time limits specified in this chapter.

(b) There shall be a final written determination by the environmental agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. The final

written determination by the environmental agency shall specify both of the following:

(1) The reason or reasons for failing to act pursuant to the time limits in this chapter.

(2) A date by which the environmental agency shall act on the permit application.

(c) Notwithstanding any other provision of this chapter, any appeal submitted pursuant to subdivision (a) involving an environmental permit from an environmental agency shall be made to the Secretary for Environmental Protection if the environmental agency declines to accept the appeal for a decision pursuant to subdivision (a) or the environmental agency does not make a final written determination pursuant to subdivision (b).

(d) Any appeal submitted pursuant to subdivision (a) involving an environmental permit to a board, office, or department within the California Environmental Protection Agency shall be made to the Secretary for Environmental Protection.

(e) For purposes of this section, "environmental permit" has the same meaning as defined in Section 71012 of the Public Resources Code, and "environmental agency" has the same meaning as defined in Section 71011 of the Public Resources Code, except that "environmental agency" does not include the agencies described in subdivisions (c) and (h) of Section 71011 of the Public Resources Code.

As added by SB 1185 (Bergeson), Stats. 1993, c. 419.

ARTICLE 6. DEVELOPMENT PERMITS FOR CLASSES OF PROJECTS

65962.5. (a) The Department of Toxic Substances Control shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all of the following:

(1) All hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code.

(2) All land designated as hazardous waste property or border zone property pursuant to Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(3) All information received by the Department of Toxic Substances Control pursuant to Section 25242 of the Health and Safety Code on hazardous waste disposals on public land.

(4) All sites listed pursuant to Section 25356 of the Health and Safety Code.

(5) All sites included in the Abandoned Site Assessment Program.

(b) The State Department of Health Services shall compile an update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all public drinking water wells that contain detectable levels of organic contaminants and that are subject to water analysis pursuant to Section 116395 of the Health and Safety Code.

(c) The State Water Resources Control Board shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all of the following:

(1) All underground storage tanks for which an unauthorized release report is filed pursuant to Section 25295 of the Health and Safety Code.

(2) All solid waste disposal facilities from which there is a migration of hazardous waste and for which a California regional water quality control board has notified the Department of Toxic Substances Control pursuant to subdivision (e) of Section 13273 of the Water Code.

(3) All cease and desist orders issued after January 1, 1986, pursuant to Section 13301 of the Water Code, and all cleanup or abatement orders issued after January 1, 1986, pursuant to Section 13304 of the Water Code, that concern the discharge of wastes that are hazardous materials.

(d) The local enforcement agency, as designated pursuant to Section 18051 of Title 14 of the California Code of Regulations, shall compile as appropriate, but at least annually, and shall submit to the California Integrated Waste Management Board, a list of all solid waste disposal facilities from which there is a known migration of hazardous waste. The California Integrated Waste Management Board shall compile the local lists into a statewide list, which shall be submitted to the Secretary for Environmental Protection and shall be available to any person who requests the information.

(e) The Secretary for Environmental Protection shall consolidate the information submitted pursuant to this section and distribute it in a timely fashion to each city and county in which sites on the lists are located. The secretary shall distribute the information to any other person upon request. The secretary may charge a reasonable fee to persons requesting the information, other than cities, counties, or cities and counties, to cover the cost of developing, maintaining, and reproducing and distributing the information.

(f) Before a lead agency accepts as complete an application for any development project which will be used by any person, the applicant shall consult the lists sent to the appropriate city or county and shall submit a signed statement to the local agency indicating whether the project and any alternatives are located on a site that is included on any of the lists compiled pursuant to this section and shall specify any list. If the site is included on a list, and the list is not specified on the statement, the lead agency shall notify the applicant pursuant to Section 65943. The statement shall read as follows:

HAZARDOUS WASTE AND SUBSTANCES STATEMENT

The development project and any alternatives proposed in this application are contained on the lists compiled pursuant to Section 65962.5 of the Government Code. Accordingly, the project applicant is required to submit a signed statement that contains the following information:

Name of applicant:

Address:

Phone number:

Address of site (street name and number if available, and ZIP Code):

Local agency (city/county):

Assessor's book, page, and parcel number:

Specify any list pursuant to Section 65962.5 of the Government Code:

Regulatory identification number:

Date of list:

Applicant, Date

(g) The changes made to this section by the act amending this section, that takes effect January 1, 1992, apply only to projects for which applications have not been deemed complete on or before January 1, 1992, pursuant to Section 65943.

As added by AB 3750 (Cortese), Stats. 1986, c. 1048, and amended by AB 3676 (Cortese), Stats. 1990, c. 537, and the Gov. Reorg. Plan No. 1 of 1991, and AB 869 (Farr), Stats. 1991, c. 1212, and SB 1497 (Senate Health and Human Services Committee), Stats. 1996, c. 1023.

Chapter 8. Procedures for Adopting Various Fees

66016. (a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65584.1, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

As added by AB 3228 (Frazee), Stats. 1990, c. 1572, and amended by AB 2567 (Moore), Stats. 1992, c. 487, and SB 647 (Kelley), Stats. 1995, c. 657, and SB 660 (Campbell), Stats. 1995, c. 686, and SB 253 (Torlakson), Stats. 2005, c. 595, and SB 1196 (Senate Local Government Committee), Stats. 2006, c. 643, and SB 253 (Torlakson), Stats. 2005, c. 253.

TITLE 7.9. RECYCLING, RESOURCE RECOVERY, AND LITTER PREVENTION

68055.1. Unless the context otherwise requires, the definitions as set forth in this section govern the construction of this chapter.

(a) "Public place" means any area that is used or held out for the use of the public whether owned and operated by public or private interests, but not including indoor areas. "Indoor area" means any enclosed area covered with a roof and protected from moisture and enclosed area covered with a roof and protected from moisture and wind.

(b) "Drive-in restaurant" means a restaurant that sells food products for immediate consumption on or near a location at which parking facilities are provided for the use of patrons in consuming the products purchased at the restaurant.

(c) "Fast food outlet" means a restaurant that sells food products primarily on a "takeout" or "to go" basis.

(d) "Grocery stores" includes, but is not limited to, convenience markets that sell groceries.

(e) "Shopping centers" means a group of two or more stores that maintain a common parking lost for patrons of those stores.

(f) "Board" means the State Solid Waste Management Board.

(g) "Litter" means all improperly discarded waste material, including, but not limited to, convenience food, beverage, and other product packages or containers constructed of steel, aluminum, glass, paper, plastic, and other natural and synthetic materials, thrown or deposited on the lands and waters of the state, but not including the properly discarded waste of the primary processing of agriculture, mining, logging, sawmilling, or manufacturing.

(h) "Solid Waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes.

As added by SB 261 (Nejedly), Stats. 1980, c. 364, and amended by SB 1874 (Dills), Stats. 1982, c. 1054.

EXCERPTS FROM HARBORS AND NAVIGATION CODE

DIVISION 1. DEPARTMENT OF BOATING AND WATERWAYS AND THE BOATING AND WATERWAYS COMMISSION

Chapter 4. Harbors and Watercraft Revolving Fund

(Chapter 4 as added by Stats. 1966, c. 61)

86. (a) The local public agency shall certify to the department that for any small craft harbor or boating facility project which is, or has been, funded pursuant to Section 70, 70.2, 70.8, 71.4, 72.5, or 76.3, or a harbor constructed with funds from the State Lands Commission from tidelands oil revenues, adequate restroom and sanitary facilities, parking, refuse disposal, vessel pumpout facilities as required pursuant to Section 776, walkways, oil recycling facilities, receptacles for the purpose of separating, reusing, or recycling all solid waste materials, and other necessary shoreside facilities sufficient for the use and operation of all vessels using the harbor or facility are provided or provide written findings showing why the facility cannot certify to these conditions.

(b) No city, county, or district, which has received or is receiving money under this division for the construction or improvement of small craft harbors which provides facilities for the operation of commercial fishing vessels registered pursuant to Article 4 (commencing with Section 7880) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code, shall prohibit the commercial operation and use of those facilities by commercial passenger fishing vessels of the same or similar displacement, which are licensed pursuant to Section 7920 of the Fish and Game Code, or the use by private recreational vessels unless otherwise expressly provided by law, unless the city, county, or district provides, elsewhere in the same harbor, alternative, equivalent facilities available at comparable cost for the commercial operation and use of commercial passenger fishing vessels and private recreational vessels or unless the city, county, or district adopts written findings showing why the existing facility cannot accommodate the operation of commercial fishing vessels, including commercial passenger fishing vessels, or private recreational vessels and why the facility cannot be modified to do so or why alternative, equivalent facilities cannot be provided in the same harbor to accommodate those operations. This subdivision does not require a facility to accept an application for the operation of an additional commercial passenger fishing boat at that facility if the harbor provides alternative, equivalent, adequate, safe facilities at comparable cost for the operation and use of commercial passenger fishing boats or if accommodations for the operation of the additional commercial passenger fishing boat are not reasonably available at the facility under the contract or agreement.

For the purposes of this subdivision, an alternative, equivalent facility in the same harbor shall provide, at comparable cost, adequate restroom and sanitary facilities, parking, refuse disposal, walkways, power and water service, and other shoreside facilities and equivalent docks, water channels, navigation aids, and weather protection, including, but not limited to, breakwaters, which are equivalent to the facility funded pursuant to Section 70, 70.2, 70.8, 71.4, 72.5, or 76.3.

(c) Any loan, grant, contract or agreement, or plan funded pursuant to Section 70, 70.2, 70.8, 71.4, 72.5, or 76.3 for any small craft harbor or boating facility project shall provide for construction, development, or improvement of facilities to substantially meet the provisions of subdivisions (a) and (b) and to provide vehicular access roads to the harbor or facility, as recommended by the Department of Transportation pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code, unless the reasons for not meeting those provisions and recommendations are set forth in the contract or agreement with the department, or an addendum thereto.

(d) During the term of any existing or new loan contract made pursuant to Section 71.4 or 76.3, or any existing or new contract or agreement pursuant to Section 70, 70.2, or 70.8, the department shall supervise and monitor compliance with subdivisions (b) and (c) and the operation and maintenance of the harbor or facility to assure that the planning, construction, development, or improvement fully complies with this section and the contract or agreement terms and conditions.

(e) For the purposes of this chapter and Chapter 2 (commencing with Section 70), any harbor or facility which is the subject of a contract or agreement as described in subdivision (d), is under the jurisdiction of the department.

As added by SB 1410 (Mello), Stats. 1990, c. 775, and amended by AB 1327 (Farr), Stats. 1991, c. 842.

DIVISION 3. VESSELS

Chapter 6. Vessel Sanitation

(Chapter 6 as added by Stats. 1974, c. 902, and amended by Stats. 1986, c. 1119)

777. (a) Vessel pumpout facilities for the transfer and disposal of sewage from marine sanitation devices, floating restrooms, and onshore toilets shall be operated and maintained in a manner that will prevent the discharge of any sewage to the waters of the state and shall be maintained in good working order and regularly cleaned.

(b) Every vessel pumpout facility shall have a notice posted on the facility identifying the city, county, local public health officer, or boating law enforcement officer responsible for enforcing this chapter pursuant to Section 779, with the telephone number where a violation of subdivision (a) may be reported.

(c) Any violation of this section is a misdemeanor. In addition, any violation of this section is subject to any remedy provided for in Chapter 5 (commencing with Section 13300) of Division 7 of the Water Code.

As added by Stats. 1974, c. 902, and amended by SB 2526 (Presley), Stats. 1986, c. 1119, and AB 3559 (Cortese), Stats. 1990, c. 1428, and AB 1327 (Farr), Stats. 1991, c. 842.

778. The state board shall adopt standards for the location, construction, operation, and maintenance of vessel pumpout facilities.

As added by Stats. 1974, c. 902, and amended by SB 2526 (Presley), Stats. 1986, c. 1119, and AB 1327 (Farr), Stats. 1991, c. 842.

EXCERPTS FROM HEALTH AND SAFETY CODE

DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

Chapter 3. Beverage Containers (REPEALED)

24384.5. REPEALED.

As added by AB 406 (Kapiloff), Stats. 1979, c. 1125, and repealed by SB 1360 (Senate Health and Human Services Committee), Stats. 1995, c. 415. (Note: See PRC Section 42350)

Chapter 6.5. Hazardous Waste Control

ARTICLE 2. DEFINITIONS

25110.11 "Contained gaseous material," for purposes of subdivision (a) of Section 23124 or any other provision of this chapter, means any gas that is contained in an enclosed cylinder or other enclosed container. "Contained gaseous material" does not include any exhaust gas, flue gas, or other vapor stream, regardless of the source, that is abated or controlled by an air pollution control device that is permitted by an air pollution control district or air quality management district, or which is specially exempted from those permit requirements.

As added by AB 2955 (Karnette), Stats. 1994, c. 1225.

25117. (a) Except as provided in subdivision (d), "hazardous waste" means a waste that meets any of the criteria for the identification of a hazardous waste adopted by the department pursuant to Section 25141.

(b) "Hazardous waste" includes, but is not limited to, RCRA hazardous waste.

(c) Unless expressly provided otherwise, "hazardous waste" also includes extremely hazardous waste and acutely hazardous waste.

(d) Notwithstanding subdivision (a), in any criminal or civil prosecution brought by a city or district attorney or the Attorney General for violation of this chapter, when it is an element of proof that the person knew or reasonably should have known of the violation, or violated the chapter willfully or with reckless disregard for the risk, or acted intentionally or negligently, the element of proof that the waste is hazardous waste may be satisfied by demonstrating that the waste exhibited the characteristics set forth in subdivision (b) of Section 25141.

As added by Stats. 1972, c. 1236, and amended by Stats. 1977, c. 1034, and Stats. 1982, c. 89, and Stats. 1988, c. 1631, and SB 1222 (Calderon), Stats. 1995, c. 638, and SB 1063 (Peace), Stats. 1996, c. 437.

25120.5. "Recyclable material" means a hazardous waste that is capable of being recycled, including, but not limited to, any of the following:

(a) A residue.

(b) A spent material, including, but not limited to, a used or spent stripping or plating solution or etchant.

(c) A material that is contaminated to such an extent that it can no longer be used for the purpose for which it was originally purchased or manufactured.

(d) A byproduct listed in the regulations adopted by the department as "hazardous waste from specific sources" or "hazardous waste from nonspecific sources. "

(e) Any retrograde material that has not been used, distributed, or reclaimed through treatment by the original manufacturer or owner by the later of the following dates:

(1) One year after the date when the material became a retrograde material.

(2) If the material has been returned to the original manufacturer, one year after the material is returned to the original manufacturer.

As added by Stats. 1980, c. 878, and amended and renumbered by Stats. 1985, c. 1594, and amended by Stats. 1988,c. 1631.

25121.1. (a) "Recycling" means using, reusing, or reclaiming a recyclable material.

(b) Notwithstanding subdivision (a), for purposes of the fees, taxes, and charges imposed pursuant to Article 7 (commencing with Section 25170), "recycling" means the collecting, transporting, storing, transferring, handling, segregating, processing, using or reusing, or reclaiming of recyclable material to produce recycled material.

As added by AB 2067 (Cunneen), Stats. 1998, c. 880.

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

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

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

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

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

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

(3) "Transfer facility" means any offsite facility that 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 for greater than 90 days at an onsite facility. The department may establish criteria and procedures to extend that 90-day period, consistent with the federal act, and to prescribe the manner in which the hazardous waste may be held if not otherwise prescribed by statute.

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

(3) (A) Except as provided in subparagraph (B), the waste is held at a transfer facility and any one of the following apply:

(i) The transfer facility is located in an area zoned residential by the local planning authority.

(ii) The transfer facility commences initial operations on or after January 1, 2005, at a site located within 500 feet of a structure identified in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (b) of Section 25232.

(iii) The hazardous waste is held for a period greater than six days at a transfer facility located in an area that is not zoned industrial or agricultural by the local planning authority.

(iv) The hazardous waste is held for a period greater than 10 days at a transfer facility located in an area zoned industrial or agricultural by the local planning authority.

(v) The hazardous waste is held for a period greater than six days at a transfer facility that commenced initial operations before January 1, 2005, is located in an area zoned agricultural by the local planning authority, and is located within 500 feet of a structure identified in subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (b) of Section 25232.

(B) (i) Notwithstanding subparagraph (A), a transfer facility located in an area that is not zoned residential by the local planning authority is not a storage facility, if the only hazardous waste held at the transfer facility is hazardous waste that is generated as a result of an emergency release and that hazardous waste is collected and temporarily stored by emergency rescue personnel, as defined in Section 25501, or by a response action contractor upon the request of emergency rescue personnel or the response action contractor, and the holding of that hazardous waste is approved by the department.

(ii) For purposes of this subparagraph, "response action contractor" means any person who enters into a contract with the department to take removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) in response to a release or threatened release, including any subcontractors of the response action contractor.

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

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

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

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

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

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

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

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

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

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

(6) The hazardous waste is held at a transfer facility at any location for any period of time and handling occurs. For purposes of this paragraph, "handling" does not include the transfer of packaged 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), or the 180-day or 270-day period for purposes of subdivision (h), 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 that is at or near the area where the waste is generated and that 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 without a hazardous waste facilities permit or other grant of authorization for a period of time longer than the shorter of the following time periods:

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

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

(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 either the regulations adopted by the department establishing requirements for generators subject to the time limit specified in paragraph (1) of subdivision (b) or the requirements specified in paragraph (1) of subdivision (h), whichever requirements are applicable.

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A generator meeting the requirements of paragraph (1) who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the facility to which the generator's waste is submitted, within 60 days from the date that the hazardous waste was accepted by the initial transporter, shall submit to the department a legible

copy of the manifest, with some indication that the generator has not received confirmation of delivery.

(i) The department may adopt regulations that set forth additional restrictions and enforceable management standards that protect human health and the environment and that apply to persons holding hazardous waste at a transfer facility. A regulation adopted pursuant to this subdivision 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 an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

As added by AB 3141 (Wright), Stats. 1982, c. 1121, and amended by AB 1858 (Wright), Stats. 1985 c. 1245, and AB 1293 (Wright), Stats. 1987, c. 293, and AB 3383 (Quackenbush), Stats. 1988, c. 1632, and AB 1847 (Quackenbush), Stats. 1989, c. 1436, and AB 107 (LaFollette), Stats. 1990, c. 48, and AB 1713 (Wright), Stats. 1991, c. 1126, and AB 2299 (Tanner), Stats. 1992, c. 293, and SB 27 (Wright), Stats. 1993, c. 410, and SB 657 (Campbell), Stats. 1994, c. 1291 ,and AB 1060 (Richter), Stats. 1995, c. 627, and AB 1245 (Frusetta), Stats. 1995, c. 628, and SB 1135 (Costa), Stats. 1995, c. 636, and SB 1291 (Wright), Stats. 1995, c. 640, and AB 2776 (Miller), Stats. 1996, c. 999, and SB 2035 (Senate Environmental Quality Committee), Stats. 2000, c. 343, and AB 2251 (Lowenthal), Stats. 2004, c. 779.

25123.8. "Universal waste" means a hazardous waste identified as a universal waste in Section 66273.9 of Title 22 of the California Code of Regulations, or as that regulation may be further amended pursuant to this chapter, or a hazardous waste designated as a universal waste pursuant to this chapter.

As added by SB 1011 (Sher), Stats. 2002, c. 626.

25124. (a) Except as provided in subdivision (c), "waste" means any solid, liquid, semisolid, or contained gaseous discarded material that is not excluded by this chapter or by regulations adopted pursuant to this chapter.

(b) For purposes of subdivision (a), a discarded material is any material that is any of the following:

(1) Relinquished by being any of the following:

(A) Disposed of.

(B) Burned or incinerated.

(C) Accumulated, stored, or treated, but not recycled, before, or in lieu of, being relinquished by being disposed of, burned, or incinerated.

(2) Recycled, or accumulated, stored, or treated before recycling, except as provided in Section 25143.2.

(3) Poses a threat to public health or the environment and meets either, or both, of the following conditions:

(A) It is mislabeled or not adequately labeled, unless the material is correctly labeled or adequately labeled within 10 days after the material is discovered to be mislabeled or inadequately labeled.

(B) It is packaged in deteriorated or damaged containers, unless the material is contained in sound or undamaged containers within 96 hours after the containers are discovered to be deteriorated or damaged.

(4) Considered inherently wastelike, as specified in regulations adopted by the department.

(c) Notwithstanding subdivision (a), a material is not a discarded material if it is either of the following:

(1) An intermediate manufacturing process stream.

(2) (A) Except as specified in subparagraph (B) and to the extent consistent with the federal act, a coolant, lubricant, or cutting fluid necessary to the operation of manufacturing equipment, that is processed to extend the life of the material for continued use, and is processed in the same manufacturing equipment in which the material is used or in connected equipment that returns the material to the originating manufacturing equipment for continued use.

(B) Subparagraph (A) does not apply to any of the following material:

(i) Material that is processed in connected equipment that is not directly and permanently connected to the originating manufacturing equipment or that is constructed or operated in a manner that may allow the release of any material or constituent of the material into the environment.

(ii) Material that is a hazardous waste prior to being introduced into the manufacturing equipment or connected equipment.

(iii) Material that is removed from the manufacturing equipment or connected equipment for storage, treatment, disposal, or burning for energy recovery outside that equipment.

(iv) Material that remains in the manufacturing equipment or connected equipment more than 90 days after that equipment ceases to be operated.

(v) Material that is processed using methods other than physical procedures.

As added by Stats. 1982, c. 1236, and amended by AB 2166 (Bader), Stats. 1985, c. 1594, and AB 2691 (Tucker), Stats. 1980, c. 878, and AB 4636 (Quackenbush), Stats. 1988, c. 1631, and SB 280 (Hart), Stats. 1989, c. 1463, and SB 2057 (Calderon), Stats. 1992, c. 1344, and AB 2088 (Alpert), Stats. 1996, c. 579, and AB 882 (Wayne), Stats. 1997, c. 470.

25141.1. REPEALED.

As added by AB 3789 (Woodruff), Stats. 1992, c. 1125, and repealed by its own terms on January 1, 1994.

ARTICLE 4. LISTINGS

25141.6. In any case where the department proposes to make a determination that a waste meets one or more of the criteria and guidelines for the identification of hazardous wastes adopted pursuant to Section 25141, but that it is not necessary to manage the waste as a hazardous waste because the waste possesses mitigating physical and chemical characteristics that render it insignificant as a hazard to human health, safety, or the environment, the department shall issue a public notice of that proposed determination. The public notice shall be electronically posted on the department's Internet home page at least 30 days before the determination becomes final and shall also be sent to all of the following:

(a) The Chairperson of the California Environmental Policy Council.

(b) The California Integrated Waste Management Board.

(c) The State Water Resources Control Board.

(d) Any person who requests the public notice.

(e) Any solid waste enforcement agency or California regional water quality control board, the jurisdiction of which the department knows will be affected by the determination.

As added by SB 636 (Sher), Stats. 1999, c. 420.

25143. (a) The department may grant a variance from one or more of the requirements of this chapter, or the regulations adopted pursuant to this chapter, for the management of a hazardous waste if all of the following conditions apply:

(1) One of the following conditions applies:

(A) The hazardous waste is solely a non-RCRA hazardous waste or the hazardous waste or its management is exempt from, or is not otherwise regulated pursuant to, the federal act.

(B) The requirement from which a variance is being granted is not a requirement of the federal act, or the regulations adopted to implement the federal act.

(C) The department has issued, or is simultaneously issuing, a variance from the federal act for the hazardous waste management pursuant to subdivision (c).

(2) The department makes one of the following findings:

(A) The hazardous waste, the amount of the hazardous waste, or the hazardous waste management activity or management unit is insignificant or unimportant as a potential hazard to human health and safety or to the environment, when managed in accordance with the conditions, limitations, and other requirements specified in the variance.

(B) The requirements, from which a variance is being granted, are insignificant or unimportant in preventing or minimizing a potential hazard to human health and safety or the environment.

(C) The handling, processing, or disposal of the hazardous waste, or the hazardous waste management activity, is regulated by another governmental agency in a manner that ensures it will not pose a substantial present or potential hazard to human health and safety, and the environment.

(D) A requirement imposed by another public agency provides protection of human health and safety or the environment equivalent to the protection provided by the requirement from which the variance is being granted.

(3) The variance is granted in accordance with this section.

(b) (1) The department may grant a variance upon receipt of a variance application for a site or sites owned or operated by an individual or business concern. The individual or business concern submitting the application for a variance shall submit to the department sufficient information to enable the department to determine if all of the conditions required by subdivision (a) are satisfied for all situations within the scope of the requested variance.

(2) The department may also grant a variance, on its own initiative, to one or more individuals or business concerns. If the variance is granted to more than one individual or business concern, the department, in granting the variance pursuant to this paragraph, shall comply with all of the following requirements:

(A) The department shall make all of the following findings, in addition to the findings required pursuant to paragraph (2) of subdivision (a):

(i) That the variance is necessary to address a temporary situation, or that the variance is needed to address an ongoing situation pending the adoption of regulations by the department.

(ii) That the variance will not create a substantive competitive disadvantage for a member or members of a specific class of facilities. This finding shall be based upon information available to the department at the time that the variance is granted.

(iii) That there are no reasonably foreseeable site-specific physical or operating conditions that could potentially impact the finding made by the department pursuant to paragraph (2) of subdivision (a). This finding shall be supported by substantial evidence in the record as a whole, and shall be based upon both of the following:

(I) The types of hazardous waste streams, the estimated amounts of hazardous waste, and the locations that are affected by the variance. The estimate of the amounts of hazardous waste that are affected by the variance shall be based upon information reasonably available to the department.

(II) Due inquiry, with respect to the hazardous waste streams and management activities affected by the variance, regarding the potential for mismanagement, enforcement and site remediation experience, and proximity to sensitive receptors.

(B) The variance shall not be granted for a period of more than one year. A variance granted pursuant to this paragraph may be renewed for one additional one-year period, if the department makes a finding that the variance has not resulted in harm to human health or safety or to the environment and that there has been substantial compliance with the conditions contained in the variance.

(C) The department shall issue a public notice at least 30 days prior to granting the variance to allow an opportunity for public comment. The public notice shall be issued in the California Regulatory Register, to the department's regulatory mailing list, and to all potentially affected hazardous waste facilities and generators known to the department. The department shall, upon request, hold a public meeting prior to granting the variance. In granting the variance and in making the findings required by paragraph (2) of subdivision (a) and subparagraph (A), the department shall consider all public comments received.

(D) The department shall not grant a variance pursuant to this paragraph from the definition of, or classification as, a hazardous waste, or from requirements pertaining to the investigation or remediation of releases of hazardous waste or constituents.

(E) The authority of the department to grant or renew variances pursuant to this paragraph shall remain in effect only

until January 1, 2002, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date. This subparagraph shall not be construed to invalidate any variance granted pursuant to this paragraph prior to the expiration of the department's authority.

(c) (1) In addition to the variance authorized pursuant to subdivisions (a) and (b), the department, after making one of the findings specified in paragraph (2) of subdivision (a), may also grant a variance from the requirements of the federal act in accordance with the provisions of Sections 260.30, 260.31, 260.32, and 260.33 of Title 40 of the Code of Federal Regulations, or any successor federal regulations, regarding the issuance of variances from classification of a material as a solid waste or variances classifying enclosed devices using controlled flame combustion as boilers.

(2) This subdivision shall take effect on the date that the department obtains authorization from the Environmental Protection Agency to implement those provisions of the federal act that are identified in paragraph (1).

(d) Each variance issued pursuant to this section shall be issued on a form prescribed by the department and shall, as applicable, include, but not be limited to, all of the following:

(1) Information identifying the individuals or business concerns to which the variance applies. This identification shall be by name, location of the site or sites, type of hazardous waste generated or managed, or type of hazardous waste management activity, as applicable.

(2) As applicable, a description of the physical characteristics and chemical composition of the hazardous waste or the specifications of the hazardous waste management activity or unit to which the variance applies.

(3) The time period during which the variance is effective.

(4) A specification of the requirements of this chapter or the regulations adopted pursuant to this chapter from which the variance is granted.

(5) A specification of the conditions, limitations, or other requirements to which the variance is subject.

(e) (1) Variances issued pursuant to this section are subject to review at the discretion of the department and may be revoked or modified at any time.

(2) The department shall revoke or modify a variance if the department finds any of the following:

(A) The conditions required by this section are no longer satisfied.

(B) The holder of the variance is in violation of one or more of the conditions, limitations, or other requirements of the variance, and, as a result of the violation, the conditions required by this section are no longer satisfied.

(C) If the variance was granted because of the finding specified in subparagraph (C) or (D) of paragraph (2) of subdivision (a), the holder of the variance is in violation of one or more of the regulatory requirements of another governmental agency to which the holder is subject and the violation invalidates that finding.

(f) Within 30 days from the date of granting a variance, the department shall issue a public notice on the California Regulatory Register.

As amended by AB 1772 (Polanco), Stats. 1992, c. 1345, and SB 1135 (Costa), Stats. 1995, c. 636, and SB 1291 (Wright), Stats. 1995, c. 640, and SB 1706 (Wright), Stats. 1996, c. 962, and AB 2776 (Miller), Stats. 1996, c. 999, and SB 660 (Sher), Stats. 1997, c. 870.

25143.2. (a) Recyclable materials are subject to this chapter and the regulations adopted by the department to implement this chapter that apply to hazardous wastes, unless the department issues a variance pursuant to Section 25143, or except as provided otherwise in subdivision (b), (c), or (d) or in the regulations adopted by the department pursuant to Sections 25150 and 25151.

(b) Except as otherwise provided in subdivisions (e), (f), and (g), recyclable material that is managed in accordance with Section 25143.9 and is or will be recycled by any of the following methods shall be excluded from classification as a waste:

(1) Used or reused as an ingredient in an industrial process to make a product if the material is not being reclaimed.

(2) Used or reused as a safe and effective substitute for commercial products if the material is not being reclaimed.

(3) Returned to the original process from which the material was generated, without first being reclaimed, if the material is returned as a substitute for raw material feedstock, and the process uses raw materials as principal feedstocks.

(c) Except as otherwise provided in subdivision (e), any recyclable material may be recycled at a facility that is not authorized by the department pursuant to the applicable hazardous waste facilities permit requirements of Article 9 (commencing with Section 25200) if either of the following requirements is met:

(1) The material is a petroleum refinery waste containing oil that is converted into petroleum coke at the same facility at which the waste was generated unless the resulting coke product would be identified as a hazardous waste under this chapter.

(2) The material meets all of the following conditions:

(A) The material is recycled and used at the same facility at which the material was generated.

(B) The material is recycled within the applicable generator accumulation time limits specified in Section 25123.3 and the regulations adopted by the department pursuant to paragraph (1) of subdivision (b) of Section 25123.3.

(C) The material is managed in accordance with all applicable requirements for generators of hazardous wastes under this chapter and regulations adopted by the department.

(d) Except as otherwise provided in subdivisions (e), (f), (g), and (h), recyclable material that meets the definition of a non-RCRA hazardous waste in Section 25117.9, is managed in accordance with Section 25143.9, and meets or will meet any of the following requirements is excluded from classification as a waste:

(1) The material can be shown to be recycled and used at the site where the material was generated.

(2) The material qualifies as one or more of the following:

(A) The material is a product that has been processed from a hazardous waste, or has been handled, at a facility authorized by the department pursuant to the facility permit requirements of Article 9 (commencing with Section 25200) to process or handle the material, if the product meets both of the following conditions:

(i) The product does not contain constituents, other than those for which the material is being recycled, that render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141.

(ii) The product is used, or distributed or sold for use, in a manner for which the product is commonly used.

(B) The material is a petroleum refinery waste containing oil that is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter.

(C) The material is oily waste, used oil, or spent nonhalogenated solvent that is managed by the owner or operator of a refinery that is processing primarily crude oil and is not subject to permit requirements for the recycling of used oil, of a public utility, or of a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent of the refinery or public utility, and meets all of the following requirements:

(i) The material is either burned in an industrial boiler, an industrial furnace, an incinerator, or a utility boiler that is in compliance with all applicable federal and state laws, or is recombined with normal process streams to produce a fuel or other refined petroleum product.

(ii) The material is managed at the site where it was generated; managed at another site owned or operated by the generator, a corporate subsidiary of the generator, a subsidiary of the same entity of which the generator is a subsidiary, or the corporate parent of the generator; or, if the material is generated in the course of oil or gas exploration or production, managed by an unrelated refinery receiving the waste through a common pipeline.

(iii) The material does not contain constituents, other than those for which the material is being recycled, that render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141, unless the material is an oil-bearing material or recovered oil that is managed in accordance with subdivisions (a) and (c) of Section 25144 or unless the material is used oil removed from equipment, vehicles, or engines used primarily at the refinery where it is to be used to produce fuels or other refined petroleum products and the used oil is managed in accordance with Section 279.22 of Title 40 of the Code of Federal Regulations prior to insertion into the refining process.

(D) The material is a fuel that is transferred to, and processed into, a fuel or other refined petroleum product at a petroleum refinery, as defined in paragraph (4) of subdivision (a) of Section 25144, and meets one of the following requirements:

(i) The fuel has been removed from a fuel tank and is contaminated with water or nonhazardous debris, of not more than 2 percent by weight, including, but not limited to, rust or sand.

(ii) The fuel has been unintentionally mixed with an unused petroleum product.

(3) The material is transported between locations operated by the same person who generated the material, if the material is recycled at the last location operated by that person and all of the conditions of clauses (i) to (vi), inclusive, of subparagraph (A) of paragraph (4) are met. If requested by the department or by any official authorized to enforce this section pursuant to subdivision (a) of Section 25180, a person handling material subject to this paragraph, within 15 days from the date of receipt of the request, shall supply documentation to show that the requirements of this paragraph have been satisfied.

(4) (A) The material is transferred between locations operated by the same person who generated the material, if the material is to be recycled at an authorized offsite hazardous waste facility and if all of the following conditions are met:

(i) The material is transferred by employees of that person in vehicles under the control of that person or by a registered hazardous waste hauler under contract to that person.

(ii) The material is not handled at any interim location.

(iii) The material is not held at any publicly accessible interim location for more than four hours unless required by other provisions of law.

(iv) The material is managed in compliance with this chapter and the regulations adopted pursuant to this chapter prior to the initial transportation of the material and after the receipt of the material at the last location operated by that person. Upon receipt of the material at the last location operated by that person, the material shall be deemed to have been generated at that location.

(v) All of the following information is maintained in an operating log at the last location operated by that person and kept for at least three years after receipt of the material at that location:

(I) The name and address of each generator location contributing material to each shipment received.

(II) The quantity and type of material contributed by each generator to each shipment of material.

(III) The destination and intended disposition of all material shipped offsite or received.

(IV) The date of each shipment received or sent offsite.

(vi) If requested by the department, or by any law enforcement official, a person handling material subject to this paragraph, within 15 days from the date of receipt of the request, shall supply documentation to show that the requirements of this paragraph have been satisfied.

(B) For purposes of paragraph (3) and subparagraph (A) of this paragraph, "person" also includes corporate subsidiary, corporate parent, or subsidiary of the same corporate parent.

(C) Persons that are a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent, and that manage recyclable materials under paragraph (3) or subparagraph (A) of this paragraph, are jointly and severally liable for any activities excluded from regulation pursuant to this section.

(5) The material is used or reused as an ingredient in an industrial process to make a product if the material meets all of the following requirements:

(A) The material is not a wastewater that meets all of the following criteria:

(i) The wastewater is a non-RCRA hazardous waste.

(ii) The wastewater contains more than 75 parts per million of total petroleum hydrocarbons, as determined by use of United States Environmental Protection Agency Method 1664, Revision A for Silica Gel Treated N-Hexane Extractable Material.

(iii) The wastewater has been transported offsite to a facility, that is not a publicly owned treatment works, a facility owned by the generator, or a corporate subsidiary, corporate parent, or a subsidiary of the same corporate parent of the generator.

(B) Any discharges to air from the treatment of the material by the procedures specified in subparagraph (C) do not contain constituents that are hazardous wastes pursuant to the regulations of the department and are in compliance with applicable air pollution control laws.

(C) The material is not being treated except by one or more of the following procedures:

(i) Filtering.

(ii) Screening.

(iii) Sorting.

(iv) Sieving.

(v) Grinding.

(vi) Physical or gravity separation without the addition of external heat or any chemicals.

(vii) pH adjustment.

(viii) Viscosity adjustment.

(6) The material is used or reused as a safe and effective substitute for commercial products, if the material meets all of the following requirements:

(A) The material is not a wastewater that meets all of the following criteria:

(i) The wastewater is a non-RCRA hazardous waste.

(ii) The wastewater contains more than 75 parts per million of total petroleum hydrocarbons, as determined by use of United States Environmental Protection Agency Method 1664, Revision A for Silica Gel Treated N-Hexane Extractable Material.

(iii) The wastewater has been transported offsite to a facility that is not a publicly owned treatment works, or a facility owned by the generator, or a corporate subsidiary, corporate parent, or a subsidiary of the same corporate parent of the generator.

(B) Any discharges to air from the treatment of the material by the procedures specified in subparagraph (C) do not contain constituents that are hazardous wastes pursuant to the regulations of the department and the discharges are in compliance with applicable air pollution control laws.

(C) The material is not being treated, except by one or more of the following procedures:

(i) Filtering.

(ii) Screening.

(iii) Sorting.

(iv) Sieving.

(v) Grinding.

(vi) Physical or gravity separation without the addition of external heat or any chemicals.

(vii) pH adjustment.

(viii) Viscosity adjustment.

(7) The material is a chlorofluorocarbon or hydrochlorofluorocarbon compound or a combination of chlorofluorocarbon or hydrochlorofluorocarbon compounds, is being reused or recycled, and is used in heat transfer equipment, including, but not limited to, mobile air-conditioning systems, mobile refrigeration, and commercial and industrial air-conditioning and refrigeration systems, used in fire extinguishing products, or contained within foam products.

(e) Notwithstanding subdivisions (b), (c), and (d), all of the following recyclable materials are hazardous wastes and subject to full regulation under this chapter, even if the recycling involves use, reuse, or return to the original process as described in subdivision (b), and even if the recycling involves activities or materials described in subdivisions (c) and (d):

(1) Materials that are a RCRA hazardous waste, as defined in Section 25120.2, used in a manner constituting disposal, or used to produce products that are applied to the land, including, but not limited to, materials used to produce a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance.

(2) Materials that are a non-RCRA hazardous waste, as defined in Section 25117.9, and used in a manner constituting disposal or used to produce products that are applied to the land as a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance. The department may adopt regulations to exclude materials from regulation pursuant to this paragraph.

(3) Materials burned for energy recovery, used to produce a fuel, or contained in fuels, except materials exempted under paragraph (1) of subdivision (c) or excluded under subparagraph (B), (C), or (D) of paragraph (2) of subdivision (d).

(4) Materials accumulated speculatively.

(5) Materials determined to be inherently wastelike pursuant to regulations adopted by the department.

(6) Used or spent etchants, stripping solutions, and plating solutions that are transported to an offsite facility operated by a person other than the generator and either of the following applies:

(A) The etchants or solutions are no longer fit for their originally purchased or manufactured purpose.

(B) If the etchants or solutions are reused, the generator and the user cannot document that they are used for their originally purchased or manufactured purpose without prior treatment.

(7) Used oil, as defined in subdivision (a) of Section 25250.1, unless one of the following applies:

(A) The used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d), paragraph (4) of subdivision (d), subdivision (b) of Section 25250.1, or Section 25250.3, and is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

(B) The used oil is used or reused on the site where it was generated or is excluded under paragraph (3) of subdivision (d), is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations, and is not any of the following:

(i) Used in a manner constituting disposal or used to produce a product that is applied to land.

(ii) Burned for energy recovery or used to produce a fuel unless the used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(iii) Accumulated speculatively.

(iv) Determined to be inherently wastelike pursuant to regulations adopted by the department.

(f) (1) Any person who manages a recyclable material under a claim that the material qualifies for exclusion or exemption pursuant to this section shall provide, upon request, to the department, the California Environmental Protection Agency, or any local agency or official authorized to bring an action as provided in Section 25180, all of the following information:

(A) The name, street and mailing address, and telephone number of the owner or operator of any facility that manages the material.

(B) Any other information related to the management by that person of the material requested by the department, the California Environmental Protection Agency, or the authorized local agency or official.

(2) Any person claiming an exclusion or an exemption pursuant to this section shall maintain adequate records to demonstrate to the satisfaction of the requesting agency or official that there is a known market or disposition for the material, and that the requirements of any exemption or exclusion pursuant to this section are met.

(3) For purposes of determining that the conditions for exclusion from classification as a waste pursuant to this section are met, any person, facility, site, or vehicle engaged in the management of a material under a claim that the material is excluded from classification as a waste pursuant to this section is subject to Section 25185.

(g) For purposes of Chapter 6.8 (commencing with Section 25300), recyclable materials excluded from classification as a waste pursuant to this section are not excluded from the definition of hazardous substances in subdivision (g) of Section 25316.

(h) Used oil that fails to qualify for exclusion pursuant to subdivision (d) solely because the used oil is a RCRA hazardous waste may be managed pursuant to subdivision (d) if the used oil is also managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

As added by AB 2166 (Bader), Stats. 1985, c. 1594, and amended by AB 4636 (Quackenbush), Stats. 1988, c. 1631, and AB 1847 (Quackenbush), Stats. 1989, c. 1436, and AB 2868 (Bader), Stats. 1990, c. 533, and AB 2834 (Quackenbush), Stats. 1990 c. 1686, and AB 1713 (Wright), Stats. 1991, c. 1126, and AB 1899 (Frizzelle), Stats. 1991, c. 1173, and AB 3172 (Lempert), Stats. 1992, c. 1343, and SB 2057 (Calderon), Stats. 1992, c. 1344, and SB 28 (Wright), Stats. 1993, c. 411, and AB 3582 (Richter), Stats. 1994, c. 1154, and SB 130 (Costa), Stats. 1995, c. 634, and SB 1191 (Calderon), Stats. 1995, c. 639, and AB 3474 (Assembly Environmental Safety and Toxic Materials Committee), Stats. 1996, c. 433, and AB 1739 (Scott), Stats. 1998, c. 244, and SB 2035 (Senate Environmental Quality Committee), Stats. 2000, c. 343, and AB 1329 (Lowenthal), Stats. 2001, c. 866.

25143.5. (a) Except as provided in subdivisions (d), (e) and (f), the department shall classify as nonhazardous waste any fly ash, bottom ash, and flue gas emission control residues, generated from a biomass combustion process, as defined in subdivision (g), if the combustion process will be adequately monitored and controlled so as to prevent the handling or the disposal of any waste in a manner prohibited by law, unless the department determines that the ash or residue is hazardous, by testing a representative sample of the ash or residue pursuant to criteria adopted by the department.

(b) The fly ash, bottom ash, and flue gas emission control residues that are classified as nonhazardous by the department are exempt from this chapter.

(c) An operator of a biomass facility which converts biomass into energy for which the department has classified the ash or residue as hazardous shall notify the department whenever there has been a significant change in the waste entering the combustion process, the combustion process itself, or in the management of the ash or residues generated by the facility. An operator of a biomass facility that converts biomass into energy, with regard to which the department has classified the ash or residue as nonhazardous, shall notify the department when there has been a significant change in the waste entering the combustion process or in the combustion process itself.

(d) For purposes of classifying fly ash, bottom ash, and flue gas emission control residues generated by the combustion of municipal solid waste in a facility, with regard to which the department classified the ash or residue as nonhazardous, on or before January 1, 1985, the sampling of the ash or residue, for purposes of classification by the department, shall occur at the point in the process following onsite treatment of the ash or residue.

(e) Notwithstanding any other provision of law, this section applies only to fly ash, bottom ash, and flue gas emission control residues which are not RCRA hazardous waste.

(f) Notwithstanding any other provision of law, the test specified in the regulations adopted by the department with regard to a waste exhibiting the characteristic of corrosivity if representative samples of the waste are not aqueous and produce a solution with a pH that is less than, or equal to, two or greater than, or equal to, 12.5, as specified in paragraph (3) of subdivision (a) of Section 66261.22 of Title 22 of the California Code of Regulations, as that section read on January 1, 1996, shall not apply to ash generated from a biomass combustion process that is managed in accordance with applicable regulations administered by the California regional water quality control board, is used beneficially in a manner that results in lowering the pH below 12.5 but above 2.0, is not accumulated speculatively, and is available for commercial use.

(g) For purposes of this section, the following definitions shall apply:

(1) "Biomass combustion process" means a combustion process that has a primary energy source of biomass or biomass waste, and of which 75 percent of the total energy input is from those sources during any calendar year, and of which 25 percent or less of the other energy sources do not include sewage sludge, industrial sludge, medical waste, hazardous waste, radioactive waste, or municipal solid waste.

(2) "Biomass" or "biomass waste" means any organic material not derived from fossil fuels, such as agricultural crop residues, bark, lawn, yard and garden clippings, leaves, silvicultural residue, tree and brush pruning, wood and wood chips, and wood waste, including these materials when separated from other waste streams. "Biomass" or "biomass waste" does not include material containing sewage sludge, industrial sludge, medical waste, hazardous waste, or radioactive waste.

As added by SB 2292 (Tucker), Stats. 1984, c. 1160, and amended by AB 4636 (Quackenbush), Stats. 1988, c. 1631, and AB 1847 (Quackenbush), Stats. 1989, c. 1436, and SB 50 (Torres), Stats. 1991, c. 1218, and SB 1706 (Wright), Stats. 1996, c. 962.

25143.8. (a) For purposes of this section, "cementitious material" means cement, cement kiln dust, clinker, and clinker dust.

(b) The test specified in the regulations adopted by the department with regard to a waste exhibiting the characteristic of corrosivity if representative samples of the waste are not aqueous and produce a solution with a pH less than or equal to 2 or greater than or equal to 12.5, as specified in paragraph (3) of subdivision (a) of Section 66261.22 of Title 22 of the California Code of Regulations, as that section read on January 1, 1996, shall not apply to waste cementitious material which is managed in accordance with applicable regulations administered by the California regional water quality control board at the cement manufacturing facility where it was generated.

(c) Cementitious material which is a nonaqueous waste, is managed in accordance with applicable regulations administered by the regional water quality control board at the cement manufacturing facility where it was generated, and would otherwise be classified as a hazardous waste based solely on the test specified in paragraph (3) of subdivision (a) of Section 66261.22 of Title 22 of the California Code of Regulations, as that section read on January 1, 1996, is excluded from classification as a hazardous waste pursuant to this chapter.

As added by SB 206 (Kelley), Stats. 1995, c. 847.

25143.9 A recyclable material shall not be excluded from classification as a waste pursuant to subdivision (b) or d) of Section 25143.2, unless all of the following requirements are met:

(a) If the material is held in a container or tank, the container or tank is labeled, marked, and placarded in accordance with the department's hazardous waste labeling, marking, and placarding requirements which are applicable to generators, except that the container or tank shall be labeled or marked clearly with the words "Excluded Recyclable Material'; instead of the words "Hazardous Waste," and manifest document numbers are not applicable. If the material is used oil, the containers, aboveground tanks, and fill pipes used to transfer oil into underground storage tanks shall also be labeled or clearly marked with the words "Used Oil".

(b) The owner or operator of the business location where the material is located has a business plan that meets the requirements of Section 25504, including, but not limited to, emergency response plans and procedures, as described in subdivision (b) of Section 25504, which specifically address the material or that meet the department's emergency response and contingency requirements which are applicable to generators of hazardous waste.

(c) The material shall be stored and handled in accordance with all local ordinances and codes, including, but not limited to, fire codes, governing the storage and handling of the hazardous material. If a local jurisdiction does not have an ordinance or code regulating the storage of the material, including, but not limited to, an ordinance or code requiring secondary containment for hazardous material storage areas, the material shall be stored in tanks, waste piles, or containers meeting the department's interim status regulations establishing design standards applicable to tanks, waste piles, or containers storing hazardous waste.

(d) If the material is being exported to a foreign country, the person exporting the material shall meet the requirements of Section 25162.1.

As added by AB 2834 (Quackenbush), Stats. 1990, c. 1686, and amended by AB 1713 (Wright), Stats. 1991, c. 1126, and AB 1899 (Frizzelle), Stats. 1991, c. 1173, and AB 3582 (Richter), Stats. 1994, c. 1154.

25143.12. Not with standing any other provision of law, debris that is contaminated only with crude oil or any of its fractions is exempt from regulation under this chapter if all of the following conditions are met:

(a) The debris consists exclusively of wood, paper, textile materials, concrete rubble, metallic objects, or other solid manufactured objects.

(b) The debris is not subject to regulation as a hazardous waste or used oil under federal law.

(c) The debris does not contain any free liquids, as determined by the paint filter test specified in the regulations adopted by the department.

(d) The debris, if not contaminated with crude oil or any of its fractions, would not be regulated as a hazardous waste under this chapter or the regulations adopted pursuant to this chapter.

(e) The debris is not a container or tank that is subject to regulation as hazardous waste under this chapter or the regulations adopted pursuant to this chapter.

(f) The debris is disposed of in a composite lined portion of a waste management unit that is classified as either a Class I or Class II waste management unit in accordance with Article 3 (commencing with Section 2530) of Chapter 15 of Division 3 of Title 23 of the California Code of Regulations, the disposal is made in accordance with the applicable requirements of the California regional water quality control board and the California Integrated Waste Management Board, and, if the waste management unit is a Class II landfill, it is sited, designed, constructed, and operated in accordance with the minimum standards applicable on or after October 9, 1993, to new or expanded municipal solid waste landfills, that are contained in Part 258 (commencing with Section 258.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations read on January 1, 1996.

As added by SB 470 (Sher), Stats. 2001, c. 605.

25143.13. (a) Notwithstanding any other provision of law, except as provided in subdivision (c), wastes containing silver or silver compounds that are RCRA hazardous wastes solely due to the presence of silver in the waste are subject to regulation under this chapter solely to the extent that these wastes are subject to regulation under the federal act. This subdivision does not apply to wastes that are classified as non-RCRA hazardous wastes due to the presence of constituents or characteristics other than silver.

(b) Notwithstanding any other provision of law, wastes containing silver or silver compounds are exempt from regulation under this chapter if the wastes are not subject to regulation under the federal act as RCRA hazardous waste, and the wastes would otherwise be subject to regulation under this chapter solely due to the presence of silver in the waste.

(c) With respect to treatment of a hazardous waste, subdivision (a) applies only to the removal of silver from photoimaging solutions and photoimaging solution wastewaters. Any other treatment of wastes containing silver or silver compounds that are RCRA hazardous wastes is subject to all of the applicable requirements of this chapter.

(d) The department shall amend its regulations, as necessary, to conform to this section. Until the department amends these regulations, the applicable regulations adopted by the Environmental Protection Agency pursuant to the federal act pertaining to the regulation of wastes containing silver or silver compounds, which are regulated as RCRA hazardous wastes solely due to the presence of silver in the waste, shall be deemed to be the regulations of the department, except as otherwise provided in subdivision (c).

(e) This section shall not be construed to limit or abridge the powers or duties granted to any state or local agency pursuant to any law, other than this chapter, to regulate wastes containing silver or silver compounds.

As added by SB 2111 (Costa), Stats. 1998, c. 309, and amended by SB 2035 (Senate Environmental Quality Committee), Stats. 2000, c. 343..

25144. (a) For purposes of this section, the following terms have the following meaning:

(1) "Oil" means crude oil, or any fraction thereof, that is liquid at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute pressure. "Oil" does not include any of the following, unless it is exempt from regulation under paragraph (1) of subdivision (g) of Section 279.10 of, or paragraph (5) of subdivision (g) of Section 279.10 of, Part 279 of Title 40 of the Code of Federal Regulations:

(A) Spent lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, heavy equipment, or machinery powered by an internal combustion engine.

(B) Spent industrial oils, including compressor, turbine, and bearing oil, hydraulic oil, metal-working oil, refrigeration oil, and railroad drainings.

(2) "Oil-bearing materials" means any liquid or semisolid material containing oil, partially refined petroleum products, or petroleum products. "Oil-bearing materials" do not include either of the following:

(A) Soil from remediation projects.

(B) Contaminated groundwater that is generated at, or originating from the operation, maintenance, or cleanup of, service stations, as defined in Section 13650 of the Business and Professions Code.

(3) "Oil recovery operations" means the physical separation of oil from oil-bearing materials by means of gravity separation, centrifugation, filter pressing, or other dewatering processes, with or without the addition of heat, chemical flocculants, air, or natural gas to enhance separation.

(4) "Petroleum refinery" means an establishment that has the Standard Industrial Classification Code 2911 and that is not subject to the permit requirements for the recycling of used oil imposed pursuant to Article 9 (commencing with Section 25200).

(5) "Subsidiary" means a corporate entity engaged in the exploration, production, transportation, refining, marketing, or distribution of crude oil or petroleum products.

(b) (1) Except as provided in paragraph (2), a biological process on the property of the producer treating oil, its products, and water, that meets the definition of a non-RCRA waste, and that produces an effluent that is continuously discharged to navigable waters in compliance with a permit issued pursuant to Section 402 of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1342), is exempt from this chapter.

(2) Residues produced in the treatment process and subsequently removed that conform to any criterion for the identification of a hazardous waste adopted pursuant to Section 25141 are not exempt from this chapter.

(c) To the extent consistent with the applicable provisions of the federal act, units, including associated piping, that are part of a system used for the recovery of oil from oil-bearing materials, and the associated storage of oil-bearing materials and the recovered oil, are exempt from this chapter, if all of the following conditions are met:

(1) The oil recovery operations are conducted at a petroleum refinery, or at another facility owned or operated by the corporate entity that owns or operates the refinery, or a corporate parent or subsidiary of the corporate entity.

(2) The oil-bearing materials are generated at the refinery or at another facility owned or operated by the corporate entity that owns or operates the refinery, or a corporate parent or subsidiary, including a sister subsidiary, of the corporate entity, or are generated in the course of oil or gas exploration or production operations conducted by an unrelated entity and placed in a common pipeline.

(3) The recovered oil is inserted into petroleum refinery process units to produce fuel or other refined petroleum products. This paragraph does not allow the direct blending, into final petroleum products, of oil-bearing materials or recovered oil that contain constituents that render these materials hazardous under the regulations adopted pursuant to Sections 25140 and 25141, other than those for which the material is being recycled.

(4) The recovered oil is not stored in a surface impoundment or accumulated speculatively at the refinery or at an offsite facility.

(5) Any residual materials removed from a unit that is exempt under this subdivision are managed in accordance with all other applicable laws.

(6) The oil-bearing materials would be excluded from classification as a waste pursuant to, or would otherwise meet the requirements for an exemption under, Section 25143.2, except that the following provisions do not apply to those oil-bearing materials:

(A) The prohibitions against prior reclamation in paragraphs (1), (2), and (3) of subdivision (b) of Section 25143.2.

(B) Subparagraph (C) of paragraph (2) of subdivision (c) of Section 25143.2.

(C) Paragraph (3) of subdivision (e) of Section 25143.2.

(D) Sections 25143.9 and 25143.10.

(E) The exceptions for wastewater containing more than 75 parts per million of total petroleum hydrocarbons, as provided by subparagraph (A) of paragraph (5) of, and subparagraph (A) of paragraph (6) of, subdivision (d) of Section 25143.2.

As added by Stats. 1977, c. 1039, and amended by Stats. 1985, c. 1435, and Stats. 1988, c. 1632, and AB 3218 (Costa), Stats. 1994, c. 1054, and SB 130 (Costa), Stats. 1995, c. 632, and AB 1329 (Lowenthal), Stats. 2001, c. 866.

ARTICLE 5. STANDARDS

25150.7. (a) The Legislature finds and declares that this section is intended to address the unique circumstances associated with the generation and management of treated wood waste. The Legislature further declares that this section shall not be construed as setting a precedent applicable to the management, including disposal, of other hazardous wastes.

(b) For purposes of this section, the following definitions shall apply:

(1) "Treated wood" means wood that has been treated with a chemical preservative for purposes of protecting the wood against attacks from insects, microorganisms, fungi, and other environmental conditions that can lead to decay of the wood and the chemical preservative is registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 and following).

(2) "Wood preserving industry" means business concerns, other than retailers, that manufacture or sell treated wood products in the state.

(c) This section applies only to treated wood waste that is a hazardous waste, solely due to the presence of a preservative in the wood, and to which both of the following requirements apply:

(1) The treated wood waste is not subject to regulation as a hazardous waste under the federal act.

(2) Section 25143.1.5 does not apply to the treated wood waste.

(d) (1) Notwithstanding Sections 25157.8, 25189.5, and 25201, treated wood waste shall be disposed of in either a class I hazardous waste landfill, or in a composite-lined portion of a solid waste landfill unit that meets all requirements applicable to disposal of municipal solid waste in California after October 9, 1993, and that is regulated by waste discharge requirements issued pursuant to Division 7 (commencing with Section 13000) of the Water Code for discharges of designated waste, as defined in Section 13173 of the Water Code, or treated wood waste.

(2) A solid waste landfill that accepts treated wood waste shall comply with all of the following requirements:

(A) Manage the treated wood waste so as to prevent scavenging.

(B) Ensure that any management of the treated wood waste at the solid waste landfill prior to disposal, or in lieu of disposal, complies with the applicable requirements of this chapter, except as otherwise provided pursuant to subdivision (e) or regulations adopted pursuant to subdivision (g).

(C) If monitoring at the composite-lined portion of a landfill unit at which treated wood waste has been disposed of indicates a verified release, then treated wood waste shall no longer be discharged to that landfill unit until corrective action results in cessation of the release.

(e) (1) Treated wood waste is exempt from the requirements of this chapter if all of the following requirements are met:

(A) The treated wood waste is managed so as to prevent scavenging.

(B) The treated wood waste is not disposed of, except as allowed pursuant to subdivision (d).

(C) The treated wood waste is not burned, recycled, reclaimed, or reused, except in accordance with the applicable

requirements of this chapter and the regulations adopted pursuant to this chapter.

(D) On and after July 1, 2005, the treated wood waste is not stored for more than 90 days and, when stored, is protected from run-on and run-off, and placed on a surface sufficiently impervious to prevent, to the extent practical, contact with and any leaching to soil or water.

(E) The treated wood waste is not mixed with other wood waste prior to disposal.

(F) The treated wood waste is handled in a manner consistent with all applicable requirements of the California Occupational Safety and Health Act of 1973 (Chapter 1 (commencing with Section 6300) of Part 1 of Division 5 of the Labor Code), including all rules, regulations, and orders relating to hazardous waste.

(2) The exemption provided by this subdivision shall remain in effect until January 1, 2007, and as of that date is inoperative.

(f) (1) Each wholesaler and retailer of treated wood and treated wood-like products in this state shall conspicuously post information at or near the point of display or customer selection of treated wood and treated wood-like products used for fencing, decking, retaining walls, landscaping, outdoor structures, and similar uses. The information shall be provided to wholesalers and retailers by the wood preserving industry in 22-point font, or larger, and contain the following message: Warning - Potential Danger. These products are treated with wood preservatives registered with the United States Environmental Protection Agency and the California Department of Pesticide Regulation and should only be used in compliance with the product labels. This wood may contain chemicals classified by the State of California as hazardous and should be handled and disposed of with care. Check product label for specific preservative information and Proposition 65 warnings concerning presence of chemicals known to the State of California to cause cancer or birth defects. Anyone working with treated wood, and anyone removing old treated wood, needs to take precautions to minimize exposure to themselves, children, pets, or wildlife, including:

 Avoid contact with skin. Wear gloves and long sleeved shirts when working with treated wood. Wash exposed areas thoroughly with mild soap and water after working with treated wood.

 Wear a dust mask when machining any wood to reduce the inhalation of wood dusts. Avoid frequent or prolonged inhalation of sawdust from treated wood. Machining operations should be performed outdoors whenever possible to avoid indoor accumulations of airborne sawdust.

 Wear appropriate eye protection to reduce the potential for eye injury from wood particles and flying debris during machining.

 If preservative or sawdust accumulates on clothes, launder before reuse. Wash work clothes separately from other household clothing.

 Promptly clean up and remove all sawdust and scraps and dispose of appropriately.

 Do not use treated wood under circumstances where the preservative may become a component of food or animal feed.

 Only use treated wood that's visibly clean and free from surface residue for patios, decks, or walkways.

 Do not use treated wood where it may come in direct or indirect contact with public drinking water, except for uses involving incidental contact such as docks and bridges.

 Do not use treated wood for mulch.

 Do not burn treated wood. Preserved wood should not be burned in open fires, stoves, or fireplaces.

For further information, go to (Web site) or call (toll free number).

In addition to the above listed precautions, treated wood waste shall be managed in compliance with applicable hazardous waste control laws.

(2) On or before July 1, 2005, the wood preserving industry shall, jointly and in consultation with the department, make information available to generators of treated wood waste, including fencing, decking and landscape contractors, solid waste landfills, and transporters, that describes how to best handle, dispose of, and otherwise manage treated wood waste, through the use either of a toll-free telephone number, Internet Web site, information labeled on the treated wood, information accompanying the sale of the treated wood, or by mailing if the department determines that mailing is feasible and other methods of communication would not be as effective. A treated wood manufacturer or supplier to a wholesaler or retailer shall also provide the information with each shipment of treated wood products to a wholesaler or retailer, and the wood preserving industry shall provide it to fencing, decking, and landscaping contractors, by mail, using the Contractor's State Licensing Board's available listings, and license application packages. The department may provide guidance to the wood preserving industry, to the extent resources permit.

(g) (1) On or before January 1, 2007, the department, in consultation with the California Integrated Waste Management Board, the State Water Resources Control Board, and the Office of Environmental Health Hazard Assessment, and after consideration of any known health hazards associated with treated wood waste, shall adopt and may subsequently revise as necessary, regulations establishing management standards for treated wood waste as an alternative to the requirements specified in this chapter and the regulations adopted pursuant to this chapter.

(2) The regulations adopted pursuant to this subdivision shall, at a minimum, ensure all of the following:

(A) Treated wood waste is properly stored, treated, transported, tracked, disposed of, and otherwise managed so as to prevent, to the extent practical, releases of hazardous constituents to the environment, prevent scavenging, and prevent harmful exposure of people, including workers and children, aquatic life, and animals to hazardous chemical constituents of the treated wood waste.

(B) Treated wood waste is not reused, with or without treatment, except for a purpose that is consistent with the

approved use of the preservative with which the wood has been treated. For purposes of this subparagraph, "approved uses" means a use approved at the time the treated wood waste is reused.

(C) Treated wood waste is managed in accordance with all applicable laws.

(D) Any size reduction of treated wood waste is conducted in a manner that prevents the uncontrolled release of hazardous constituents to the environment, and that conforms to applicable worker health and safety requirements.

(E) All sawdust and other particles generated during size reduction are captured and managed as treated wood waste.

(F) All employees involved in the acceptance, storage, transport, and other management of treated wood waste are trained in the safe and legal management of treated wood waste, including, but not limited to, procedures for identifying and segregating treated wood waste.

(3) This subdivision does not authorize the department to adopt a regulation that does one or more of the following:

(A) Imposes a requirement as an addition to, rather than as an alternative to, one or more of the requirements of this chapter.

(B) Supersedes subdivision (d) concerning the disposal of treated wood waste.

(C) Supersedes any other provision of this chapter that provides a conditional or unconditional exclusion, exemption, or exception to a requirement of this chapter or the regulations adopted pursuant to this chapter, except the department may adopt a regulation pursuant to this subdivision that provides an alternative condition for a requirement specified in this chapter for an exclusion, exemption, or exception and that allows an affected person to choose between complying with the requirements specified in this chapter or complying with the alternative conditions set forth in the regulation.

(h) (1) A person managing treated wood waste who is subject to a requirement of this chapter, including a regulation adopted pursuant to this chapter, shall comply with either the alternative standard specified in the regulations adopted pursuant to subdivision (g) or with the requirements of this chapter.

(2) A person who is in compliance with the alternative standard specified in the regulations adopted pursuant to subdivision (g) is deemed to be in compliance with the requirement of this chapter for which the regulation is identified as being an alternative, and the department and any other entity authorized to enforce this chapter shall consider that person to be in compliance with that requirement of this chapter.

(i) On January 1, 2005, all variances granted by the department before January 1, 2005, governing the management of treated wood waste are inoperative and have no further effect.

(j) Nothing in this section may be construed to limit the authority or responsibility of the department to adopt regulations under any other provision of law.

(k) On or before June 1, 2011, the department shall prepare and post on its Web site a report that makes a determination regarding the successful compliance with, and implementation of, this section.

(l) (1) This section shall become inoperative on June 1, 2012, and, as of January 1, 2013 is repealed, unless a later enacted statute that becomes operative on or before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) Notwithstanding paragraph (1), any regulations adopted pursuant to this section on or before June 1, 2012 shall continue in force and effect after that date, until repealed or revised by the department.

As added by AB 1353 (Matthews), Stats. 2004, c. 597.

25150.8. If treated wood waste is accepted by a solid waste landfill that manages and disposes of the treated wood waste in accordance with Section 25143.1.5 or paragraphs (1) and (2) of subdivision (d) of Section 25150.7, the treated wood waste, upon acceptance by the solid waste landfill, shall thereafter be deemed to be a solid waste, and not a hazardous waste, for purposes of this chapter and Section 40191 of the Public Resources Code.

As added by AB 1353 (Matthews), Stats. 2004, c. 597.

25157.8. (a) Except as provided in subdivision (c), on and after January 1, 1999, no person shall dispose waste that contains total lead in excess of 350 parts per million, copper in excess of 2500 parts per million, or nickel in excess of 2000 parts per million to land at other than a class I hazardous waste disposal facility, unless the waste is disposed at the site of generation pursuant to express approval of the regional water quality control board granted prior to August 21, 1998, and the waste was classified as non hazardous at that time, until both of the following occur:

(1) The appropriate California regional water quality control board has amended the solid waste facility's waste discharge requirements to specifically allow disposal of the waste.

(2) The appropriate local enforcement agency has revised the solid waste facility permit of the facility to specifically allow this disposal pursuant to Chapter 3 (commencing with Section 44001) of Part 4 of Division 30 of the Public Resources Code.

(b) Except as provided in subdivision (c), no person shall dispose any material to land at other than a class I hazardous waste disposal facility, if the material is regulated as a hazardous waste by the department, until all of the following have occurred:

(1) The department has issued a variance pursuant to Section 25143 to specifically allow disposal of the material to a disposal facility other than a class I hazardous waste disposal facility.

(2) The appropriate California regional water quality control board has amended the solid waste facility's waste discharge requirements to specifically allow disposal of the material.

(3) The appropriate local enforcement agency has revised the solid waste facility permit of the facility at which the material is proposed to be disposed to specifically allow this disposal pursuant to Chapter 3 (commencing with Section 44001) of Part 4 of Division 30 of the Public Resources Code.

(c) This section does not apply to any of the following:

(1) Wastes that are disposed of pursuant to a variance issued by the department prior to August 21, 1998.

(2) Wastes that are disposed of pursuant to a variance issued by the department and that the department classified and managed as a "special waste" pursuant to regulations adopted by the department that were in effect on August 21, 1998.

(3) Wastes disposed of pursuant to a variance issued to a state or local agency by the department pursuant to Section 25143 for the disposal of lead contaminated soil, if the disposal is only within the operating right-of-way of an existing highway, as defined in Section 23 of the Streets and Highways Code. This paragraph applies to lead-contaminated soil that is moved from one project to another only if the lead-contaminated soil remains within the designated, contiguously contaminated corridor and within the same transportation district for which the department has specifically issued the variance.

(d) This section does not exempt any state or local agency, or any other person, from any conditions or requirements of a California regional water quality control board, or any other agency, that may be placed on the reuse or disposal of waste pursuant to a variance issued by the department.

(e) This section shall remain in effect until July 1, 2006, and as f that date is repealed unless a later enacted statute repeals or extends that date.

As added by AB 2784 (Strom-Martin), Stats. 1998, c. 326, and amended by AB 414 (Dutra), Stats. 2001, c. 861.

25162.1. A recyclable material that is to be exported to a foreign country is not excluded from classification as a waste pursuant to subdivision (b) or (d) of Section 25143.2, unless the requirements of Sections 25143.2 and 25143.9 are met, and the person exporting the material has complied with all of the following requirements:

(a) The person notifies the department, in writing, four weeks before the initial shipment. This notification may cover export activities extending over a 12-month or lesser period and shall include all of the following information:

(1) The generator's name, site address, mailing address, telephone number, Environmental Protection Agency or state identification number, if applicable, contact person, and signature of exporter.

(2) Each transporter's name, address, telephone number, Environmental Protection Agency or state identification number, if applicable, name of contact person, mode of transportation, and container type used during transport.

(3) A description of the material and, if applicable, its United States Department of Transportation proper shipping name, hazard class, and shipping identification number (UN/NA).

(4) The estimated frequency of shipments and total quantity of material to be exported.

(5) All points of departure from the state and intended destinations.

(6) Each receiving facility's name and address.

(7) A description of the end use of the material, and the basis for the specific exemption provided in Section 25143.2 which is applicable to the material.

(b) For each individual shipment, submit to the department, within 90 days of shipment date, a copy of the waybill, shipping paper, or any document which includes all of the following information specific to that shipment:

(1) Each generator's name and address.

(2) Each receiving facility's name and address.

(3) The date of shipment.

(4) The type, quantity, and value of the material.

As added by AB 1899 (Frizzelle), Stats. 1991, c. 1173.

ARTICLE 6. TRANSPORTATION

25163. (a) (1) Except as otherwise provided in subdivisions (b), (c), (e), and (f), it is unlawful for any person to carry on, or engage in, the transportation of hazardous wastes unless the person holds a valid registration issued by the department, and it is unlawful for any person to transfer custody of a hazardous waste to a transporter who does not hold a valid registration issued by the department. A person who holds a valid registration issued by the department pursuant to this section is a registered hazardous waste transporter for purposes of this chapter. Any registration issued by the department to a transporter of hazardous waste is not transferable from the person to whom it was issued to any other person.

(2) Any person who transports hazardous waste in a vehicle shall have a valid registration issued by the department in his or her possession while transporting the hazardous waste. The registration certificate shall be shown upon demand to any representative of the department, officer of the Department of the California Highway Patrol, any local health officer, or any public officer designated by the department. Any person registered pursuant to this section may obtain additional copies of the registration certificate from the department upon the payment of a fee of two dollars ($2) for each copy requested, in accordance with Section 12196 of the Government Code.

(3) The hazardous waste information required and collected for registration pursuant to this subdivision shall be recorded and maintained in the management information system operated by the Department of the California Highway Patrol.

(b) Persons transporting only septic tank, cesspool, seepage pit, or chemical toilet waste that does not contain a hazardous waste originating from other than the body of a human or animal and who hold an unrevoked registration issued by the health officer or the health officer's authorized representative pursuant to Article 1 (commencing with Section

117400) of Chapter 4 of Part 13 of Division 104 are exempt from the requirements of subdivision (a).

(c) Except as provided in subdivision (f), persons transporting hazardous wastes to a permitted hazardous waste facility for transfer, treatment, recycling, or disposal, which wastes do not exceed a total volume of five gallons or do not exceed a total weight of 50 pounds, are exempt from the requirements of subdivision (a) and from the requirements of Section 25160 concerning possession of the manifest while transporting hazardous waste, upon meeting all of the following conditions:

(1) The hazardous wastes are transported in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during the transporting.

(2) Different hazardous waste materials are not mixed within a container during the transporting.

(3) If the hazardous waste is extremely hazardous waste or acutely hazardous waste, the extremely hazardous waste or acutely hazardous waste was not generated in the course of any business, and is not more than 2.2 pounds.

(4) The person transporting the hazardous waste is the producer of that hazardous waste, and the person produces not more than 100 kilograms of hazardous waste in any month.

(5) The person transporting the hazardous waste does not accumulate more than a total of 1,000 kilograms of hazardous waste onsite at any one time.

(d) Any person registered as a hazardous waste transporter pursuant to subdivision (a) is not subject to the registration requirements of Chapter 6 (commencing with Section 25000), but shall comply with those terms, conditions, orders, and directions that the health officer or the health officer's authorized representative may determine to be necessary for the protection of human health and comfort, and shall otherwise comply with the requirements for statements as provided in Section 25007. Violations of those requirements of Section 25007 shall be punished as provided in Section 25010. Proof of registration pursuant to subdivision (a) shall be submitted by mail or in person to the local health officer in the city or county in which the registered hazardous waste transporter will be conducting the activities described in Section 25001.

(e) Any person authorized to collect solid waste, as defined in Section 40191 of the Public Resources Code, who unknowingly transports hazardous waste to a solid waste facility, as defined in Section 40194 of the Public Resources Code, incidental to the collection of solid waste is not subject to subdivision (a).

(f) Any person transporting household hazardous waste or a conditionally exempt small quantity generator transporting hazardous waste to an authorized household hazardous waste collection facility pursuant to Section 25218.5 is exempt from subdivision (a) and from paragraph (1) of subdivision (d) of Section 25160 requiring possession of the manifest while transporting hazardous waste.

As added by AB 715 (Wright), Stats. 1991, c. 1084, and SB 1143 (Killea), Stats. 1992, c. 1346, and AB 2211 (Goldsmith), Stats. 1993, c. 589, and SB 1091 (Killea), Stats. 1993, c. 913, SB 1524 (Wright), Stats. 1994, c. 738, and SB 845 (Leonard) Sec. 1, Stats. 1995, c. 672, and SB 1497 (Senate Health and Human Services Committee), Stats. 1996, c. 1023, and AB 2201 (House), Stats. 1996, c. 539, and SB 2035 (Senate Environmental Quality Committee), Stats. 2000, c. 343.

25163. REPEALED.

As added by Stats. 1977, c. 1039, and amended by SB 825 (Keene), Stats. 1979, c. 1097, and AB 2140 (Torres), Stats. 1980, c. 848, and SB 1918 (Keene), Stats. 1980, c. 1112, and AB 1015 (Killea), Stats. 1983, c. 1037, and AB 2434 (O'Connell), Stats. 1984, c. 1230, and AB 1744 (Wright), Stats. 1985, c. 1193, and AB 1930 (LaFollette), Stats. 1986, c. 551, and AB 4636 (Quackenbush), Stats. 1988, c. 1631, and AB 3089 (Frizzelle), Stats. 1990, c. 659, AB 715 (Wright), Stats. 1991, c. 1084, and SB 1143 (Killea), Stats. 1992, c. 1346, and AB 2211 (Goldsmith), Stats. 1993, c. 589, and SB 1091 (Killea), Stats. 1993, c. 913, and SB 1524 (Wright), Stats. 1994, c. 738, and SB 845 (Leonard) Sec. 2, Stats. 1995, c. 672, SB 1497 (Senate Health and Human Services Committee), Stats. 1996, c. 1023, and repealed by AB 2201 (House), Stats. 1996, c. 539.

ARTICLE 7. TREATMENT, RECYCLING, AND DISPOSAL TECHNOLOGY

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

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

(b) (1) The status of the hazardous waste facilities permit program that shall include all of the following information:

(A) A description of the final hazardous waste facilities permit applications received.

(B) The number of final hazardous waste facilities permits issued to date.

(C) The number of final hazardous waste facilities permits yet to be issued.

(D) A complete description of the reasons why the final hazardous waste facilities permits yet to be issued have not been issued.

(2) For purposes of paragraph (1), "hazardous waste facility" means a facility that uses a land disposal method, as defined in subdivision (d) of Section 25179.2, and that disposes of wastes regulated as hazardous waste pursuant to the federal act.

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

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

(e) A summary of enforcement actions taken by the department pursuant to this chapter and any other actions relating to hazardous waste management.

(f) Summary data on annual quantities and types of hazardous waste generated, transported, treated, stored, and disposed.

(g) Summary data regarding onsite and offsite disposition of hazardous waste.

(h) Research activity initiated by the department.

(i) Regulatory action by other agencies relating to hazardous waste management.

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

(k) Any other data considered pertinent by the department to hazardous waste management.

(l) The information specified in subdivision (c) of Section 25161, paragraph (4) of subdivision (a) of Section 25197.1, subdivision (c) of Section 25354, and Sections 25334.7, and 25356.5.

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

As added by AB 1543 (Tanner), Stats. 1982, c. 89, and amended by AB 526 (O'Connell), Stats. 1987, c. 822, and AB 1899 (Frizzelle), Stats. 1991, c. 1173, and AB 2481 (Brulte), Stats. 1992, c. 321, and SB 1191 (Calderon), Stats. 1995, c. 639, and AB 2701 (Runner), Stats. 2004, c. 644.

ARTICLE 8. ENFORCEMENT

25187.9. REPEALED.

As added by AB 3082 (Alpert), Stats. 1994, c. 1151, and repealed by SB 660 (Sher), Stats. 1997, c. 870.

ARTICLE 9. PERMITTING OF FACILITIES

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

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

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

(B) Before the fixed term of a permit expires, the owner or operator of a facility intending to extend the term of the facility's permit shall submit a complete Part A application for a permit renewal. At any time following the submittal of the Part A application, the owner or operator of a facility shall submit a complete Part B application, or any portion thereof, as well as any other relevant information, as and when requested by the department. To the extent not inconsistent with the federal act, when a complete Part A renewal application, and any other requested information, has been submitted 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.

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

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

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

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

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

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

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

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

As added by Stats. 1977, c. 1039, and amended by Stats. 1978, c. 1397, and Stats. 1979, c. 1152, and Stats. 1980, c. 259, and Stats. 1988, c. 1632, and Stats. 1989, c. 1436, and AB 2251 (Lowenthal), Stats. 2004, c. 669.

25200.1. Notwithstanding Section 25200, the department shall not issue a hazardous waste facility permit to a facility which commences operation on or after January 1, 1987, unless the department determines that the facility operator is in compliance with regulations adopted by the department pursuant to this chapter requiring that the operator

provide financial assurance that the operator can respond adequately to damage claims arising out of the operation of the facility or the facility is exempt from these financial assurance requirements pursuant to this chapter or the regulations adopted by the department to implement this chapter.

As added by AB 2948 (Tanner), Stats. 1986, c. 1504, and amended by AB 646 (Wright), Stats. 1991, c. 1125; and SB 1291 (Wright), Stats. 1995, c. 640.

25200.2. (a) The department shall develop a permitting process for transportable hazardous waste treatment units for treating hazardous waste in accordance with the federal act and in accordance with this chapter for hazardous wastes that are not otherwise subject to the federal act. The permitting process shall require the units to be permitted pursuant to the regulations of the department for operation pursuant to a permit-by-rule, a hazardous waste facilities permit, or pursuant to the regulations of the department for operation under a standardized permit adopted pursuant to Section 25201.6, whichever the department determines to be appropriate, by regulation, depending on the nature of the treatment units and the type of hazardous waste to be treated, and without regard to whether the units are determined to be onsite or offsite treatment units.

(b) The operator of a transportable hazardous waste treatment unit shall pay the same annual fee as facilities authorized to operate pursuant to a permit-by-rule specified in subdivision (a) of Section 25205.14. The operator of a unit is exempt from paying the facility fee specified in Section 25205.2 for any year or reporting period during which the unit was operating for any activity authorized under permit, except as specified in subdivision (b) of Section 25205.12.

(c) A transportable hazardous waste treatment unit operating pursuant to a hazardous waste facilities permit, a standardized permit, or pursuant to the department's regulations for operation under a permit-by-rule may operate at a facility for a period not to exceed one year. If the owner or operator of the transportable hazardous waste treatment unit shows cause, the department may authorize up to two extensions of this period, of six months duration, during which the transportable hazardous waste treatment unit may operate at the facility, if the department reviews the justification for the extension request after the first six-month period.

(d) Notwithstanding any other provision of this section, if, as of March 1, 1996, the department has not issued proposed regulations, or has not adopted emergency regulations, to implement the changes made to this section by the act adding this subdivision, until the department issues or adopts those regulations, the department shall regulate all transportable treatment units operating pursuant to a permit-by-rule on January 1, 1996, pursuant to the regulations adopted by the department with regard to permit-by-rule, and shall regulate all transportable treatment units operating pursuant to a hazardous waste facilities permit on January 1, 1996, pursuant to the regulations providing for a standardized permit.

As added by Stats. 1987, c. 515, and amended by SB 922 (Calderon), Stats. 1993, c. 1145, and AB 3082 (Alpert), Stats. 1994, c. 1151, and SB 289 (Wright), Stats. 1995, c. 423.

25200.3. (a) A generator who uses the following methods for treating RCRA or non-RCRA hazardous waste in tanks or containers, which is generated onsite, and which do not require a hazardous waste facilities permit under the federal act, shall, for those activities, be deemed to be operating pursuant to a grant of conditional authorization without obtaining a hazardous waste facilities permit or other grant of authorization and a generator is deemed to be granted conditional authorization pursuant to this section, upon compliance with the notification requirements specified in subdivision (e), if the treatment complies with the applicable requirements of this section:

(1) The treatment of aqueous wastes which are hazardous solely due to the presence of inorganic constituents, except asbestos, listed in subparagraph (B) of paragraph (1) and subparagraph (A) of paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, and which contain not more than 1400 ppm total of these constituents, using the following treatment technologies:

(A) Phase separation, including precipitation, by filtration, centrifugation, or gravity settling, including the use of demulsifiers and flocculants in those processes.

(B) Ion exchange, including metallic replacement.

(C) Reverse osmosis.

(D) Adsorption.

(E) pH adjustment of aqueous waste with a pH of between 2.0 and 12.5.

(F) Electrowinning of solutions, if those solutions do not contain hydrochloric acid.

(G) Reduction of solutions which are hazardous solely due to the presence of hexavalent chromium, to trivalent chromium with sodium bisulfite, sodium metabisulfite, sodium thiosulfite, ferrous chloride, ferrous sulfate, ferrous sulfide, or sulfur dioxide, provided that the solution contains less than 750 ppm of hexavalent chromium.

(2) Treatment of aqueous wastes which are hazardous solely due to the presence of organic constituents listed in subparagraph (B) of paragraph (1), or subparagraph (B) of paragraph (2), of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and which contain not more than 750 ppm total of those constituents, using either of the following treatment technologies:

(A) Phase separation by filtration, centrifugation, or gravity settling, but excluding supercritical fluid extraction.

(B) Adsorption.

(3) Treatment of wastes which are sludges resulting from wastewater treatment, solid metal objects, and metal workings which contain or are contaminated with, and are hazardous solely due to the presence of, constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, or treatment of wastes which are dusts which contain, or are contaminated with, and are hazardous solely due to the presence of, not more than 750 ppm total of those constituents, except asbestos, listed in subparagraph (B) of

paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, using any of the following treatment technologies:

(A) Physical processes which constitute treatment only because they change the physical properties of the waste, such as filtration, centrifugation, gravity settling, grinding, shredding, crushing, or compacting.

(B) Drying to remove water.

(C) Separation based on differences in physical properties, such as size, magnetism, or density.

(4) Treatment of alum, gypsum, lime, sulfur, or phosphate sludges, using either of the following treatment technologies:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(5) Treatment of wastes listed in Section 66261.120 of Title 22 of the California Code of Regulations, which meet the criteria and requirements for special waste classification in Section 66261.122 of Title 22 of the California Code of Regulations, using any of the following treatment technologies, if the waste is hazardous solely due to the presence of constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and the waste contains not more than 750 ppm total of those constituents:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(C) Screening to separate components based on size.

(D) Separation based on differences in physical properties, such as size, magnetism, or density.

(6) Treatment of wastes, except asbestos, which have been classified by the department as special wastes pursuant to Section 66261.24 of Title 22 of the California Code of Regulations, using any of the following treatment technologies, if the waste is hazardous solely due to the presence of constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and the waste contains not more than 750 ppm of those constituents:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(C) Magnetic separation.

(7) Treatment of soils which are hazardous solely due to the presence of metals listed in subparagraph (A) of paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, using either of the following treatment technologies:

(A) Screening to separate components based on size.

(B) Magnetic separation.

(8) Except as provided in Section 25201.5, treatment of oil mixed with water and oil/water separation sludges, using any of the following treatment technologies:

(A) Phase separation by filtration, centrifugation, or gravity settling, but excluding supercritical fluid extraction. This phase separation may include the use of demulsifiers and flocculants in those processes, even if the processes involve the application of heat, if the heat is applied in totally enclosed tanks and containers, and if it does not exceed 160 degrees Fahrenheit, or any lower temperature which may be set by the department.

(B) Separation based on differences in physical properties, such as size, magnetism, or density.

(C) Reverse osmosis.

(9) Neutralization of acidic or alkaline wastes that are hazardous only due to corrosivity or toxicity that results only from the acidic or alkaline material, in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, if the wastes contain less than 10 percent acid or base constituents by weight, and are treated in tanks or containers and piping, constructed of materials compatible with the range of temperatures and pH levels, and subject to appropriate pH and temperature controls. If the waste contains more than 10 percent acid or base constituents by weight, the volume treated in a single batch at any one time shall not exceed 500 gallons.

(10) Treatment of spent cleaners and conditioners which are hazardous solely due to the presence of copper or copper compounds, subject to the following:

(A) The following requirements are met, in addition to all other requirements of this section:

(i) The waste stream does not contain more than 5000 ppm total copper.

(ii) The generator does not generate for treatment any more than 1000 gallons of the waste stream per month.

(iii) The treatment technologies employed are limited to those set forth in paragraph (1) for metallic wastes.

(iv) The generator keeps records documenting compliance with this subdivision, including records indicating the volume and concentration of wastes treated, and the management of related solutions which are not cleaners or conditioners.

(B) Cleaners and conditioners, for purposes of this paragraph, are solutions containing surfactants and detergents to remove dirt and foreign objects. Cleaners and conditioners do not include microetch, etchant, plating, or metal stripping solutions or solutions containing oxidizers, or any cleaner based on organic solvents.

(C) A grant of conditional authorization under this paragraph shall expire on January 1, 1998, unless extended by the department pursuant to this section.

(D) The department shall evaluate the treatment activities described in this paragraph and shall designate, by regulation, not later than January 1, 1997, those activities eligible for conditional authorization and those activities subject to permit-by-rule. In adopting regulations under this

subparagraph, the department shall consider all of the following:

(i) The volume of waste being treated.

(ii) The concentration of the hazardous waste constituents.

(iii) The characteristics of the hazardous waste being treated.

(iv) The risks of the operation, and breakdown, of the treatment process.

(11) Any waste stream technology combination certified by the department, pursuant to Section 25200.1.5, as suitable for authorization pursuant to this section, that operates pursuant to the conditions imposed on that certification.

(b) Any treatment performed pursuant to this section shall comply with all of the following, except as to generators, who are treating hazardous waste pursuant to paragraph (11) of subdivision (a), who shall also comply with any additional conditions of the specified certification if those conditions are different from those set forth in this subdivision:

(1) The total volume of hazardous waste treated in the unit in any calendar month shall not exceed 5,000 gallons or 45,000 pounds, whichever is less, unless the waste is a dilute aqueous waste described in paragraph (1), (2), or (9) of subdivision (a) or oily wastes as described in paragraph (8) of subdivision (a). The department may, by regulation, impose volume limitations on wastes which have no limitations under this section, as may be necessary to protect human health and safety or the environment.

(2) The treatment is conducted in tanks or containers.

(3) The treatment does not consist of the use of any of the following:

(A) Chemical additives, except for pH adjustment, chrome reduction, oil/water separation, and precipitation with the use of flocculants, as allowed by this section.

(B) Radiation.

(C) Electrical current except in the use of electrowinning, as allowed by this section.

(D) Pressure, except for reverse osmosis, filtration, and crushing, as allowed by this section.

(E) Application of heat, except for drying to remove water or demulsification, as allowed by this section.

(4) All treatment residuals and effluents are managed and disposed of in accordance with applicable federal, state, and local requirements.

(5) The treatment process does not do either of the following:

(A) Result in the release of hazardous waste into the environment as a means of treatment or disposal.

(B) Result in the emission of volatile hazardous waste constituents or toxic air contaminants, unless the emission is in compliance with the rules and regulations of the air pollution control district or air quality management district.

(6) The generator unit complies with any additional requirements set forth in regulations adopted pursuant to this section.

(c) A generator operating pursuant to subdivision (a) shall comply with all of the following requirements:

(1) Except as provided in paragraph (4), the generator shall comply with the standards applicable to generators specified in Chapter 12 (commencing with Section 66262.10) of Division 4.5 of Title 22 of the California Code of Regulations and with the applicable requirements in Sections 66265.12, 66265.14, and 66265.17 of Title 22 of the California Code of Regulations.

(2) The generator shall comply with Section 25202.9 by making an annual waste minimization certification.

(3) The generator shall comply with the environmental assessment procedures required pursuant to subdivisions (a) to (e), inclusive, of Section 25200.14. If that assessment reveals that there is contamination resulting from the release of hazardous waste or constituents from a solid waste management unit or a hazardous waste management unit at the generator's facility, regardless of the time at which the waste was released, the generator shall take every action necessary to expeditiously remediate that contamination, if the contamination presents a substantial hazard to human health and safety or the environment or if the generator is required to take corrective action by the department. If a facility is remediating the contamination pursuant to, and in compliance with the provisions of, an order issued by a California regional water quality control board or other state or federal environmental enforcement agency, that remediation shall be adequate for the purposes of complying with this section, as the remediation pertains to the jurisdiction of the ordering agency. This paragraph does not limit the authority of the department or a unified program agency pursuant to Section 25187 as may be necessary to protect human health and safety or the environment.

(4) The generator unit shall comply with container and tank standards applicable to non-RCRA wastes, unless otherwise required by federal law, specified in subdivisions (a) and (b) of Section 66264.175 of Title 22 of the California Code of Regulations, as the standards apply to container storage and transfer activities, and to Article 9 (commencing with Section 66265.170) and Article 10 (commencing with Section 66265.190) of Chapter 15 of Division 4.5 of Title 22 of the California Code of Regulations, except for Section 66265.197 of Title 22 of the California Code of Regulations.

(A) Unless otherwise required by federal law, ancillary equipment for a tank or container treating hazardous wastes solely pursuant to this section, is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the ancillary equipment's integrity is attested to, pursuant to Section 66265.191 of Title 22 of the California Code of Regulations, every two years from the date that retrofitting requirements would otherwise apply.

(B) (i) The Legislature hereby finds and declares that in the case of underground, gravity-pressured sewer systems, integrity testing is often not feasible.

(ii) The best feasible leak detection measures which are sufficient to ensure that underground gravity-pressured sewer systems, for which it is not feasible to conduct integrity testing, do not leak.

(iii) If it is not feasible for an operator's ancillary equipment, or a portion thereof, to undergo integrity testing, the operator shall not be subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the operator implements the best feasible leak detection measures which are determined to be sufficient by the department in those regulations, and those leak detection measures do not reveal any leaks emanating from the operator's ancillary equipment. Any ancillary equipment found to leak shall be retrofitted by the operator to meet the secondary containment standards of Section 66265.196 of Title 22 of the California Code of Regulations.

(5) The generator shall prepare and maintain a written inspection schedule and a log of inspections conducted.

(6) The generator shall prepare and maintain written operating instructions and a record of the dates, concentrations, amounts, and types of waste treated. Records maintained to comply with the state, federal, or local programs may be used to satisfy this requirement, to the extent that those documents substantially comply with the requirements of this section. The operating instructions shall include, but not be limited to, directions regarding all of the following:

(A) How to operate the treatment unit and carry out waste treatment.

(B) How to recognize potential and actual process upsets and respond to them.

(C) When to implement the contingency plan.

(D) How to determine if the treatment has been efficacious.

(E) How to address the residuals of waste treatment.

(7) The generator shall maintain adequate records to demonstrate to the department and the unified program agency that the requirements and conditions of this section are met, including compliance with all applicable pretreatment standards and with all applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged. The records shall be maintained onsite for a period of five years.

(8) The generator shall treat only hazardous waste which is generated onsite. For purposes of this chapter, a residual material from the treatment of a hazardous waste generated offsite is not a waste that has been generated onsite.

(9) Except as provided in Section 25404.5, the generator shall submit a fee to the State Board of Equalization in the amount required by Section 25205.14, unless the generator is subject to a fee under a permit-by-rule. The generator shall submit that fee within 30 days of the date that the fee is assessed by the State Board of Equalization.

(d) Notwithstanding any other provision of law, the following activities are ineligible for conditional authorization:

(1) Treatment in any of the following units:

(A) Landfills.

(B) Surface impoundments.

(C) Injection wells.

(D) Waste piles.

(E) Land treatment units.

(2) Commingling of hazardous waste with any hazardous waste that exceeds the concentration limits or pH limits specified in subdivision (a), or diluting hazardous waste in order to meet the concentration limits or pH limits specified in subdivision (a).

(3) Treatment using a treatment process not specified in subdivision (a).

(4) Pretreatment or posttreatment activities not specified in subdivision (a).

(5) Treatment of any waste which is reactive or extremely hazardous.

(e) (1) Not less than 60 days prior to commencing the first treatment of hazardous waste under this section, the generator shall submit a notification, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(A) The CUPA, if the generator is under the jurisdiction of a CUPA.

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

(2) Upon demonstration of good cause by the generator, the department may allow a shorter time period, than the 60 days required by paragraph (1), between notification and commencement of hazardous waste treatment pursuant to this section.

(3) Each notification submitted pursuant to this subdivision shall be completed, dated, and signed according to the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements that were in effect on January 1, 1996, and apply to hazardous waste facilities permit applications, shall be on a form prescribed by the department, and shall include, but not be limited to, all of the following information:

(A) The name, identification number, site address, mailing address, and telephone number of the generator to whom the conditional authorization is granted.

(B) A description of the physical characteristics and chemical composition of the hazardous waste to which the conditional authorization applies.

(C) A description of the hazardous waste treatment activity to which the conditional authorization applies, including the basis for determining that a hazardous waste facilities permit is not required under the federal act.

(D) A description of the characteristics and management of any treatment residuals.

(E) Documentation of any convictions, judgments, settlements, or orders resulting from an action by any local, state, or federal environmental or public health enforcement agency concerning the operation of the facility within the last three years, as the documents would be available under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or the Information Practices Act of 1977 (Chapter 1

(commencing with Section 1798) of Title 1.8 of Part 4 of the Civil Code). For purposes of this paragraph, a notice of violation for any local, state, or federal agency does not constitute an order and a generator is not required to report the notice unless the violation is not corrected and the notice becomes a final order.

(f) Any generator operating pursuant to a grant of conditional authorization shall comply with all regulations adopted by the department relating to generators of hazardous waste.

(g) (1) Upon terminating operation of any treatment process or unit conditionally authorized pursuant to this section, the generator conducting treatment pursuant to this section shall remove or decontaminate all waste residues, containment system components, soils, and structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from service shall be conducted in a manner that does both of the following:

(A) Minimizes the need for further maintenance.

(B) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the environment after the treatment process is no longer in operation.

(2) Any generator conducting treatment pursuant to this section who permanently ceases operation of a treatment process or unit that is conditionally authorized pursuant to this section shall, upon completion of all activities required under this subdivision, provide written notification, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(A) The CUPA, if the generator is under the jurisdiction of a CUPA.

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

(h) In adopting regulations pursuant to this section, the department may impose any further restrictions or limitations consistent with the conditionally authorized status conferred by this section which are necessary to protect human health and safety and the environment.

(i) The department may revoke any conditional authorization granted pursuant to this section. The department shall base a revocation on any one of the causes set forth in subdivision (a) of Section 66270.43 of Title 22 of the California Code of Regulations or in Section 25186, or upon a finding that operation of the facility in question will endanger human health and safety, domestic livestock, wildlife, or the environment. The department shall conduct the revocation of a conditional authorization granted pursuant to this section in accordance with Chapter 21 (commencing with Section 66271.1) of Division 4.5 of Title 22 of the California Code of Regulations and as specified in Section 25186.7.

(j) A generator who would otherwise be subject to this section may contract with the operator of a transportable treatment unit who is operating pursuant to a permit-by-rule, a standardized permit, or a full state hazardous waste facilities permit to treat the generator's waste. If treatment of the generator's waste takes place under such a contract, the generator is not otherwise subject to the requirements of this section, but shall comply with all other requirements of this chapter that apply to generators. The operator of the transportable treatment unit that performs onsite treatment pursuant to this subdivision shall comply with all requirements applicable to transportable treatment units operating pursuant to a permit-by-rule, as set forth in the regulations adopted by the department.

(k) (1) Within 30 days of any change in operation which necessitates modifying any of the information submitted in the notification required pursuant to subdivision (e), a generator shall submit an amended notification, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(A) The CUPA, if the generator is under the jurisdiction of a CUPA.

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

(2) Each amended notification shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to hazardous waste facilities permit applications.

(l) A person who has submitted a notification to the department pursuant to subdivision (e) shall be deemed to be operating pursuant to this section, and, except as provided in Section 25404.5, shall be subject to the fee set forth in subdivision (a) of Section 25205.14 until that person submits a certification that the generator has ceased all treatment activities of hazardous waste streams authorized pursuant to this section in accordance with the requirements of subdivision (g). The certification required by this subdivision shall be submitted, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(1) The CUPA, if the generator is under the jurisdiction of a CUPA.

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

(m) The development and publication of the notification form specified in subdivision (e) is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at

least one public workshop concerning the development of the notification form.

As added by AB 1772 (Polanco), Stats. 1992, c. 1345, and amended by SB 28 (Wright), Stats. 1993, c. 411, and AB 2060 (Weggeland), Stats. 1993, c. 412, and SB 657 (Deddeh), Stats. 1994, c. 1291, and AB 1966 (Figueroa), Stats. 1995, c. 631, and SB 1135 (Costa), Stats. 1995, c. 636, and SB 1222 (Calderon), Stats. 1995, c. 638, and SB 1191 (Calderon), Stats. 1995, c. 639, and SB 1921 (Wright), Stats. 1995, c. 640, and SB 2111 (Costa), Stats. 1998, c. 309.

25200.12. A modification to an offsite facility operating under interim status pursuant to Section 25200.5 that requires a revised Part A application pursuant to Article 4 (commencing with Section 66270.40) of Chapter 20 of Division 4.5 of Title 22 of the California Code of Regulations, as that article read on January 1, 1992, is a discretionary project for purposes of subdivision (a) of Section 21080 of the Public Resources Code and is subject to the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, unless the modification is otherwise excluded from that division pursuant to paragraphs (2) to (15), inclusive, of subdivision (b) of Section 21080 of the Public Resources Code.

As added by AB 1613, Stats. 1991, c. 719, and amended by SB 975 (Senate Judiciary Committee), Stats. 1995, c. 91.

25200.14. (a) For purposes of this section, "phase I environmental assessment" means a preliminary site assessment based on reasonably available knowledge of the facility, including, but not limited to, historical use of the property, prior releases, visual and other surveys, records, consultant reports, and regulatory agency correspondence.

(b) (1) Except as provided in paragraph (2) and in subdivision (i), in implementing the requirements of Section 25200.10 for facilities operating pursuant to a permit-by-rule under the regulations adopted by the department regarding transportable treatment units and fixed treatment units, which are contained in Chapter 45 (commencing with Section 67450.1) of Division 4.5 of Title 22 of the California Code of Regulations, or for generators operating pursuant to a grant of conditional authorization under Section 25200.3, the department or the unified program agency authorized to implement this section pursuant to Section 25404.1 shall require the owner or operator of the facility or the generator to complete and file a phase I environmental assessment with the department or the authorized unified program agency not later than one year from the date of adoption of the checklist specified in subdivision (f), but not later than January 1, 1997, or one year from the date that the facility or generator becomes authorized to operate, whichever date is later. After submitting a phase I environmental assessment, the owner or operator of the facility or the generator shall subsequently submit to the department or the authorized unified program agency, during the next regular reporting period, if any, updated information obtained by the facility owner or operator or the generator concerning releases subsequent to the submission of the phase I environmental assessment.

(2) Paragraph (1) does not apply to a facility owner or operator that is conducting, or has conducted, a site assessment of the entire facility or to a generator that is conducting, or has conducted, a site assessment of the entire facility of the generator in accordance with an order issued by a California regional water quality control board or any other state or federal environmental enforcement agency.

(c) An assessment which would otherwise meet the requirements of this section that is prepared for another purpose and was completed not more than three years prior to the date by which the facility owner or operator or the generator is required to submit a phase I environmental assessment may be used to comply with this section if the assessment is supplemented by any relevant updated information reasonably available to the facility owner or operator or to the generator.

(d) The department or the unified program agency authorized to implement this section pursuant to Section 25404.1 shall not require sampling or testing as part of the phase I environmental assessment. A phase I environmental assessment shall be certified by the facility owner or operator or by the generator, or by their designee, or by a certified professional engineer, or a geologist, or a registered environmental assessor. The phase I environmental assessment shall indicate whether the preparer believes that further investigation, including sampling and analysis, is necessary to determine whether a release has occurred, or to determine the extent of a release from a solid waste management unit or hazardous waste management unit.

(e) (1) If the results of a phase I environmental assessment conducted pursuant to subdivision (b) indicate that further investigation is needed to determine the existence or extent of a release from a solid waste management unit or hazardous waste management unit, the facility owner or operator or the generator shall submit a schedule, within 90 days from the date of submission of the phase I environmental assessment, for that further investigation to the department or to the unified program agency authorized to implement this section pursuant to Section 25404.1. If the department or the authorized unified program agency determines, based upon a review of the phase I environmental assessment or other site-specific information in its possession, that further investigation is needed to determine the existence or extent of a release from a solid waste management unit or hazardous waste management unit, in addition to any further action proposed by the facility owner or operator or the generator, or determines that a different schedule is necessary to prevent harm to human health and safety or to the environment, the department or the authorized unified program agency shall inform the facility owner or operator or the generator of that determination and shall set a reasonable time period in which to accomplish that further investigation.

(2) In determining if a schedule is acceptable for investigation or remediation of any facility or generator subject to this section, the department may require more expeditious action if the department determines that hazardous constituents are mobile and are likely moving toward, or have

entered, a source of drinking water, as defined by the State Water Resources Control Board, or determines that more expeditious action is otherwise necessary to protect human health or safety or the environment. To the extent that the department determines that the hazardous constituents are relatively immobile, or that more expeditious action is otherwise not necessary to protect public health or safety or the environment, the department may allow a longer schedule to allow the facility or generator to accumulate a remediation fund, or other financial assurance mechanism, prior to taking corrective action.

(3) If a facility owner or operator or the generator is conducting further investigation to determine the nature or extent of a release pursuant to, and in compliance with, an order issued by a California regional water quality control board or other state or federal environmental enforcement agency, the department or the authorized unified program agency shall deem that investigation adequate for the purposes of determining the nature and extent of the release or releases that the order addressed, as the investigation pertains to the jurisdiction of the ordering agency.

(f) The department shall develop a checklist to be used by facility owners or operators and generators in conducting a phase I environmental assessment. The development and publication of the checklist is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the checklist. The checklist shall not exceed the phase I requirements adopted by the American Society for Testing and Materials (ASTM) for due diligence for commercial real estate transactions. The department shall deem compliance with those ASTM standards, or compliance with the checklist developed and published by the department, as meeting the phase I environmental assessment requirements of this section.

(g) A facility, or to the extent required by the regulations adopted by the department, a transportable treatment unit, operating pursuant to a permit-by-rule shall additionally comply with the remaining corrective action requirements specified in Section 67450.7 of Title 22 of the California Code of Regulations, in effect on January 1, 1992.

(h) A generator operating pursuant to a grant of conditional authorization pursuant to Section 25200.3 shall additionally comply with paragraph (3) of subdivision (c) of Section 25200.3.

(i) The department or the authorized unified program agency shall not require a phase I environmental assessment for those portions of a facility subject to a corrective action order issued pursuant to Section 25187, a cleanup and abatement order issued pursuant to Section 13304 of the Water Code, or a corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

As added by AB 1772 (Polanco), Stats. 1992, c. 1345, and amended by SB 28 (Wright), Stats. 1993, c. 411, and AB 2955 (Karnette), Stats. 1994, c. 1255, and SB 1222 (Calderon), Stats. 1995, c. 638, and SB 1191 (Calderon), Stats. 1995, c. 639, and AB 2776 (Miller), Stats. 1996, c. 999.

25200.15. (a) The owner or operator of a facility that has a hazardous waste facilities permit issued pursuant to Section 25200 or 25201.6 may change facility structures or equipment without modifying the facility's hazardous waste facilities permit, if either of the following apply:

(1) The change to structures or equipment is not within a permitted unit.

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

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

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

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

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

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

(b) (1) To the extent consistent with the federal act, and the regulations adopted pursuant to the federal act, the owner or operator of a facility that has a hazardous waste facilities permit issued pursuant to Section 25200 or 25201.6 may change the facility structure or equipment utilizing the Class 1* permit modification, specified in Chapter 20 (commencing with Section 66270.1) of Division 4.5 of Title 22 of the California Code of Regulations, as adopted by the department, if the department determines that all of the following apply:

(A) 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 district or air pollution control district.

(B) The change to the structure or equipment 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.

(C) The owner or operator has submitted sufficient information for the department to make the determinations required by subparagraphs (A) and (B) to comply with the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, the California Environmental Quality Act.

(2) A change to a facility structure or equipment that is authorized by this subdivision may not result in an increase in

the permitted capacity of a hazardous waste management unit affected by the change.

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

(4) This subdivision does not apply to changes classified as Class 1 or Class 1* under the department's regulations pursuant to Chapter 20 (commencing with Section 66270.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(5) The owner or operator of a facility applying for a "Class 1* permit modification" pursuant to this subdivision shall enter into a written agreement with the department pursuant to which that person shall reimburse the department, pursuant to Article 9.2 (commencing with Section 25206.1), for the costs incurred by the department in processing the application.

(c) (1) To the extent consistent with the federal act, the owner or operator of a facility operating under a hazardous waste facilities permit issued pursuant to Section 25200 or 25201.6 may make a Class 1 permit modification for minor equipment replacement or upgrade with functionally equivalent components of equipment such as pipes, valves, pumps, conveyors, controls, or other similar equipment, as specified in Section (A)(3) of Appendix I of Chapter 20 (commencing with Section 66270.1) of Division 4.5 of Title 22 of the California Code of Regulations, without providing prior notification as long as the modification is exempt from the requirements of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, and if the owner or operator complies with both of the following conditions:

(A) The owner or operator notifies the department concerning the replacement or upgrade by certified mail or other means that establish proof of delivery within seven calendar days after the change is commenced. The notice shall specify the replacement or upgrade being made to the equipment referenced in the permit and shall explain why the replacement or upgrade is necessary.

(B) Except as otherwise specified in this subdivision, the owner or operator complies with the requirements of Chapter 20 (commencing with Section 66270.1) and Chapter 21 (commencing with Section 66271.1) of Division 4.5 of Title 22 of the California Code of

Regulations, as adopted by the department, that are applicable to a Class 1 modification.

(2) Misapplication of the Class 1 modification allowed under this subdivision is subject to enforcement by the department under this chapter.

(3) This subdivision shall remain in effect until the time when the department amends its regulations to provide for replacement or upgrade of equipment without prior notification, subject to those conditions and limitations determined to be necessary by the department.

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

As added by SB 1222 (Calderon), Stats. 1995, c. 638, and amended by AB 2251 (Lowenthal), Stats. 2004, c. 779, and AB 1342 (Assembly Environmental Safety and Toxic Materials Committee), Stats. 2005, c. 577.

25201. (a) Except as provided in subdivisions (c) and (d), no owner or operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or disposal site shall accept, treat, store, or dispose of a hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous waste facilities permit or other grant of authorization from the department to use and operate the facility, area, or site, or the owner or operator is operating under a permit-by-rule pursuant to the department's regulations, or a grant of conditional authorization or conditional exemption pursuant to this chapter.

(b) Except as necessary to comply with Section 25159.18, any person planning to construct a new hazardous waste facility or a new hazardous waste management unit, which would manage RCRA hazardous waste, shall obtain a hazardous waste facilities permit or a permit amendment from the department prior to commencing construction.

(c) A hazardous waste facilities permit is not required for a recycle-only household hazardous waste collection facility operated in accordance with subdivision (b) of Section 25218.8.

(d) A hazardous waste facilities permit is not required for a facility that meets the requirements of Section 13263.2 of the Water Code.

As added by Stats. 1977, c. 1039, and amended by SB 2031 (Nimmo), Stats 1978, c. 1397, and AB 2691 (Tucker), Stats. 1980, c. 878, and AB 1858 (Wright), Stats. 1985, c. 1245, and AB 1196 (Wright), Stats. 1988, c. 1376, and AB 1847 (Quackenbush), Stats. 1989, c. 1436, and AB 2597 (Tanner), Stats. 1990, c. 1265, and SB 2057 (Calderon), Stats. 1992, c. 1344, and AB 1772 (Polanco), Stats. 1992, c. 1345, and SB 1143 (Killea), Stats. 1992, c. 1346, and SB 1091 (Killea), Stats. 1993, c. 913, and SB 796 (Wright), Stats. 1993, c. 1203, and AB 2955 (Karnette) Stats. 1994, c. 1225, and SB 657 (Campbell), Stats. 1994, c. 1291, and AB 1291 (Wright), Stats. 1995, c. 640.

25201.1. (a) A solid waste facility, as defined in Section 40194 of the Public Resources Code, or any recycling facility, that accepts and processes empty aerosol cans and de minimis quantities of nonempty aerosol cans collected as an incidental part of the collection of empty cans for recycling, is exempt from the requirement to obtain a hazardous waste facilities permit or other authorization from the department for purposes of conducting that activity if both of the following conditions are met:

(1) The nonempty aerosol cans are from products that are normally intended for household use and were generated by households.

(2) The city, county, or regional agency in the area that the facility serves provides educational information to the public on the safe collection and recycling or disposal of

empty and nonempty aerosol cans that encourages, to the maximum extent feasible, the separation and recycling of empty aerosol cans through such programs as curbside, dropoff, and buy-back recycling programs, and the diversion of nonempty aerosol cans into household hazardous waste collection programs. Issues of compliance with this subdivision shall be determined by the California Integrated Waste Management Board or by the appropriate local enforcement agency.

(b) This section is not intended to alter the obligation to manage as a hazardous waste any nonempty aerosol cans that meet the requirements of Section 25117, and that are not subject to the exemption provided in this section.

(c) Nothing in this section exempts a solid waste facility that engages in an activity that requires a hazardous waste facility permit, other than the acceptance and processing of empty aerosol cans and de minimis quantities of nonempty aerosol cans as an incidental part of the collection of empty cans for recycling, from the requirement of obtaining a hazardous waste facilities permit.

As added by SB 352 (Wright), Stats. 1995, c. 424, and amended by AB 3082 (Assembly Judiciary Committee), Stats. 2004, c. 183.

25201.3. (a) A local agency shall not deem any of the following generators performing any of the following treatment activities to be a hazardous waste treatment facility for purposes of making a land use decision, and the department shall not require any of the following generators or facilities performing any of the following treatment activities to publish a notice regarding those activities:

(1) A facility operating pursuant to a permit-by-rule.

(2) A generator granted conditional authorization pursuant to this chapter for specified treatment activities.

(3) A generator performing conditionally exempt treatment pursuant to this chapter.

(b) For purposes of this section, "land use decision" means a discretionary decision of a local agency concerning a hazardous waste facility project, as defined in subdivision (b) of Section 25199.1, including the issuance of a land use permit or conditional use permit, the granting of a variance, the subdivision of property, and the modification of existing property lines pursuant to Title 7 (commencing with Section 65000) of the Government Code, and any local agency decision concerning a hazardous waste facility which is in existence and the enforcement of those decisions. This section does not limit or restrict the existing authority of a local agency to impose conditions on, or otherwise regulate, facilities, transportable treatment units or generators operating pursuant to a permit-by-rule, or a conditional authorization or conditional exemption pursuant to this chapter.

As added by AB 646 (Wright), Stats. 1991, c. 1125, and amended by AB 1772, (Polanco), Stats. 1992, c. 1345, and SB 28 (Wright), Stats. 1993, c. 411, and SB 1191 (Calderon), Stats. 1995, c. 639.

25201.4. (a) (1) The unified program agency shall develop and implement a program to inspect persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to this chapter or the regulations adopted by the department, for compliance with the applicable statutes and regulations.

(2) If there is not CUPA, the inspection program required pursuant to paragraph (1) shall be developed and implemented by either the department or one of the following:

(A) Before January 1, 1997, by the local health officer or local public officer designated pursuant to Section 25180.

(B) On and after January 1, 1997, to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(b) (1) Any program operated pursuant to this section shall be conducted in accordance with the standards adopted by the department pursuant to subdivision (c).

(2) Any program operated pursuant to this section shall, at a minimum, ensure that within two years of the date that a person submits a notification that it is operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to this chapter of the regulations adopted by the department, a site inspection shall be conducted at the facility, including verification of compliance with applicable generator requirements, container standards, and administrative and recordkeeping requirements, and that a compliance inspection shall be conducted at the facility to verify compliance with all applicable requirements every three years thereafter. Initial verification inspections which are conducted prior to the department's adoption of standards pursuant to subdivision (c) shall not be required to be conducted in accordance with those standards.

(c) The department shall, upon consultation with certified unified program agencies, local health officers, and local public officers designated pursuant to Section 25180, adopt regulations establishing standards which provide criteria for the implementation of a local inspection program to inspect generators, facilities, or transportable treatment units operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to this chapter or the regulations adopted by the department. These standards shall include, but not be limited to, qualification standards, inspection and enforcement standards, and reporting criteria. The development and publication of these standards is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

As added by AB 646 (Wright), Stats. 1991, c. 1125, and repealed and added by AB 1772 (Polanco), Stats. 1992, c. 1345, and amended by SB 28 (Wright), Stats. 1993, c. 411, and AB 3082 (Alpert), Stats. 1994, c. 1151, and SB 1191 (Calderon), Stats. 1995, c. 639.

25201.4.1. (a) Except as provided in subdivision (c), any person subject to the notification requirements of Sections 25110.10, 25123.3, 25144.6, 25200.3, 25201.5, or 25201.14 shall only be required to submit the required notification to the CUPA, or, in those jurisdictions where there is no CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(b) Any person required to submit a notice pursuant to subdivision (a) is also required to submit the required notice to the department until (1) regulations promulgated by the Secretary for Environmental Protection establishing a unified program information collection and reporting system and standards are effective, (2) the regulations require a statewide data base system that will enable the department and the public to obtain the required information from all CUPAs or the authorized officers or agencies, and (3) the statewide data base system is in place and fully operational.

(c) A person conducting an activity that is not included within the scope of the hazardous waste element of the unified program, as specified in paragraph (1) of subdivision (c) of Section 25404, is required to submit a notice pursuant to Sections 25110.10, 25123.3, 25144.6, 25200.3, 25201.5, or 25201.14, but shall comply with any regulations that the department may adopt specifying notification requirements for those activities.

(d) Notwithstanding subdivision (l) of Section 25200.3, any person who has submitted a notification to the CUPA, or, in those jurisdictions where there is no CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, pursuant to subdivision (a) of this section and subdivision (e) of Section 25200.3, shall be deemed to be operating pursuant to Section 25200.3, and, except as provided in Section 25404.5, shall be subject to the fee set forth in subdivision (b) of Section 25205.14 until the person submits a certification pursuant to subdivision (l) of Section 25200.3.

(e) Notwithstanding subdivision (j) of Section 25201.5, any person who has submitted a notification to the CUPA, or, in those jurisdictions where there is no CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, pursuant to subdivision (a) of this section and paragraph (7) of subdivision (d) of Section 25201.5, shall be deemed to be operating pursuant to Section 25201.5, and, except as provided in Section 25404.5, shall be subject to the fee set forth in subdivision (c) of Section 25205.14 until the person submits a certification pursuant to subdivision (j) of Section 25201.5.

As added by AB 1357 (Baldwin), Stats. 1997, c. 778.

25201.5. (a) Notwithstanding any other provision of law, a hazardous waste facilities permit is not required for a generator who treats hazardous waste of a total weight of not more than 500 pounds, or a total volume of not more than 55 gallons, in any calendar month, if both of the following conditions are met:

(1) The hazardous waste is not an extremely hazardous waste and is listed in Section 67450.11 of Title 22 of the California Code of Regulations, as in effect on January 1, 1992, as eligible for treatment pursuant to the regulations adopted by the department for operation under a permit-by-rule and the treatment technology used is approved for that waste stream in Section 67450.11 of Title 22 of the California Code of Regulations for treatment under a permit-by-rule.

(2) The generator is not otherwise required to obtain a hazardous waste facilities permit or other grant of authorization for any other hazardous waste management activity at the facility.

(b) Notwithstanding any other provision of law, treatment in the following units is ineligible for exemption pursuant to subdivision (a) or (c):

(1) Landfills.

(2) Surface impoundments.

(3) Injection wells.

(4) Waste piles.

(5) Land treatment units.

(6) Thermal destruction units.

(c) Notwithstanding any other provision of law, a hazardous waste facilities permit or other grant of authorization is not required to conduct the following treatment activities, if the generator treats the following hazardous waste streams using the treatment technology required by this subdivision:

(1) The generator mixes or cures resins mixed in accordance with the manufacturer's instructions, including the mixing or curing of multicomponent and preimpregnated resins in accordance with the manufacturer's instructions.

(2) The generator treats a container of 110 gallons or less capacity, which is not constructed of wood, paper, cardboard, fabric, or any other similar absorptive material, for the purposes of emptying the container as specified by Section 66261.7 of Title 22 of the California Code of Regulations, as revised July 1, 1990, or treats the inner liners removed from empty containers that once held hazardous waste or hazardous material. The generator shall treat the container or inner liner by using the following technologies, if the treated containers and rinseate are managed in compliance with the applicable requirements of this chapter:

(A) The generator rinses the container or inner liner with a suitable liquid capable of dissolving or removing the hazardous constituents which the container held.

(B) The generator uses physical processes, such as crushing, shredding, grinding, or puncturing, that change only the physical properties of the container or inner liner, if the container or inner liner is first rinsed as provided in subparagraph (A) and the rinseate is removed from the container or inner liner.

(3) The generator conducts drying by pressing or by passive or heat-aided evaporation to remove water from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(4) The generator conducts magnetic separation or screening to remove components from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(5) The generator neutralizes acidic or alkaline wastes which are hazardous solely due to corrosivity or toxicity resulting from the presence of acidic or alkaline material from

food or food byproducts, and alkaline or acidic waste, other than wastes containing nitric acid, at SIC Code Major Group 20, food and kindred product facilities, as defined in subdivision (p) of Section 25501, if both of the following conditions are met:

(A) The neutralization process does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(B) The neutralization process is required in order to meet discharge or other regulatory requirements.

(6) Except as provided for specific waste streams in Section 25200.3, the generator conducts the separation by gravity of the following, if the activity is conducted in impervious tanks or containers constructed of noncorrosive materials, the activity does not involve the addition of heat or other form of treatment, or the addition of chemicals other than flocculants and demulsifiers, and the activity is managed in compliance with applicable requirements of federal, state, or local agency or treatment works:

(A) The settling of solids from waste where the resulting aqueous stream is not hazardous.

(B) The separation of oil/water mixtures and separation sludges, if the average oil recovered per month is less than 25 barrels.

(7) The generator is a laboratory which is certified by the State Department of Health Services or operated by an educational institution, and treats wastewater generated onsite solely as a result of analytical testing, or is a laboratory which treats less than one gallon of hazardous waste, which is generated onsite, in any single batch, subject to the following:

(A) The wastewater treated is hazardous solely due to corrosivity or toxicity that results only from the acidic or alkaline material, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, or is excluded from the definition of hazardous waste by subparagraph (E) of paragraph (2) of subsection (a) of Section 66261.3 of Title 22 of the California Code of Regulations, or both.

(B) The treatment meets all of the following requirements, in addition to all other requirements of this section:

(i) The treatment complies with all applicable pretreatment requirements.

(ii) Neutralization occurs in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations; wastes to be neutralized do not contain any more than 10 percent acid or base concentration by weight, or any other concentration limit which may be imposed by the department; and vessels and piping for neutralization are constructed of materials that are compatible with the range of temperatures and pH levels, and subject to appropriate pH temperature controls.

(iii) Treatment does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(8) The hazardous waste treatment is carried out in a quality control or quality assurance laboratory at a facility that is not an offsite hazardous waste facility and the treatment activity otherwise meets the requirements of paragraph (1) of subdivision (a).

(9) Any waste stream technology combination certified by the department, pursuant to Section 25200.1.5, as suitable for authorization pursuant to this section, that operates pursuant to the conditions imposed on that certification.

(10) The generator uses any technology that is certified by the department, pursuant to Section 25200.1.5, as effective for the treatment of formaldehyde or glutaraldehyde solutions used in health care facilities that are operated pursuant to the conditions imposed on the certification and which makes the operation appropriate to this tier. The technology may be certified using a pilot certification process until the department adopts regulations pursuant to Section 25200.1.5. This paragraph shall be operative only until April 11, 1996.

(d) A generator conducting treatment pursuant to subdivision (a) or (c) shall meet all of the following conditions:

(1) The waste being treated is generated onsite, and a residual material from the treatment of a hazardous waste generated offsite is not a waste that has been generated onsite.

(2) The treatment does not require a hazardous waste facilities permit pursuant to the federal act.

(3) The generator prepares and maintains written operating instructions and a record of the dates, amounts, and types of waste treated.

(4) The generator prepares and maintains a written inspection schedule and log of inspections conducted.

(5) The records specified in paragraphs (3) and (4) are maintained onsite for a period of three years.

(6) The generator maintains adequate records to demonstrate that it is in compliance with all applicable pretreatment standards and with all applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged.

(7) (A) Not less than 60 days before commencing treatment of hazardous waste pursuant to this section, the generator shall submit a notification, in person or by certified mail, with return receipt requested, to the department and to one of the following:

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

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

(B) Upon demonstration of good cause by the generator, the department may allow a shorter time period, than the 60 days required by subparagraph (A), between notification and commencement of hazardous waste treatment pursuant to this section.

(C) The notification submitted pursuant to this paragraph shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the

California Code of Regulations, as those requirements apply to permit applications, shall be on a form prescribed by the department, and shall include, but not be limited to, all of the following information:

(i) The name, identification number, site address, mailing address, and telephone number of the generator to whom the conditional exemption applies.

(ii) A description of the physical characteristics and chemical composition of the hazardous waste to which the conditional exemption applies.

(iii) A description of the hazardous waste treatment activity to which the conditional exemption applies, including, but not limited to, the basis for determining that a hazardous waste facilities permit is not required under the federal act.

(iv) A description of the characteristics and management of any treatment residuals.

(D) The development and publication of the notification form required under this paragraph is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

(E) Any notification submitted pursuant to this paragraph shall supersede any prior notice of intent submitted by the same generator in order to obtain a permit-by-rule under the regulations adopted by the department. This subparagraph does not require the department to refund any fees paid for any application in conjunction with the submission of a notice of intent for a permit-by-rule.

(8) (A) Upon terminating operation of any treatment process or unit exempted pursuant to this section, the generator who conducted the treatment shall remove or decontaminate all waste residues, containment system components, soils, and other structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from service shall be conducted in a manner that does both of the following:

(i) Minimizes the need for further maintenance.

(ii) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the environment after treatment process is no longer in operation.

(B) Any owner or operator who permanently ceases operation of a treatment process or unit that is conditionally exempted pursuant to this section shall, upon completion of all activities required under this subdivision, provide written notification in person or by certified mail, with return receipt requested, to the department and to one of the following:

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

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

(9) The waste is managed in accordance with all applicable requirements for generators of hazardous waste under this chapter and the regulations adopted by the department pursuant to this chapter.

(10) Except as provided in Section 25404.5, the generator submits a fee in the amount required by Section 25205.14, unless the generator is subject to a fee under a permit-by-rule or a grant of conditional authorization pursuant to Section 25200.3. The generator shall submit that fee within 30 days of the date that the fee is assessed by the State Board of Equalization, in the manner specified by Section 43152.10 of the Revenue and Taxation Code.

(e) (1) Unless otherwise required by federal law, ancillary equipment for a tank or container treating hazardous wastes solely pursuant to this section is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the ancillary equipment's integrity is attested to pursuant to Section 66265.191 of Title 22 of the California Code of Regulations every two years from the date that retrofitting requirements would otherwise apply.

(2) (A) The Legislature hereby finds and declares that, in the case of underground, gravity-pressured sewer systems, integrity testing is often not feasible.

(B) The department shall, by regulation, determine the best feasible leak detection measures which are sufficient to ensure that underground gravity-pressured sewer systems, for which it is not feasible to conduct integrity testing, do not leak.

(C) If it is not feasible for an operator's ancillary equipment, or a portion thereof, to undergo integrity testing, the operator shall not be subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the operator implements the best feasible leak detection measures that are determined to be sufficient by the department in those regulations, and those leak detection measures do not reveal any leaks emanating from the operator's ancillary equipment. Any ancillary equipment found to leak shall be retrofitted by the operator to meet the full secondary containment standards of Section 66265.196 of Title 22 of the California Code of Regulations.

(f) Nothing in this section shall abridge any authority granted to the department, a unified program agency, or local health officer or local public officer designated pursuant to Section 25180, by any other provision of law to impose any further restrictions or limitations upon facilities subject to this section, that the department, a unified program agency, or local health officer or local public officer designated pursuant to Section 25180, determines to be necessary to protect human health or the environment.

(g) A generator that would otherwise be subject to this section may contract with the operator of a transportable treatment unit who is operating pursuant to this section to treat the generator's waste. If treatment of the generator's waste takes place under such a contract, the generator is not otherwise subject to the requirements of this section, but shall comply with all other requirements of this chapter that apply to generators. The operator of the transportable treatment unit shall comply with all of the applicable requirements of this

section and, for purposes of this section, the operator of the transportable treatment unit shall be deemed to be the generator.

(h) A generator conducting activities which are exempt from this chapter pursuant to Section 66261.7 of Title 22 of the California Code of Regulations, as that section read on January 1, 1993, is not required to comply with this section.

(i) (1) Within 30 days of any change in operation which necessitates modifying any of the information submitted in the notification required pursuant to paragraph (7) of subdivision (d), a generator shall submit an amended notification, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(A) The CUPA, if the generator is under the jurisdiction of a CUPA.

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

(2) Each amended notification made pursuant to this subdivision shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to hazardous waste facilities permit applications.

(j) A person who submitted a notification to the department pursuant to paragraph (7) of subdivision (d) shall be deemed to be operating pursuant to this section, and, except as provided in Section 25404.5, shall be subject to the fee set forth in subdivision (c) of Section 25205.14 until that person submits a certification that the generator has ceased all treatment activities of hazardous waste streams authorized pursuant to this section in accordance with the requirements of paragraph (8) of subdivision (d). The certification required by this subdivision shall be submitted, in person or by certified mail, with return receipt requested, to the department and to one of the following:

(1) The CUPA, if the generator is under the jurisdiction of a CUPA.

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

As added by AB 1772 (Polanco), Stats. 1992, c. 1345, and amended by SB 28 (Wright), Stats. 1993, c. 411, and AB 2060 (Weggeland), Stats. 1993, c. 412, and AB 3601 (Assembly Judiciary Committee), Stats. 1994, c. 146, and AB 3577 (Epple), Stats. 1994, c. 276, and SB 1572 (Wright), Stats. 1994, c. 406, and SB 657 (Campbell), Stats. 1994, c. 1291, and SB 1135 (Costa), Stats. 1995, c. 636, and SB 1191 (Calderon), Stats. 1995, c. 639, and SB 1291 (Wright), Stats. 1995, c. 640, and SB 2111 (Costa), Stats. 1998, c. 309.

25201.12. Notwithstanding any other provision of law, a hazardous waste facilities permit or other grant of authorization from the department, and payment of any fee imposed pursuant to Article 9.1 (commencing with Section 25205.1), are not required for a facility, with regard to the facility's operation of a physical process to remove air pollutants from exhaust gases prior to their emission to the atmosphere, as permitted by an air pollution control district or an air quality management district, unless a permit is required for that operation pursuant to the federal act. However, the facility is subject to all requirements imposed pursuant to this chapter on hazardous waste generators with regard to any liquid, semisolid, or solid hazardous waste that is generated as part of, and upon its removal from, the air pollution control process.

As added by AB 2955 (Karnette), Stats. 1994, c. 1225.

25201.16. (a) For purposes of this section, the following terms have the following meanings:

(1) "Aerosol can" means a container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam.

(2) "Aerosol can processing" means the puncturing, draining, or crushing of aerosol cans.

(3) "Destination facility," as used in Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations, also includes a facility that treats, except as described in subdivision (d), or disposes of, a hazardous waste aerosol can that is shipped to the facility as a universal waste aerosol can, except destination facility does not include a facility at which universal waste aerosol cans are merely accumulated.

(4) "Hazardous waste aerosol can" means an aerosol can that meets the definition of hazardous waste, as defined in Section 25117.

(5) "Unauthorized release" means a release to the environment that is in violation of any applicable federal, state, or local law, or any permit or other approval document issued by any federal, state, or local agency.

(6) "Universal waste aerosol can" means a hazardous waste aerosol can while it is being managed in accordance with the department's regulations governing the management of universal waste, except as required otherwise in subdivisions (d) to (k), inclusive. Upon receipt of a universal waste aerosol can by a destination facility for purposes of treatment or disposal, the can is no longer a universal waste aerosol can, but continues to be a hazardous waste aerosol can.

(7) With respect to a universal waste aerosol can, the term "universal waste handler," as defined in Section 66273.9 of Title 22 of the California Code of Regulations, does not include either of the following:

(A) A person who treats, except as described in subdivision (h), or disposes of hazardous waste aerosol cans including universal waste aerosol cans.

(B) A person engaged in offsite transportation of hazardous waste aerosol cans, including, but not limited to, universal waste aerosol cans, by air, rail, highway, or water, including a universal waste aerosol can transfer facility.

(b) (1) The requirements of this section apply to any person who manages aerosol cans, except for the following:

(A) Aerosol cans that are not yet wastes pursuant to Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations.

(B) Aerosol cans that do not exhibit a characteristic of a hazardous waste as set forth in Article 3 (commencing with Section 66261.20) of Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations.

(C) Aerosol cans that are empty pursuant to subsection (m) of Section 66261.7 of Title 22 of the California Code of Regulations.

(2) (A) An aerosol can becomes a waste on the date the aerosol can is discarded or is no longer useable. An aerosol can is deemed to be no longer useable when any of the following occurs:

(i) The can is as empty as possible, using standard practices.

(ii) The spray mechanism no longer operates as designed.

(iii) The propellant is spent.

(iv) The product is no longer used.

(B) An unused aerosol can is a waste, for purposes of Section 25124, on the date the owner decides to discard it.

(c) (1) The disposal of any hazardous waste aerosol can is subject to the requirements of this chapter, and to any regulations adopted by the department relating to the disposal of hazardous waste.

(2) Except as otherwise provided in this section, the treatment or storage of any hazardous waste aerosol can is subject to the requirements of this chapter, and any regulations adopted by the department relating to the treatment and storage of hazardous waste.

(d) (1) Except as provided in paragraph (2), a universal waste aerosol can is deemed to be a universal waste for purposes of the department's regulations governing the management of universal wastes.

(2) The exemptions described in Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations for universal waste generated by households and conditionally exempt small quantity waste generators of universal waste do not apply to universal waste aerosol cans.

(e) A universal waste handler shall manage universal waste aerosol cans in a manner that prevents fire, explosion, and the unauthorized release of any universal waste or component of a universal waste to the environment.

(f) Any container used to accumulate or transport universal waste aerosol cans, or the contents removed from a universal waste aerosol can or processing device, unless the contents have been determined to not be hazardous waste, shall meet all of the following requirements:

(1) (A) Except when waste is added or removed or as provided in subparagraph (B), the container shall be closed, structurally sound, and compatible with the contents of the universal waste aerosol can, and shall show no evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(B) The closed container requirement in subparagraph (A) does not apply to a container used to accumulate universal waste aerosol cans prior to processing the cans pursuant to subdivision (h), or prior to shipping the cans offsite, except that the container shall be covered at the end of each workday.

(2) The container shall be placed in a location that has sufficient ventilation to avoid formation of an explosive atmosphere, and shall be designed, built, and maintained to withstand pressures reasonably expected during storage and transportation.

(3) (A) The container shall be placed on or above a floor or other surface that is free of cracks or gaps and is sufficiently impervious and bermed to contain leaks and spills.

(B) Subparagraph (A) does not apply to a container used to accumulate universal waste aerosol cans prior to processing the cans pursuant to subdivision (h) or prior to shipping the cans offsite.

(4) Incompatible materials shall be kept segregated and managed appropriately in separate containers.

(5) A container holding flammable wastes shall be kept at a safe distance from heat and open flames.

(6) A container used to hold universal waste aerosol cans shall be labeled or marked clearly with one of the following phrases: "Universal Waste-Aerosol Cans", "Waste Aerosol Cans", or "Used Aerosol Cans".

(g) A universal waste handler shall accumulate universal waste aerosol cans in accumulation containers that meet the requirements of subdivision (f). The universal waste aerosol cans shall be accumulated in a manner that is sorted by type and compatibility of contents.

(h) A universal waste handler may process a universal waste aerosol can to remove and collect the contents of the universal waste aerosol can, if the universal waste handler meets all of the following requirements:

(1) The handler is not an offsite commercial processor of aerosol cans. For the purposes of this paragraph, a household hazardous waste collection facility, as defined in subdivision (f) of Section 25218.1, is not an offsite commercial processor.

(2) The handler ensures that the universal waste aerosol can is processed in a manner and in equipment designed, maintained, and operated so as to prevent fire, explosion, and the unauthorized release of any universal waste or component of a universal waste to the environment.

(3) The handler ensures that the unit used to process the universal waste aerosol cans is placed on or above a non earthen floor that is free of cracks or gaps and is sufficiently impervious and bermed to contain leaks and spills.

(4) The handler ensures that the processing operations are performed safely by developing and implementing a written operating procedure detailing the safe processing of universal waste aerosol cans. This procedure shall, at a minimum, include all of the following:

(A) The type of equipment to be used to process the universal waste aerosol cans safely.

(B) Operation and maintenance of the unit.

(C) Segregation of incompatible wastes.

(D) Proper waste management practices, including ensuring that flammable wastes are stored away from heat and open flames.

(E) Waste characterization.

(5) The handler ensures that a spill cleanup kit is readily available to immediately clean up spills or leaks of the contents of the universal waste aerosol can.

(6) The handler immediately transfers the contents of the universal waste aerosol can or processing device, if applicable, to a container that meets the requirements of subdivision (f), and characterizes and manages the contents pursuant to subdivision (i).

(7) The handler ensures that the area in which the universal waste aerosol cans are processed is well ventilated.

(8) The handler ensures, through a training program utilizing the written operating procedures developed pursuant to paragraph (4), that each employee is thoroughly familiar with the procedure for sorting and processing universal waste aerosol cans, and proper waste handling and emergency procedures relevant to his or her responsibilities during normal facility operations and emergencies.

(i) A universal waste handler who processes universal waste aerosol cans to remove the contents of the aerosol can, or who generates other waste as a result of the processing of aerosol cans, shall determine whether the contents of the universal waste aerosol can, residues, or other wastes exhibit a characteristic of hazardous waste identified in Article 3 (commencing with Section 66261.20) of Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations.

(1) If the contents of the universal waste aerosol can, residues, or other wastes exhibit a characteristic of hazardous waste, those wastes shall be managed in compliance with all applicable requirements of this chapter and the regulations adopted by the department pursuant to this chapter. The universal waste handler shall be deemed the generator of that hazardous waste and is subject to the requirements of Chapter 12 (commencing with Section 66262.10) of Division 4.5 of Title 22 of the California Code of Regulations.

(2) If the contents of the universal waste aerosol can, residues, or other wastes are not hazardous, the universal waste handler shall manage those wastes in a manner that is in compliance with all applicable federal, state, and local requirements.

(j) (1) A universal waste handler that processes universal waste aerosol cans shall, no later than the date on which the handler first initiates this activity, submit a notification, in person or by certified mail, with return receipt requested, to either of the following:

(A) The CUPA, if the facility is under the jurisdiction of a CUPA.

(B) If the facility is not under the jurisdiction of a CUPA, the notification shall be submitted to the agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(2) Each notification submitted pursuant to this subdivision shall be completed, dated, and signed according to the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, and shall include, but not be limited to, all of the following information:

(A) The name, identification number, site address, mailing address, and telephone number of the handler.

(B) A description of the universal waste aerosol can processing activities, including the type and eimated volumes or quantities of universal waste aerosol cans to be processed monthly, the treatment process or processes, equipment descriptions, and design capacities.

(C) A description of the characteristics and management of any hazardous treatment residuals.

(3) (A) Within 30 days of any change in operation which necessitates modifying any of the information submitted in the notification required pursuant to this subdivision, the handler shall submit an amended notification, in person or by certified mail, with return receipt requested, to one of the following:

(i) The CUPA, if the facility is under the jurisdiction of a CUPA.

(ii) If the facility is not under the jurisdiction of a CUPA, the notification shall be submitted to the agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(B) Each amended notification shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to hazardous waste facilities permit applications.

(k) In addition to the requirements set forth in Article 4 (commencing with Section 66273.50) of Chapter 23 of Division 4.5 of Title 22 of the California Code of Regulations, during transportation, including holding time at a transfer facility, a transporter of universal waste aerosol cans shall comply with the following requirements:

(1) The transporter shall transport and otherwise manage universal waste aerosol cans in a manner that prevents fire, explosion, and the unauthorized release of any universal waste, or component of a universal waste, into the environment.

(2) Universal waste aerosol cans shall be transported and stored in accumulation containers that are clearly marked or labeled for that use and that meet the requirements of subdivision (f).

(l) The department may adopt regulations specifying any additional requirement or limitation on the management of hazardous waste aerosol cans that the department determines is necessary to protect human health or safety or the environment.

(m) The development and publication of the notification form specified in subdivision (j) is not subject to the requirements described in Chapter 3.5 (commencing with Section 11340) of Part I of Division 3 of Title 2 of the Government Code.

(n) In addition to the requirements set forth in this section, a hazardous waste aerosol can shall be managed in a

manner that meets all requirements established by the United States Environmental Protection Agency.

As added by SB 1158 (Knight), Stats. 2001, c. 450.

25204.6. (a) On or before January 1, 1995, the Secretary for Environmental Protection shall develop a hazardous waste facility regulation and permitting consolidation program, after holding an appropriate number of public hearings throughout the state. The program shall be developed in close consultation with the director and with the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, and with affected businesses and interested members of the public, including environmental organizations.

(b) The hazardous waste facility regulation and permitting consolidation program shall provide for all of the following:

(1) The grant of sole authority to either the department, or the State Water Resources Control Board and the California regional water quality control boards, to implement and enforce the requirements of Article 6 (commencing with Section 66264.90) of Chapter 14 of, and Article 6 (commencing with Section 66265.90) of Chapter 15 of, Division 4.5 of Title 22 of the California Code of Regulations, but not including Section 66264.100 of Title 22 of the California Code of Regulations, and of Article 5 (commencing with Section 2530) of Chapter 15 of Division 3 of Title 23 of the California Code of Regulations, but not including Sections 2550.10, 2550.11, and 2550.12 of those regulations.

(2) The development of a process for ensuring, at each facility which conducts offsite hazardous waste treatment, storage, or disposal activities, or which conducts onsite treatment, storage, or disposal activities which are required to receive a permit under the federal act, and which is required to clean up or abate the effects of a release of a hazardous substance pursuant to Section 13304 of the Water Code, or which is required to take corrective action for a release of hazardous waste or constituents pursuant to Section 25200.10, or both, that sole jurisdiction over the supervision of that action is vested in either the department or the State Water Resources Control Board and the California regional water quality control boards.

(3) The development of a unified hazardous waste facility permit, issued by the department, which incorporates all conditions, limitations, and requirements imposed by the State Water Resources Control Board or the California regional water quality control boards to protect water quality, and incorporate all conditions, limitations, and requirements imposed by the department pursuant to this chapter.

(4) The development of a consolidated enforcement and inspection program designed to ensure effective, efficient, and coordinated enforcement of the laws implemented by the department, the State Water Resources Control Board, and the California regional water quality control boards, as those laws relate to facilities conducting offsite hazardous waste treatment, storage, or disposal activities, and to facilities conducting onsite treatment, storage, and disposal activities which are required to receive a permit under the federal act.

(c) The Secretary for Environmental Protection may immediately implement those aspects of the program which do not require statutory changes. If the Secretary for Environmental Protection determines that statutory changes are needed to fully implement the program, the secretary shall recommend these changes to the Legislature on or before January 1, 1995. It is the intent of the Legislature that the program be fully implemented not later than January 1, 1996.

(d) The Secretary for Environmental Protection shall work in close consultation with the Environmental Protection Agency, and shall implement this section only to the extent that doing so will not result in this state losing its authorization to implement the federal act, or its delegation to implement the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

As added by SB 1082 (Calderon), Stats. 1993, c. 418, and amended by SB 1191 (Calderon), Stats. 1995, c. 639.

25205. (a) Except as provided in Section 25245.5, the department shall not issue or renew a permit to operate a hazardous waste facility unless the owner or operator of the facility establishes and maintains the financial assurances required pursuant to Article 12 (commencing with Section 25245).

(b) The grant of interim status of a facility, or any portion thereof, that is operating under a grant of interim status pursuant to Section 25200.5, based on the facility having been in existence on November 19, 1980, shall terminate on July 1, 1997, unless the department certifies, on or before July 1, 1997, that the facility is in compliance with the financial assurance requirements of Article 12 (commencing with Section 25245) for a facility in operation since November 19, 1980, for all units, tanks, and equipment for which the facility has authorization to operate pursuant to its grant of interim status.

As added by SB 95 (Presley), Stats. 1982, c. 90, and amended by AB 4636 (Quackenbush), Stats, 1988, c. 1631, and AB 646 (Wright), Stats. 1991, c. 1125, and SB 1706 (Wright), Stats. 1996, c. 962.

ARTICLE 9. FACILITIES AND GENERATOR FEES

25205.1. For purposes of this article, the following definitions apply:

(a) "Board" means the State Board of Equalization.

(b) "Facility" means any units or other structures, and all contiguous land, used for the treatment, storage, disposal, or recycling of hazardous waste, for which a permit or a grant of interim status has been issued by the department for that activity pursuant to Article 9 (commencing with Section 25200).

(c) "Large storage facility," in those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a storage facility with capacity to store 1,000 or more tons of hazardous waste. In those cases in which it is not so provided, "large storage facility" means a storage facility that stores 1,000 or more tons of hazardous waste during any one month

of the current reporting period commencing on or after July 1, 1991.

(d) "Large treatment facility," in those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle 1,000 or more tons of hazardous waste. In those cases in which it is not so provided, "large treatment facility" means a treatment facility that treats, land treats, or recycles 1,000 or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(e) "Generator" means a person who generates hazardous waste at an individual site commencing on or after July 1, 1988. A generator includes, but is not limited to, a person who is identified on a manifest as the generator and whose identification number is listed on that manifest, if that identifying information was provided by that person or by an agent or employee of that person.

(f) "Ministorage facility," in those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a storage facility with capacity to store 0.5 tons (1,000 pounds) or less of hazardous waste.

In those cases in which it is not so provided, "ministorage facility" means a storage facility that stores 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(g) "Minitreatment facility," in those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle 0.5 tons (1,000 pounds) or less of hazardous waste. In those cases in which it is not so provided, "minitreatment facility, means a treatment facility that treats, land treats, or recycles 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(h) "Site" means the location of an operation that generates hazardous wastes and is noncontiguous to any other location of these operations owned by the generator.

(i) "Small storage facility," in those cases in which total storage capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a storage facility with capacity to store more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste. In those cases in which it is not so provided, "small storage facility" means a storage facility that stores more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991.

(j) "Small treatment facility," in those cases in which total treatment capacity is provided in a permit, interim status document, or federal Part A application for the facility, means a treatment facility with capacity to treat, land treat, or recycle more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste. In those cases in which this is not provided, "small treatment facility" means a treatment facility that treats, land treats, or recycles more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any month of the current reporting period commencing on or after July 1, 1991.

(k) "Unit" means a hazardous waste management unit, as defined in regulations adopted by the department. If an area is designated as a hazardous waste management unit in a permit, it shall be conclusively presumed that the area is a "unit."

(l) "Class 1 modification," "class 2 modification," and "class 3 modification" have the meanings provided in regulations adopted by the department.

(m) "Hazardous waste" has the meaning provided in Section 25117. The total tonnage of hazardous waste, unless otherwise provided by law, includes the hazardous substance as well as any soil or other substance that is commingled with the hazardous substance.

(n) "Land treat" means to apply hazardous waste onto or incorporate it into the soil surface for the sole and express purpose of degrading, transforming, or immobilizing the hazardous constituents.

(o) "Treatment," "storage," and "disposal" mean only that treatment, storage, or disposal of hazardous waste engaged in at a facility pursuant to a permit or grant of interim status issued by the department pursuant to Article 9 (commencing with Section 25200). Treatment, storage, or disposal that does not require this permit or grant of interim status shall not be considered treatment, storage, or disposal for purposes of this article.

(1) "Disposal" includes only the placement of hazardous waste onto or into the ground for permanent disposition and does not include the placement of hazardous waste in surface impoundments, as defined in regulations adopted by the department, or the placement of hazardous waste onto or into the ground solely for purposes of land treatment.

(2) "Storage" does not include the ongoing presence of hazardous wastes in the ground or in surface impoundments after the facility has permanently discontinued accepting new hazardous wastes for placement into the ground or into surface impoundments.

As added by AB 3513 (Killea), Stats. 1984, c. 960, and repealed and added by AB 4283 (Wright), Stats. 1986, c. 1506, and amended by AB 1308 (Wright), Stats. 1987, c. 1417, and SB 194 (Torres), Stats. 1991, c. 1123, and AB 646 (Wright), Stats. 1991, c. 1125, and SB 1469 (Calderon), Stats. 1992, c. 852, and SB 1091 (Killea), Stats. 1993, c. 913, and SB 922 (Calderon), Stats. 1993, c. 1145 and SB 1852 (Committee on Judiciary), Stats. 2006, c. 538.

25205.2. (a) Except as provided in subdivisions (c) and (h), in addition to the fees specified in Section 25174.1, each operator of a facility shall pay a facility fee for each reporting period, or any portion thereof, to the board based on the size and type of the facility, as specified in Section 25205.4. On or before January 31of each calendar year, the department annually shall notify the board of all known facility operators by facility type and size. The department shall also notify the board of any operator who is issued a permit or grant of

interim status within 30 days from the date that a permit or grant of interim status is issued to the operator. The fee specified in this section does not apply to facilities exempted pursuant to Section 5205.12.

(b) The board shall deposit all fees collected pursuant to subdivision (a) in the Hazardous Waste Control Account in the General Fund. The fees so deposited may be expended by the department, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25174.

(c) Notwithstanding subdivision (a), a person who is issued a variance by the department from the requirement of obtaining a hazardous waste facilities permit or grant of interim status is not subject to the fee, for any reporting period following the reporting period in which the variance was granted by the department.

(d) Operators subject to facility fee liability pursuant to this section shall pay the following amounts:

(1) The operator shall pay the applicable facility fee for each reporting period in which the facility actually engaged in the treatment, storage, or disposal of hazardous waste.

(2) The operator shall pay the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in that treatment or storage. For the 1994 reporting period and thereafter, the facility's size for that additional reporting period shall be deemed to be the largest size at which the facility has ever been subject to the fee. If the department previously approved a unit or portion of the facility for a variance, closure, or permit-by-rule, the facility's size for that reporting period shall be deemed to be its largest size since the department granted the approval.

(3) The operator of a disposal facility shall pay twice the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in disposal of hazardous waste.

(4) For the 1994 reporting period and thereafter, a facility shall not be deemed to have stopped treating, storing, or disposing of hazardous waste unless it has actually ceased that activity and has notified the department of its intent to close.

(5) If the reporting period which immediately followed the final reporting period in which a facility actually engaged in the treatment, storage, or disposal of the hazardous waste was the six-month period from July 1, 1991, through December 31, 1991, the operator shall be subject to twice the fee otherwise applicable to that operator for that reporting period under paragraphs (2) and (3).

(e) No facility shall be subject to a facility fee for treatment, storage, or disposal, if that activity ceased before July 1, 1986, and if the fee for the activity was not paid prior to January 1, 1994.

(f) Notwithstanding any other provision of this section, a person who ceased actual treatment, storage, or disposal of hazardous waste, whether generated onsite or received from offsite, before July 1, 1986, and who paid facility fees for any reporting period after that date pursuant to a decision of the State Board of Equalization, and who filed a claim for refund of those fees on or before January 1, 1994, shall be entitled to a refund of those amounts.

(g) Facility operators who treated, stored, or disposed of hazardous waste on or after July 1, 1986, shall be subject to the provisions of this section which were in effect prior to January 1, 1994, as to payments which their operators made prior to January 1, 1994. The operators shall be subject to subdivision (d) as to any other liability for the facility fee.

(h) A treatment facility is not subject to the facility fee established pursuant to this section, if the facility engages in treatment exclusively to accomplish a removal or remedial action or a corrective action in accordance with an order issued by the Environmental Protection Agency pursuant to the federal act or in accordance with an order issued by the department pursuant to Section 25187, if the facility was put in operation solely for purposes of complying with that order. The department shall instead assess a fee for that facility for the actual time spent by the department for the inspection and oversight of that facility. The department shall base the fee on the department's work standards and shall assess the fee on an hourly basis.

(i) Notwithstanding subdivision (a), a facility operating pursuant to a standardized permit or grant of interim status, as specified in Section 25201.6, shall receive a credit for the annual facility fee imposed by this section for a period of time equal to the number of years that the facility lawfully operated prior to September 21, 1993, pursuant to a hazardous waste facilities permit or other grant of authorization and paid facility fees for the operation of the facility pursuant to this section.

As added by AB 4283 (Wright), Stats. 1986, c. 1506, and amended by SB 194 (Torres), Stats. 1991, c. 1123, and AB 646 (Wright), Stats. 1991, c. 1125, and SB 1091 (Killea), Stats. 1993, c. 913, and SB 922 (Calderon), Stats. 1993, c. 1145, and AB 3629 (Karnette), Stats. 1994, c. 1223, and SB 1532 (Wright), Stats. 1996, c. 259.

25205.5. (a) In addition to the fee imposed pursuant to Section 25174.1, every generator of hazardous waste, in the amounts specified in subdivision (c), shall pay the board a generator fee for each generator site for each calendar year, or portion thereof, unless the generator has paid a facility fee or received a credit, as specified in Section 25205.2, for each specific site, for the calendar year for which the generator fee is due.

(b) The base fee rate for the fee imposed pursuant to subdivision (a) is two thousand seven hundred forty-eight dollars ($2,748).

(c) (1) Each generator who generates an amount equal to, or more than, five tons, but less than 25 tons, of hazardous waste during the prior calendar year shall pay 5 percent of the base rate.

(2) Each generator who generates an amount equal to, or more than, 25 tons, but less than 50 tons, of hazardous waste during the prior calendar year shall pay 40 percent of the base rate.

(3) Each generator who generates an amount equal to, or more than, 50 tons, but less than 250 tons, of hazardous waste during the prior calendar year shall pay the base rate.

(4) Each generator who generates an amount equal to, or more than, 250 tons, but less than 500 tons, of hazardous waste during the prior calendar year shall pay five times the base rate.

(5) Each generator who generates an amount equal to, or more than, 500 tons, but less than 1,000 tons, of hazardous waste during the prior calendar year shall pay 10 times the base rate.

(6) Each generator who generates an amount equal to, or more than, 1,000 tons, but less than 2,000 tons, of hazardous waste during the prior calendar year shall pay 15 times the base rate.

(7) Each generator who generates an amount equal to, or more than, 2,000 tons of hazardous waste during the prior calendar year shall pay 20 times the base rate.

(d) The base rate established pursuant to subdivision (b) was the base rate for the 1997 calendar year and the board shall adjust the base rate annually to reflect increases or decreases in the cost of living, during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.

(e) The establishment of the annual operating fee pursuant to this section is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The following materials are not hazardous wastes for purposes of this section:

(1) Hazardous materials which are recycled, and used onsite, and are not transferred offsite.

(2) Aqueous waste treated in a treatment unit operating, or which subsequently operates, pursuant to a permit-by-rule, or pursuant to Section 25200.3 or 25201.5. However, hazardous waste generated by a treatment unit treating waste pursuant to a permit-by-rule, by a unit which subsequently obtains a permit-by-rule, or other authorization pursuant to Section 25200.3 or 25201.5 is hazardous waste for purposes of this section.

(g) The fee imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(h) (1) A generator who pays a hazardous waste generator inspection fee to a certified unified program agency, which is imposed as part of a single fee system and fee accountability program that are both in compliance with the requirements of Section 25404.5, shall be eligible for a refund of all, or part of, the generator fee paid pursuant to subdivision (a) if both of the following conditions apply:

(A) The generator received a credit pursuant to Section 43152.7 or 43152.11 of the Revenue and Taxation Code for fees paid for hazardous waste generated in 1996.

(B) The department certifies, pursuant to subdivision (b) of Section 25205.9, that funds are available to pay all or part of the refund.

(2) A generator who is eligible for a refund pursuant to paragraph (1) shall submit an application for that refund to the board by September 30 following the fiscal year during which the generator paid the generator fee pursuant to subdivision (a). An application for a refund postmarked after September 30 is void, shall not be processed by the board, and shall be returned to the applicant.

(i) (1) A generator who transfers hazardous materials to an offsite facility for recycling at that offsite facility or another offsite facility shall be eligible for a refund of all, or part of, the generator fee paid pursuant to subdivision (a) if all of the following conditions apply:

(A) The offsite facility to which the hazardous materials are manifested pays a facility fee pursuant to Section 25205.2.

(B) The amount of hazardous materials transferred to the offsite facility and recycled there, when deducted from the total tonnage of hazardous waste generated at the generator's site, results in the generator becoming eligible for a generator fee that is lower than the fee paid pursuant to subdivision (a).

(C) The hazardous materials transferred to the offsite facility are not burned in a boiler, industrial furnace, or an incinerator, as those terms are defined in Section 260.10 of Title 40 of the Code of Federal Regulations, used in a manner constituting disposal, or used to produce products that are applied to land.

(D) The department certifies, pursuant to subdivision (b) of Section 25205.9, that funds are available to pay all or part of the refund.

(2) A generator who is eligible for a refund pursuant to paragraph (1) shall submit an application for that refund to the board by September 30 following the fiscal year during which the generator paid the generator fee pursuant to subdivision (a). An application for a refund postmarked after September 30 is void, shall not be processed by the board, and shall be returned to the applicant.

(j) (1) The amendment of this section made by Chapter 1125 of the Statutes of 1991 does not constitute a change in, but is declaratory of, existing law.

(2) The amendment of subdivision (a) of this section made by Chapter 259 of the Statutes of 1996 does not constitute a change in, but is declaratory of, existing law.

As added by AB 4283 (Wright), Stats. 1986, c. 1506, and amended by SB 194 (Torres), Stats. 1991, c. 1123, and AB 646 (Wright), Stats. 1991, c. 1125, and AB 1772 (Polanco), Stats. 1992, c. 1345, and SB 922 (Calderon), Stats. 1993, c. 1145, and AB 1964 (Figueroa), Stats. 1995, c. 630, and SB 1532 (Wright), Stats. 1996, c. 259, and SB 660 (Sher), Stats.1997, c. 870, and SB 2014 (Schiff), Stats. 1998, c. 737, and SB 1185 (Senate Revenue and Taxation Committee), Stats. 2001, c. 543.

25205.5.1. Notwithstanding Sections 25174.1 and 25205.5, the department may adopt regulations exempting victims of disasters from the hazardous waste disposal fee imposed pursuant to Section 25174.1 and the generator fee imposed pursuant to Section 25205.5. The regulations may allow that exemption if all of the following apply:

(a) The hazardous waste is generated in a geographical area identified in a state of emergency proclamation by the Governor pursuant to Section 8625 of the Government Code because of fire, flood, storm, earthquake, riot, or civil unrest.

(b) The hazardous waste is generated when property owned or controlled by the victim is damaged or destroyed as a result of the disaster.

(c) The hazardous waste is not hazardous waste that is routinely produced as part of a manufacturing or commercial business or that is managed by a hazardous waste facility or a facility operated by a generator of hazardous waste who files a hazardous waste notification statement with the department pursuant to subdivision (a) of Section 25158.

(d) The victim meets any other condition or limitation on eligibility specified by the department.

As added by AB 645 (Frusetta), Stats. 1996, c. 688.

25205.8. REPEALED.

As added by Stats. 1989, c. 269, and amended by Stats. 1989, c. 1032, and AB 604 (Kelley), Stats. 1991, c. 1122, and AB 1964 (Figueroa), Stats. 1995, c. 630, and repealed by SB 660 (Sher), Stats. 1997, c. 870.

25205.9. (a) On or before June 30 of each year, the department shall determine if there are surplus funds in the Hazardous Waste Control Account and shall, upon appropriation by the Legislature, allocate these surplus funds to pay refunds in the following order of priority:

(1) To pay refunds to generators pursuant to subdivision (c).

(2) To pay refunds to generators pursuant to subdivision (d). However, the department shall not pay refunds pursuant to subdivision (d) until all applications for refunds pursuant to subdivision (c) have first been paid.

(b) The department shall certify the amount of the surplus in the Hazardous Waste Control Account to the board and shall direct the board to pay refunds to generators pursuant to subdivisions (c) and (d) to the extent funds permit. If funds are not sufficient to pay all the refunds for which the board receives applications pursuant to subdivision (h) of Section 25205.5, the department shall direct the board to pay refunds pursuant to subdivision (c) on a pro rata basis. If funds are sufficient to pay all refunds for which applications are received pursuant to subdivision (h) of Section 25205.5 but not sufficient to pay all refunds for which applications were received by the board pursuant to subdivision (i) of Section 25205.5, the department shall direct the board to pay refunds pursuant to subdivision (d) on a pro rata basis.

(c) (1) If the department certifies that there are sufficient funds to do so, the board shall issue refunds, in the manner directed by the department pursuant to subdivision (b), to hazardous waste generators who are eligible for refunds pursuant to paragraph (1) of subdivision (h) of Section 25205.5.

(2) The refund made to a generator pursuant to this subdivision shall not exceed the fee paid by the generator pursuant to Section 25205.5, or exceed the hazardous waste generator inspection fee paid to the certified unified program agency for the previous calendar year, whichever is less.

(3) The board may issue refunds pursuant to this section only if the department certifies, pursuant to subdivision (b), that funds for these refunds are available.

(d) (1) If the department certifies that there are sufficient funds to do so, the board shall issue refunds, in the manner directed by the department pursuant to subdivision (b), to hazardous waste generators who are eligible for refunds pursuant to paragraph (1) of subdivision (i) of Section 25205.5.

(2) The refund made to a generator pursuant to this subdivision shall be equal to the difference between the amount of the generator fee paid by the generator pursuant to Section 25205.5 and the amount the generator would have paid if the amount of hazardous materials transferred to an offsite facility for recycling had been deducted from the total tonnage of hazardous waste generated at the generator's site. However, if a generator receives a refund pursuant to subdivision (c), the generator may not receive a refund pursuant to this subdivision that exceeds the difference between the amount of the generator fee paid pursuant to Section 25205.5 and the amount of the refund received pursuant to subdivision (c).

(3) The board may issue refunds pursuant to this subdivision only if the department certifies, pursuant to subdivision (b), that funds for these refunds are available.

(e) For purposes of this section, "surplus" means the amount in the Hazardous Waste Control Account on June 30

of each year that is in excess of the reserve required by subdivision (k) of Section 25174.

As added by AB 2794 (Wright), Stats. 1990, c. 1267, and amended by AB 604 (Kelley), c. 1122, and AB 1964 (Figueroa), Stats. 1995, c. 630, and repealed by SB 660 (Sher), Stats. 1997, c. 870, and added by SB 2014 (Schiff), Stats. 1998, c. 737, and amended by SB 1231 (Senate Revenue and Taxation Committee), Stats. 1999, c. 941.

25205.13. (a) Notwithstanding any other provision of law or regulation, for the 1993 reporting period, the deadline for submitting permit-by-rule fixed treatment unit facility-specific notifications and unit-specific notifications is April 1, 1993, or 60 days prior to commencing the first treatment of that waste, whichever date is later.

(b) The development and publication of the notification form for a fixed or transportable treatment unit operating pursuant to a permit-by-rule, as specified in subdivisions (a) and (b) of Section 67450.2 of Title 22 of the California Code of Regulations, is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

(c) A facility or transportable treatment unit operating pursuant to a permit-by-rule shall provide the following information with the notifications required pursuant to subdivisions (a) and (b) of Section 67450.2 of Title 22 of the California Code of Regulations:

(1) The basis for determining that a hazardous waste facility permit is not required under the federal act.

(2) Documentation of any convictions, judgments, settlements, or orders resulting from an action by any local, state, or federal environmental or public health enforcement agency concerning the operation of the facility within the last three years, as the documents would be available under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code or the Information Practices Act of 1977 (Chapter 1

(commencing with Section 1798) of Title 1.8 of Part 4 of the Civil Code.

(3) A waste minimization certificate, as specified in Section 25202.9.

(d) The facility or transportable treatment unit operating pursuant to a permit-by-rule shall treat only waste which is generated onsite.

As added by AB 646 (Wright), Stats. 1991, c. 1125, and repealed and added by AB 1772 (Polanco), Stats. 1992, c. 1345, and amended by SB 28 (Wright), Stats. 1993, c. 411.

25205.14. (a) Except as provided in Section 25404.5, the owner or operator of a facility or transportable treatment unit operating pursuant to a permit-by-rule shall pay a fee to the board per facility or transportable treatment unit for each reporting period, or portion thereof. The fee for the 1997 reporting period shall be nine hundred fifty-eight dollars ($958). Until July 1, 1998, the owner or operator of a facility or transportable treatment unit operating pursuant to a permit-by-rule shall also pay a fee in the amount of 50 percent of the fee specified in this subdivision for each modification of the notification required by Sections 67450.2 and 67450.3 of Title 22 of the California Code of Regulations, as those sections read on January 1, 1995, or as those sections may subsequently be amended. Thereafter, the fee shall be adjusted annually by the board to reflect increases and decreases in the cost of living, as measured by the Consumer Price Index issued by the Department of Industrial Relations or a successor agency. The reporting period shall begin January 1 of each calendar year. On or before January 31 of each calendar year, the department shall notify the board of all known owners or operators operating pursuant to a permit-by-rule who are not exempted from this fee pursuant to Section 25404.5. The department shall also notify the board of any owner or operator authorized to operate pursuant to a permit-by-rule, who is not exempted from this fee pursuant to Section 25404.5, within 60 days after the owner or operator is authorized.

(b) Except as provided in Section 25404.5, a generator operating under a grant of conditional authorization pursuant to Section 25200.3 shall pay a fee to the board per facility for each reporting period, or portion thereof, unless the generator is subject to a fee under a permit-by-rule. The fee for the 1997 reporting period shall be nine hundred fifty-eight dollars ($958). Thereafter, the fee shall be adjusted annually by the board to reflect increases and decreases in the cost of living, during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or a successor agency. The reporting period shall begin January 1 of each calendar year. On or before January 31 of each calendar year, the department shall notify the board of all known generators operating pursuant to a grant of conditional authorization under Section 25200.3 who are not exempted from this fee pursuant to Section 25404.5. The department shall also notify the board of any generator authorized to operate under a grant of conditional authorization, who is not exempted from this fee pursuant to Section 25404.5, within 60 days of the receipt of notification.

(c) Except as provided in Section 25404.5, a generator performing treatment conditionally exempted pursuant to Section 25144.6 or subdivision (a) or (c) of Section 25201.5 shall pay thirty-eight dollars ($38) to the board per facility for each reporting period, unless that generator is subject to a fee under a permit-by-rule or a conditional authorization pursuant to Section 25200.3. Until July 1, 1998, a generator performing treatment conditionally exempted pursuant to Section 25144.6 or subdivision (a) or (c) of Section 25201.5 shall pay one hundred dollars ($100) to the board per facility for the initial operating period, or portion thereof, unless that generator is subject to a fee under a permit-by-rule or a conditional authorization pursuant to Section 25200.3. The reporting period shall begin January 1 of each calendar year. On or before January 31 of each calendar year, the department shall notify the board of all known facilities performing treatment conditionally exempted by Section 25144.6 or subdivision (a) or (c) of Section 25201.5 who are not exempted from this fee pursuant to Section 25404.5. The department shall also notify the board of any generator who notifies the department that the generator is conducting a conditionally exempt treatment operation, and who is not exempted from this fee pursuant to Section 25404.5, within 60 days of the receipt of the notification.

(d) The fees imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

As added by AB 1772 (Polanco), Stats. 1992, c. 1345, and amended by SB 28 (Wright), Stats. 1993, c. 411, and SB 419 (Wright), Stats. 1993, c. 912, and SB 927 (Wright), Stats. 1994, c. 914, and AB 3082 (Alpert), Stats. 1994, c. 1151, and AB 1964 (Figueroa), Stats. 1995, c. 630, and SB 1191 (Calderon), Stats. 1995, c. 639, and SB 1291 (Wright), Stats. 1995, c. 640, and SB 1839 (Senate Revenue and Taxation Committee), Stats. 1996, c. 226, and SB 660 (Sher), Stats. 1997, c. 870.

ARTICLE 9. 4. BANNED, UNREGISTERED, OR OUTDATED AGRICULTURAL WASTES

25207. The Legislature finds and declares all of the following:

(a) Small agriculture-related operations need an appropriate and economic means of disposing of banned, unregistered, or outdated agricultural wastes.

(b) An awareness of the problems caused by agricultural wastes has increased as information has become available from the planning process for county hazardous waste management plans conducted pursuant to Article 3.5 (commencing with Section 25135).

(c) Banned, unregistered, or outdated agricultural wastes are located in rural areas.

(d) The abandonment or illegal disposal of these agricultural wastes is a threat to water supplies and wildlife habitat.

As added by AB 563 (Hannigan), Stats. 1990, c. 1173, and amended by AB 2292 (Hannigan), Stats. 1992, c. 591.

25207.1. For purposes of this article, the following definitions apply:

(a) "Banned or unregistered agricultural waste" means a hazardous waste, as defined in Section 25117, including an extremely hazardous waste, containing an economic poison for which the Administrator of the Environmental Protection Agency has canceled or suspended its registration after purchase pursuant to Part 164 (commencing with Section 164.1) of Subchapter E of Chapter 1 of Title 40 of the Code of Federal Regulations, or for which the Director of Pesticide Regulation has canceled or suspended its registration after purchase pursuant to Section 12825, 12826, 12827, or 12827.5 of the Food and Agricultural Code.

(b) "Economic Poison" means an economic poison, as defined in Section 12753 of the Food and Agricultural Code.

(c) "Eligible participant" means any of the following:

(1) Any person who stores not more than 500 kilograms of banned, unregistered, or outdated agricultural wastes and operates any of the following:

(A) A farm for the purpose of cultivating the soil or raising any agricultural or horticultural commodity.

(B) An agricultural pest control business.

(C) An agricultural pesticide dealership.

(D) A park, cemetery, or golf course.

(2) A governmental agency which performs pest control work and stores not more than 500 kilograms of banned, unregistered, or outdated agricultural wastes.

(3) A business concern which primarily conducts operations relating to agriculture and stores not more than 500 kilograms of banned, unregistered, or outdated agricultural wastes.

(d) "Outdated agricultural waste" means an economic poison which can be classified as a retrograde material, as defined in Section 25121.5.

(e) "Registrant" has the same meaning as defined in Section 12755 of the Food and Agricultural Code.

As added by AB 563 (Hannigan), Stats. 1990, c. 1173, and amended by AB 2292 (Hannigan), Stats. 1992, c. 591.

25207.13. For purposes of complying with the manifest requirements of subdivision (b) of Section 25160, a county which collects banned, unregistered, or outdated agricultural wastes pursuant to this article shall be deemed to be the person who produced the hazardous waste, if the banned, unregistered, or outdated agricultural wastes collected by the county is labeled and no remedial or removal action is required.

As added by AB 563 (Hannigan), Stats. 1990, c. 1173, and amended by AB 2292 (Hannigan), Stats. 1992, c. 591, and repealed, amended, and renumbered by AB 562 (Hannigan), Stats. 1993, c. 989.

ARTICLE 10.1. MANAGEMENT OF HAZARDOUS WASTES REMOVED FROM DISCARDED APPLIANCES

(Article 10.1 as added by AB 847 (Wayne), Stats. 1997, c. 884)

25211. For purposes of this article, the following terms have the following meaning:

(a) "Certified appliance recycler" means a person or entity engaged in the business of removing and properly managing materials that require special handling from discarded major appliances, and who is certified pursuant to Section 25211.4, and does not include a person described in subdivision (b) of Section 25211.2.

(b) "CUPA" means a certified unified program agency, as defined in subdivision (b) of Section 25123.7.

(c) "Major appliance" has the same meaning as defined in Section 42166 of the Public Resources Code.

(d) "Materials that require special handling" has the same meaning as defined in Section 42167 of the Public Resources Code.

(e) "Scrap recycling facility" means a facility where machinery and equipment are used for processing and manufacturing scrap metal into prepared grades and whose principal product is scrap iron or nonferrous metallic scrap for sale for remelting purposes. A scrap recycling facility includes, but is not limited to, a feeder yard, a metal shredding facility, a metal crusher, and a metal baler.

As added by AB 847 (Wayne), Stats. 1997, c. 884, and amended by AB 2277 (Dymally), Stats. 2004, c. 880.

25211.1. On and after January 1, 2006, no person other than a certified appliance recycler shall do either of the following:

(a) Remove materials that require special handling from major appliances pursuant to subdivision (a) of Section 25212.

(b) Transport, deliver, or sell discarded major appliances to a scrap recycling facility, except as provided in subdivision (b) of Section 25211.2.

As added by AB 2277 (Dymally), Stats. 2004, c. 880.

25211.2. (a) On and after January 1, 2006, except as provided in subdivision (b), a person who transports, delivers, or sells discarded major appliances to a scrap recycling facility shall provide evidence that he or she is a certified appliance recycler and shall certify, on a form prepared by the department and provided to the facility at the time of the transaction, that all materials that require special handling have been removed from the appliances pursuant to subdivision (a) of Section 25212. Information on the form shall include, but not be limited to, the appliance recycler certificate number, the appliance recycler's hazardous waste generator identification number, the number and types of appliances included in the shipment, and the facilities to which the materials that require special handling that were removed from the appliances were sent or are to be sent.

(b) A person who is not a certified appliance recycler may transport, deliver, or sell discarded major appliances to a scrap recycling facility only if the condition specified in paragraph (1) or (2) is met:

(1) (A) The appliances have not been crushed, baled, shredded, sawed or sheared apart, or otherwise processed in such a manner that could result in the release, or prevent the removal, of materials that require special handling.

(B) The scrap recycling facility is a certified appliance recycler.

(2) (A) The appliances have been crushed, baled, shredded, or sawed or sheared apart.

(B) The person provides the scrap recycling facility written evidence from a certified appliance recycler, as required in subdivision (a), that all materials that require special handling were removed from the appliances in compliance with subdivision (a) of Section 25212.

(c) On and after January 1, 2006, except as provided in subdivision (b), a scrap recycling facility shall not accept a discarded major appliance from a person who is not a certified appliance recycler.

As added by AB 2277 (Dymally), Stats. 2004, c. 880.

25211.3. A certified appliance recycler, and any person who is not a certified appliance recycler who is subject to subdivision (b) or (c) of Section 25211.2, shall retain onsite records demonstrating compliance with applicable requirements of this article and Section 42175 of the Public Resources Code. The records shall be retained for three years and shall be made available for inspection, upon the request of a representative of the department or a CUPA. The records shall be retained, after that three-year period, during the course of an unresolved enforcement action or as requested by the department or CUPA. The records shall include, but not be limited to, all of the following information:

(a) The amount, by volume or weight or both, as determined by the department, of each material that required special handling.

(b) The method used by the appliance recycler to recycle, dispose of, or otherwise manage each material that required special handling, including the name and address of the facility to which each material was sent.

As added by AB 2277 (Dymally), Stats. 2004, c. 880.

25211.4. (a) On and after July 1, 2005, a person wishing to operate as a certified appliance recycler shall submit an application to the department and obtain certification from the department pursuant to this section. On or before May 1, 2005, the department shall make available on its Web site an application for certification as a certified appliance recycler that includes all of the following:

(1) The business name under which the appliance recycler operates, and the business owner's name, address, and telephone number.

(2) A hazardous waste generator identification number issued by the department pursuant to this chapter.

(3) A statement indicating that the applicant has either filed an application for a stormwater permit or is not required to obtain a stormwater permit.

(4) A statement indicating that the applicant has either filed a hazardous materials business plan or is not required to file the plan.

(5) The tax identification number assigned by the Franchise Tax Board.

(6) A copy of a business license and any conditional use permits issues by the appropriate city or county.

(7) A description of the ability of the applicant to properly remove and manage all materials that require special handling, including, but not limited to, a technical description of all equipment used in removing and managing the materials and the training provided to personnel engaged in the removal and managing of the materials.

(8) Any other information that the department may determine to be necessary to carry out this article.

(b) A person wishing to operate as a certified appliance recycler shall submit to the department, under penalty of perjury, the information required pursuant to subdivision (a). The department shall review the application for completeness and, upon determining that the application is complete and meets the requirements of this section, shall issue a numbered certificate to the applicant. The department shall notify an applicant whose application fails to meet the requirements for certification of the reason why the department denied the certification. The department may revoke or suspend a certification issued pursuant to this section, in accordance with the procedures specified in Sections 25186.1 and 25186.2, for any of the grounds specified in Section 25186.

(c) The certificate issued by the department shall include the issuance date and the expiration date, which shall be three years after the issuance date. A person whose certification has expired, and who has not applied for and obtained a new current certification, is no longer a certified appliance recycler and may no longer operate as a certified appliance recycler.

(d) Upon issuance of a certificate, the department shall transmit the application and certification of the certified appliance recycler to the certified uniform program agency in whose jurisdiction the person is located, which shall, as soon as is practicable, inspect the certified appliance recycling facility to determine whether the recycler is capable of properly removing and managing materials that require special handling from major appliances. In making the determination, the certified uniform program agency shall consider various factors, including, but not limited to, the working condition of equipment used to remove the materials, the technical ability of employees of the business to operate the equipment proficiently, and the facility's compliance with existing applicable laws.

As added by AB 2277 (Dymally), Stats. 2004, c. 880.

25211.5. The department may adopt any regulations determined necessary to implement and enforce this article.

As added by AB 2277 (Dymally), Stats. 2004, c. 880.

25212. (a) Materials that require special handling that are contained in major appliances shall not be disposed of at a solid waste facility and shall be removed from major appliances in which they are contained prior to the appliance being crushed, baled, shredded, sawed or sheared apart, disposed of, or otherwise processed in a manner that could result in the release or prevent the removal of materials that require special handling.

(b) A person who, pursuant to subdivision (a), removes from a major appliance any material that requires special handling, that is a hazardous waste under this chapter, is a hazardous waste generator and shall comply with all provisions of this chapter applicable to generators of hazardous waste.

(c) All materials that require special handling that have been removed from a major appliance pursuant to subdivision (a), and that are hazardous wastes, shall be managed in accordance with this chapter.

(d) A person who fails to comply with subdivision (a) is in violation of this chapter.

(e) (1) The department or a local health officer or other public officer authorized pursuant to Article 8 (commencing with Section 25180), including, when applicable, a certified unified program agency (CUPA) or a unified program agency within the jurisdiction of a CUPA, shall incorporate both of the following into the existing inspection and enforcement activities of the department or the local health officer or other public officer:

(A) The regulation of materials that require special handling that, when removed from a major appliance, is hazardous waste.

(B) The enforcement of subdivision (a).

(2) The department, local health officers, or other public officers shall coordinate their activities as needed to identify and regulate materials that require special handling that, when removed from major appliances, are hazardous wastes that are transported from one jurisdiction to another.

As added by AB 847 (Wayne), Stats. 1997, c. 884, and amended by SB 633 (Sher), Stats. 2001, c. 656, and AB 2277 (Dymally), Stats. 2004, c.880.

25213. (a) To implement subdivision (c) of Section 25212, the department shall, based on reasonably available information, develop a statewide list of appliance recyclers, used appliance dealers, solid waste facilities, metal scrapyards, and others who may remove, or do business with those who remove, from major appliances, materials that require special handling. The department shall notify persons on the list of the requirements of this chapter and the steps that will be required to be taken to comply with this chapter.

(b) The department shall transmit a copy of the Appliance Recycling Guide, published by the California Integrated Waste Management Board, and any other materials determined to be necessary by the department to ensure compliance with this chapter, to the following persons and agencies:

(1) Persons who apply for a generator identification number indicating that they are involved with any activities regulated pursuant to this article.

(2) The local officers and agencies authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.

(c) The department shall transmit the generator identification number of any person identified pursuant to paragraph (1) of subdivision (b) and the statewide list developed pursuant to subdivision (a) to the appropriate local officers and agencies authorized to enforce this chapter pursuant to subdivision (a) of Section 25180.

As added by AB 847 (Wayne), Stats. 1997, c. 884.

25214. The department shall make information available upon request regarding the implementation of this article, including, but not limited to, the list of persons notified pursuant to subdivision (a) of Section 25213, the list of persons identified pursuant to paragraph (1) of subdivision (b) of Section 25213, information on inspection and enforcement, and other information pertaining to the record of compliance with this article, subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

As added by AB 847 (Wayne), Stats. 1997, c. 884.

ARTICLE 10.2. MOTOR VEHICLE SWITCHES

(Article 10.2 as added by SB 633 (Sher), Stats. 2001, c. 656)

25214.5. For purposes of this article, "mercury-containing motor vehicle light switch" means any motor vehicle light switch found in the hood or trunk of a motor vehicle that contains mercury.

As added by SB 633 (Sher), Stats. 2001, c 656.

25214.6. Any mercury-containing motor vehicle light switch removed from a motor vehicle is subject to Chapter 23 (commencing with Section 66273.1) of Division 4.5 of Title 22 of the California Code of Regulations, and any other applicable regulation adopted by the department pursuant to this chapter, including, but not limited to, standards for the handling of hazardous waste, standards for destination facilities, requirements for the tracking of universal waste shipments, import requirements, and the regulations governing different products.

As added by SB 633 (Sher), Stats. 2001, c. 656.

25214.7. The department shall do all of the following:

(a) Coordinate with local agencies to provide technical assistance to businesses engaged in the dismantling or crushing of motor vehicles concerning the safe removal and proper disposal of mercury-containing light switches from motor vehicles, including information about vehicle makes and models that contain mercury light switches and entities that provide mercury recycling services.

(b) Coordinate and encourage entities, such as associations representing motor vehicle repair shops, to offer to the public the replacement and recycling of mercury-containing motor vehicle light switches.

(c) Make available to the public information concerning services to replace and recycle mercury-containing motor vehicle light switches.

As added by SB 633 (Sher), Stats. 2001, c. 656.

25214.8. On or before January 1, 2004, the department shall report to the appropriate policy and fiscal committees of the Legislature on both of the following:

(a) The success of efforts to remove mercury-containing vehicle light switches from vehicles pursuant to Section 25214.6.

(b) Compliance with the requirement to remove mercury-containing appliance switches pursuant to Section 42175 of the Public Resources Code.

As added by SB 633 (Sher), Stats. 2001, c. 656.

ARTICLE 10.2.1. MERCURY-ADDED THERMOSTATS, RELAYS, SWITCHES, AND MEASURING DEVICES

(Article 10.2.1 as added by AB 1369, Stats. 2004, c. 626, and amended by AB 1415 (Pavley), Stats. 2005, c. 578)

25214.8.1. (a) The Legislature finds and declares all of the following:

(1) Once mercury is released into the environment it can change to methyl mercury, a highly toxic compound. Methyl mercury is easily taken up in living tissue and bioaccumulates over time, causing serious health effects, including neurological and reproductive disorders in humans and wildlife. Since mercury does not break down in the environment, it has become a significant health threat to humans and wildlife.

(2) Due to the bioaccumulation of mercury and other contaminants in fish, the California Environmental Protection Agency has issued a warning advising that adults and women who are pregnant or who may become pregnant should limit their fish intake from several state waterways.

(3) Increasingly stringent mercury discharge limits for wastewater treatment plants make the identification and elimination of unnecessary sources of mercury a critical task, because the cost of mercury removal at a wastewater treatment plant is far greater than the societal benefits of continuing use of mercury-containing products, as currently formulated.

(4) Thermostats and other switches and relays are among the largest remaining sources of mercury in consumer products that can be legally sold in California.

(5) Most thermostats contain 3,000 milligrams of mercury and have a 35-year lifespan.

(6) Many other mercury-containing switches hold up to 4 grams of mercury, and mercury-containing relays hold as much as 153 grams.

(7) Esophageal dilators contain as much as two pounds of mercury.

(8) Mercury thermostats, switches, relays, measuring devices, esophageal dilators, and gastrointestinal tubes are hazardous waste when discarded, and on and after January 1, 2006, all mercury thermostat, switch, relay, measuring device, esophageal dilator, and gastrointestinal tube wastes will be prohibited from disposal in a solid waste landfill under the regulations adopted pursuant to this chapter.

(9) Economical alternatives to mercury thermostats, relays, switches, measuring devices, esophageal dilators, and gastrointestinal tubes are available for commercial and, when applicable, residential applications.

(b) For purposes of this article the following definitions shall apply:

(1) "Mercury-added product" means any product or device that contains mercury.

(2) "Mercury-added thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. A mercury-added thermostat includes thermostats used to sense and control room temperature in residential, commercial, industrial, and other buildings but does not include a thermostat used to sense and control temperature as part of a manufacturing process.

(3) "Mercury relay" means a mercury-added product or device that opens or closes electrical contacts to effect the operation of other devices in the same or another electrical circuit. "Mercury relay" includes, but is not limited to, mercury displacement relays, mercury wetted reed relays, and mercury contact relays.

(4) "Mercury switch" means a mercury-added product or device that opens or closes an electrical circuit or gas valve.

(A) A mercury switch includes, but is not limited to, mercury float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in pressure, mercury temperature switches actuated by a change in temperature, and mercury flame sensors.

(B) A mercury switch does not include a mercury-added thermostat or a mercury diostat.

(C) "Mercury diostat" means a mercury switch that controls a gas valve in an oven or oven portion of a gas range.

As added by AB 1369 (Pavley), Stats. 2004, c. 626, and amended by AB 1415 (Pavley), Stat. 2005, c. 578.

25214.8.2. On and after January 1, 2006, a person shall not sell, offer to sell, or distribute for promotional purposes in this state, a mercury-added thermostat, unless the mercury-added thermostat meets either of the following criteria:

(a) The thermostat will be used for manufacturing or industrial purposes.

(b) The thermostat will be used by a blind or visually impaired person.

As added by AB 1369 (Pavley), Stats. 2004, c. 626.

25214.8.3. (a) Except as provided in subdivision (b), on or after July 1, 2006, a person shall not sell, offer to sell, or distribute for promotional purposes in this state, any of the following new or refurbished mercury-added products:

(1) A barometer.

(2) An esophageal dilator, bougie tube, or gastrointestinal tube.

(3) A flow meter.

(4) A hydrometer.

(5) A hydrometer or psychometer.

(6) A manometer.

(7) A pyrometer.

(8) A sphygmanometer.

(9) A thermometer.

(b) Subdivision (a) does not apply to the sale of a mercury-added product if the use of the product is required under a federal law or federal contract specification or if the only mercury-added component in the product is a button cell battery.

As added by AB 1415 (Pavley), Stats. 2005, c. 578.

25214.8.4. (a) Except as provided in subdivisions (b) to (e), inclusive, and Section 25214.8.5, on or after July 1, 2006, a person shall not sell, offer to sell, or distribute for promotional purposes in this state, a new or refurbished

mercury switch or mercury relay individually or as a product component.

(b) Subdivision (a) does not apply if the switch or relay is used to replace a switch or relay that is a component in a larger product in use prior to July 1, 2006, and one of the following applies:

(1) The larger product is used in manufacturing.

(2) The switch or relay is integrated in and not physically separate from other components of the larger product.

(c) Subdivision (a) does not apply to the sale of a mercury switch or mercury relay if use of the switch or relay is required under federal law or federal contract specification.

(d) Subdivision (a) does not apply to a mercury switch or a mercury relay that contains less than 1 milligram of mercury, if the manufacturer of the mercury switch or relay has notified the department of its plans to operate under an exemption pursuant to this subdivision. The notification shall be resubmitted to the department every three years. The initial and subsequent notifications shall be signed and dated, and shall include all of the following:

(1) The name of the manufacturer and the name, position, and contact information for the person who is the manufacturer's contact person on all matters concerning the exemption.

(2) An identification and description of the mercury switch or mercury relay to which the exemption applies.

(3) A statement that the manufacturer certifies all of the following:

(A) The mercury switch or relay is hermetically sealed by the manufacturer.

(B) The mercury switch or relay is intended for industrial use in test and measurement instruments or in systems for monitoring and control applications.

(C) There is no substantially equivalent nonmercury alternative technology for the intended use of the switch or relay, considering all aspects of electrical performance, size, power consumption, product life, and cost.

(D) (1) The manufacturer, individually, or in conjunction with an industry or trade group, has developed and implemented an ongoing program for the proper end-of-life collection, transportation, and management of exempted mercury switches or relays sold in this state, including the removal of the mercury switch or mercury relay from the product in which it is contained.

(2) The program includes a consumer information component to ensure that users of the mercury switch or relay, and the products that contain the mercury switches or relays, are aware of available collection opportunities and legal requirements for management of the mercury switch or relay, once the switch or relay or the product becomes a waste.

(E) The manufacturer recognizes that the exemption provided by this subdivision becomes null and void if and when either of the following occurs:

(i) The manufacturer fails to submit a new exemption notification, meeting the requirements of this subdivision, within three years following submission of the prior exemption notification.

(ii) Any of the conditions set forth in subparagraphs (A) to (D), inclusive, are no longer satisfied.

(e) Subdivision (a) does not apply to the resale of a refurbished imaging and therapy system utilized for medical diagnostic purposes that includes a mercury switch or relay if the manufacturer of the imaging and therapy system has notified the department of its plans to operate under an exemption pursuant to this subdivision. The notification shall be signed and dated, and shall include all of the following:

(1) The name of the manufacturer and the name, position, and contact information for the person who is the manufacturer's contact person on all matters concerning the exemption.

(2) An identification and description of the imaging and therapy system to which the exemption applies.

(3) A statement that the manufacturer certifies all of the following:

(A) The mercury switch or relay is integrated in, and not physically separate from, other components of the larger product.

(B) The larger product was initially manufactured prior to July 1, 2006.

(C) (1) The manufacturer, individually, or in conjunction with an industry or trade group, has developed and implemented an ongoing program for the proper end-of-life collection, transportation, and management of mercury switches or relays contained in exempted imaging and therapy systems sold in this state, including the removal of the mercury switch or mercury relay from the product in which it is contained.

(2) The program includes a consumer information component to ensure that users of the products that contain the mercury switches or relays are aware of available collection opportunities and legal requirements for management of the mercury switch or relay, and the products that contain the mercury switches or relays, once the switch or relay or the product becomes a waste.

(D) The manufacturer recognizes that the exemption provided by this subdivision becomes null and void if and when any of the conditions set forth in subparagraphs (A) and (B) are no longer satisfied.

As added by AB 1415 (Pavley), Stats 2005, c. 578.

25214.8.5. (a) A product containing a mercury switch or a mercury relay is exempt from subdivision (a) of Section 25214.8.4, if the manufacturer of the product, or a trade group representing the manufacture, has obtained an exemption, pursuant to the process described in subdivision (b), for the product. An exemption granted under subdivision (b) may apply to all or only to limited uses of the product. An exemption granted under subdivision (b) also applies to the sale to the product manufacturer of the mercury switch or relay to be contained in the product covered by the exemption.

(b) The department shall grant, or renew, an exemption from subdivision (a) of Section 25214.8.4 for a period of three years only if all of the following conditions are met:

(1) The manufacturer of the product, or a trade group representing the manufacturer, submits a request for an initial or renewed exemption to the department that specifies the use or uses of the product for which an exemption is requested along with supporting information that complies with the requirements set forth in subdivision (c). A manufacturer or trade group may submit a request only for a product and use for which there is no technical feasible alternative, available at a reasonable cost, to the use of the mercury switch or mercury relay in the product for purposes of that use.

(2) The supporting information submitted by the manufacturer or trade group demonstrates that the product is eligible for the exemption.

(3) The manufacturer or trade group requesting the exemption enters into a cost reimbursement agreement with the department, pursuant to subdivision (d), and complies with the terms of that agreement.

(c) The supporting information that a manufacturer or trade group submits to the department, before the department may grant an exemption pursuant to subdivision (b), shall include all of the following:

(1) The name of the manufacturer, or the trade group and the manufacturers represented by the trade group, requesting the exemption and the name, position, and contact information for the person who is the manufacturer's or trade group's contact person on all matters concerning the exemption.

(2) An identification and description of the product, and the use or uses of the product, for which the exemption is requested.

(3) An identification and description of the mercury switch or mercury relay, including identification of the manufacturer of the switch or relay, and an explanation of the need for, and functioning of, the mercury switch or mercury relay in the product.

(4) For each use for which an exemption is requested, information that fully and clearly demonstrates that there is no technically feasible alternative, available at a reasonable cost, to the use of the mercury switch or mercury relay in the product for purposes of that use. This shall include, but is not limited to, a description of past, current, and planned future efforts to seek or develop those alternatives, and a description of all alternatives that have been considered and an explanation of the technical or economic reasons as to why each alternative is not satisfactory.

(5) Information that fully and clearly demonstrates that the switch or relay or the product is constructed so as to prevent the release of mercury to the environment.

(6) A feasible, effective, detailed and complete plan for the proper collection, transportation, and management of the product at the end of its useful life, including removal and proper management of the mercury switch or mercury relay contained in the product, and information fully and clearly demonstrating that the manufacturer, individually, or in conjunction with an industry or trade group, is committed to and capable of implementing the plan. The plan shall include an education and outreach component to ensure that users of the product are aware of available collection opportunities and legal requirements for management of the product once it becomes a waste. An exemption granted pursuant to subdivision (b) shall become null and void if the manufacturer, individually, or in conjunction with an industry or trade group, has not implemented the plan submitted in support of the exemption request within six months of the effective date of the exemption.

(7) A copy of all similar exemption requests, including supporting documentation, submitted by the applicant to another state, and a copy of that state's response to the exemption request.

(d) A manufacturer or trade group that requests an exemption, or an exemption renewal, pursuant to subdivision (b) shall enter into a written agreement with the department pursuant to the procedures set fourth in Article 9.2 (commencing with Section 25206.1), for reimbursement of all costs incurred by the department in processing and responding to the request.

(e) Trade secrets, as defined in Section 25173, that are identified at the time of submission by a manufacturer or trade group, shall be treated as confidential as required by department procedures established pursuant to Section 25173. Any information that is not a trade secret, as defined in Section 25173, or that has not been identified by the manufacturer as a trade secret, shall be made available to the public upon request pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(f) (1) The department shall grant or deny an exemption requested pursuant to subdivision (b) no later than 180 calendar days after receiving the exemption request and all information determined by the department to be necessary to determine if all of the conditions specified in subdivision (b) are met.

(2) An exemption shall not be deemed to be granted if the department fails to grant or deny the exemption request within the time limit specified in paragraph (1)

(3) Nothing in this subdivision shall preclude the applicant and the department from mutually agreeing to an extension of the time limit specified in paragraph (1).

As added by AB 1415 (Pavley), Stats. 2005, c. 578.

25214.8.6. On or after January 1, 2008, a person shall not sell, offer to sell, or distribute for promotional purposes in this state, a mercury diostat or a new or refurbished oven or gas range containing a mercury diostat.

As added by AB 1415 (Pavley), Stats. 2005, c. 578.

ARTICLE 10.3. ELECTRONIC WASTE

(As added by SB 20 (Sher), Stats. 2003, c. 526)

25214.9. (a) The requirements and other provisions of Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code are incorporated by reference as requirements and provisions of this chapter.

(b) To the extent consistent with the federal act, the department may, by regulation, establish management

standards as an alternative to one or more of the standards in this chapter, for any specified activity that involves the management of an electronic waste.

As added by SB 20 (Sher), Stats. 2003, c. 526.

25214.10. (a) For purposes of this section, "electronic device" has the same meaning as a "covered electronic device," as defined in Section 42463 of the Public Resources Code.

(b) The department shall adopt regulations, in accordance with this section, that prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, to the extent that Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, and as amended thereafter by the Commission of European Communities, prohibits that sale due to the presence of certain heavy metals.

(c) The regulations adopted pursuant to subdivision (b) shall take effect January 1, 2007, or on or after the date Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, takes effect, whichever date is later.

(d) The department shall exclude, from the regulations adopted pursuant to this section, the sale of an electronic device that contains a substance that is used to comply with the consumer, health, or safety requirements that are required by the Underwriters Laboratories, the federal government, or the state.

(e) In adopting regulations pursuant to this section, the department may not require the manufacture or sale of an electronic device that is different than, or otherwise not prohibited by, the European Union under Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003.

(f) (1) The department may not adopt any regulations pursuant to this section that impose any requirements or conditions that are in addition to, or more stringent than, the requirements and conditions expressly authorized by this section.

(2) In complying with this subdivision, the department shall use, in addition to any other information deemed relevant by the department, the published decisions of the Technical Adaptation Committee and European Union member states that interpret the requirements of Directive 2002/95/EC.

As added by SB 20 (Sher), Stats. 2003, c. 526, and amended by SB 50 (Sher), Stats. 2004, c. 863.

25214.10.1. (a) For purposes of this section, the following definitions shall apply:

(1) "Electronic device" means a video display device, as defined in subdivision (t) of Section 42463 of the Public Resources Code, with a screen size of greater than four inches.

(2) "Covered electronic device," "manufacturer," and "retailer" have the same meaning as those terms are defined in Section 42463 of the Public Resources Code.

(b) The department shall adopt regulations that identify electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter.

(c) (1) Except as provided in subdivision (e), a manufacturer of an electronic device that is identified in the regulations adopted by the department shall send a notice in accordance with the schedule specified in subparagraph (A) or (B), as applicable, of paragraph (3), to any retailer that sells that electronic device manufactured by the manufacturer. The notice shall identify the electronic device, and shall inform the retailer that the electronic device is a covered electronic device and is subject to a fee in accordance with subdivision (d).

(2) A manufacturer subject to this subdivision shall also send a copy of the notice to the State Board of Equalization.

(3) The notice required by this subdivision shall be sent in accordance with the following schedule:

(A) On or before October 1, 2004, the manufacturer shall send a notice covering any electronic device manufactured by that manufacturer that is identified in the regulations adopted by the department on or before July 1, 2004, that identify the electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter.

(B) On or before April 1, 2005, and on or before every April 1 of each year thereafter, the manufacturer shall send a notice covering any electronic device manufactured by that manufacturer identified in the regulations adopted by the department pursuant to subdivision (b) on or before December 31 of the prior year.

(4) If a retailer sells a refurbished covered electronic device, the manufacturer is required to comply with the notice requirement of this subdivision only if the manufacturer directly supplies the refurbished covered electronic device to the retailer.

(d) (1) Except as provided in subdivision (e), a covered electronic device that is identified in the regulations adopted, on or before July 1, 2004, by the department, that identify electronic devices that the department determines are presumed to be, when discarded, a hazardous waste pursuant to this chapter shall, on and after January 1, 2005, be subject to Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the fee imposed pursuant to Section 42464 of the Public Resources Code.

(2) Except as provided in subdivision (e), a covered electronic device identified in the regulations adopted by the department, pursuant to subdivision (b), shall, on and after July 1 of the year subsequent to the year in which the covered electronic device is first identified in the regulations, be subject to Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code, including the fee imposed pursuant to Section 42464 of the Public Resources Code.

(e) (1) If the manufacturer of an electronic device that is identified in the regulations adopted by the department pursuant to subdivision (b) obtains the concurrence of the

department that an electronic device, when discarded, would not be a hazardous waste, in accordance with procedures set forth in Section 66260.200 of Title 22 of the California Code of Regulations, the electronic device shall cease to be a covered electronic device and shall cease to be subject to subdivisions (c) and (d) on the first day of the quarter that begins not less than 30 days after the date that the department provides the manufacturer with a written nonhazardous concurrence for the electronic device pursuant to this subdivision. A manufacturer shall notify each retailer, to which that manufacturer has sold a covered electronic device, that the device has been determined pursuant to this subdivision to be nonhazardous and is no longer subject to a covered electronic recycling fee.

(2) No later than 10 days after the date that the department issues a written nonhazardous concurrence to the manufacturer, the department shall do both of the following:

(A) Post on the department's Web site a copy of the nonhazardous concurrence, including, but not limited to, an identification and description of the electronic device to which the concurrence applies.

(B) Send a copy of the nonhazardous concurrence, including, but not limited to, an identification and description of the electronic device to which the concurrence applies, to the California Integrated Waste Management Board and the State Board of Equalization.

(f) Notwithstanding Section 42474 of the Public Resources Code, a fine or penalty shall not be assessed on a retailer who unknowingly sells, or offers for sale, in this state a covered electronic device for which the covered electronic waste recycling fee has not been collected or paid, if the failure to collect the fee was due to the failure of the State Board of Equalization to inform the retailer that the electronic device was subject to the fee.

As added by SB 50 (Sher), Stats. 2004, c. 863.

25214.10.2. A regulation adopted pursuant to this article may be adopted as an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, an emergency regulation adopted by the department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

As added by SB 50 (Sher), Stats. 2004, c. 863.

ARTICLE 10.4. TOXICS IN PACKAGING PREVENTION ACT

(Article 10.4 as added by AB 455 (Chu), Stats. 2003, c. 679, and amended and renumbered by AB 2021 (Chu), Stats. 2004, c. 445)

25214.11. (a) The Legislature finds and declares all of the following:

(1) The management of solid waste can pose a wide range of hazards to public health and safety and to the environment.

(2) Packaging comprises a significant percentage of the overall solid waste stream.

(3) The presence of heavy metals in packaging is a part of the total concern regarding the disposal of hazardous constituents in the solid waste stream, in light of the presence of heavy metals in emissions or ash when packaging is incinerated, or in leachate when packaging is disposed of in a solid waste landfill.

(4) Lead, mercury, cadmium, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern.

(5) It is desirable, as a first step in reducing the toxicity of packaging waste, and reducing the hazardous materials that may be disposed of in solid waste landfills, to eliminate the addition of these heavy metals to packaging.

(6) The intent of this article is to achieve this reduction in toxicity without impeding or discouraging the expanded use of recycled materials in the production of packaging and its components.

(b) This article shall be known, and may be cited, as the "Toxics in Packaging Prevention Act."

As added by AB 455 (Chu), Stats. 2003, c. 679.

25214.12. For purposes of this article, the following terms have the following meanings:

(a) "ASTM" means the American Society for Testing and Materials.

(b) "Distribution" means the practice of taking title to a package or a packaging component for promotional purposes or resale. A person involved solely in delivering a package or a packaging component on behalf of a third party is not engaging in distribution.

(c) (1) "Intentional introduction" means the act of deliberately utilizing a regulated metal in the formation of a package or packaging component where its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality.

(2) "Intentional introduction" does not include either of the following:

(A) The use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, where the incidental retention of a residue of that metal in the final package or packaging component is not desired or deliberate, if the final package or packaging component is in compliance with subdivision (c) of Section 25214.13.

(B) The use of recycled materials as feedstock for the manufacture of new packaging materials, where some portion of the recycled materials may contain amounts of a regulated

metal, if the new package or packaging component is in compliance with subdivision (c) of Section 25214.13.

(d) "Incidental presence" means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

(e) "Manufacturer" means any person, firm, association, partnership, or corporation producing a package or packaging component.

(f) "Manufacturing" means the physical or chemical modification of a material to produce packaging or a packaging component.

(g) "Package" means any container, produced either domestically or in a foreign country, providing a means of marketing, protecting, or handling a product, including a unity package, an intermediate package or a shipping container, as defined in the ASTM specification D 996. "Package" also includes unsealed receptacles, including carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

(h) "Packaging component" means any individual assembled part of a package that is produced either domestically or in a foreign country, including, but not necessarily limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, labels, dyes, pigments, adhesives, stabilizers, or any other additives. Tin-plated steel that meets the ASTM specification A 623 shall be considered as a single package component. Electrogalvanized coated steel and hot dipped coated galvanized steel that meet the ASTM qualifications A 591, A 653, A 879, and A 924 shall be treated in the same manner as tin-plated steel.

(i) "Purchaser" means a person who purchases and takes title to a package or a packaging component, from a manufacturer or supplier, for the purpose of packaging a product manufactured, distributed, or sold by the purchaser.

(j) "Recycled material" means a material that has been separated from solid waste for the purpose of recycling the material as a secondary material feedstock. Recycled materials include paper, plastic, wood, glass, ceramics, metals, and other materials, except that recycled material does not include a regulated metal that has been separated from other materials into its elemental or other chemical state for recycling as a secondary material feedstock.

(k) "Regulated metal" means lead, mercury, cadmium, or hexavalent chromium.

(l) (1) "Supplier" means a person who does or is one or more of the following:

(A) Sells, offers for sale, or offers for promotional purposes, a package or packaging component that is used by any other person to package a product.

(B) Takes title to a package or packaging component, produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

(C) Acts as an intermediary for the purchase of a package or packaging component for resale from a manufacturer located in another country to a purchaser located in this state, and who may receive a commission or a fee on that sale.

(D) Listed as the importer of record on a United States Customs Service form for an imported package or packaging component.

(2) "Supplier" does not include a person involved solely in delivering a package or packaging component on behalf of a third party.

(m) "Toxics in Packaging Clearinghouse" means the Toxics in Packaging Clearinghouse (TPCH) of the Council of State Governments.

As added by AB 455 (Chu), Stats. 2003, c. 679, and amended by AB 2021 (Chu), Stats. 2004, c. 445.

25214.13. (a) Except as provided in Section 25214.14, on and after January 1, 2006, a manufacturer or supplier may not offer for sale or for promotional purposes in this state a package or packaging component that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

(b) Except as provided in Section 25214.14, on and after January 1, 2006, a person may not offer for sale or for promotional purposes in this state a product in a package that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

(c) Except as provided in Section 25214.14, on and after January 1, 2006, the sum of the incidental total concentration levels of all regulated metals present in a single-component package or in an individual packaging component may not exceed 100 parts per million by weight.

As added by AB 455 (Chu), Stats. 2003, c. 679, and amended by AB 2021 (Chu), Stats. 2004, c. 445.

25214.14. A package or a packaging component is exempt from the requirements of Section 25214.13, and shall be deemed in compliance with this article, if the manufacturer or supplier complies with the applicable documentation requirements specified in Section 25214.15 and the package or packaging component meets any of the following conditions:

(a) The package or packaging component is marked with a code indicating a date of manufacture prior to January 1, 2006.

(b) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process, to comply with the health or safety requirements of a federal or state law.

(c) (1) The package or packaging component contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13 only because of the addition of a recycled material.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(d) (1) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process for a use for which there is no feasible alternative.

(2) For purposes of this subdivision, "a use for which there is no feasible alternative" means a use, other than for purposes of marketing, for which a regulated metal is essential to the protection, safe handling, or function, of the package's contents, and technical constraints preclude the substitution of other materials.

(e) (1) The package or packaging component is reused and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13, and all of the following apply:

(A) The product being conveyed by the package, the package, or packaging component is otherwise regulated under a federal or state health or safety requirement.

(B) The transportation of the packaged product is regulated under federal or state transportation requirements.

(C) The disposal of the package is otherwise performed according to the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(f) (1) The package or packaging component has a controlled distribution and reuse and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(g) (1) The packaging or packaging component is a glass or ceramic package or packaging component that has a vitrified label, and that, when tested in accordance with the Waste Extraction Test, described in Appendix II of Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations does not exceed 1.0 ppm for cadmium, 5.0 ppm for hexavalent chromium, or 5.0 ppm for lead. A glass or ceramic package or packaging component containing mercury is not exempted pursuant to this subdivision.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

As added by AB 455 (Chu), Stats. 2003, c. 679, and amended by AB 2021 (Chu), Stats. 2004, c. 445.

25214.15. (a) A package or packaging component qualifies for an exemption pursuant to Section 25214.14 only if the manufacturer or supplier prepares, retains and biennially updates documentation containing all of the following information for that package or packaging component:

(1) A statement that the documentation applies to an exemption from the requirements of Section 25214.13.

(2) The name, position, and contact information for the person who is the manufacturer's or supplier's contact person on all matters concerning the exemption.

(3) An identification of the exemption and a reference to the applicable subdivision in Section 25214.14 setting forth the conditions for the exemption.

(4) A description of the type of package or packaging component to which the exemption applies.

(5) Identification of the type and concentration of the regulated metal or metals present in the package or packaging component, and a description of the testing methods used to determine the concentration.

(6) An explanation of the reason for the exemption.

(7) Supporting documentation that fully and clearly demonstrates that the package or packaging component is eligible for the exemption.

(8) The documentation listed in subdivisions (b), (c), (d), (e), (f), (g), or (h), whichever is applicable for the exemption.

(b) If an exemption is being claimed under subdivision (a) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) Date of manufacture.

(2) Estimated time needed to exhaust current inventory.

(3) Alternative package or packaging component that meets the requirements of Section 25214.13.

(c) If an exemption is being claimed under subdivision (b) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation that contains all of the following information for each regulated metal intentionally introduced in the package or packaging component to which the exemption applies:

(1) Identification of the specific federal or state law requiring the addition of the regulated metal to the package or packaging component.

(2) Detailed information that fully and clearly demonstrates that the addition of the regulated metal to the package or packaging component is necessary to comply with the law identified pursuant to paragraph (1).

(3) A description of past, current, and planned future efforts to seek or develop alternatives to eliminate the use of the regulated metal in the package or packaging component.

(4) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to why the alternative is not satisfactory for purposes of achieving compliance with the law identified pursuant to paragraph (1).

(d) If an exemption is being claimed under subdivision (c) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The type and percentage of recycled material or materials added to the package or packaging component.

(2) The type and concentration of each regulated metal contained in each recycled material added to the package or packaging component.

(3) Efforts to minimize or eliminate the regulated metals in the package or packaging component.

(4) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(e) If an exemption is being claimed under subdivision (d) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for each regulated metal intentionally introduced into the package or packaging component to which the exemption applies:

(1) Detailed information and evidence that fully and clearly demonstrates how the regulated metal contributes to, and is essential to, the protection, safe handling, or functioning of the package's contents.

(2) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(3) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to the technical constraints that preclude substitution of the alternative for the use of the regulated metal.

(4) Documentation that the regulated metal is not being used for the purposes of marketing.

(f) If an exemption is being claimed under subdivision (e) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The percentage of reused materials.

(2) Identification of the federal or state health or safety law regulating the product being conveyed by the package, the package, or the packaging component.

(3) Identification of the federal or state transportation law regulating the transportation of the packaged product.

(4) Information demonstrating that the package is disposed of in accordance with the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104.

(5) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(g) If an exemption is being claimed under subdivision (f) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The percentage of reused materials.

(2) Information and evidence that demonstrates that the environmental benefit of the controlled distribution and reuse of the package or packaging component is significantly greater, as compared to the same package or packaging component manufactured in compliance with the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13.

(3) A means of identifying, in a permanent and visible manner, any reusable package or packaging component containing a regulated metal for which the exemption is sought.

(4) A method of regulatory and financial accountability, so that a specified percentage of the reusable packages or packaging components that are manufactured and distributed to other persons are not discarded by those persons after use, but are returned to the manufacturer or identified designees.

(5) A system of inventory and record maintenance to account for reusable packages or packaging components placed in, and removed from, service.

(6) A means of transforming returned packages or packaging components that are no longer reusable into recycled materials for manufacturing, or a means of collecting and managing returned packages or packaging components as waste in accordance with applicable federal and state law.

(7) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(h) If an exemption is being claimed under subdivision (g) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update the following documentation for the package or packaging component to which the exemption applies:

(1) Applicable test data.

(2) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(i) A manufacturer or supplier shall submit the documentation required pursuant to subdivisions (a) to (h), inclusive, to the department, as follows:

(1) Upon receipt of a written request from the department, the manufacturer or supplier shall, on or before 30 calendar days after the date of receipt, do one of the following:

(A) Submit the required documentation to the department.

(B) Submit a letter to the department indicating the date by which the documentation shall be submitted, which may be no more than 90 calendar days after the date of receipt of the department's request.

(2) If the department finds that the documentation supplied pursuant to paragraph (1) is incomplete or incorrect, the department shall notify the manufacturer or supplier that the documentation is incomplete or incorrect, and the manufacturer or supplier shall submit complete and correct documentation to the department within 60 calendar days after the date of receipt of the notification.

(j) If a manufacturer or supplier fails to comply with subdivision (i) by any of the specified dates in that subdivision, the manufacturer or supplier shall, with respect to the package or packaging component to which the

documentation request applies, comply with one of the following:

(1) Immediately cease to offer the package or packaging component for sale or for promotional purposes in this state.

(2) Replace the package or packaging component with a package or packaging component that conforms with the regulated metals limitations specified in Section 25214.13, in accordance with a schedule approved in writing by the department.

(3) Submit complete and correct documentation for the package or packaging component, in accordance with a schedule approved in writing by the department.

As added by AB 455 (Chu), Stats. 2003, c. 679, and amended by AB 2021 (Chu), Stats. 2004, c. 445.

25214.16. (a) On and after January 1, 2006, each manufacturer or supplier shall furnish a certificate of compliance to the purchaser of a package or packaging component stating that the package or packaging component is in compliance with the requirements of this article. However, if, pursuant to Section 25214.14, the package is exempt from the requirements of Section 25214.13, the certificate of compliance shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturer or supplier. A copy of the certificate of compliance shall be kept on file by the manufacturer or supplier of the package or packaging component.

(b) A purchaser of a package or packaging component subject to subdivision (a) shall retain the certificate of compliance for as long as the package or packaging component is in use by the purchaser.

(c) The manufacturer or supplier shall furnish to the department a copy of the certificate of compliance for each package or packaging component for which an exemption is claimed under Section 25214.14 at the time when a certificate of compliance for that package or packaging component is first furnished to a purchaser. If no exemption is claimed for a package or packaging component, the manufacturer or supplier shall provide to the department upon request a copy of the certificate of compliance for that package or packaging component.

(d) If a manufacturer or supplier of a package or packaging component subject to subdivision (a) reformulates or creates a new package or packaging component, the manufacturer or supplier shall provide the purchaser, and, if the package or packaging component is exempt, the department, with an amended or new certificate of compliance for the reformulated or new package or packaging component.

As added by AB 455 (Chu), Stats. 2003, c. 679, and amended by AB 2021 (Chu), Stats. 2004, c. 445.

25214.17. (a) Except as provided in subdivision (b), the department, pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), shall provide the public with access to all information relating to a package or packaging component that has been submitted to the department by a manufacturer or supplier of a package or packaging component pursuant to this article.

(b) (1) The department shall keep confidential any information identified by the manufacturer or supplier, pursuant to paragraph (2), as proprietary in nature, including trade secrets, as defined in Section 25173.

(2) A manufacturer or supplier providing information to the department pursuant to this article shall, at the time of submission, identify all information which the manufacturer or supplier believes is proprietary in nature. The department shall make available to the public any information not identified by the manufacturer or supplier as proprietary in nature.

As added by AB 2021 (Chu), Stats. 2004, c. 445.

25214.18. If the department determines that other substances contained in packaging should be added as regulated metals to the list set forth in subdivision (k) of Section 25214.12 in order to further reduce the toxicity of packaging waste, the department may submit recommendations to the Governor and the Legislature for additions to the list, along with a description of the nature of the substitutes used in lieu of the recommended additions to the list.

As added by AB 455 (Chu), Stats. 2003, c. 679.

25214.19. This article does not do the following:

(a) Affect a duty or other requirement imposed under federal or state law.

(b) Alter or diminish a legal obligation otherwise required in common law or by statute or regulation.

(c) Create or enlarge a defense in an action to enforce a legal obligation otherwise required in common law or by statute or regulation.

As added by AB 455 (Chu), Stats. 2003, c. 679, and amended by AB 2021 (Chu), Stats. 2004, c. 445.

25214.20. (a) The provisions of this article are severable, and if a court holds that a phrase, clause, sentence, or provision of this article is invalid, or that its applicability to a person or circumstance is invalid, the remainder of the article and its applicability to other persons and circumstances may not be affected.

(b) The provisions of this article shall be liberally construed to give effect to the purposes of this article.

As added by AB 455 (Chu), Stats. 2003, c. 679.

25214.21. The department may enforce the requirements of this article pursuant to its authority to enforce this chapter under all applicable provisions of law.

As added by AB 2021 (Chu), Stats. 2004, c. 445.

ARTICLE 10.6. MANAGEMENT OF SMALL HOUSEHOLD BATTERIES

25216.1. (a) Any collection location or intermediate collection location that receives, or any person that transports, spent batteries, as defined in this article, is exempt from the requirements of this chapter concerning the receipt, storage, and transportation of hazardous waste if the batteries are

subsequently sent from that collection location to a facility authorized to receive those batteries and all of the following conditions are met:

(1) The collection location is either of the following:

(A) The collection location does not store more than 600 pounds of batteries at any one time and no batteries are stored for longer than 180 days.

(B) The collection location is operated, or is authorized to be operated, by a public agency as part of a curbside collection program, no batteries are stored for longer than 180 days, and the public agency has considered appropriate volume limits and other necessary precautions to protect the public health, safety, and the environment.

(2) The batteries are stored and transferred in a manner which minimizes the possibility of fire, explosion, or any release of hazardous substances or hazardous waste constituents.

(3) The collection location, transporter, and receiving facility retains a copy of the hazardous waste manifest or bill of lading used during transportation for a period of three years. If a bill of lading is used, the bill of lading shall have, at a minimum, all of the following information:

(A) The name, address, and telephone number of the collection location, transporter, and receiving facility.

(B) A general description and quantity of batteries.

(C) The date of the transfer.

(D) The signatures of the transporter and the collection location representative.

(4) The batteries are not treated or reclaimed at any location exempted from the requirements of this chapter by this article.

(5) Batteries which are received in accordance with subparagraph (A) or (B) of paragraph (1) which are not subsequently recycled at the facility or transferred to a permitted recycling facility are transferred to a disposal facility authorized to accept such batteries.

(b) A household hazardous waste collection facility, as defined in subdivision (f) of Section 25218.1, may refuse to accept spent batteries if the volume of spent batteries delivered for receipt exceeds the facility's storage capabilities. Such a facility may charge a fee to recover the handling, storage, and disposal costs of those spent batteries, which shall not exceed the facility's handling, storage, and disposal costs.

As added by SB 1594 (Alquist), Stats. 1989, c. 1122, and amended by SB 1143 (Killea), Stats. 1992, c. 1346, and SB 219 (Thompson), Stats. 1995, c. 633.

25216.2. (a) (1) This article does not apply to batteries that are disposed of on or into the land, water, or air.

(2) For purposes of this subdivision, disposal does not include a battery which is delivered to a collection location or an intermediate collection location and subsequently transported to a household hazardous waste collection facility.

(b) The department shall implement this article consistent with all applicable state and federal laws.

As added by Stats. 1989, c. 1122, and amended by SB 219 (Thompson), Stats. 1995, c. 633.

25216.3. (a) For purposes of this section, "spent dry cell battery containing zinc electrodes" means an alkaline or zinc-carbon battery, that meets all of the following conditions:

(1) It is an enclosed device or sealed container consisting of one or more voltaic or galvanic cells, electrically connected to produce electric energy, of any shape, including, but not limited to, button, coin, cylindrical, or rectangular, and designed for commercial, industrial, medical, institutional, or household use.

(2) It contains an electrode comprised of zinc or zinc oxide or a combination thereof, and a liquid starved or gelled electrolyte.

(3) It does not contain any constituent, other than zinc or zinc oxide, that would cause it to be classified as a hazardous waste pursuant to this chapter.

(4) It is discarded by the user.

(b) Notwithstanding any other provision of law, a spent dry cell battery containing zinc electrodes is not a hazardous waste, and is not subject to the requirements of this chapter, if all of the following conditions are met:

(1) The spent dry cell battery containing zinc electrodes is disposed of in a permitted municipal solid waste landfill, as defined in Section 20164 of Title 27 of the California Code of Regulations, or in a permitted municipal solid waste transformation facility, as defined in Section 40201 of the Public Resources Code, or is accumulated for recycling.

(2) The spent dry cell battery containing zinc electrodes is not stored or accumulated for longer than 180 days. In addition, at least 75 percent, by weight or volume, of all spent dry cell batteries containing zinc electrodes stored or accumulated at a site during a calendar year shall be transferred to a different site for disposal or recycling during that calendar year.

(3) The spent dry cell battery containing zinc electrodes is stored, accumulated, and transferred in a manner that minimizes the possibility of fire, explosion, or any release of hazardous substances or hazardous waste constituents.

As added by SB 1924 (McPherson), Stats. 1998, c. 281.

ARTICLE 10.7 RECYCLABLE LATEX PAINT

(Article 10.7 as added by AB 2178 (Brulte), Stats. 1991, c. 364)

25217. For the purposes of this article, "recyclable latex paint" means any water-based latex paint, still in liquid form, that is transferred for the purposes of being recycled.

As added by AB 2178 (Brulte), Stats. 1991, c. 364.

25217.1. No person shall dispose of, or attempt to dispose of, liquid latex paint in the land or into the waters of the state unless authorized by applicable provisions of law.

As added by AB 2178 (Brulte), Stats. 1991, c. 364.

25217.2. (a) Recyclable latex paint may be accepted at any location if all of the following conditions are met:

(1) The location manages the recyclable latex paint in accordance with all applicable latex paint product management procedures specified by federal, state, or local law or regulation which include, at a minimum, that the recyclable latex paint is stored and handled in a manner that minimizes

the chance of exposing the handler and the environment to potentially hazardous constituents that may be in, or have been incidentally added to, the recyclable latex paint.

(2) Any latex paint that is accepted as recyclable by the location and which is later discovered to be nonrecyclable shall be deemed to be a waste generated at the location where this discovery is made and this latex paint shall be managed as a waste in accordance with this chapter.

(3) The owner or operator of the location has a business plan that meets the requirements of Section 25504, if required by the administrating agency, including, but not limited to, emergency response plans and procedures, as described in subdivision (b) of Section 25504. The plans and procedures shall specifically address recyclable latex paint or meet the department's emergency response and contingency requirements which are applicable to generators of hazardous waste.

(4) If the recyclable latex paint is not excluded or exempted from regulation under Chapter I (commencing with Section 1.1) of Title 40 of the Code of Federal Regulations, the location meets all applicable federal requirements.

As added by AB 2178 (Brulte), Stats. 1991, c. 364.

25217.3. (a) Notwithstanding Sections 25160 and 25163, a person may transport recyclable latex paint without the use of a manifest or obtaining registration as a hazardous waste hauler if the transporter complies with this article.

(b) A person transporting recyclable latex paint shall use a bill of lading to document the transportation of recyclable latex paint from collection locations, or any interim locations, to a recycling facility, whenever the transportation involves a change in ownership of the recyclable latex paint. A copy of the bill of lading shall be kept by the originating location, transporter, and destination of the recyclable latex paint for a period of at least three years and shall include all of the following information:

(1) The name, address, and telephone number of the originating location, the transporter, and the destination of the recyclable latex paint.

(2) The quantity of the recyclable latex paint being transported.

(3) The date on which the transporter accepts the recyclable latex paint from the originating location.

(4) The signatures of the transporter and a representative of the originating location.

As added by AB 2178 (Brulte), Stats. 1991, c. 364.

25217.4. A person may recycle recyclable latex paint at a facility which is not authorized by the department pursuant to the applicable hazardous waste facilities permit requirements of Article 9 (commencing with Section 25200) if the person complies with Section 25217.2.

As added by AB 2178 (Brulte), Stats. 1991, c. 364.

ARTICLE 10.8. HOUSEHOLD HAZARDOUS WASTE AND SMALL QUANTITY GENERATOR WASTE

(Article 10.8 as added by SB 1143 (Killea), Stats. 1992, c. 1346, and as repealed and added by SB 1091 (Killea), Stats. 1993, c. 913)

25218. The Legislature hereby finds and declares all of the following:

(a) Residential households which generate household hazardous waste and conditionally exempt small quantity generators which generate small amounts of hazardous waste in the state need an appropriate and economic means of disposing of the hazardous waste they generate.

(b) (1) Counties and cities provide for the collection of household hazardous waste and conditionally exempt small quantity generator waste as a community service to ensure proper handling and disposal of the material and to prevent the potential contamination of solid waste landfills.

(2) To the extent available, cities and counties should consider utilizing public service television to provide public safety awareness and training on packaging and transporting household hazardous waste to collection centers.

(c) To facilitate and increase the collection of household hazardous waste and conditionally exempt small quantity generator waste, it is the responsibility of the state to provide for an expedited and streamlined permitting and regulatory structure for household hazardous waste and conditionally exempt small quantity generator waste collection and handling. Overburdensome regulations defeat the objectives of providing convenient and accessible collection facilities and the protection of public health and safety.

(d) Abandonment or illegal disposal of household hazardous waste and hazardous waste from small businesses and the continued disposal of those wastes into the solid waste stream is a threat to public health and safety and to the environment.

(e) It is the shared responsibility of citizens, conditionally exempt small quantity generators, disposal facility operators, hazardous waste processors, manufacturers, sellers, solid waste handles, and state and local agencies to ensure the proper recycling and disposal of household hazardous waste and conditionally exempt small quantity generator waste.

As added by SB 1143 (Killea), Stats. 1992, c. 1346, and repealed and added by SB 1091 (Killea), Stats. 1993, c. 913, and as amended by SB 845 (Leonard), Stats. 1995, c. 672.

25218.1. For purposes of this article, the following terms have the following meaning:

(a) "Conditionally exempt small quantity generator" or "CESQG" means a business concern which meets the criteria specified in Section 261.5 of Title 40 of the Code of Federal Regulations.

(b) "Curbside household hazardous waste collection program" means a collection service authorized by a public agency that is operated in accordance with Section 25163 and subdivision (d) of Section 25218.5 and that collects one or more of the following types of household hazardous waste:

(1) Latex paint.

(2) Used oil.

(3) Used oil filters.

(4) Household hazardous waste that is designated as a universal waste pursuant to this chapter or the regulations adopted by the department.

(c) "Door-to-door household hazardous waste collection program" or "household hazardous waste residential pickup service" means a program operated by a public agency, or its contractor, that collects household hazardous waste from individual residences, and transports that waste in an inspected and certified hazardous waste transport vehicle to an authorized household hazardous waste collection facility.

(d) "Household" means a single detached residence or a single unit of a multiple residence unit and all appurtenant structures.

(e) "Household hazardous waste" means any hazardous waste generated incidental to owning or maintaining a place of residence. Household hazardous waste does not include any waste generated in the course of operating a business concern at a residence.

(f) "Household hazardous waste collection facility" means a facility operated by a public agency, or its contractor, for the purpose of collecting, handling, treating, storing, recycling, or disposing of household hazardous waste, and its operation may include accepting hazardous waste from conditionally exempt small quantity generators if that acceptance is authorized pursuant to Section 25218.3. Household hazardous waste collection facilities include permanent household hazardous waste collection facilities, as defined in subdivision (h), temporary household hazardous waste collection facilities, as defined in subdivision (p), recycle-only household hazardous waste collection facilities, as defined in subdivision (n), curbside household hazardous waste collection programs, as defined in subdivision (b), and mobile household hazardous waste collection facilities, as defined in subdivision (g).

(g) "Mobile household hazardous waste collection facility" means a portable structure within which a household hazardous waste collection facility is operated and that meets all of the following conditions:

(1) The facility is operated not more than four times in any one calendar year at the same location.

(2) The facility is operated not more than three consecutive weeks within a two-month period at the same location.

(3) Upon the termination of operations, all equipment, materials, and waste are removed from the site within 144 hours.

(h) "Permanent household hazardous waste collection facility" means a permanent or semipermanent structure at a fixed location that meets both of the following conditions:

(1) The facility is operated at the same location on a continuous, regular schedule.

(2) The hazardous waste stored at the facility is removed within one year after collection.

(i) "Public agency" means a state or federal agency, county, city, or district.

(j) "Quality assurance plan" means a written protocol prepared by a public agency that is designed to ensure that reusable household hazardous products or materials, as defined in subdivision (o), that are collected by a household hazardous waste collection program are evaluated to verify that product containers, contents, and labels are as they originated from the products' manufacturers. The public agency or a person authorized by the public agency, as defined in subdivision (k), shall design the protocol to ensure, using its best efforts with the resources generally available to the public agency, or the person authorized by the public agency, that products selected for distribution are appropriately labeled, uncontaminated, and appear to be as they originated from the product manufacturers. A quality assurance plan shall identify specific procedures for evaluating each container placed in a recycling or exchange program. The quality assurance plan shall also identify those products that shall not be accepted for distribution in a recycling or exchange program. Unacceptable products may include, but are not limited to, banned or unregistered agricultural waste, as defined in subdivision (a) of Section 25207.1, and products containing PCB, asbestos, or dioxin.

(k) "Person authorized by the public agency" means an employee of a public agency or a person from whom services are contracted by the public agency.

(l) "Recipient" means any person who accepts a reusable household hazardous product or material at a household hazardous waste collection facility operating pursuant to this article.

(m) "Recyclable household hazardous waste material" means any of the following:

(1) Latex paint.

(2) Used oil.

(3) Used oil filters.

(4) Antifreeze.

(5) Spent lead-acid batteries.

(6) Household hazardous waste that is designated as a universal waste pursuant to this chapter or the regulations adopted by the department, except a universal waste for which the department determines, by regulation, that there is no readily available authorized recycling facility capable of accepting and recycling that waste.

(n) "Recycle-only household hazardous waste collection facility" means a household hazardous waste collection facility that is operated in accordance with Section 25218.8 and accepts for recycling only recyclable household hazardous waste materials.

(o) "Reusable household hazardous product or material" means a container of household hazardous product, or a container of hazardous material generated by a conditionally exempt small quantity generator, that has been received by a household hazardous waste facility operating pursuant to this article and that is offered for distribution in a materials exchange program to a recipient, as defined in subdivision (l), in accordance with a quality assurance plan, as defined in subdivision (j).

(p) "Temporary household hazardous waste collection facility" means a household hazardous waste collection facility that meets both of the following conditions:

(1) The facility is operated not more than once for a period of not more than two days in any one month at the same location.

(2) Upon termination of operations, all equipment, materials, and waste are removed from the site within 144 hours.

As added by SB 1091 (Killea), Stats. 1993, c. 913, and amended by AB 2202 (Baca), Stats. 1996, c. 647, and SB 1011 (Sher), Stats. 2002, c. 626.

25218.2. (a) Prior to commencing operations, a public agency, or its contractor, that intends to operate a household hazardous waste collection facility shall submit the following written information to the CUPA, or, in those jurisdictions where there is no CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404:

(1) A certification that the household hazardous waste collection facility will be operated in accordance with this article and with any other requirement that may be imposed by the department by regulation.

(2) All of the following information:

(A) The facility's name.

(B) The facility's location.

(C) The facility's generator identification number.

(D) The date that the facility will begin operation.

(E) The facility's operating schedule.

(b) In addition to the information required pursuant to paragraph (2) of subdivision (a), the public agency, or its contractor, shall also subsequently notify the CUPA, or, in those jurisdictions where there is no CUPA, the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, of any significant change in the facility's operating schedule.

(c) The public agency, or its contractor, shall also submit the written information pursuant to subdivision (a), and notify the department pursuant to subdivision (b), until (1) regulations promulgated by the Secretary for Environmental Protection establishing a unified program information collection and reporting system and standards are effective, (2) the regulations require a statewide data base system that will enable the department and the public to obtain the required information from all CUPAs or the authorized officers or agencies, and (3) the statewide data base system is in place and fully operational.

As added by SB 1091 (Killea), Stats. 1993, c. 913, and amended by AB 1357 (Baldwin), Stats. 1997, c. 778.

25218.3. (a) The department may authorize any household hazardous waste collection facility to accept hazardous waste from conditionally exempt small quantity generators.

(b) A household hazardous waste collection facility which is authorized to accept hazardous waste from CESQGs pursuant to subdivision (a) shall not accept more than 100 kilograms of hazardous waste, or 1 kilogram of extremely hazardous waste, from any one CESQG in a calendar month.

(c) A public agency, or its contractor, that accepts hazardous waste from CESQGs pursuant to this section may charge the CESQGs a fee for the cost incurred in handling their hazardous waste.

(d) The department may adopt and revise regulations for household hazardous waste collection facilities, including those which are authorized to accept hazardous waste from CESQGs. The regulations shall provide for all of the following:

(1) Promoting the reduction, reclamation, and recycling of hazardous waste over other hazardous waste management alternatives.

(2) Ensuring the safe transport of household hazardous waste and hazardous waste to authorized collection programs.

(3) Ensuring the compliance of participating CESQGs with the monthly quantity limitations specified in Section 261.5 of Title 40 of the Code of Federal Regulations.

As added by SB 1091 (Killea), Stats. 1993, c. 913.

25218.4. Except as provided in subdivision (f) of Section 25218.5, any person who transports household hazardous waste, and any CESQG that transports hazardous waste to an authorized household hazardous waste collection facility, who meets the conditions of Section 25218.5, is exempt from subdivision (a) of Section 25163 and from the requirement for possession of a manifest in paragraph (1) of subdivision (d) of Section 25160.

As added by SB 1091 (Killea), Stats. 1993, c. 913 and amended by SB 364 (Wright), Stats. 1995, c. 195, and AB 2201 (House), Stats. 1996 c. 539.

25218.5. (a) (1) Except as provided in paragraph (2), hazardous waste transported to a household hazardous waste collection facility shall be transported by any of the following:

(A) The individual or CESQG who generated the waste.

(B) A curbside household hazardous waste collection program.

(C) A mobile household hazardous waste collection facility, a temporary household hazardous waste collection facility, or a recycle-only household hazardous waste facility.

(D) A door-to-door household hazardous waste collection program.

(E) A household hazardous waste residential pickup service.

(F) A registered hazardous waste transporter carrying hazardous waste generated by a CESQG.

(G) A registered hazardous waste transporter carrying hazardous waste from a solid waste landfill loadcheck program or a transfer station loadcheck program under agreement with the household hazardous waste facility.

(H) A registered hazardous waste transporter, under agreement with the household hazardous waste facility, operating under a contract with a public agency to transport

hazardous wastes that were disposed of in violation of this chapter, and that are being removed by, or are being removed under the oversight of, the public agency, if the hazardous wastes were not originally disposed of in violation of this chapter by that public agency.

(2) Spent batteries that are received and transported pursuant to Section 25216.1 may be transported to a household hazardous waste collection facility from a collection location or an intermediate collection location.

(3) Notwithstanding Section 25218.4, a registered hazardous waste transporter or mobile household hazardous waste collection facility transporting hazardous waste to a household hazardous waste collection facility shall comply with subdivisions (a) and (c) of Section 25163 and paragraph (1) of subdivision (d) of Section 25160.

(b) An individual transporting household hazardous waste generated by that individual and a CESQG transporting hazardous waste generated by the CESQG to a household hazardous waste collection facility shall meet all of the following conditions:

(1) (A) Except as provided in subparagraphs (B) and (C) and Section 25218.5.1, the total amount of household hazardous waste transported by an individual or hazardous waste transported by a CESQG to a household hazardous waste collection facility shall not exceed a total liquid volume of five gallons or a total dry weight of 50 pounds. If the hazardous waste transported is both liquid and nonliquid, the total amount transported shall not exceed a combined weight of 50 pounds.

(B) Subparagraph (A) does not apply to spent batteries that are collected by a collection location or intermediate collection location pursuant to Section 25216.1 and transported to a household hazardous waste collection facility.

(C) A CESQG may transport up to 27 gallons or 220 pounds, but not more than 100 kilograms, per month to a household hazardous waste collection facility, if all of the following conditions are met:

(i) The hazardous waste being transported was generated by that CESQG.

(ii) The CESQG contacts the household hazardous waste collection facility prior to each delivery to confirm that the facility will accept the hazardous waste.

(iii) The household hazardous waste collection facility provides oral, written, or electronic instructions to the CESQG prior to each delivery on proper packing for the safe transportation of the specific hazardous waste being transported.

(iv) The CESQG or employees of the CESQG transport the hazardous waste in a vehicle owned and operated by the CESQG.

(2) The household hazardous waste and CESQG hazardous waste that is transported shall be in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during transport.

(3) Different household hazardous wastes or different CESQG hazardous wastes shall not be mixed within a container before or during transport.

(4) If the hazardous waste is an extremely hazardous waste or an acutely hazardous waste, the total amount transported by a CESQG shall not exceed 2.2 pounds.

(c) (1) Except as provided in paragraph (2), the total combined volume or weight of latex paint, used oil filters, antifreeze, and small batteries transported to a recycle-only household hazardous waste collection facility by any one individual shall not exceed a total volume of 10 gallons or a total dry weight of 100 pounds. Up to two spent lead-acid batteries may be transported at the same time and not more than 20 gallons of used oil may be transported in the same vehicle if the volume of each individual container does not exceed five gallons.

(2) Paragraph (1) does not apply to spent batteries that are collected by a collection location or intermediate collection location pursuant to Section 25216.1 and transported to a household hazardous waste collection facility.

(d) A curbside household hazardous waste collection program shall meet all of the following conditions:

(1) Not more than a total combined weight of 10 pounds of used oil filters shall be collected from a single residence at one time.

(2) Not more than five gallons of used oil shall be collected from a single residence at one time, and the volume of each individual container collected shall not exceed five gallons.

(3) Not more than five gallons of latex paint shall be collected from a single residence at one time, and the volume of each individual container collected shall not exceed five gallons.

(4) Hazardous waste containing mercury shall not be collected by a curbside household hazardous waste collection program unless the waste is contained in secure packaging that prevents breakage and spillage.

(5) Fluorescent light tubes that are four feet or greater in length shall not be collected by a curbside household hazardous waste collection program.

(6) The transported household hazardous waste shall be in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during transport.

(7) Different household hazardous wastes shall not be mixed within a container before or during transport.

(e) A door-to-door household hazardous waste collection program or household hazardous waste residential pickup service shall meet all of the following conditions:

(1) The transported household hazardous waste shall be in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during transport.

(2) Different household hazardous wastes shall not be mixed within a container before or during transport.

(3) A door-to-door household hazardous waste collection program or household hazardous waste residential pickup service is exempt from the requirements of Section 25160 regarding the use of a manifest when transporting household hazardous waste collected from individual residences to an authorized hazardous waste collection facility. In lieu of a manifest, a receipt shall be issued for the

household hazardous waste collected from an individual residence, and a copy of the receipt shall be retained by the public agency for a period of at least three years.

(f) Notwithstanding Section 25218.4, a mobile household hazardous waste collection facility, a temporary household hazardous waste collection facility, or a recycle-only household hazardous waste collection facility that transports household hazardous waste from the collection facility to a household hazardous waste collection facility pursuant to subdivision (a) shall comply with subdivisions (a) and (c) of Section 25163 and paragraph (1) of subdivision (d) of Section 25160.

As added by SB 1091 (Killea), Stats. 1993, c. 913, and amended by SB 364 (Wright), Stats. 1995, c. 195, and SB 219 (Thompson), Stats. 1995, c. 633, and SB 1291 (Wright), Stats. 1995, c. 640, and SB 1011 (Sher), Stats. 2002, c. 626, and AB 3041 (Assembly Environmental Safety and Toxic Materials Committee), Stats. 2004, c. 686.

25218.5.1. Notwithstanding Section 25218.5, a public agency may elect to increase the liquid volume and dry weight specified in paragraph (1) of subdivision (b) of, and in subdivision (c) of, Section 25218.5, to a liquid volume of 15 gallons and a dry weight of 125 pounds, if the public agency, as the case may be, finds that the local household hazardous waste collection program operated by that public agency, or its contractor, has adequate public education programs to inform the public on proper techniques for packaging and transporting the household hazardous waste to the program's household hazardous waste collection facilities.

As added by SB 845 (Leonard), Stats. 1995, c. 672.

25218.6. The fees imposed by Article 7 (commencing with Section 25170) and Article 9.1 (commencing with Section 25205.1) do not apply to either of the following:

(a) Hazardous wastes generated or disposed of by a public agency, or its contractor, operating a household hazardous waste collection facility, including, but not limited to, hazardous waste received from CESQGs.

(b) A household hazardous waste collection facility operated in accordance with this article.

As added by SB 1091 (Killea), Stats. 1993, c. 913.

25218.7. The corrective action provisions of Section 25200.l0 do not apply to a permit issued for the operation of a temporary household hazardous waste collection facility.

As added by SB 1091 (Killea), Stats. 1993, c. 913.

25218.8. (a) Except as provided in subdivision (b), a hazardous waste facilities permit shall be obtained for the operation of a household hazardous waste collection facility.

(b) A hazardous waste facilities permit is not required for the operation of a recycle-only household hazardous waste collection facility if all of the following conditions are met:

(1) The facility accepts only the following recyclable household hazardous waste materials for subsequent transport to an authorized recycling facility:

(A) Latex paint.

(B) Used oil.

(C) Used oil filters.

(D) Antifreeze.

(E) Spent lead-acid batteries.

(F) Nickel-cadium, alkaline, carbon-zinc, or other small batteries, if the facility is in compliance with Section 25216.1.

(2) No hazardous wastes or other materials are handled at the facility other than the materials specified in paragraph (1).

(3) The materials are transported to the collection facility by either of the following:

(A) The person who generated the material.

(B) The authorized curbside household hazardous waste collection program.

(4) The materials transported to the facility are transported in accordance with Section 25218.5.

(5) The materials collected are not stored at the facility for more than 180 days, except that less than one ton of spent lead-acid batteries may be stored at the facility for up to one year. More than one ton of spent lead-acid batteries shall not be stored at the facility for more than 180 days.

(6) The materials collected are managed in accordance with the hazardous waste labeling, containerization, emergency response, and personnel training requirements of this chapter.

(7) The facility is in compliance with Section 25218.2.

As added by SB 1091 (Killea), Stats. 1993, c. 913.

25218.9 On or before October 1 of each year, a public agency, or its contractor, operating a household hazardous waste collection facility shall submit to the CUPA, or, in those jurisdictions where there is no CUPA, to the officer or agency authorized pursuant to subdivision (f) of Section 25404.3 to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, a copy of the completed California Integrated Waste Management Board Form 303, which is required to be submitted to that board for the prior fiscal year pursuant to regulations adopted by that board. The completed California Integrated Waste Management Board Form 303 shall also be submitted to the department until (1) regulations promulgated by the Secretary for Environmental Protection establishing a unified program information collection and reporting system and standards are effective, (2) the regulations require a statewide data base system that will enable the department and the public to obtain the required information from all CUPAs or the authorized officers or agencies, and (3) the statewide data base system is in place and fully operational.

As added by SB 1091 (Killea), Stats. 1993, c. 913, and amended by AB 1357 (Baldwin), Stats. 1997, c. 778.

25218.10. The department and the California Integrated Waste Management Board shall jointly develop and maintain a data base of all household hazardous waste collection events, facilities, and programs within the state. The department and the California Integrated Waste Management Board shall both maintain that information, as a cooperative effort, and shall make information from the data base available to the public upon request. However, the department and the California Integrated Waste Management Board shall

implement this section only to the extent that funds are appropriated therefor by the Legislature.

As added by SB 1143 (Killea), Stats. 1992, c. 1346, and repealed and renumbered by SB 1091 (Killea), Stats. 1993, c. 913.

25218.11. (a) On or before March 31, 1996, the department shall develop a separate and distinct regulatory structure for the permitting of permanent household hazardous waste facilities which conduct the activities specified in subdivision (b). The regulations shall simplify the permitting of facilities and encourage the collection of material and shall be not more burdensome than is necessary to protect the public health and safety. The regulations adopted to implement this section shall weigh public safety considerations of household hazardous waste collection with the safety and environmental considerations of illegal disposal.

(b) The regulations adopted pursuant to subdivision (a) shall apply only to household hazardous collection activities that are operated by a public agency, or its contractor, and that only accept household hazardous waste or hazardous waste collected from conditionally exempt small quantity generators. The regulations shall require that prior to the commencement of the activities specified in this subdivision, the activities shall be authorized by the department.

As added by SB 845 (Leonard), Stats. 1995, c. 672.

25218.12. (a) A public agency may conduct a materials exchange program as a part of its household hazardous waste collection program if the public agency determines which reusable household hazardous products or materials are suitable and acceptable for distribution to the public in accordance with a quality assurance plan prepared by the public agency. The public agency shall instruct the recipient to use the product in a manner consistent with the instructions on the label.

(b) If the recipient of a household hazardous product or material is a business or employer, the recipient shall be responsible for obtaining any written information necessary for compliance with the Hazardous Substances Information and Training Act (Chapter 1 (commencing with Section 6360) of Part 7 of Division of the Labor Code).

As added by AB 2202 (Baca), Stats. 1996, c. 647.

25218.13. (a) A household hazardous waste collection facility that has a permit issued under Section 25218.8 may operate as a "home-generated sharps consolidation point," as defined in subdivision (b) of Section 117904, if the facility is approved by the enforcement agency as a point of consolidation pursuant to Section 117904 and the facility complies with the provisions of that section.

(b) For the purposes of this section, "sharps waste" has the meaning defined in Section 40190.5 of the Public Resources Code.

As added by SB 1362 (Figueroa), Stats. 2004, c. 157.

ARTICLE 12. FINANCIAL RESPONSBILITY AND CLOSURE AND MAINTENANCE OF FACILITIES

25245.5. REPEALED.

As added by AB 646 (Wright), Stats. 1991, c. 1125, and amended by AB 1772 (Polanco), Stats. 1992, c. 1345, and SB 28 (Wright), Stats. 1993, c. 411, and repealed by SB 1291 (Wright), Stats. 1995, c. 640.

25246. (a) Each owner or operator of a hazardous waste facility shall submit hazardous waste facility closure and postclosure plans to the department and to the California regional water quality control board for the region in which the facility is located. The plans shall contain the owner's or operator's estimate of the cost of closure and subsequent maintenance, shall conform to the regulations adopted by the department and shall comply with applicable state laws relating to water quality protection and monitoring.

(b) The plans specified in subdivision (a) shall be submitted to the department with the application for a hazardous waste facilities permit or when otherwise requested by the department. The plans shall be submitted to the California regional water quality control board with a report of waste discharge submitted in accordance with Section 13260 of the Water Code. An owner or operator who has submitted a request for, or received a hazardous waste facilities permit prior to, the adoption of the standards and regulations pursuant to Section 25245 shall submit the plans within 180 days after the department issues a written request for the plans. Prior to actual closure of the facility, the plans shall be updated if requested by the department. However, no owner or operator shall be required to revise or amend a closure plan after the department notifies the owner or operator in writing that the closure of the facility has been completed in accordance with the approved closure plan.

(c) An owner or operator who has not submitted facility closure and postclosure plans shall submit the plans at least 180 days prior to closure of the hazardous waste facility.

(d) This section does not apply to any person operating under a permit-by-rule, a conditional authorization, or a conditional exemption, pursuant to this chapter or the regulations adopted by the department.

As added by Stats. 1982, c. 90, and amended by Stats. 1988, c. 1631, and SB 1291 (Wright), Stats. 1995, c. 640.

ARTICLE 13. MANAGEMENT OF USED OIL

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

(1) (A) "Used oil" means all of the following:

(i) 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.

(ii) Material that is subject to regulation as used oil under Part 279 (commencing with Section 279.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(B) Examples of used oil are spent lubricating fluids that 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; metalworking oil; refrigeration oil; and railroad drainings.

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

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

(ii) (I) Wastewater, the discharge of which is subject to regulation under either Section 307(b) (33 U.S.C. Sec. 1317(b)) or Section 402 (33 U.S.C. Sec. 1342) of the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), including wastewaters at facilities that have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil.

(II) For purposes of this clause, "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.

(III) This exception does 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 that contains polychlorinated biphenyls (PCBs) at a concentration of 5 ppm or greater.

(v) (I) Oil containing more than 1000 ppm total halogens, which 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 Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(II) A person may rebut the presumption specified in subclause (I) by demonstrating that the used oil does not contain hazardous waste, including, but not limited to, in the manner specified in subclause (III).

(III) The presumption specified in subclause (I) is rebutted if it is demonstrated that the used oil that is the source of total halogens at a concentration of more than 1000 ppm is solely either household waste, as defined in Section 261.4(b)(1) of Title 40 of the Code of Federal Regulations, or is collected from conditionally exempt small quantity generators, as defined in Section 261.5 of Title 40 of the Code of Federal Regulations. Nothing in this subclause authorizes any person to violate the prohibition specified in Section 25250.7.

(2) "Board" means the California Integrated Waste Management Board.

(3) (A) "Recycled oil" means any oil that meets all of the following requirements specified in clauses (i) to (iii), inclusive:

(i) Is produced either solely from used oil, or is produced solely from used oil that has been mixed with one or more contaminated petroleum products or oily wastes, other than wastes listed as hazardous under the federal act, provided that if the resultant mixture is subject to regulation as a hazardous waste under Section 279.10(b)(2) of Title 40 of the Code of Federal Regulations, the mixture is managed as a hazardous waste in accordance with all applicable hazardous waste regulations, and the recycled oil produced from the mixture is not subject to regulation as a hazardous waste under Section 279.10(b)(2) of Title 40 of the Code of Federal Regulations. If the oily wastes with which the used oil is mixed were recovered from a unit treating hazardous wastes that are not oily wastes, these recovered oily wastes are not excluded from being considered as oily wastes for purposes of this section or Section 25250.7.

(ii) The recycled oil meets one of the following requirements:

(I) The recycled oil is produced by a generator lawfully recycling its oil.

(II) The recycled oil is produced at a used oil recycling facility that is authorized to operate pursuant to Section 25200 or 25200.5 solely by means of one or more processes specifically authorized by the department. The department may not authorize a used oil recycling facility to use a process in which used oil is mixed with one or more contaminated petroleum products or oily wastes unless the department determines that the process to be authorized for mixing used oil with those products or wastes will not substantially contribute to the achievement of compliance with the specifications of subparagraph (B).

(III) The recycled oil is produced in another state, and the used oil recycling facility where the recycled oil is produced, and the process by which the recycled oil is produced, are authorized by the agency authorized to implement the federal act in that state.

(iii) Has been prepared for reuse and meets all of the following standards:

(I) The oil meets the standards of purity set forth in subparagraph (B).

(II) If the oil was produced by a generator lawfully recycling its oil or the oil is lawfully produced in another state, the oil is not hazardous pursuant to the criteria adopted by the department pursuant to Section 25141 for any characteristic or constituent other than those listed in subparagraph (B).

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

(IV) The oil is not subject to regulation as a hazardous waste under the federal act.

(V) If the oil was produced lawfully at a used oil recycling facility in this state, the oil is not hazardous pursuant to any characteristic or constituent for which the department has made the finding required by subparagraph (B) of paragraph (2) of subdivision (a) of Section 25250.19, except for one of the characteristics or constituents identified in the standards of purity set forth in subparagraph (B).

(B) The following standards of purity are in effect for recycled oil, in liquid form, unless the department, by regulation, establishes more stringent standards:

(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 degrees Fahrenheit.

(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 Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

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

(C) Compliance with the specifications of subparagraph (B) or with the requirements of clauses (iv) and (v) of subparagraph (B) of paragraph (1) shall not be met by blending or diluting used oil with crude or virgin oil, or with a contaminated petroleum product or oily waste, except as provided in subclause (II) of clause (ii) of subparagraph (A), 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.

(D) This paragraph does not apply to oil that is to be disposed of or used in a manner constituting disposal.

(4) "Used oil recycling facility" means a facility that reprocesses or re-refines used oil.

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

(6) "Used oil transfer facility" means a transfer facility, as defined in subdivision (a) of Section 25123.3, that meets the qualifications to be a storage facility, for purposes of Section 25123.3.

(7) (A) For purposes of this section and Section 25250.7 only, "contaminated petroleum product" means a product that meets all of the following conditions:

(i) It is a hydrocarbon product whose original intended purpose was to be used as a fuel, lubricant, or solvent.

(ii) It has not been used for its original intended purpose.

(iii) It is not listed in Subpart D (commencing with Section 251.30) of Part 261 of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(iv) It has not been mixed with a hazardous waste other than another contaminated petroleum product.

(B) Nothing in this section or Section 25250.7 shall be construed to affect the exemptions in Section 25250.3, or to subject contaminated petroleum products that are not hazardous waste to any requirements of this chapter.

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

(1) The used oil has not been treated by the generator of the used oil, the generator claims the used oil is exempt from regulation by the department, and the used oil meets all of the following conditions:

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

(B) The used oil is not hazardous pursuant to the criteria adopted by the department pursuant to Section 25141 for any characteristic or constituent other than those listed in subparagraph (B) of 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 Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(D) The used oil is not subject to regulation as either hazardous waste or used oil under the federal act.

(E) The generator of the used oil has complied with the notification requirements of subdivision (c) and the testing and recordkeeping requirements of Section 25250.19.

(F) The used oil is not disposed of or used in a manner constituting disposal.

(2) The used oil meets all the requirements for recycled oil specified in paragraph (3) of subdivision (a), the requirements of subdivision (c), and the requirements of Section 25250.19.

(c) Used oil recycling facilities and generators lawfully recycling their own used oil that are the first to claim that recycled oil meets the requirements specified in paragraph (2) of subdivision (b) 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 used oil is exempt from regulation pursuant to paragraph (1) of subdivision (b), shall notify the department, 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 or recycling facility, whichever first claimed that the used oil or recycled oil meets the standards and criteria, and on the transporter or the user of the used oil or recycled oil, whichever has possession, to prove that the oil meets those standards and criteria.

(d) Used oil shall be managed in accordance with the requirements of this chapter and any additional applicable requirements of Part 279 (commencing with Section 279.1) of

Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

As added by SB 86 (Presley), Stats. 1986, c. 871, and amended by AB 379 (Killea), Stats. 1988, c. 545, and AB 817 (Bader), Stats. 1989, c. 1254, and AB 2965 (Eastin), Stats. 1990, c. 1219, and AB 1899 (Frizzelle), Stats. 1991, c. 1173, and AB 3582 (Richter), Stats. 1994, c. 1154, and SB 289 (Wright), Stats. 1995, c. 423, and AB 1245 (Frusetta), Stats. 1995, c. 628, and AB 1964 (Figueroa), Stats. 1995, c. 630, and SB 1291 (Wright), Stats. 1995, c. 640, and SB 1979 (O'Connell), Stats. 1996, c. 901, and SB 1824 (Calderon), Stats. 1998, c. 675, and AB 2067 (Cunneen), Stats. 1998, c. 880, and SB 1924 (O'Connell), Stats. 2000, c. 732, and AB 1348 (Lowenthal), Stats. 2003, c. 362, and AB 2251 (Lowenthal), Stats. 2004, c. 779.

25250.3. Any virgin oil product or partially refined product, which has not been previously used, which has become contaminated with nonhazardous impurities such as dirt or water, and which has been returned to bulk storage by the product's manufacturer, transporter, or wholesaler for gravity separation of contaminants, is exempt from this article. Any petroleum product which becomes contaminated with any other petroleum product during refining, transportation by pipeline, or storage and which remains usable as a refinery feed stock or as a refinery fuel is exempt from this article.

As added by SB 86 (Presley), Stats. 1986, c. 871.

25250.4. (a) Used oil shall be managed as a hazardous waste in accordance with the requirements of this chapter, unless one of the following applies:

(1) The used oil is excluded from regulation as hazardous waste pursuant to Section 25143.2, and is not subject to regulation as hazardous waste under the federal act.

(2) The used oil has been shown by the generator to meet the requirements of paragraph (1) of subdivision (b) of Section 25250.1 or the used oil is recycled oil and meets the requirements of paragraph (2) of subdivision (b) of Section 25250.1.

(b) This section does not apply to dielectric fluid removed from oil-filled electrical equipment that is filtered and replaced, onsite, at a restricted access electrical equipment area, or that is removed and filtered at a maintenance facility for reuse in electrical equipment and is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(c) For the purposes of this section:

(1) "Oil-filled electrical equipment" includes, but is not limited to, transformers, circuit breakers, and capacitors.

(2) "Restricted access electrical equipment area" means a fenced-off or walled-off restricted access area that is covered by a spill prevention control and countermeasure plan prepared in accordance with Part 112 of Title 40 of the Code of Federal Regulations and that is used in the transmission or distribution of electrical power, or both.

(d) For the purposes of subdivision (b), "filtered" means the use of filters assisted by the application of heat and suction to remove impurities, including, but not limited to, water, particulates, and trace amounts of dissolved gases, by equipment mounted upon or above an impervious surface.

(e) Nothing in this section affects the authority of the department or a certified unified program agency in the event of a spill.

As added by SB 86 (Presley), Stats. 1986, c. 871, and amended by AB 1899 (Frizzelle), Stats. 1991, c. 1173, and SB 1824 (Calderon), Stats. 1998, c. 675, and AB 2067 (Cunneen), Stats. 1998, c. 880, and AB 2573 (Briggs), Stats. 2000, c. 726, and SB 1924 (O'Connell), Stats. 2000, c. 732.

25250.5. (a) The disposal of used oil by discharge to sewers, drainage systems, surface water or groundwater, watercourses, or marine waters; by incineration or burning as fuel; or by deposit on land, is prohibited, unless authorized under other provisions of law.

(b) The use of used oil or recycled oil as a dust suppressant or insect or weed control agent is prohibited unless allowed under another applicable law, but only to the extent that use as a dust suppressant or insect or weed control agent is consistent with the federal act.

As added by SB 86 (Presley), c. 871, Stats. 1986, and amended by AB 817 (Bader), c. 1254, Stats. 1989, and AB 2965, (Eastin), c. 1219, Stats. 1990, and AB 3582, (Richter), c. 1154, Stats. 1994.

25250.7. (a) Except as provided in subdivision (b) or (c), no person who generates, stores, or transfers used oil shall intentionally contaminate used oil with other hazardous waste other than minimal amounts of vehicle fuel.

(b) A used oil transfer or recycling facility authorized by the department pursuant to Section 25200, 25200.5, or 25201.6 may mix used oil with a contaminated petroleum product or with an oily waste other than wastes listed as hazardous under the federal act, if all of the following conditions are met:

(1) If the resultant mixture is subject to regulation as a hazardous waste under paragraph (2) of subsection (b) of Section 279.10 of Title 40 of the Code of Federal Regulations, it is managed as a hazardous waste in accordance with all applicable hazardous waste regulations.

(2) The resultant mixture is used to produce recycled oil, as defined in paragraph (3) of subdivision (a) of Section 25250.1, at a used oil recycling facility solely by means of a process that has been specifically authorized by the department to treat these mixtures.

(3) The mixing of the used oil with a contaminated petroleum product or an oily waste is specifically authorized in the facility's permit.

(c) A generator or transporter may mix used oil with one or more contaminated petroleum products if the mixture is managed in accordance with Section 25143.2 or if all of the following conditions apply:

(1) If the resultant mixture is subject to regulation as a hazardous waste under paragraph (2) of subsection (b) of Section 279.10 of Title 40 of the Code of Federal Regulations, it is managed as a hazardous waste in accordance with all applicable hazardous waste regulations.

(2) (A) Except as provided in subparagraph (B), the resultant mixture is transported to a used oil recycling facility that issues a statement, in writing, to the generator or

transporter that the mixture will be used to produce recycled oil, as defined in paragraph

(3) of subdivision (a) of Section 25250.1, at a facility authorized to operate pursuant to Section 25200 or 25200.5 solely by means of a process that has been specifically authorized by the department to treat these mixtures.

(B) If the resultant mixture is transported to a used oil recycling facility located in another state, that facility is authorized by the agency authorized to implement the federal act in that state.

(3) The mixing is not conducted in a manner that violates subparagraph (C) of paragraph (3) of subdivision (a) of Section 25250.1.

(4) The transporter tests the halogen content of the used oil to demonstrate compliance with clause (vi) of subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1 before mixing the used oil with the contaminated petroleum product.

As added by SB 86 (Presley), Stats. 1986, c. 871, and amended by AB 817 (Bader), Stats. 1989, c. 1254, and SB 1824 (Calderon), Stats. 1998, c. 675, and AB 2067 (Cunneen), Stats. 1998, c. 880, and AB 1348 (Lowenthal), Stats. 2003, c. 362.

25250.8. REPEALED.

As added by SB 86 (Presley), Stats. 1986, c. 871, and amended by AB 379 (Killea), Stats. 1988, c. 545, and AB 3582 (Richter), Stats. 1994, c. 1154, and repealed by SB 271 (O'Connell), Stats. 2001, c. 319.

25250.9 . (a) (1) Except as provided in subdivision (b), a hazardous waste transporter who transports used oil shall provide a written notification in the form below to each generator from whom the transporter receives used oil:

IMPORTANT NOTICE REGARDING THE DISPOSITION OF YOUR USED OIL PLEASE SIGN AFTER READING

_____ (used oil transporter) hereby advises _____ (used oil generator) that _____ (generator's) shipment of used oil may be transported to a facility that is required to comply with federal regulations applicable to management of used oil, but that is not required to comply with the more stringent requirements applicable to hazardous waste management facilities. California facilities that handle or process used oil are required to meet those more stringent requirements, and some out-of-state facilities that process used oil also meet those requirements. These include more stringent leak detection and prevention requirements, engineering certifications of tank integrity, and financial assurances for closure and accidental releases. It is lawful to send used oil to out-of-state facilities that comply only with federal used oil management standards and not these more stringent requirements.

This notification is for information purposes only.

_____ (signed, Transporter) Date: _____

_____ (signed, Generator) Date: _____

(2) A hazardous waste transporter shall provide the notice required pursuant to paragraph (1) at least once each year, except if the notice is provided pursuant to subdivision (g).

(b) A transporter is not required to provide a generator with the notification specified in subdivision (a) if either of the following apply:

(1) The generator from whom the transporter receives used oil specifically designates in writing that the used oil is to be transported to a specified facility and that facility either is authorized by the department to produce used oil into recycled oil or it is operating in accordance with a hazardous waste facilities permit or interim status document issued pursuant to the federal act.

(2) The transporter annually certifies to the generator, in writing, that any used oil that the transporter receives from the generator will be transported only to a facility that is authorized by the department to produce used oil into recycled oil or to a facility that is lawfully operating in accordance with a hazardous waste facilities permit or interim status document issued pursuant to the federal act.

(c) A transporter may make the certification specified in subdivision (a) even if the used oil the transporter receives from the generator is first transported to a transfer facility, as defined in paragraph (3) of subdivision (a) of Section 25123.3, or a storage facility authorized by the department to store used oil, before the used oil is sent to a facility that is authorized by the department to produce used oil into recycled oil or to a facility that is lawfully operating in accordance with a hazardous waste facilities permit or interim status document issued pursuant to the federal act.

(d) Any person who makes a material misrepresentation in the course of implementing the requirements of this section is in violation of this chapter. A transporter that relies in reasonable good faith upon a statement made by a facility to comply with this section is not in violation of this chapter.

(e) Each transporter subject to this section shall retain the documents necessary to demonstrate compliance with this section, including, but not limited to, each signed notification form, for as long as the transporter is required to retain the manifest for the used oil to which the documents apply.

(f) This section shall not be construed to prohibit the transportation of used oil to any facility located outside the state, or to impose liability upon, or in any way affect the liability of a generator whose used oil is transported to a facility located outside the state in accordance with the requirements of this section.

(g) A transporter may place the notification and signature and date block specified in subdivision (a) on the back of the service order the transporter provides to the generator, if the notification language and associated signature and date block specified in subdivision (a) is the only wording appearing on that side of the service order and the transporter

and generator sign the signature and date block each time the generator receives a service order.

As added by AB 2166 (Lowenthal), Stats. 2002, c. 992, and amended by AB 1348 (Lowenthal), Stats. 2003, c. 362.

25250.10. Every registered hazardous waste hauler who transports used oil shall report to the department, on or before March 1 of each year, the following information on a form provided by the department:

(a) The shipping descriptions of used oil transported during the preceding calendar year.

(b) The volume of each type of used oil transported, identified by shipping description.

(c) The facilities to which the used oil was transported, identified by name, address, telephone number, and Environmental Protection Agency identification number.

As added by SB 86 (Presley), Stats. 1986, c. 871, and amended by AB 379 (Killea), Stats. 1988, c. 545.

25250.11. (a) Any person who receives used oil from consumers or other used oil generators, is exempt from hazardous waste facilities permit requirements imposed pursuant to Article 9 (commencing with Section 25200) with respect to any location at which used oil is received if all of the following conditions are met:

(1) Each shipment of used oil received does not exceed 55 gallons, and the capacity of any single container does not exceed 55 gallons.

(2) No other hazardous wastes are received at the location, unless authorized by other provisions of law.

(3) The used oil is transported by the generator of the used oil.

(b) Any person who transports used oil is exempt from the requirements of subdivision (a) of Section 25163 and from the requirements of Section 25160 concerning the possession of a manifest while transporting used oil to a location described in subdivision (a) if all of the following conditions are met:

(1) The capacity of any single container does not exceed 55 gallons.

(2) Each shipment of used oil does not exceed 55 gallons.

(3) The person transporting the used oil had generated the used oil.

(4) The person transporting the used oil does not transport greater than 20 gallons of used oil, and does not transport any used oil in any container exceeding 5 gallons in capacity, without first contacting the destination location described in subdivision (a) and verifying that the location will accept the used oil.

(c) This section does not prevent any person that receives used oil pursuant to subdivision (a) from placing volume limits or container size limits on the shipments of used oil accepted by that person that are smaller than the limits specified in this section.

As added by SB 86 (Presley), Stats, 1986, c. 871, and amended by AB 379 (Killea), Stats. 1988, c. 545, and AB 817 (Bader), Stats. 1989, c. 1254, and AB 2965 (Eastin), Stats. 1990, c. 1219, and AB 2201 (House), Stats. 1996, c. 539, and SB 470 (Sher), Stats. 2001, c. 605.

25250.12. Used oil generated during maintenance operations may be transferred from its point of generation to the maintenance person's place of business, other than a residence, for the purpose of consolidation in a tank or container, without meeting the requirements of Sections 25160, 25163, and 25201, if the material is to be recycled at an authorized offsite hazardous waste facility and if all the following conditions are met:

(a) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator.

(b) Not more than 55 gallons are transferred in the vehicle at any one time.

(c) The used oil is managed in accordance with all laws concerning storage and handling of hazardous wastes upon consolidation at the maintenance person's place of business.

(d) The used oil is deemed to be generated at the point of consolidation upon consolidation.

As added by AB 2965 (Eastin), Stats. 1990, c. 1219, and amended by AB 3582 (Richter), Stats. 1994, c. 1154.

25250.13. Notwithstanding any provision of this chapter, a transfer facility, as defined in paragraph (3) of subdivision (a) of Section 25123.3, that accepts used oil and holds the oil for more than 24 hours, but is not otherwise a storage facility, as defined in subdivision (b) of Section 25123.3, 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.

As added by AB 2583 (Richter), Stats. 1994, c. 1154, and amended by AB 1245 (Frusetta), Stats. 1995, c. 628, and AB 2251 (Lowenthal), Stats. 2004, c. 779.

25250.15. (a) Any person operating a refuse removal vehicle or a curbside collection vehicle used to collect or transport used oil which has been generated as a household waste or as part of a curbside recycling program, as defined by the board, is exempt from the requirements of Sections 25160 and 25250.8, and subdivision (a) of Section 25163 of this code and Chapter 2.5 (commencing with Section 2500) of Division 2 of, Division 14.1 (commencing with Section 32000) of, and subdivision (g) of Section 34500 of, the Vehicle Code.

(b) Refuse removal and other curbside collection operations exempted under subdivision (a) are also exempt from permit requirements pursuant to Article 9 (commencing with Section 25200), if the storage location meets all applicable hazardous waste generator, container, and tank requirements, except for the generator fee requirement specified in subdivision (d).

(c) Used oil collected pursuant to this section shall be deemed to be generated by the storage location upon receipt.

(d) Used oil collected pursuant to this section is exempt from the generator fee imposed pursuant to Section 25205.5.

As added by SB 86 (Presley), Stats. 1986, c. 871, and amended by AB 2965 (Eastin), Stats. 1990, c. 1219, and AB 1899 (Frizzelle), Stats. 1991, c. 1173, and AB 2201 (House), Stats. 1996, c. 539.

25250.16. (a) No person may recycle used oil without obtaining authorization from the department pursuant to Section 25200 or 25200.5, or unless exempted pursuant to Section 25143.2.

(b) Any person who is authorized to recycle used oil pursuant to Section 25200 or 25200.5 shall assure, to the satisfaction of the department, that halogens removed from used oil in the recycling process are not burned, except at a facility authorized to do so pursuant to Section 25200 or 25200.5.

As added by SB 86 (Presley), Stats. 1986, c. 871, and amended by AB 379 (Killea), Stats. 1988, c. 545, and AB 817 (Bader), Stats. 1989, c. 1254, and SB 289 (Wright), Stats. 1995, c. 423.

25250.17. (a) Unless the facility meets the requirements of Section 25250.11, each used oil recycling, storage, or transfer facility shall submit a report, on or before March 1 of each even-numbered year, to the department, on a form provided by the department, containing all of the following information:

(1) The total volume of used oil possessed at the beginning and end of the preceding calendar year.

(2) The total volume of used oil received during the preceding calendar year.

(3) The total volume of used oil recycled during the preceding calendar year, itemized as follows:

(A) Prepared for reuse as a petroleum product.

(B) Consumed in the process of preparing for reuse, including wastes generated.

(C) Prepared for reuse other than as a petroleum product, specifying each type of other use.

(D) Not recycled but transported offsite.

(E) The manner in which the used oil is processed or re-refined, including the specific processes used, if applicable.

(4) Any other information which the department may require.

(b) The department may utilize reports collected by other governmental agencies to obtain the information required by this section.

As added by SB 86 (Presley), Stats. 1986, c. 871, and amended by AB 379 (Killea), Stats. 1988, c. 545, and AB 3582 (Richter), Stats. 1994, c. 1154.

25250.18. (a) Any person who transports recycled oil or oil exempted pursuant to paragraph (1) of subdivision (b) of Section 25250.1 shall maintain with each shipment a certification form, provided by the department, which contains all of the following information:

(1) The name and address of the used oil recycling facility or generator claiming the oil meets the requirements of Section 25250.1.

(2) The name and address of the facility receiving the shipment.

(3) The quantity of oil delivered.

(4) The date of shipment or delivery.

(5) A cross-reference to the records and documentation required under Section 25250.1.

(b) Certification forms required in subdivision (a) shall be maintained for three years and are subject to an audit and verification by the department or the board.

As added by SB 86 (Presley), Stats. 1986, c. 871, and amended by AB 379 (Killea), Stats. 1988, c. 545, and AB 2965 (Eastin), Stats. 1990, c. 1219, and SB 1924 (O'Connell), Stats. 2000, c. 732.

25250.19. (a) (1) A used oil recycler shall test all recycled oil in accordance with paragraph (2), prior to transportation from the recycling facility, pursuant to applicable methods in the Environmental Protection Agency Document No. Solid Waste 846 or any equivalent alternative method approved or required by the department, and shall ensure and certify the oil as being in compliance with the standards specified in paragraph (3) of subdivision (a) of Section 25250.1.

(2) The used oil recycler shall test the recycled oil for compliance with the purity standards set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1, and for any other hazardous characteristics or constituents for which testing is required in the permit issued by the department for the used oil recycling facility. The permit shall require testing for compliance with the purity standards set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1. The permit may also require testing for other hazardous characteristics and constituents only if the department finds, based upon evidence in the record, all of the following:

(A) There is a reasonable expectation that the recycled oil may exhibit the hazardous characteristic or contain the hazardous constituent at a level that would cause it to be hazardous waste if the recycled oil were a waste, taking into consideration at least all of the following factors:

(i) The conditions included in the facility's permit limiting the wastes that may be accepted at the facility and the conditions requiring testing of the wastes accepted at the facility.

(ii) The types of wastes that historically have been accepted by the facility or similar facilities and the types of wastes that the facility can reasonably be expected to accept in the future, including any new products or constituents.

(iii) Previous test results of recycled oil produced by the facility indicating the presence, or lack of the presence, of the constituent or characteristic at a level that would cause it to be hazardous waste if the recycled oil were a waste.

(iv) The treatment technologies and methods authorized in the facility's permit for production of the recycled oil and the extent to which those treatment technologies and methods

remove or reduce the constituents or characteristics from the wastes accepted by the facility; and

(B) The hazardous characteristic or constituent cannot reasonably be expected to be present in products produced from crude oil similar to the recycled oil products produced by the facility at levels that would cause the product produced from crude oil to be a hazardous waste if it were a waste.

(3) Records of tests performed pursuant to this subdivision and a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department or the board. The department shall perform an audit and verification on a periodic basis. The department may charge a reasonable fee for this activity.

(b) A generator claiming that used oil is exempted from regulation pursuant to paragraph (1) of subdivision (b) of Section 25250.1 shall ensure that all used oil for which the exemption is claimed has been tested and certified as being in compliance with the standards specified in paragraph (1) of subdivision (b) of Section 25250.1, prior to transportation from the generator location. A generator lawfully recycling its own oil shall ensure that all recycled oil has been tested and certified as being in compliance with the requirements specified in paragraph (2) of subdivision (b) of Section 25250.1. Records of tests performed and a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department, the unified program agency, or the board.

(c) Used oil recyclers identified in subdivision (a) and generators identified in subdivision (b) shall record in an operating log and retain for three years the information specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25250.18 on each shipment of recycled or exempted oil.

(d) Operating logs required in subdivision (c) are subject to audit and verification by the department, the unified program agency, or the board.

(e) (1) If oil produced at a used oil recycling facility in this state meets the standards of purity set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1 and is not hazardous due to the presence of any characteristic or constituent for which the department has made a finding required by subparagraphs (A) and (B) of paragraph (2) of subdivision (a), but the oil is hazardous due to the presence of another constituent or characteristic, the facility operator shall not be subject to any penalty pursuant to this chapter for failing to manage the oil as a hazardous waste, unless both of the following apply:

(A) While the oil was onsite at the facility, the operator of the facility knew, or reasonably should have known, that the oil failed to meet those criteria.

(B) The facility operator failed to take action to manage the oil as a hazardous waste when the oil was determined to be hazardous.

(2) The department may exercise its authority, including, but not limited to, the issuance of an order, to a used oil recycling facility pursuant to Section 25187, to ensure that oil subject to this subdivision is managed as a hazardous waste pursuant to this chapter.

As added by SB 86 (Presley), Stats. 1986, c. 871, and amended by AB 379 (Killea), Stats. 1988, c. 545, and AB 2965 (Eastin), Stats. 1990, c. 1219, and AB 3582 (Richter), Stats. 1994, c. 1154, and SB 1191 (Calderon), Stats. 1995, c. 639, and SB 1924 (O'Connell), Stats. 2000, c. 732.

25250.22. (a) Notwithstanding any other provision of state law, and to the extent consistent with the federal act, a filter that contains a residue of gasoline or diesel fuel, may be managed in accordance with the requirements in the department's regulations governing the management of used oil filters, unless the department adopts regulations establishing management standards specific to filters that contain those residues.

(b) Management of filters that contain residue of gasoline, and commingled filters that include filters that contain residue of gasoline, shall also meet all of the following requirements:

(1) The filters shall be stored in containers that are designed to prevent ignition of the gasoline and that are labeled "used oil and gasoline filters."

(2) For purposes of transportation, the filters shall be packaged, and the package shall be marked and labeled in accordance with the applicable requirements of Parts 172 (commencing with Section 172.1), 173 (commencing with Section 173.1), 178 (commencing with Section 178.1), and 179 (commencing with Section 179.1) of Title 49 of the Code of Federal Regulations.

(3) The filters shall be stored and otherwise managed in accordance with applicable state and local fire code regulations.

(4) Any gasoline, or used oil commingled with gasoline, that accumulates in containers or other equipment used for filter storage or recycling, and nonmetal filter material removed from filter housing, shall be evaluated pursuant to Section 66262.11 of Title 22 of the California Code of Regulations, to determine its regulatory status under the federal act, and it shall be managed accordingly.

As added by AB 2254 (Aghazarian), Stats. 2004, c. 240.

25250.23. Any person who transports used oil shall register as a hazardous waste hauler and, unless specifically exempted or unless the used oil is not regulated by the department pursuant to subdivision (b) of Section 25250.1, shall comply with all provisions of this chapter.

As added by SB 86 (Presley), Stats. 1986, c. 871, and amended by SB 1924 (O'Connell), Stats. 2000, c. 732.

25250.24. (a) Except as provided in subdivision (b), any person who generates, receives, stores, transfers, transports, treats, or recycles used oil, unless specifically exempted or unless the used oil is not regulated by the department pursuant to subdivision (b) of Section 25250.1, shall comply with all provisions of this chapter.

(b) Used oil which is removed from a motor vehicle and which is subsequently recycled, by a recycler who is permitted pursuant to this article, shall not be included in the calculation

of the amount of hazardous waste generated for purposes of the generator fee imposed pursuant to Section 25205.5.

As added by SB 86 (Presley), Stats. 1986, c. 871, and amended by Stats. 1988, c. 1085, and SB 1924 (O'Connell), Stats. 2000, c. 732.

25250.25. (a) Any person who manufactures containers which are produced specifically for the noncommercial storage or transportation of used oil and which are sold in this state to consumers, shall not sell or transfer any of those containers in this state to any person, unless the container meets all of the following requirements:

(1) The used oil cannot leak or unintentionally be spilled from the container with normal handling.

(2) No part of the container that comes in contact with the used oil can absorb any of the used oil being collected and transported.

(3) The following statement shall be printed on a readily visible part of the container in at least 12-point typeface by the manufacturers of the container:

"Used oil is classified as a hazardous waste under California law. Used oil must be recycled properly. Placing used oil into household garbage or commercial dumpsters or pouring it into sewers or onto the ground is prohibited by law."

(b) Any person who manufactures containers which are produced specifically for the noncommercial drainage of used oil and which are sold in this state to consumers, shall not sell or transfer any of those containers in this state to any person unless the container meets the requirements of paragraphs (2) and (3) of subdivision (a).

As added by AB 3297 (Killea), Stats. 1988, c. 776.

Chapter 6.8. Hazardous Substance Account

ARTICLE 6. RECOVERY ACTIONS

25366.5. (a) Any public agency operating a household hazardous waste collection program or any person operating such a program under a written agreement with a public agency, or, for material received from the public as used oil, any person operating a certified used oil collection center as provided in Section 48660 of the Public Resources Code, shall not be held liable in any cost recovery action brought pursuant to Section 25360, including, but not limited to, any action to recover the fees imposed by Section 25343 or any action brought pursuant to subdivision (e) of Section 25363, for any waste that has been properly handled and transported to an authorized hazardous waste treatment, storage, or disposal facility at a location other than that of the collection program.

(b) For purposes of this section, "household hazardous waste collection program" means a program or facility, specified in Section 25218.1, in which hazardous wastes from households and conditionally exempt small quantity generators, are collected and ultimately transferred to an authorized hazardous waste treatment, storage, or disposal facility.

(c) Except as provided in subdivision (a), this section does not affect or modify the obligations or liabilities of any person imposed pursuant to any state or federal law.

As added by AB 1744 (Wright), Stats. 1985, c. 1193, and amended by AB 2597 (Tanner), Stats. 1990, c. 1265, and AB 2076 (Sher), Stats. 1991, c. 817, and SB 1985 (Thompson), Stats. 1992, c. 363, and AB 2166 (Lowenthal), Stats 2002, c. 992.

Chapter 6.85. California Expedited Remedial Action Reform Act of 1994

(Chapter 6.85 as added by SB 923 (Calderon), Stats. 1994, c. 435)

ARTICLE 1. DEFINITIONS

(Article 1 as added by SB 923 (Calderon), Stats. 1994, c. 435)

25396. Unless the context indicates otherwise, the following definitions govern the construction of this chapter.

(a) "Affected community" means the local residents or workers living or working, and owners of businesses operating, in proximity to the site, who are, or may be, directly impacted by the conditions at the site, or by any response action. "Affected community" also includes the legislative body of the jurisdiction in which a site is located.

(b) "Agency" means the California Environmental Protection Agency.

(c) "Arbitration panel" means the arbitration panel convened pursuant to Section 25398.10.

(d) "Beneficial uses of water" means uses of the waters of the state that are identified in the current State Water Resources Control Board and California regional water quality control boards' water quality control plans for the area in which the site is located.

(e) "Department" means the Department of Toxic Substances Control.

(f) "Engineering controls" means measures to control or contain migration of hazardous substances or to prevent, minimize or mitigate environmental damage which may otherwise result from a release or threatened release, including, but not limited to, caps, covers, dikes, trenches, leachate collection systems, treatment systems, and groundwater containment systems or procedures.

(g) "Federal act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (42 U.S.C. Sec. 9601 et seq.).

(h) "Fund Administrator" means the state officer assigned the responsibility of protecting the viability of the trust fund as the representative of the state for the orphan share in all actions concerning apportionment of liability if there is a potential apportionment of liability to the orphan share for payment from the trust fund.

(i) "Hazardous substance" shall have the same meaning as set forth in Sections 25316 and 25317.

(j) (1) "Insolvent" means a person or entity who has received a discharge of liability under Section 727, 944, or 1141 of Title 11 of the United States Code, for pre-petition response costs relating to a site selected for response actions pursuant to this chapter.

(2) Notwithstanding paragraph (1), a person or entity is not insolvent with respect to any payment that the department

receives or will receive for any pre-petition response costs as a result of the bankruptcy, or with respect to any post-petition response costs.

(k) "Interim endangerment" means conditions at a site which pose a significant risk either of harm to human health or of serious environmental damage unless immediate response action is initiated before remedial action measures set forth in a remedial action plan prepared for the site are implemented.

(l) "Land use controls" means recorded instruments restricting the present and future uses of the site, including, but not limited to, recorded easements, covenants, restrictions or servitudes, or any combination thereof, as appropriate. Land use controls shall run with the land from the date of recordation, shall bind all of the owners of the land, and their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees, and shall be enforceable by the department pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5.

(m) "Orphan share" means that share of liability for the costs of response actions apportioned to responsible persons who are insolvent or cannot be identified or located. The department may adopt regulations to further define a process to determine when a responsible person cannot be identified or located.

(n) "Person" shall have the same meaning as set forth in Section 25319.

(o) "Planned use" means the reasonably expected future land uses based on all of the following factors:

(1) The land use history of the site and surrounding properties, the current land uses of the site and surrounding properties and recent development patterns in the area where the site is located.

(2) Land use designations at the site and surrounding properties, including current and likely future zoning and local land use plans and the presence, if any, of groundwater and surface water recharge areas.

(3) The potential for economic redevelopment.

(4) Current plans for the site by the property owner or owners.

(5) Affected community comments on the proposals for use of the site.

(p) "Release" has the same meaning as set forth in Sections 25320 and 25321.

(q) "Remedy" or "remedial action" means actions that are necessary to prevent, minimize, or mitigate damage that may result from a release or threatened release of a hazardous substance and that, when carried through to completion, allow a site to be permanently used for its planned use without any significant risk to human health or any significant potential for future environmental damage. "Remedy" or "remedial action" includes, but is not limited to, all of the following:

(1) Actions at the location of the release, such as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling, reuse, diversion, destruction, or segregation of reactive wastes, dredging, excavation, repair, or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to ensure that these actions protect human health and safety, or the environment.

(2) The costs of permanent relocation of residents and businesses and community facilities where the Governor determines that, alone or in combination with other measures, that relocation is more cost-effective than, and environmentally preferable to, the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect human health and safety, or the environment.

(3) Offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

(r) "Remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, those actions which may be necessarily taken in the event of the threat or release of hazardous substances into the environment, those actions which may be necessary to monitor, assess, and evaluate the release, or threat of release, of hazardous substances, the disposal of removed material, and the taking of other actions which may be necessary to prevent, minimize, or mitigate damage to human health and safety, or the environment, which may otherwise result from a release or threat of release. "Remove" or "removal" also includes, but is not limited to, security fencing or other measures to limit access, provision of alternative water supplies, and temporary evacuation and housing of threatened individuals not otherwise provided.

(s) "Respond," "response," or "response action" means removal actions, and remedial actions, including, but not limited to, operation and maintenance measures.

(t) "Response costs" means all costs incurred by the state or any responsible person in taking response actions under this chapter at a specific site, including costs incurred by any state agency in implementing and administering this chapter pursuant to the limitations established in subdivision (f) of Section 25399, and in overseeing response actions under this chapter. Those costs shall include all costs incurred by the state in relation to any judicial review of a decision of an arbitration panel pursuant to subdivision (e) of Section 25398.10 or any arbitration conducted pursuant to this chapter.

(u) "Responsible person" has the same meaning as set forth in Section 25323.5 for "responsible party" or "liable person."

(v) "Secretary" means the Secretary for Environmental Protection.

(w) "Site" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

(x) "Site Designation Committee" or "committee" means the Site Designation Committee created pursuant to Section 25261.

(y) "State board" means the State Water Resources Control Board.

(z) "Trust fund" means the Expedited Site Remediation Trust Fund created pursuant to subdivision (a) of Section 25399.1.

As added by SB 923 (Calderon), Stats. 1994, c. 435 and amended by SB 975 (Senate Judiciary Committee), Stats. 1995, c. 91, and SB 1757 (Calderon), Stats. 1996, c. 632.

25396.1. This chapter shall be known and may be cited as the California Expedited Remedial Action Reform Act of 1994.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25396.2. Chapter 3 (commencing with Section 856) of Title 3 of Part 2 of Division 2 of the Civil Code does not apply to a site which is subject to a response action pursuant to this chapter.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

ARTICLE 2. SITE SELECTION

(Article 2 as added by SB 923 (Calderon), Stats. 1994, c. 435)

25396.5. (a) The intent of this chapter is to establish a pilot program to determine if expedited procedures for carrying out response actions at response action sites are appropriate and protective of human health and the environment.

(b) This chapter is applicable to not more than 30 response action sites, of which not more than 10 may have an orphan share. The department, upon a request from a responsible person for consideration of a site for remediation pursuant to this program, shall forward the request to the Site Designation Committee, along with the department's recommendation as to whether the site should be selected. The department shall also forward the request to the local jurisdiction in which the site is located, to allow that local jurisdiction to submit comments to the committee concerning the request.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25396.6. The committee may select a site for remediation pursuant to this chapter only if the site meets all of the following conditions:

(a) The department is the appropriate administering agency for the site pursuant to Section 25236 and the committee designates the department as the administering agency.

(b) The responsible person or persons requesting selection of the site have submitted a completed preliminary endangerment assessment, as defined in Section 25319.5, which concludes that significant response actions are necessary at the site and includes an analysis of the scope and identity of the affected community.

(c) The committee finds all of the following:

(1) The site is not on, or eligible to be placed on, the National Priority List prepared pursuant to the federal act, or is not a site which is owned or operated by a department, agency, or instrumentality of the United States.

(2) There are funds available in the trust fund to cover all of the response action costs that will or may be assigned to the orphan share at the site, unless one or more of the responsible persons who have submitted a notice of intent under paragraph (3) agree in writing to pay for the orphan share at the site that cannot be paid by the state because of insufficient funding in the trust fund. Any agreement to pay orphan share costs, which the fund cannot pay, shall be backed by adequate forms of financial security, as determined by the department.

(3) One or more responsible persons submit a notice of intent to the department to do all of the following:

(A) Be bound by the requirements of this chapter.

(B) Enter into an enforceable agreement with the department, as set forth in paragraph (1) of subdivision (b) of Section 25398.2.

(C) Pay all response costs not otherwise paid by the trust fund or another responsible person.

(4) There is no known condition of interim endangerment existing at the site at the time it is selected for response actions pursuant to this chapter.

(5) (A) Except as provided in subparagraph (B), the department has not already issued an order or entered into an enforceable agreement with responsible parties at the site under Chapter 6.8 (commencing with Section 25300), the department has not commenced a judicial action against responsible persons at the site, and no orders have been issued by a court requiring responsible persons at the site to take response actions or to pay the department's response costs at the site.

(B) The committee may waive the requirements of subparagraph (A) for not more than five sites if the committee determines that the selection of the site, for response action pursuant to this chapter, will not delay response action at the site and is otherwise in the public interest.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25397. (a) Except to the extent otherwise specified in this chapter, response actions for a site selected pursuant to Section 25396.6 shall be taken pursuant to this chapter, and the requirements of Chapter 6.8 (commencing with Section 25300) shall not apply. In addition, the provisions of Chapter 6.65 (commencing with Section 25260) shall apply to all response actions taken at sites selected pursuant to this chapter, including the requirement that the response action be implemented in compliance with all state and local laws, ordinances, regulations, and standards that are applicable to the response action.

(b) The committee may, as part of the findings required by Section 25396.6, direct that an advisory committee be convened pursuant to Section 25263 to ensure that the department receives adequate guidance in overseeing response action at a site that is selected for remedial action under this chapter.

(c) An advisory committee convened pursuant to subdivision (b) shall have the same powers and duties as an advisory committee that is convened pursuant to Section 25263. The advisory committee shall be bound by the decisions of an arbitration panel and any court decisions rendered upon judicial review.

(d) The department shall maintain a list of sites selected for response action pursuant to this chapter and shall make this list available to interested parties.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

ARTICLE 3. PREREQUISITES OF THE PROGRAM

(Article 3 as added by SB 923 (Calderon), Stats. 1994, c. 435)

25397.1. Any action taken by the department pursuant to this chapter shall be consistent with all applicable regulations adopted by the State Water Resources Control Board, all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code, and all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, to the extent the department determines that those regulations, plans, and policies are not less stringent than this chapter and the regulations adopted pursuant to this chapter.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25397.2. The department shall ensure that the public is given the opportunity to participate in response actions taken pursuant to this chapter in accordance with the department's public policy and procedures manual, No. OPP-94-002.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25397.3. Nothing in this chapter shall be construed to restrict the rights of responsible persons and the department to agree upon other voluntary methods of remediation.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

ARTICLE 4. EXPEDITED SITE REMEDIATION

(Article 4 as added by SB 923 (Calderon), Stats. 1994, c. 435)

25398. (a) The department shall serve as the lead agency for implementing this chapter and shall act as the oversight agency for purposes of all response actions taken pursuant to this chapter.

(b) After a site has been selected for response action under this chapter, and prior to holding the conference specified in Section 25398.2, the department shall, after necessary investigation, including a title search of the site, if appropriate, notify appropriate state and local agencies and all known potentially responsible persons for that site of all of the following:

(1) The names and addresses of all potentially responsible persons who the department has identified at the site, and the factual and statutory basis for that identification.

(2) That the site has been selected for response action under this chapter, that the potentially responsible person's rights and liabilities with respect to the site will be determined under this chapter, and that the potentially responsible person will be bound by that determination.

(3) A description of the known extent and type of hazardous substance that has been released or is threatened to be released on, at, or from the site.

(4) The date, time, and place for the conference specified in Section 25398.2.

(c) After the notice provided for in subdivision (b) has been issued, the department shall notify any additional persons who have been subsequently identified by the department as potentially responsible persons, of the selection of the site under this chapter. This notification shall include all the information specified in subdivision (b) except that the date, time, and place of the conference specified in Section 25398.2 need not be included if that conference has already taken place. The department shall also send such notifications to the other potentially responsible parties who have already been identified.

(d) (1) The department shall notify the city or county in which any site is located that a response action has been initiated pursuant to this chapter. The department shall provide the city or county with notice of the time, date, and place of all public hearings and meetings regarding the response action, shall provide the city or county with regular response action progress reports, and shall involve the city or county in any deliberation concerning land use controls or actions proposed pursuant to subdivision (c) of Section 25398.7. The department shall request the city or county to provide the department with the city's or county's assessment of the planned use of the site, including the current and future zoning and general plan designations for the site and the city's or county's determination as to the appropriate planned use designation in the remedial action plan prepared for the site. The city's or county's determination as to the appropriate planned use designation shall be presumed by the department to be the appropriate planned use for the site. In any action or proceeding to attack, set aside, void, or annul a determination of the appropriate planned use by the city or county pursuant to this section, there shall be a rebuttable presumption of the validity of the determination by the city or county. The department may rebut that presumption by showing, based upon substantial evidence in the record, that the requirements of this chapter are more fully satisfied by a determination that there should be a different planned use for the site.

(2) Before making a determination regarding the planned use for the site, the department shall hold a public hearing on that issue and shall consider all comments received at the hearing. The department shall thereafter determine the planned use and provide a written explanation supporting its determination to the city or county and to any person requesting an explanation.

(e) Nothing in this chapter shall be construed to affect the authority of a city or county pursuant to Title 7 (commencing with Section 65000) of the Government Code.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25398.2. (a) Within 90 days from the date of the selection of a site pursuant to Section 25396.6, the department

shall hold a conference with the identified potentially responsible persons for purposes of explaining all of the following:

(1) The department's requirements for the performance of a site investigation and the preparation of a site investigation report to determine the nature and extent of possible releases of hazardous substances at the site.

(2) The department's requirements for a community assessment.

(3) The department's procedures for carrying out response activities, including requirements for public participation.

(b) (1) Except as provided in paragraph (2), within 90 days from the date of the close of the conference, the department may enter into an enforceable agreement with one or more responsible persons for a site selected pursuant to Section 25396.6. The enforceable agreement shall require all of the following:

(A) The responsible person shall take necessary response actions at the site pursuant to this chapter.

(B) The responsible person or persons shall pay all of the state's response costs that are related to the site on an ongoing basis, within 60 days from the date of receipt of each invoice from the department, except response costs incurred by the state in relation to an arbitration conducted pursuant to this chapter, or judicial review of the arbitration decision, if the arbitration or judicial review is initiated by a responsible person who is not a party to the enforceable agreement. After liability is finally apportioned pursuant to this chapter, each participating responsible person's share of response costs may be adjusted in relation to the shares of other participating responsible persons. Any agreement to pay orphan share costs, which the fund cannot pay, shall be backed by adequate forms of financial security, as determined by the department.

(C) The department and the responsible person enter into a covenant not to sue each other or any responsible person who has entered into an enforceable agreement under this section pursuant to the federal act. However, any site selected for remediation pursuant to this chapter shall not be immune from, and, if appropriate, may be subject to, natural resource damage claims pursuant to subdivision (f) of Section 9607 of the federal act.

(D) If a responsible person subject to the agreement fails to comply with this chapter or any regulation, requirement, or order issued or adopted pursuant to this chapter, the department shall remove the site from eligibility for response action pursuant to Chapter 6.65 (commencing with Section 25260) and this chapter, and may direct that any further response actions at that site be taken pursuant to Chapter 6.8 (commencing with Section 25300), unless one or more of the remaining responsible persons, if any, agree to assume the noncomplying responsible person's responsibilities under the agreement.

(2) The 90-day period to enter into an agreement may be extended by agreement of the department and the responsible person or responsible persons.

(c) The covenants not to sue executed by responsible persons and the department shall be expressly conditioned upon performance of all obligations under this chapter and the enforceable agreement.

(d) If no responsible person enters into an enforceable agreement pursuant to subdivision (b), the response actions at the site shall no longer be governed by this chapter.

(e) A draft remedial action plan shall be prepared pursuant to Section 25398.6 by the responsible person. The draft remedial action plan shall be approved by the department pursuant to Section 25398.6 for each site selected. Preliminary and intermediate actions may be taken prior to the approval of a remedial action plan to ensure protection of public health and the environment.

(f) To the extent consistent with the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C.A. Sec. 6901 et seq.), the department may exclude from the hazardous waste facilities permit requirements of Section 25201, those portions of any response action selected and carried out pursuant to this chapter, that complies with all laws, rules, regulations, standards, requirements, criteria, or limitations applicable to the construction, operation, and closure of the type of facility at the site, and with any other condition imposed by the department as necessary to protect human health and safety or the environment. The department may enforce any federal or state law, rule, regulation, standard, requirement, criteria, or limitation with which the response action is required to comply pursuant to this subdivision.

As added by SB 923 (Calderon), Stats. 1994, c. 435, and amended by SB 1757 (Calderon), Stats. 1996, c. 632.

25398.3. (a) If the department determines that an interim endangerment exists at any site after it has been selected for response action pursuant to Article 2 (commencing with Section 25396.5), the department may take those actions necessary to contain or eliminate the interim endangerment.

(b) When actions are required to be taken to immediately contain or eliminate an interim endangerment, the department shall, whenever practicable, given the risk of harm to human health and the environment, provide the potentially responsible person or persons, who have entered into an agreement pursuant to subdivision (b) of Section 25398.2, a reasonable opportunity to initiate or take over the interim endangerment response actions as soon as possible.

(c) To contain or eliminate an interim endangerment at any site undergoing remediation pursuant to this chapter, the department may take either of the following actions:

(1) Order the responsible persons to take or pay for all appropriate remedial actions necessary to contain or eliminate the interim endangerment.

(2) Take or contract for any appropriate response actions necessary to contain or eliminate the interim endangerment and if so, the provisions of Section 25358.5 shall apply with respect to response actions taken or contracted for by the department.

(d) Any person subject to an order issued pursuant to paragraph (1) of subdivision (c) who does not comply with the order without a showing of good cause shall be subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day of noncompliance. Liability under this subdivision may be imposed in a civil action or liability may be imposed administratively pursuant to Section 25359.3.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25398.4. Any remedial action plan prepared pursuant to this chapter shall require response actions that, when fully implemented place the site for which the plan is prepared in a condition that allows it to be permanently used for its planned use without any significant risk to human health or any significant potential for future environmental damage. To ensure that those objectives are met and permanently maintained, response actions shall be based on a site specific assessment that evaluates the potential human health risks, if any, that are posed by the hazardous substance release or threatened release at the site, the potential human health risks, if any, that may result if the site is permanently used for its planned use after response actions have been completed, and the adverse effects on the environment, if any, of the hazardous substance release. The site-specific assessment required by this section shall be carried out using standard criteria, principles, and protocols for risk assessments adopted by the department. Those criteria, principles, and protocols shall be based on sound scientific methods, knowledge, and practice, and shall reflect criteria, principles, and protocols developed for risk assessment pursuant to Section 57003, to the extent relevant to risk assessments conducted pursuant to this chapter.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25398.5. (a) (1) To expedite the conversion of property into productive use and to provide funds for response activities, the department may approve a site owner's request to modify the boundaries of a site selected for response action under this chapter. The department may approve a site owner's request for that modification only if all of the following apply to the site:

(A) A remedial action plan has been approved by the department for the site.

(B) The holder of the first deed of trust, if any, has concurred in the modification of the boundaries of the site.

(C) The portions of the site proposed to be removed from the site by the boundary modification do not require any response action.

(D) The planned use for the portions of the site proposed to be removed from the site by the boundary modification will not result in an unacceptable risk of human exposure to hazardous substances from the site.

(E) Hazardous substances have not migrated, and are not expected to migrate, onto the portions of the site proposed to be removed from the site by the boundary modification.

(F) The modification of the boundaries of the site will not significantly interfere with response actions at the site.

(2) As a condition to approving a site owner's request to modify the boundaries of a site pursuant to paragraph (1), the department shall require that the owner, after complying with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), deposit the net proceeds of the sale, after payment of expenses necessary and appropriate to the subdivision and sale, of the portions of the site proposed to be removed from the site by the boundary modification, into a special trust account to be applied towards the cost of response actions at the site if the department determines that adequate funds may not otherwise be available to pay for all costs of response actions at the site. The department shall also require that the site owner provide the department with access to any of the portions of the site proposed to be removed from the site by a boundary modification for the purpose of taking a response action.

(b) Purchasers and their lessees of the portions of the site proposed to be removed from the site by a boundary modification approved pursuant to this section which do not require any response action under this chapter shall not acquire liability under this chapter solely based on that purchase or lease if both of the following apply:

(1) The purchaser or lessee is not affiliated with any other person liable for response costs at the site including any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the parcel is conveyed or financed or the instruments by which a lease is created.

(2) Hazardous substances have not been released from the portions of the site proposed to be removed from the site by a boundary modification subsequent to the date of the purchase or lease.

(c) The department's approval of a site owner's request to modify the boundaries of a site pursuant to this section shall not constitute a subdivision of any parcel within the boundaries of the site. Any subdivision of any parcels within the boundaries of the site shall comply with the requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) .

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25398.6. (a) All remedies selected at a site subject to this chapter shall meet all of the following criteria:

(1) Be protective of human health and the environment.

(2) Provide long-term reliability at reasonable cost.

(3) Provide reasonable protection to the waters of the state, as required by the Water Code.

(4) Leave the site in a condition that allows it to be permanently used for its planned use and free of any significant risk to human health or any potential for any future significant environmental damage.

(b) A response action may achieve protection of human health and the environment by any of the following methods:

(1) Proven and effective engineering controls and appropriate land use controls to eliminate or mitigate risk at a site when utilized for its planned use.

(2) Treatment that reduces the toxicity, mobility, or volume of hazardous substances.

(3) Removal of hazardous substances.

(4) A combination of engineering and land use controls, treatment, and removal.

(5) Other methods of protection.

(c) Except as provided in subdivision (d), the department shall give no special preference to one or more available types of response action, including engineering and land use controls, treatment, removal, or other methods of protection, but shall evaluate available response action options on the individual merits of each option, or combination of options, reasonably available in light of site-specific conditions. In selecting the appropriate remedy, the department shall balance all of the following factors:

(1) The effectiveness of the remedy.

(2) The long-term reliability of the remedy.

(3) Any short-term risk to the affected community, to those engaged in the remediation effort, or to the environment.

(4) The reasonableness of the cost of the remedy.

(d) For discrete areas within a site that contain hazardous substances which are: (1) present in high concentrations or (2) are highly mobile, and for which containment cannot prevent significant risk of harm to human health or the environment from exposure to the hazardous substances, the department shall select treatment or removal, or both, as the remedial alternative or alternatives. The department may, however, select engineering and land use controls, or other methods of protection, to be implemented in combination with treatment or removal, or both, if such a combination will prevent a significant risk of harm from exposure.

(e) A remedial action plan prepared pursuant to this chapter shall include all of the following:

(1) The selection of a response action alternative or combination of alternatives described in subdivision (b) that are appropriate for the site and that satisfy the response action criteria set forth in this section.

(2) A site-specific assessment prepared for the site pursuant to Section 25398.4.

(3) A description of the characteristics of the site, including the potential for offsite migration of hazardous substances, the condition of surface or subsurface soil, and the hydrogeologic conditions.

(4) An analysis of the cost-effectiveness of the remedial action measures.

(5) An analysis of the ability to implement the remedial action measures.

(6) Consideration of the historical use of the site, background levels of hazardous substances present there due to natural conditions, and the existing and planned use of the site, in determining the extent, type, and scope of the remedy appropriate for the site.

(f) A remedial action plan prepared pursuant to this chapter shall include all of the following:

(1) A summary of the site investigation report setting forth the full extent of contamination at the site, including an assessment of potential human health risks from exposure to the hazardous substances and an assessment of environmental impacts which shall include the impact of the contamination on the planned uses of the site and the beneficial uses of water.

(2) An analysis of the long-term and short-term protection afforded by the remedial action with regard to human health and the environment.

(3) An analysis of the compliance of the remedial action with federal, state, and local statutes, regulations, and ordinances.

(g) In addition to the requirements of subdivision (a), a remedial action plan prepared pursuant to this chapter shall do all of the following:

(1) Describe all proposed remedial action measures in detail.

(2) Set forth a schedule for implementation of the plan.

(3) Set forth a plan for long-term operation and maintenance of the remedial action measures, if any are required.

(h) Any remedial action plan approved pursuant to this section shall include a statement of reasons setting forth the basis for the remedial action selected. The statement shall include a description of each alternative evaluated and the reasons for the rejection of alternatives that were evaluated and not selected.

(i) Before approving a remedial action plan, the department shall do all of the following:

(1) Notify the public, including those persons reasonably believed to be members of the affected community, of the response action proposed in the plan in a manner that provides reasonable assurance of reaching those persons on a timely basis. The notice shall include posting notices in the area where the proposed remedial action would be taken and notification, by direct mail, of the recorded owners of property contiguous to the site addressed by the plan, as shown in the latest equalized assessment roll and all potentially responsible persons identified in the plan.

(2) Provide at least 30 days for comment by the potentially responsible persons, appropriate federal, state, and local agencies, the affected community, and other members of the Public.

(3) Hold one or more public meetings with the potentially responsible persons, the affected community, and other members of the public, if any, seeking information or desiring to comment, concerning the response action. The information provided shall include an assessment of the degree of contamination, the characteristics of the hazardous substances, an estimate of the time required to carry out the response action and a description of the proposed response action, the planned use, and the remedial objectives. The department shall give all of the parties entitled by this section to a public meeting a fair opportunity to comment on the merits of the plan.

(4) Comply with Section 25397.2.

(j) After complying with subdivision (i), the department shall review and consider any comments received at the public meeting or by other means within the specified time period, shall consider the affected community's acceptance of the

proposed remedial alternative or alternatives, and shall propose revisions to the draft plan, if appropriate.

(k) When reviewing a remedial action plan, the department shall give no special preferences to one or more available types of response action, including engineering and land use controls, treatment, removal, or other types of corrective action, but shall evaluate available response action options on the individual merits of each option reasonably available in light of specific site conditions.

(I) Within 60 days after the close of the comment period set forth in paragraph (2) of subdivision (i), the department shall approve the final remedial action plan, or issue a notice of deficiency to the person who submitted the plan that describes, in detail, any deficiencies in the plan. A remedial action plan found to be deficient shall be modified in a reasonable time. However, any notice of rejection of the notice of deficiency shall be filed with the department within 30 days from the date of receipt of the notice of deficiency. Within 60 days of receiving a modified plan, the department shall approve the plan or advise the person who prepared the plan, in detail, of the new or continuing deficiencies. Any failure to act by the department as provided in this subdivision may be appealed to the secretary. If the secretary fails to act on behalf of the department within 30 days after the appeal is filed, the department's failure to act may be challenged by any responsible person for the site pursuant to the provisions of Section 1085 of the Code of Civil Procedure.

(m) Once approved by the department, a draft plan shall become final 60 days from the date that notice of its approval is provided in writing by appropriate means, as provided in subdivision (b) of Section 25398.10, unless a petition for review is filed prior to that time pursuant to Section 25398.10.

(n) A remedial action plan is not required for the abatement of an interim endangerment pursuant to Section 25398.2.

(o) Nothing in this chapter shall be construed to change the standards for response actions taken at voluntary action sites that are overseen by the department pursuant to Section 25201.9 or any other authority.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25398.7. (a) A remedial action plan may utilize land use controls to limit or restrict land use where appropriate. All land use controls shall be recorded by the site owner in the county in which the site is located. The site owner shall provide the department with a copy of the land use controls which have been appropriately recorded.

(b) Any person who violates the terms of a land use control which that person knew, or reasonably should have known, applied to the property, shall be subject to a civil penalty not to exceed twenty-five thousand dollars ($25,000) per day for each day of violation.

(c) The terms and conditions of a land use control may be modified only with the express written consent of the department based on a determination that the response actions implemented at the site provide sufficient protection of human health and the environment required by subdivision (a) of Section 25398.6, and are sufficient to permit the planned use of the site. If additional response action is required to provide that protection, the department shall not approve the request for modification of the restriction or control until completion of the additional response action. Implementation of a modification to a land use control shall be in accordance with the following procedure:

(1) The person requesting the modification to the permitted use of the site shall provide the request in writing to the department for the site to approve a modification to an existing land use control. The request shall be accompanied by supporting documentation demonstrating that the response action implemented at the site provides the required protection. The request shall be accompanied by any applicable costs.

(2) Within 120 days of receiving the request, and after a public notice is placed in a newspaper of general circulation in the affected area, and after a 30-day public comment period, a duly noticed public meeting shall be held on the merits of the request, the department shall do one of the following:

(A) Approve the proposed modification.

(B) Approve the proposed modification with conditions for implementation of additional response action.

(C) Disapprove the proposed modification and provide the owner with the reasons for that disapproval.

(3) (A) The approval or denial of a request for modification shall become final within 30 days from the date that the department acts to approve or deny the modification and provides notice to all persons required to receive notice pursuant to, and in the manner required by, paragraph (2). Within 30 days from the date that any decision to approve a request for modification becomes final, the site owner shall record the modified land use control in the county in which the site is located and provide the department with a copy of the land use control which has been endorsed by the county recorder. The approved modification shall take effect upon recordation and after notice of the final decision is given in writing by appropriate means, to immediately adjacent property owners, commenters, and persons who attended the public meeting and requested this notice.

(B) If the approval is accompanied with conditions which require compliance prior to modification of the land use control, the site owner shall provide the department with a copy of the land use control which has been appropriately recorded within 30 days after the department has notified the site owner that compliance with those conditions has been demonstrated. The approved modification shall take effect upon recordation.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25398.8 (a) At the same time that the department gives notice of the approval of the remedial action plan for a site, or prior to the time that the department issues its first notice of deficiency regarding the remedial action plan, the department shall, based on all available information before the department at that time, do both of the following:

(1) Notify, in writing, and by appropriate means, all of the responsible persons, the affected community, and the public, of the department's proposed apportionment of liability

for the costs of response for the site which is the subject of the remedial action plan.

(2) Indicate in the notice whether there are orphan shares that will, or may be, paid from the trust fund.

(b) The department shall apportion liability for the response actions taken pursuant to this chapter to each responsible person for that person's share of response costs, based upon equitable factors and fairness principles so that total shares, including orphan shares, if any, total 100 percent. The fund administrator shall represent any orphan share with respect to actions concerning apportionment of liability if there is a proposed apportionment of liability to the orphan share for payment from the trust fund. The department shall provide any person who has requested notification of the department's proposed apportionment of liability with a copy of the proposed apportionment within 10 days after the department completes its proposal for apportionment of liability.

(c) The department shall weigh each factor considered appropriate under the circumstances of the release for which the remedial action was initiated. The department shall emphasize timely apportionment of approximate shares of liability and is not required to precisely determine all relevant factors, as long as substantial justice among the parties is achieved. Equitable factors that shall guide the apportionment decision include, but are not limited to, all of the following:

(1) The amount of hazardous substance for which each person is responsible.

(2) The degree of toxicity of the hazardous substance, its contribution to the contamination at the site, and the total expense involved in the remediation effort attributable to the hazardous substances for which each person is responsible.

(3) The degree of involvement of the person in the generation transportation, treatment, or disposal of the hazardous substance for which each person is responsible.

(4) The degree of care exercised by the responsible person with respect to the hazardous substances for which each person is responsible, taking into account the characteristics of the substance.

(5) The degree of cooperation by the responsible person with federal, state, and local officials to prevent harm to human health and the environment.

(d) The site owner shall pay for all additional costs of response actions performed pursuant to this chapter at the request of the site owner that exceed the costs that would be incurred if the response action were limited to those required by this chapter.

(e) The apportionment of liability pursuant to this section shall not be subject to judicial review, except as provided in Section 25398.10.

(f) Notwithstanding the requirements of subdivisions (a) to (d), inclusive, the potentially responsible persons may agree upon an allocation of liability among themselves at a particular site, that, in the absence of an allocation of liability to an orphan share for payment from the trust fund, shall be adopted by the department as the apportionment of liability for the site.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25398.9. (a) Prior to the date that the department apportions liability pursuant to Section 25398.8, the department shall, when it determines that it is in the best interests of the public, propose a final administrative or judicial expedited settlement with responsible persons who, in the judgment of the department, meet either of the following conditions for eligibility for such an expedited settlement: (1) The responsible person's individual contribution of hazardous substances at the site is de minimis. The contribution of hazardous substance to a site by a responsible person is de minimis if both of the following apply:

(A) The responsible person's volumetric contribution of materials containing hazardous substances is minimal in comparison to the total volumetric contributions of materials containing hazardous substances at the site, and that individual contribution is presumed to be minimal if it is 1 percent or less of the total volumetric contribution at the site, unless the department identifies a lower threshold based on site-specific factors.

(B) The responsible person's contribution of materials containing hazardous substances does not present toxic or other hazardous effects that are significantly greater than those of other hazardous substances at the site.

(2) (A) The responsible person is the site owner, did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the site, and did not contribute to the release or threat of release of a hazardous substance at the site through any action or omission.

(B) Paragraph (A) does not apply if the responsible person purchased the site with actual or constructive knowledge that the site was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(b) The department may reach an expedited settlement with responsible persons only when the aggregate shares of liability determined pursuant to subdivision (a) do not exceed 10 percent of the projected cost of the response action at the site.

(c) Any person who enters into a settlement pursuant to this section shall provide any information relevant to the administration of this chapter which is requested by the department. The determination of whether a person is eligible for an expedited settlement shall be made on the basis of all information available to the department at the time the determination is made. If the department determines not to apply the provisions of this section at a site, the basis for that determination shall be explained in writing to any person who requests such a settlement.

(d) A responsible person who has reached a final settlement under this section and paid any response costs which are part of the settlement, is not liable for claims for contribution from any other party for the costs of the response action at the site.

(e) At the same time that notice is provided pursuant to subdivision (a) of Section 25398.8, the department shall provide written notice of the proposed settlement to all other responsible persons, the affected community, and the public

by appropriate means. The notice shall identify the site and the parties to the proposed settlement.

(f) The department shall consider any written comments submitted regarding the proposed expedited settlement in determining whether or not to consent to the proposed settlement. The department may withhold consent to the proposed settlement if the comments disclose factors or considerations that indicate the proposed settlement is inappropriate, improper, or inadequate. The department shall withhold consent to the proposed settlement if any responsible person for the site petitions the department to invoke an arbitration panel to evaluate the merits of the settlement before the settlement agreement becomes final.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25398.10. (a) The Director of Environmental Health Hazard Assessment shall convene an arbitration panel, if a timely petition is filed with the director, for purposes of resolving all disputes with any responsible person concerning any of the following:

(1) The remedial action plan developed pursuant to Section 25398.6, including disputes regarding remedy selection, other technical issues, conditions of approval, or any other element of the plan.

(2) The department's proposed apportionment of liability pursuant to Section 25398.8.

(3) Any proposed de minimis settlements pursuant to Section 25398.9.

(4) The department's approval or denial of a change in land use pursuant to Section 25398.7.

(5) The department's approval or denial of a certificate of completion pursuant to Section 25398.15, as provided in subdivision (b) of Section 25398.15.

(b) (1) Petitions for disputes concerning the matters specified in paragraphs (1) to (3), inclusive, of subdivision (a) shall be filed within 60 days from the date that the notice of approval of the remedial action plan is issued, or from the date that the responsible person or persons preparing the remedial action plan notify the department in writing, by appropriate means, of the responsible person or person's rejection of a notice of deficiency. Within 10 days of the department's approval of the remedial action plan or receipt of a notice of a rejection of a notice of deficiency for the remedial action plan, the department shall provide notice in writing, by appropriate means, of its approval, or receipt of the notice of rejection, to all responsible persons for the site and to the public. The notice shall indicate the rights of the parties to file petitions for arbitration of the disputes concerning the matters specified in paragraphs (1) to (3), inclusive, of subdivision (a) and the deadline for the filing of a petition. Petitions for arbitration of disputes concerning the matters specified in paragraphs (1) to (3), inclusive, of subdivision (a) may be made by any responsible person. Petitions for arbitration of disputes concerning the matter specified in paragraph (1) of subdivision (a) may also be filed by the affected community, and petitions for arbitration of disputes concerning the matters specified in paragraphs (2) and (3) of subdivision (a) may be filed by any member of the public if orphan shares that are to be paid from the trust fund are at issue.

(2) Petitions for the arbitration of all disputes concerning the matters specified in paragraphs (4) and (5) of subdivision (a) may be made by any responsible person for the site, the affected community, or the public, and shall be made prior to the time that the action in dispute becomes final.

(3) Prior to submitting a petition for arbitration, the responsible persons shall make all reasonable efforts to resolve the dispute.

(4) If one or more petitions for arbitration have been filed for any combination of review of the remedial action plan, apportionment of liability, or de minimis settlements, the arbitration panel shall review all of these petitions in a consolidated hearing. The arbitration panel shall minimize the need for hearings on all other issues by consolidating hearings in all cases where reasonably possible.

(5) The arbitrators shall be selected as provided in subdivision (d) of Section 25356.2.

(c) All the provisions of Sections 25356.2, 25356.3, 25356.4 and 25356.6 apply to arbitration proceedings conducted pursuant to this section, except for all of the following:

(1) The arbitration panel shall apply the factors and standards for liability apportionment set forth in subdivision (c) of Section 25398.8, instead of those set forth in subdivision (c) of Section 25356.2.

(2) The provisions of subdivision (a) of Section 25356.3 and the provisions of subdivisions (c) and (e) of Section 25356.4 shall not apply.

(3) The arbitrators shall be bound by, and shall apply, the requirements and standards set forth in this chapter and Chapter 6.65 (commencing with Section 25260) that are applicable to the dispute that is the subject of the arbitration.

(4) The arbitrators shall have the expertise and experience appropriate to understand and critically evaluate the issues to be arbitrated.

(d) The arbitration panel shall hold a public hearing on any matter presented to the panel for evaluation, shall take all evidence presented, shall keep a record of the proceedings, including all testimony and evidence presented, and shall have discretion in the determination of facts. All findings and decisions of the panel shall be supported by substantial evidence in light of the whole record. The response action for which the arbitration panel has been requested to act pursuant to this section shall not be stayed during the pendency of the arbitration proceedings. Notice of the arbitration panel's decision shall be provided in writing, by appropriate means, within five days from the date that the arbitration panel has reached a decision, to the responsible persons, the affected community, the public, and any other person or entity who participated in the arbitration proceeding and requested notice of the decision.

(e) The department, any member of the advisory committee described in Section 25263, or, for purposes of appealing the approval of a remedial action plan by the arbitration panel, any member of the affected community, may

seek judicial review of a decision of the arbitration panel by filing a petition for a writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure not more than 30 days from the date that notice of the decision is provided in writing by appropriate means to those entities or persons. Any person authorized to petition for arbitration may also seek judicial review of a decision of the arbitration panel concerning any matter for which the person is authorized pursuant to subdivision (b) to submit a petition for arbitration, by filing a petition for writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure not more than 30 days from the date that notice of the decision is provided in writing by appropriate means to that person. No person may seek judicial review of a matter that is subject to arbitration, if requested that has not been first presented to an arbitration panel.

(f) Except for acts of recklessness, gross negligence, fraud, deceit, or other criminal activity, the arbitrators are immune from liability for any actions taken in their role as arbitrators.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25398.11. (a) (1) The secretary shall ensure that all arbitration panels are provided with the necessary technical support services by a team of state employees with experience and expertise appropriate to the issue or issues in dispute, including, but not limited to, where necessary, expertise in hydrogeology, geology, chemical engineering, toxicology, hazardous substance response action, law, soil science, environmental health and engineering, industrial hygiene, and other related disciplines. The team of state employees shall provide a written report to the panel setting forth the team recommendations on all technical issues before the arbitrators, and the arbitrators shall give substantial weight to the team's recommendations. The team's report shall be a public record.

(2) The Director of Environmental Health Hazard Assessment shall adopt procedures for the removal of arbitrators from panels for inadequate performance of their assigned responsibilities.

(b) (1) The department shall notify all responsible persons who have been identified and located, the affected community, the team of state employees, and the public, of the arbitration hearing request and the location and scheduling of the arbitration hearing, in writing, by appropriate means, as soon as reasonably practicable after an arbitration hearing is requested.

(2) All responsible persons for the site notified by the department of the arbitration shall be subject to arbitration by the arbitration panel, and all response costs shall be apportioned among all responsible persons notified of the arbitration proceedings regardless of whether those persons appear before the arbitration panel.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25398.12. (a) No person may serve as an arbitrator for a site for which that person has a conflict of interest. A conflict of interest, for purposes of this section, includes the following:

(1) Employment at any time in the past by one or more of the responsible persons for the site.

(2) Existence of a potentially material financial impact from one or more of the decisions the arbitrator may be asked to make involving the site.

(b) Any person may challenge the selection of any arbitrator on grounds of (1) conflict of interest, or (2) lack of one or more of the qualifications required by Section 25398.10. Any challenge shall be filed with the Director of Environmental Health Hazard Assessment within 10 days of the provision of public notice of the arbitration hearing pursuant to paragraph (1) of subdivision (b) of Section 25398.11. The Director of Environmental Health Hazard Assessment shall, within 20 days thereafter, determine the arbitrator's fitness to serve. Any arbitrator that is disqualified from serving on a particular panel shall be replaced in a timely manner in the same manner as the disqualified arbitrator was chosen.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25398.13. All decisions of the arbitration panel shall be made by majority vote.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25398.14. Upon completion of an engineering design to implement an approved remedial action plan, the responsible persons for the site shall submit the design to the department for approval. The department shall approve, modify, or deny the design within 60 days from the date of receipt.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25398.15. (a) Upon completion of a response action pursuant to a remedial action plan, the responsible person shall file a request with the department for a certificate of completion. A request for certificate of completion may be filed even though long-term operation and maintenance requirements and other long-term remedial activities remain an ongoing obligation, if all other final response actions have been completed.

(b) The department shall review each request for a certificate of completion and shall approve the request if the department determines that the response action plan and any other directive of the department have been satisfactorily completed and that the site has been placed into a condition that allows it to be permanently used for its planned use without any significant risk to human health or potential for any future significant environmental damage. The department shall approve or deny the request for a certificate of completion within 90 days after it is filed with the department. Any failure of the department to act on the submittal of a request for a certificate of completion within the time periods provided in this section may be appealed to the secretary. If the secretary fails to act on behalf of the department within 30 days after the appeal is filed, the department's failure to act may be challenged by any responsible person for the site pursuant to the provisions of Section 1085 of the Code of Civil Procedure. Any person who disputes the approval or denial of a request for a certificate of completion may, before the approval or denial becomes final pursuant to subdivision (c),

file a petition for review of that denial pursuant to Section 25398.10 except that the petition may request review only concerning those issues in dispute that were heard before an arbitration panel in a prior hearing concerning the remedial action plan. All other disputes concerning the approval or denial of a request for a certificate of completion may be resolved by the secretary, at the discretion of the secretary.

(c) Notice of any approval or denial of a request for a certificate of completion shall be provided to the responsible persons for the site and to the public by appropriate means, within five days from the date that the decision is made by the department. The approval or denial shall become final within 30 days from the date that notice is provided pursuant to this subdivision, unless a review of that approval or denial is requested, pursuant to subdivision (b), before the expiration of that 30-day period.

(d) A certificate of completion that becomes final pursuant to this section shall be deemed to have been issued pursuant to Section 25264. and Sections 25264 and 25265 shall apply to the site.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

ARTICLE 5. INSPECTION, SECURITY, AND DAMAGES

(Article 5 as added by SB 923 (Calderon), Stats. 1994, c. 435)

25398.16. The department shall have the same authority with regard to a remedial action site selected for response pursuant to this chapter as the authority provided in Sections 25358.1 and 25359.5 and all potentially responsible persons are entitled to the trade secret protection set forth in Section 25358.2 with regard to any action taken by the department pursuant to this chapter.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25398.17. (a) A responsible person who has entered into an agreement with the department, and is in compliance with the terms of that agreement and who is in compliance with all orders issued by the department, may seek, in addition to contribution, treble damages from any responsible person who has failed or refused to comply with any order or agreement relating to a site selected for response action under this chapter, was named in the order or agreement, and is subject to contribution. A responsible person from whom treble damages is sought in a contribution action shall not be assessed treble damages by any court where the responsible person, for sufficient cause, as determined by the court, failed to comply with an agreement or with an order issued by the department, or where the principles of fundamental fairness will be violated, as determined by the court. A responsible person seeking treble damages pursuant to this section shall show that notice of the order or agreement was provided to the responsible person against whom treble damages are being sought.

(b) One-half of any treble damages awarded pursuant to this section shall be paid to the department for deposit in the trust fund. Nothing in this subdivision affects the rights of any party to seek contribution pursuant to any other statute or under common law.

(c) If treble damages are assessed against any person pursuant to this section, that person shall be deemed to have acted willfully with respect to the conduct that gave rise to this liability for purposes of Section 533 of the Insurance Code.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

ARTICLE 6. RECOVERY ACTIONS

(Article 6 as added by SB 923 (Calderon), Stats. 1994, c. 435)

25399. (a) A responsible person is liable to the department and the trust fund for the response costs as provided in the agreement entered into pursuant to Section 25398.2, and for any other response costs incurred by the state, which are allocated to the responsible person in a final liability apportionment decision by the department pursuant to Section 25398.8 or the final decision of an arbitration panel pursuant to Section 25398.10 and which have been paid, or assigned for payment, from the trust fund.

(b) Actions to recover any response costs incurred by the state shall be commenced by the Attorney General, upon the request of the department or the fund administrator, against the responsible person or persons.

(c) The department and the fund administrator shall only seek response costs in an action pursuant to paragraph (b) from those responsible persons who have not paid their apportioned share of response costs to the department, or who have otherwise failed to comply with this chapter or any regulation, agreement, or order adopted pursuant to this chapter.

(d) Any person who has incurred response costs in accordance with this chapter may seek contribution or indemnity from any person who is liable pursuant to this chapter, except that no claim may be asserted against a person whose liability has been determined and which has been or is being fully discharged pursuant to this chapter, or against a person who has executed an agreement with the department pursuant to Section 25398.2, and is in compliance with this chapter and any regulation, agreement, or order adopted pursuant to this chapter. An action to enforce a claim may be brought as a cross-complaint by a defendant in an action brought pursuant to this section, or in a separate action for contribution or indemnity after the plaintiff has paid the department for response costs in accordance with this chapter. Any plaintiff or cross-complainant seeking contribution or indemnity shall give written notice to the department upon filing an action or cross-complaint under this section. In resolving claims for contribution or indemnity, the court shall allocate costs among liable parties, including the orphan shares, as set forth in the department's final liability apportionment decision or an arbitration panel decision pursuant to this chapter, except in instances where responsible parties have agreed to pay for orphan shares pursuant to the agreement provided for in Section 25398.2.

(e) (1) An action under this section for the recovery of response costs shall be commenced within three years after a certificate of completion is issued pursuant to Section 25398.15 or, in cases where responsible persons are identified

by the department after that three-year period, within three years after the responsible persons are identified.

(2) A subsequent action or actions under this section for further response costs may be maintained at any time during the response action, but shall be commenced no later than three years after the date of completion of all response action.

(f) In addition to any other response costs recovered from the responsible parties for each site, the department and the fund administrator, on behalf of the trust fund, may recover up to one-thirtieth of those costs incurred by the state in implementing and administering this chapter. The department shall specify in the Governor's Budget the amount of costs for which it will seek recovery pursuant to this subdivision, and shall specify either in that document, or in a separate document submitted to the Joint Legislative Budget Committee, the methodology used in calculating those costs.

As added by SB 923 (Calderon), Stats. 1994, c. 435, and amended by SB 1757 (Calderon), Stats. 1996, c. 632.

ARTICLE 7. OFFICE OF TRUST FUND ADMINISTRATOR

(Article 7 as added by SB 923 (Calderon), Stats. 1994, c. 435)

25399.1. (a) The Expedited Site Remediation Trust Fund is hereby created in the State Treasury and the money in the trust fund may be expended by the department, upon appropriation by the Legislature, to carry out this chapter.

(b) All expenses that are incurred by the state pursuant to this chapter shall be paid solely by the responsible parties or the trust fund. No liability or obligation is imposed upon the state pursuant to this chapter, and the state shall not incur a liability or obligation beyond the extent to which money is provided by the responsible parties or the trust fund for the purposes of this chapter.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

25399.2. (a) A fund administrator shall be designated by the Governor.

(b) The fund administrator shall prudently administer the trust fund and shall protect the trust fund against unreasonable assessments of liability to the orphan share in all liability apportionment actions under this chapter where funding for all or a part of an orphan share is sought from the trust fund. The fund administrator shall have the same authority as a responsible person specified in this chapter with regard to a site where the orphan share is to be funded in whole, or in part, from the trust fund.

As added by SB 923 (Calderon), Stats. 1994, c. 435.

Chapter 6.11. Unified Hazardous Waste and Hazardous Materials Management Regulatory Program

(Chapter 6.11 as added by SB 1082 (Calderon), Stats. 1993, c. 418)

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) "Certified Unified Program Agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) "Participating Agency" or "PA" means a state or local agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) "Department" means the Department of Toxic Substances Control.

(3) "Minor violation" means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing, willful, or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation as provided in Section 25117.6.

(G) A class II violation committed by a chronic or a recalcitrant violator, as provided in Section 25117.6.

(H) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

(4) "Secretary" means the Secretary for Environmental Protection.

(5) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(6) "Unified program facility permit" means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, are applicable to all of the following:

(i) Hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(ii) Persons managing perchlorate materials.

(iii) Persons subject to Article 10.1 (commencing with Section 25211) of Chapter 6.5.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

(3) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(4) The requirements of Article 1 (commencing with Section 25500) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by

unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) The secretary shall establish an electronic geographic information management system capable of receiving all data collected by the unified program agencies pursuant to this subdivision and Section 25504.1. The secretary shall make all nonconfidential data available on the Internet.

(3) (A) As funding becomes available, the secretary shall establish, consistent with paragraph (2), and thereafter maintain, a statewide database.

(B) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) Once the statewide database is established, the secretary shall work with the CUPAs to develop a phased-in schedule for the electronic collection and submittal of information to be included in the statewide database, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary, in making this determination shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide database shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials.

As added by SB 1082 (Calderon), Stats. 1993, c. 418, and amended by AB 3082 (Alpert), Stats. 1994, c. 1151, and SB 1191 (Calderon), Stats. 1995, c. 639, and AB 1357 (Baldwin), Stats. 1997, c. 778, and AB 2872 (Shelley), Stats. 2000, c. 144, and AB 2481 (Frommer), Stats. 2002, c. 999, and AB 826 (Jackson), Stats. 2003, c. 608, and AB 1640 (Laird), Stats. 2003, c. 696, and AB 2277 (Dymally), Stats. 2004, c. 880, and SB 1108 (Senate Judiciary Committee, Stats. 2005, c. 22, and AB 403 (LaMalfa), Stats. 2005, c. 388.

25404. REPEALED

As added by AB 2481 (Frommer), Stats. 2002, c. 999, and amended by AB 826 (Jackson), Stats. 2003, c. 608, and AB 1640 (Laird), Stats. 2003, c. 696, and AB 2277 (Dymally), Stats. 2004, c 880, and SB 1108 (Senate Judiciary Committee), Stats. 2005, c. 22, and repealed by AB 403 (LaMalfa), Stats. 2005, c. 388.

25404.1. (a) (1) All aspects of the unified program related to the adoption and interpretation of statewide standards and requirements shall be the responsibility of the state agency which is charged with that responsibility under existing law. For underground storage tanks, that agency shall be the State Water Resources Control Board. The California regional water quality control boards shall have responsibility for the issuance of variances pursuant to subdivision (b) of Section 25299.4. The Department of Toxic Substances Control shall have the sole responsibility for the issuance of variances from the requirements of Chapter 6.5 (commencing with Section 25100) and the regulations adopted pursuant thereto, for the determination of whether or not a waste is hazardous or nonhazardous, for the determination of whether or not a person is eligible to be deemed to be operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department, and for the suspension and revocation of permits-by-rule, conditional authorizations, and conditional exemptions.

(2) Except as provided in paragraphs (1) and (3), those aspects of the unified program related to the application of statewide standards to particular facilities, including the issuance of unified program facility permits, the review of reports and plans, environmental assessment, compliance and correction, and the enforcement of those standards and requirements against particular facilities, shall be the responsibility of the unified program agencies.

(3) (A) Except in those jurisdictions for which the UPA has been determined by the department, in accordance with regulations adopted pursuant to subparagraph (C), to be qualified to implement the environmental assessment and removal and remediation corrective action aspects of the unified program, the department shall have sole responsibility and authority under the unified program for all of the following:

(i) Implementing and enforcing the requirements of paragraph (3) of subdivision (c) of Section 25200.3 and Sections 25200.10 and 25200.14, and the regulations adopted by the department to implement those sections. As a pilot program in up to 10 counties, pending the adoption an implementation of regulations pursuant to subparagraph (C), the department may delegate to the CUPA, through a delegation agreement, responsibility and authority for implementing and enforcing the requirements of Section 25200.14.

(ii) The issuance of orders under Section 25187 requiring removal or remedial action.

(iii) The issuance of orders under Section 25187.1.

(B) Notwithstanding subparagraph (A), a UPA may issue an order under Section 25187 specifying a schedule for compliance or correction and imposing an administrative penalty for any violation of the requirements of Chapter 6.5 (commencing with Section 25100) listed in paragraph (1) of subdivision (c) of Section 25404, or the requirements of any permit, rule, regulation, standard or requirement issued or adopted pursuant to the requirements of Chapter 6.5 (commencing with Section 25100) listed in paragraph (1) of subdivision (c) of Section 25404, if one of the following applies:

(i) The order does not require removal or remedial action.

(ii) The only removal or remedial actions required by the order are those actions determined to be necessary to address an imminent and substantial endangerment based upon a finding by the UPA pursuant to subdivision (f) of Section 25187.

(C) The department shall adopt emergency regulations specifying the criteria and procedures for implementing

paragraph (3) of subdivision (c) of Section 25200.3 and Sections 25200.10 and 25200.14, including criteria and procedures for determining whether or not a unified program agency is qualified to implement the environmental assessment and removal and remediation corrective action portions of the unified program under paragraph (3) of subdivision (c) of Section 25200.3 and Sections 25187, 25187.1, 25200.10, and 25200.14. The criteria for determining whether a unified program agency is qualified shall, at a minimum, include consideration of the following factors:

(i) Adequacy of the technical expertise possessed by the unified program agency.

(ii) Adequacy of staff resources.

(iii) Adequacy of budget resources and funding mechanisms.

(iv) Training requirements.

(v) Past performance in implementing and enforcing requirements related to environmental assessments, and removal and remediation corrective actions.

(vi) Recordkeeping and accounting systems.

(D) The regulations adopted by the department pursuant to subparagraph (C) shall include provisions to ensure coordinated and consistent application of paragraph (3) of subdivision (c) of Section 25200.3 and Sections 25187, 25187.1, 25200.10, and 25200.14, when both the department and the unified program agency are, or will be, implementing and enforcing the requirements of one or more of these sections at the same facility.

(E) For purposes of subparagraph (D), "facility" means the entire site that is under the control of the owner or operator.

(b) (1) On or before January 1, 1996, each county shall apply to the secretary to be certified as a unified program agency to implement the unified program within the unincorporated area of the county and within each city in the county, in which area or city, as of January 1, 1996, the city or other local agency has not applied to be the certified unified program agency.

(2) (A) Any city or other local agency which, as of December 31, 1995, has been designated as an administering agency pursuant to Section 25502, or which has assumed responsibility for the implementation of Chapter 6.7 (commencing with Section 25280) pursuant to Section 5283, may apply to the secretary to become the certified unified program agency to implement the unified program within the jurisdictional boundaries of the city or local agency.

(B) A city or other local agency which, as of December 31, 1995, has not been designated as an administering agency pursuant to Section 25502, or which has not assumed responsibility for the implementation of Chapter 6.7 (commencing with Section 25280) pursuant to Section 25283, may apply to the secretary to become the certified unified program agency within the jurisdictional boundaries of the city or local agency if it enters into an agreement with the county to become the certified unified program agency within those boundaries. A county shall not refuse to enter into an agreement unless it specifies in writing its reasons for failing to enter into the agreement. However, if the city does not enter into the agreement with the county, within 30 days of receiving a county's reasons for failing to enter into agreement, a city may request that the secretary allow it to apply to be a certified unified program agency and the secretary may, in his or her discretion, approve the request.

(3) A city, county, or other local agency may propose, in its application for certification to the secretary, to allow other public agencies to implement certain elements of the unified program, but the secretary shall accept that proposal only if the secretary makes the findings specified in subdivision (d) of Section 25404.3.

(4) If a city or other local agency which, as of December 31, 1995, has been designated as an administering agency pursuant to Section 25502, or has assumed responsibility for the implementation of Chapter 6.7 (commencing with Section 25280) pursuant to Section 25283, requests that the county propose in its application for certification to the secretary that the city or local agency implement, within the jurisdictional boundaries of the city or local agency, those elements of the unified program which, as of December 31, 1995, the city or local agency has authority to administer, the county shall grant that request. If such an agency is subsequently removed or withdraws from the unified program, the agency shall not act as an administering agency under Section 25502 or act as a local agency pursuant to Chapter 6.7 (commencing with Section 25280), except as provided in subdivision (c) of Section 25283.

As added by SB 1082 (Calderon), Stats. 1993, c. 418, and amended by SB 1123 (Calderon), Stats. 1994, c. 65, and SB 1191 (Calderon), Stats. 1995, c. 639.

25404.1.1. (a) If the unified program agency determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that the UPA is authorized to enforce or implement pursuant to this chapter, the UPA may issue an administrative enforcement order requiring that the violation be corrected and imposing an administrative penalty, in accordance with the following:

(1) Except as provided in paragraph (5), if the order is for a violation of Chapter 6.5 (commencing with Section 25100), the violator shall be subject to the applicable administrative penalties provided by that chapter.

(2) If the order is for a violation of Chapter 6.7 (commencing with Section 25280), the violator shall be subject to the applicable civil penalties provided in subdivisions (a), (b), (c), and (e) of Section 25299.

(3) If the order is for a violation of Article 1 (commencing with Section 25500) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25514.5.

(4) If the order is for a violation of Article 2 (commencing with Section 25531) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25540 or 25540.5.

(5) If the order is for a violation of Section 25270.5, the violator shall be liable for a penalty of not more than five thousand dollars ($5,000) for each day on which the violation continues. If the violator commits a second or subsequent violation, a penalty of not more than ten thousand dollars ($10,000) for each day on which the violation continues may be imposed.

(b) In establishing a penalty amount and ordering that the violation be corrected pursuant to this section, the UPA shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the penalty, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

(c) Any order issued pursuant to this section shall be served by personal service or certified mail and shall inform the person served of the right to a hearing. If the UPA issues an order pursuant to this section, the order shall state whether the hearing procedure specified in paragraph (2) of subdivision (e) may be requested by the person receiving the order.

(d) Any person served with an order pursuant to this section who has been unable to resolve any violation with the UPA, may within 15 days after service of the order, request a hearing pursuant to subdivision (e) by filing with the UPA a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(e) Except as provided in subparagraph (B) of paragraph (2), a person requesting a hearing on an order issued by the UPA under this section may select the hearing officer specified in either paragraph (1) or (2) in the notice of defense filed with the UPA pursuant to subdivision (d). If a notice of defense is filed but no hearing officer is selected, the UPA may select the hearing officer. Within 90 days of receipt of the notice of defense by the UPA, the hearing shall be scheduled using one of the following:

(1) An administrative law judge of the Office of Administrative Hearings of the Department of General Services, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions.

(2) (A) A hearing officer designated by the UPA, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions. When a hearing is conducted by a UPA hearing officer pursuant to this paragraph, the UPA shall issue a decision within 60 days after the hearing is conducted. Each hearing officer designated by a UPA shall meet the requirements of Section 11425.30 of the Government Code and any other applicable restriction.

(B) A UPA, or a person requesting a hearing on an order issued by a UPA may select the hearing process specified in this paragraph in a notice of defense filed pursuant to subdivision (d) only if the UPA has, as of the date the order is issued pursuant to subdivision (c), selected a designated hearing officer and established a program for conducting a hearing in accordance with this paragraph.

(f) The hearing decision issued pursuant to paragraph (2) of subdivision (e) shall be effective and final upon issuance by the UPA. A copy of the decision shall be served by personal service or by certified mail upon the party served with the order, or their representative, if any.

(g) Any provision of an order issued under this section, except the imposition of an administrative penalty, shall take effect upon issuance by the UPA if the UPA finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment. A request for a hearing shall not stay the effect of that provision of the order pending a hearing decision. However, if the UPA determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, the order as a whole, except the imposition of an administrative penalty, shall take effect upon issuance by the UPA. A request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.

(h) A decision issued pursuant to paragraph (2) of subdivision (e) may be reviewed by a court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this section, the court shall uphold the decision of the UPA if the decision is based upon substantial evidence in the record as a whole. The filing of a petition for writ of mandate shall not stay any action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(i) All administrative penalties collected from actions brought by a UPA pursuant to this section shall be paid to the UPA that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the activities of the UPA in enforcing this chapter.

(j) The UPA shall consult with the district attorney, county counsel, or city attorney on the development of policies to be followed in exercising the authority delegated pursuant to this section as it relates to the authority of the UPA to issue orders.

(k) (1) A unified program agency may suspend or revoke any unified program facility permit, or an element of a unified program facility permit, for not paying the permit fee or a fine or penalty associated with the permit in accordance with the procedures specified in this subdivision.

(2) If a permittee does not comply with a written notice from the unified program agency to the permittee to make the payments specified in paragraph (1) by the required date

provided in the notice, the unified program agency may suspend or revoke the permit or permit element. If the permit or permit element is suspended or revoked, the permittee shall immediately discontinue operating that facility or function of the facility to which the permit element applies until the permit is reinstated or reissued.

(3) A permittee may request a hearing to appeal the suspension or revocation of a permit or element of a permit pursuant to this subdivision by requesting a hearing using the procedures provided in subdivision (d).

(l) This section does not do any of the following:

(1) Otherwise affect the authority of a UPA to take any other action authorized by any other provision of law, except the UPA shall not require a person to pay a penalty pursuant to this section and pursuant to a local ordinance for the same violation.

(2) Restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

(3) Prevent the UPA from cooperating with, or participating in, a proceeding specified in paragraph (2).

As added by AB 2481 (Frommer), Stats. 2002, c. 999, and amended by AB 1640 (Laird), Stats. 2003 , c. 696.

25404.1.2. (a) (1) An authorized representative of the UPA, who in the course of conducting an inspection, detects a minor violation, shall take an enforcement action as to the minor violation only in accordance with this section.

(2) In any proceeding concerning an enforcement action taken pursuant to this section, there shall be a rebuttable presumption upholding the determination made by the UPA regarding whether the violation is a minor violation.

(b) A notice to comply shall be the only means by which a UPA may cite a minor violation, unless the person cited fails to correct the violation or fails to submit the certification of correction within the time period prescribed in the notice, in which case the UPA may take any enforcement action, including imposing a penalty, as authorized by this chapter.

(c) (1) A person who receives a notice to comply detailing a minor violation shall have not more than 30 days from the date of the notice to comply in which to correct any violation cited in the notice to comply. Within five working days of correcting the violation, the person cited or an authorized representative shall sign the notice to comply, certifying that any violation has been corrected, and return the notice to the UPA.

(2) A false certification that a violation has been corrected is punishable as a misdemeanor.

(3) The effective date of the certification that any violation has been corrected shall be the date that it is postmarked.

(d) If a notice to comply is issued, a single notice to comply shall be issued for all minor violations noted during the inspection, and the notice to comply shall list all of the minor violations and the manner in which each of the minor violations may be brought into compliance.

(e) If a person who receives a notice to comply pursuant to subdivision (a) disagrees with one or more of the alleged violations listed on the notice to comply, the person shall provide the UPA a written notice of disagreement along with the returned signed notice to comply. If the person disagrees with all of the alleged violations, the written notice of disagreement shall be returned in lieu of the signed certification of correction within 30 days of the date of issuance of the notice to comply. If the issuing agency takes administrative enforcement action on the basis of the disputed violation, that action may be appealed in the same manner as any other alleged violation under Section 25404.1.1.

(f) This section may not be construed as doing any of the following:

(1) Preventing the reinspection of a facility to ensure compliance with this chapter or to ensure that minor violations cited in a notice to comply have been corrected and that the facility is in compliance with those laws and regulations within the jurisdiction of the UPA.

(2) Preventing the UPA from requiring a person to submit necessary documentation needed to support the person's claim of compliance pursuant to subdivision (c).

(3) Restricting the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

(4) Preventing the UPA from cooperating with, or participating in, a proceeding specified in paragraph (3).

As added by AB 2481 (Frommer), Stats. 2002, c. 999, and amended by AB 403 (LaMalfa), Stats.2005, c. 388.

25404.1.3. (a) A unified program agency may apply to the clerk of the appropriate court for a judgment to collect an administrative penalty for an administrative order or decision that has become final pursuant to subdivision (d) or (f) of Section 25404.1.1 and imposes a penalty pursuant to Section 25401.1.1, if a petition for judicial review of the final order or decision has not been filed within the time limits prescribed in Section 11523 of the Government Code.

(b) The UPA's application to the court clerk shall include a certified copy of the final administrative order or decision that copy of the order or decision constitutes a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

As added by AB 1640 (Laird), Stats. 2003, c. 696.

25404.2. (a) The unified program agencies in each jurisdiction shall do all of the following:

(1) (A) The certified unified program agency shall develop and implement a procedure for issuing, to a unified program facility, a unified program facility permit which would replace any permit required by Section 25284 and any permit or authorization required under any local ordinance or

regulation relating to the generation or handling of hazardous waste or hazardous material, but which would not replace a permit issued pursuant to a local ordinance which incorporates provisions of the Uniform Fire Code and Uniform Building Code.

(B) The unified program facility permit, and, if applicable, an authorization to operate pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department, are the only grants of authorization required under the unified program elements specified in subdivision (c) of Section 25404.

(C) The unified program agencies shall enforce the elements of a unified program facility permit in the same manner as the permits replaced by the unified program facility permit would be enforced.

(D) If a unified program facility is operating pursuant to the applicable grants of authorization which would otherwise be included in a unified program facility permit for the activities in which the facility is engaged, the unified program agencies shall not require that unified program facility to obtain a unified program facility permit as a condition of operating pursuant to the unified program elements specified in subdivision (c) of Section 25404 and any permit or authorization required under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials.

(E) This subparagraph applies to unified program facilities which have existing, not yet expired, grants of authorization for some, but not all, of the authorization requirements encompassed in the unified program facility permit. When issuing a unified program facility permit to such a unified program facility, the unified program agency shall incorporate, by reference, into the unified program facility permit any of the facility's existing, not yet expired, grants of authorization.

(2) To the maximum extent feasible within statutory constraints, the certified unified program agency, in conjunction with participating agencies, shall consolidate, coordinate, and make consistent any local or regional regulations, ordinances, requirements, or guidance documents related to the implementation of the provisions specified in subdivision (c) of Section 25404 or pursuant to any regional or local ordinance or regulation pertaining to hazardous waste or hazardous materials. This paragraph does not affect the authority of a unified program agency with regard to the preemption of the unified program agency's authority under state law.

(3) The certified unified program agency, in conjunction with participating agencies, shall develop and implement a single, unified inspection and enforcement program to ensure coordinated, efficient, and effective enforcement of the provisions specified in subdivision (c) of Section 25404, and any local ordinance or regulation pertaining to the handling of hazardous waste or hazardous materials.

(4) The certified unified program agency, in conjunction with participating agencies, shall coordinate, to the maximum extent feasible, single, unified inspection and enforcement program with the inspection and enforcement program of other federal, state, regional, and local agencies which affect facilities regulated by the unified program. This paragraph does not prohibit the unified program agencies, or any other agency, from conducting inspections, or from undertaking any other enforcement-related activity, without giving prior notice to the regulated entity, except where the prior notice is otherwise required by law.

(b) An employee or authorized representative of a unified program agency or a state agency acting pursuant to this chapter has the authority specified in Section 25185, with respect to the premises of a handler, and in Section 25185.5, with respect to real property which is within 2,000 feet of the premises of a handler, except that this authority shall include inspections concerning hazardous material, in addition to hazardous waste.

(c) Each air quality management district or air pollution control district, each publicly owned treatment works, and each office, board, and department within the California Environmental Protection Agency, shall coordinate, to the maximum extent feasible, those aspects of its inspection and enforcement program which affect facilities regulated by the unified program with the inspection and enforcement programs of each certified unified program agency.

(d) The certified unified program agency, in conjunction with participating agencies, may incorporate, as part of the unified program within its jurisdiction, the implementation and enforcement of laws which the unified program agencies are authorized to implement and enforce, other than those specified in subdivision (c) of Section 25404, if that incorporation will not impair the ability of the unified program agencies to fully implement the requirements of subdivision (a).

(e) (1) The withdrawal of an application for a unified program facility permit after it has been filed with the unified program agency shall not, unless the unified program agency consents in writing to the withdrawal, deprive the unified program agencies of their authority to institute or continue a proceeding against the applicant for the denial of the unified program facility permit upon any ground provided by law, and such a withdrawal shall not affect the authority of the unified program agencies to institute or continue a proceeding against the applicant pertaining to any violation of the requirements specified in subdivision (c) of Section 25404 or of any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials.

(2) The suspension, expiration, or forfeiture by operation of law of a unified program facility permit, or its suspension, forfeiture, or cancellation by the unified program agency or by order of a court, or its surrender or attempted or actual transfer without the written consent of the unified program agency shall not affect the authority of the unified program agencies to institute or continue a disciplinary proceeding against the holder of a unified program facility

permit upon any ground, or otherwise taking an action against the holder of a unified program facility permit on these grounds.

As added by SB 1082 (Calderon), Stats. 1993, c. 418, and amended by SB 1123 (Calderon), Stats. 1994, c. 65, and SB 1191 (Calderon), Stats. 1995, c. 639.

25404.3. (a) The secretary shall, within a reasonable time after submission of a complete application for certification pursuant to Section 25404.2, and regulations adopted pursuant to that section, but not to exceed 180 days, review the application, and, after holding a public hearing, determine if the application should be approved. Before disapproving an application for certification, the secretary shall submit to the applicant agency a notification of the secretary's intent to disapprove the application, in which the secretary shall specify the reasons why the applicant agency does not have the capability or the resources to fully implement and enforce the unified program in a manner that is consistent with the regulations implementing the unified program adopted by the secretary pursuant to this chapter. The secretary shall provide the applicant agency with a reasonable time to respond to the reasons specified in the notification and to correct deficiencies in its application. The applicant agency may request a second public hearing, at which the secretary shall hear the applicant agency's response to the reasons specified in the notification.

(b) In determining whether an applicant agency should be certified, or designated as certified, the secretary, after receiving comments from the director, the Director of the Office of Emergency Services, the State Fire Marshal, and the Executive Officers and Chairpersons of the State Water Resources Control Board and the California regional water quality control boards, shall consider at least all of the following factors:

(1) Adequacy of the technical expertise possessed by each unified program agency that will be implementing each element of the unified program, including, but not limited to, whether the agency responsible for implementing and enforcing the requirements of Chapter 6.5 (commencing with Section 25100) satisfies the requirements of Section 15260 of Title 27 of the California Code of Regulations.

(2) Adequacy of staff resources.

(3) Adequacy of budget resources and funding mechanisms.

(4) Training requirements.

(5) Past performance in implementing and enforcing requirements related to the handling of hazardous materials and hazardous waste.

(6) Recordkeeping and cost accounting systems.

(7) Compliance with the criteria in Section 15170 of Title 27 of the California Code of Regulations.

(c) (1) In making the determination of whether or not to certify a particular applicant agency as a certified unified program agency, the secretary shall consider the applications of every other applicant agency applying to be a certified unified program agency within the same county, in order to determine the impact of each certification decision on the county. If the secretary identifies that there may be adverse impacts on the county if any particular agency in a county is certified, the secretary shall work cooperatively with each affected agency to address the secretary's concerns.

(2) The secretary shall not certify an agency to be a certified unified program agency unless the secretary finds both of the following:

(A) The unified program will be implemented in a coordinated and consistent manner throughout the entire county in which the applicant agency is located.

(B) The administration of the unified program throughout the entire county in which the applicant agency is located will be less fragmented between jurisdictions, as compared to before January 1, 1994, with regard to the administration of the provisions specified in subdivision (c) of Section 25404.

(d) (1) The secretary shall not certify an applicant agency that proposes to allow participating agencies to implement certain elements of the unified program unless the secretary makes all of the following findings:

(A) The applicant agency has adequate authority, and has in place adequate systems, protocols, and agreements, to ensure that the actions of the other agencies proposed to implement certain elements of the unified program are fully coordinated and consistent with each other and with those of the applicant agency, and to ensure full compliance with the regulations implementing the unified program adopted by the secretary pursuant to this chapter.

(B) An agreement between the applicant and other agencies proposed to implement any elements of the unified program contains procedures for removing any agencies proposed and engaged to implement any element of the unified program. The procedures in the agreement shall include, at a minimum, provisions for providing notice, stating causes, taking public comment, making appeals, and resolving disputes.

(C) The other agencies proposed to implement certain elements of the unified program have the capability and resources to implement those elements, taking into account the factors designated in subdivision (b).

(D) All other agencies proposed to implement certain elements of the unified program shall maintain an agreement with the applicant agency that ensures that the requirements of Section 25404.2 will be fully implemented.

(E) If the applicant agency proposes that any agency other than itself will be responsible for implementing aspects of the single fee system imposed pursuant to Section 25404.5, the applicant agency maintains an agreement with that agency that ensures that the fee system is implemented in a fully consistent and coordinated manner, and that ensures that each participating agency receives the amount that it determines to constitute its necessary and reasonable costs of implementing the element or elements of the unified program that it is responsible for implementing.

(2) After the secretary has certified an applicant agency pursuant to this subdivision, that agency shall obtain the approval of the secretary before removing and replacing a

participating agency that is implementing an element of the unified program.

(3) Any state agency, including, but not limited to, the State Department of Health Services, acting as a participating agency, may contract with a unified program agency to implement or enforce the unified program.

(e) Until a city's or county's application for certification to implement the unified program is acted upon by the secretary, the roles, responsibilities, and authority for implementing the programs identified in subdivision (c) of Section 25404 that existed in that city or county pursuant to statutory authorization as of December 31, 1993, shall remain in effect.

(f) (1) Except as provided in subparagraph (C) of paragraph (2) or in Section 25404.8, if no local agency has been certified by January 1, 1997, to implement the unified program within a city, the secretary shall designate either the county in which the city is located or another agency pursuant to subparagraph (A) of paragraph (2) as the unified program agency.

(2) (A) Except as provided in subparagraph (C), if no local agency has been certified by January 1, 2001, to implement the unified program within the unincorporated or an incorporated area of a county, the secretary shall determine how the unified program shall be implemented in the unincorporated area of the county, and in any city in which there is no agency certified to implement the unified program. In such an instance, the secretary shall work in consultation with the county and cities to determine which state or local agency or combination of state and local agencies should implement the unified program, and shall determine which state or local agency shall be designated as the certified unified program agency.

(B) The secretary shall determine the method by which the unified program shall be implemented throughout the county and may select any combination of the following implementation methods:

(i) The certification of a state or local agency as a certified unified program agency.

(ii) The certification of an agency from another county as the certified unified program agency.

(iii) The certification of a joint powers agency as the certified unified program agency.

(C) Notwithstanding paragraph (1) and subparagraphs (A) and (B), if the Cities of Sunnyvale, Anaheim, and Santa Ana prevail in litigation filed in 1997 against the secretary, and, to the extent the secretary determines that these three cities meet the requirements for certification, the secretary may certify these cities as certified unified program agencies.

(g) (1) If a certified unified program agency wishes to withdraw from its obligations to implement the unified program and is a city or a joint powers agency implementing the unified program within a city, the agency may withdraw after providing 180 days' notice to the secretary and to the county within which the city is located, or to the joint powers agency with which the county has an agreement to implement the unified program.

(2) Whenever a certified unified program agency withdraws from its obligations to implement the unified program, or the secretary withdraws an agency's certification pursuant to Section 25404.4, the successor certified unified program agency shall be determined in accordance with subdivision (f).

As added by SB 1082 (Calderon), Stats. 1993, c. 418, and amended by SB 1191 (Calderon), Stats. 1995, c. 639, and SB 1824 (Kelley), Stats. 2000, c. 730, and AB 1640 (Laird), Stats. 2003, c. 696, and SB 1108 (Senate Judiciary Committee), Stats. 2005, c. 22.

25404.3.1. A city or other local agency, which, as of December 31, 1999, has been designated as an administering agency pursuant to Section 25502, or has assumed responsibility for the implementation of Chapter 6.7 (commencing with Section 25280) pursuant to Section 25283, and that wishes to administer the unified program or an element of the unified program identified in subdivision (c) of Section 25404, shall request the secretary to include the agency in the implementation structure established by paragraph (2) of subdivision (f) of Section 25404.3. The secretary may grant the request for as long as the agency remains qualified to implement the unified program or an element of the program.

As added by SB 1824 (Kelley), Stats. 2000, c. 730.

25404.4. (a) (1) The secretary shall periodically review the ability of each certified unified program agency to carry out this chapter. If a certified unified program agency fails to meet its obligations to adequately implement the unified program, the secretary may withdraw the certified unified program agency's certification, or may enter into a program improvement agreement with the certified unified program agency to make the necessary improvements. A certified unified program agency with which the secretary has entered into a program improvement agreement may continue to implement the unified program while the program improvement agreement is in effect and the certified unified program agency is in compliance with the agreement.

(2) Before withdrawing a certified unified program agency's certification, the secretary shall submit to the certified unified program agency a notification of the secretary's intent to withdraw certification, in which the secretary shall specify the reasons why the certified unified program agency has failed to meet its obligations to adequately implement the unified program. The secretary shall provide the certified unified program agency with a reasonable time to respond to the reasons specified in the notification and to correct the deficiencies specified in the notification. The certified unified program agency may request a public hearing, at which the secretary shall hear the agency's response to the reasons specified in the notification.

(b) (1) If the secretary finds that a certified unified program agency has failed to adequately enforce the requirements of the unified program with respect to a particular facility, the secretary may direct the appropriate state agency to take any necessary actions and to issue necessary orders to the facility.

(2) If the secretary finds that the failure to adequately enforce the requirements of the unified program may result in an imminent and substantial endangerment to the environment or to the public health and safety, the secretary shall direct the appropriate state agency to take any necessary actions and to issue the necessary orders to the facility.

(3) This chapter does not prevent any appropriate state agency from issuing an order or taking any other action pursuant to state law.

As added by SB 1082 (Calderon), Stats. 1993, c. 418, and amended by SB 1123 (Calderon), Stats. 1994, c. 65, and SB 1191 (Calderon), Stats. 1995, c. 639.

25404.5. (a) (1) Each certified unified program agency shall institute a single fee system, which shall replace the fees levied pursuant to Sections 25201.14 and 25205.14, except for transportable treatment units permitted under Section 25200.2, and which shall also replace any fees levied by a local agency pursuant to Sections 25143.10, 25287, 25513, and 25535.2, or any other fee levied by a local agency specifically to fund the implementation of the provisions specified in subdivision (c) of Section 25404. Notwithstanding Sections 25143.10, 25201.14, 25205.14, 25287, 25513, and 25535.2, a person who complies with the certified unified program agency's "single fee system" fee shall not be required to pay any fee levied pursuant to those sections, except for transportable treatment units permitted under Section 25200.2.

(2) The governing body of the certified unified program agency shall establish the amount to be paid by each person regulated by the unified program under the single fee system at a level sufficient to pay the necessary and reasonable costs incurred by the certified unified program agency and by any participating agency pursuant to the requirements of subparagraph (E) of paragraph (1) of subdivision (d) of Section 25404.3.

(3) The fee system may also be designed to recover the necessary and reasonable costs incurred by the certified unified program agency, or a participating agency pursuant to the requirements of subparagraph (E) of paragraph (1) of subdivision (d) of Section 25404.3, in administering provisions other than those specified in subdivision (c) of Section 25404, if the implementation and enforcement of those provisions has been incorporated as part of the unified program by the certified unified program agency pursuant to subdivision (b) of Section 25404.2, and if the single fee system replaces any fees levied as of January 1, 1994, to fund the implementation of those additional provisions.

(4) The amount to be paid by a person regulated by the unified program may be adjusted to account for the differing costs of administering the unified program with respect to that person's regulated activities.

(b) Except as provided in subdivision (d), the single fee system instituted by each certified unified program agency shall include an assessment on each person regulated by the unified program of a surcharge, the amount of which shall be determined by the secretary annually, to cover the necessary and reasonable costs of the Office of Emergency Services, the State Fire Marshal, and the State Water Resources Control Board in carrying out their responsibilities under this chapter. The secretary may adjust the amount of the surcharge to be collected by different certified unified program agencies to reflect the different costs incurred by the Office of Emergency Services, the State Fire Marshal, and the State Water Resources Control Board in supervising the implementation of the unified program in different jurisdictions, and in supervising the implementation of the unified program in those jurisdictions for which the secretary has waived the assessment of the surcharge pursuant to subdivision (d). The certified unified program agency may itemize the amount of the surcharge on any bill, invoice, or return that the agency sends to a person regulated by the unified program. Each certified unified program agency shall transmit all surcharge revenues collected to the secretary on a quarterly basis. The surcharge shall be deposited in the Unified Program Account, which is hereby created in the General Fund and which may be expended, upon appropriation by the Legislature, by the Office of Emergency Services, the State Fire Marshal, and the State Water Resources Control Board for the purposes of implementing this chapter.

(c) Each certified unified program agency and the secretary shall, before the institution of the single fee system and the assessment of the surcharge, implement a fee accountability program designed to encourage more efficient and cost-effective operation of the program for which the single fee and surcharge are assessed. The fee accountability programs shall include those elements of the requirements of the plan adopted pursuant to Section 25206 that the secretary determines are appropriate.

(d) The secretary may waive the requirement for a county to assess a surcharge pursuant to subdivision (b), if both of the following conditions apply:

(1) The county meets all of the following conditions:

(A) The county submits an application to the secretary for certification on or before January 1, 1996, that incorporates all of the requirements of this chapter, and includes the county's request for a waiver of the surcharge, and contains documentation that demonstrates, to the satisfaction of the secretary, both of the following:

(i) That the assessment of the surcharge will impose a significant economic burden on most businesses within the county.

(ii) That the combined dollar amount of the surcharge and the single fee system to be assessed by the county pursuant to subdivision (a) exceeds the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(B) The application for certification, including the information required by subparagraph (A), is determined by the secretary to be complete, on or before April 30, 1996. The secretary, for good cause, may grant an extension of that deadline of up to 90 days.

(C) The county is certified by the secretary on or before December 31, 1996.

(D) On or before January 1, 1994, the county completed the consolidation of the administration of the hazardous waste

generator program, the hazardous materials release response plans and inventories program, and the underground storage tank program, referenced in paragraphs (1), (3), and (4) of subdivision (c) of Section 25404, into a single program within the county's jurisdiction.

(E) The county demonstrates that it will consolidate the administration of all programs specified in subdivision (c) of Section 25404, and that it will also consolidate the administration of at least one additional program that regulates hazardous waste, hazardous substances, or hazardous materials, as specified in subdivision (d) of Section 25404.2, other than the programs specified in subdivision (c) of Section 25404, into a single program to be administered by a single agency in the county's jurisdiction at the time that the county's certification by the secretary becomes effective.

(2) The secretary makes all of the following findings:

(A) The county meets all of the criteria specified in paragraph (1).

(B) The assessment of the surcharge would impose a significant economic burden on most businesses within the county.

(C) The combined dollar amount of the surcharge and the single fee system to be assessed by the county pursuant to subdivision (a) would exceed the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(D) The waiver of the surcharge for those counties applying for and qualifying for a waiver, and the resulting increase in the surcharge for other counties, would not, when considered cumulatively, impose a significant economic burden on businesses in any other county that does not apply for, or does not meet the criteria for, a waiver of the surcharge.

(e) The secretary shall review all of the requests for a waiver of the surcharge made pursuant to subdivision (d) simultaneously, so as to adequately assess the cumulative impact of granting the requested waivers on businesses in those counties that have not applied, or do not qualify, for a waiver, and shall grant or deny all requests for a waiver of the surcharge within 30 days from the date that the secretary certifies all counties applying, and qualifying, for a waiver. If the secretary finds that the grant of a waiver of the surcharge for all counties applying and qualifying for the waiver will impose a significant economic burden on businesses in one or more other counties, the secretary shall take either of the following actions:

(1) Deny all of the applications for a waiver of the surcharge.

(2) Approve only a portion of the waiver requests for counties meeting the criteria set forth in subdivision (d), to the extent that the approved waivers, when taken as a whole, meet the condition specified in subparagraph (D) of paragraph (2) of subdivision (d). In determining which of the counties' waiver requests to grant, the secretary shall consider all of the following factors:

(A) The relative degree to which the assessment of the surcharge will impose a significant economic burden on most businesses within each county applying and qualifying for a waiver.

(B) The relative degree to which the combined dollar amount of the surcharge and the single fee system to be assessed, pursuant to subdivision (a), by each county applying and qualifying for a waiver exceeds the combined dollar amount of all existing fees that are replaced by the single fee system for most businesses within the county.

(C) The relative extent to which each county applying and qualifying for a waiver has incorporated, or will incorporate, upon certification, additional programs pursuant to subdivision (d) of Section 25404.2, into the unified program within the county's jurisdiction.

(f) The secretary may, at any time, terminate a county's waiver of the surcharge granted pursuant to subdivisions (d) and (e) if the secretary determines that the criteria specified in subdivision (d) or the grant of a waiver are no longer met.

As added by SB 1082 (Calderon), Stats. 1993, c. 418, and amended by AB 3082 (Alpert), Stats. 1994, c. 1151, and SB 1107 (Leslie), Stats. 1995, c. 635, and SB 1191 (Calderon), Stats. 1995, c. 639, and AB 1357 (Baldwin), Stats. 1997, c. 778, and SB 660 (Sher), Stats. 1997, c. 870.

25404.6. (a) The secretary may immediately implement those aspects of the unified program which do not require statutory changes. If the secretary determines that statutory changes are needed to fully implement the program, the secretary shall recommend those changes to the Legislature on or before March 1, 1995, so that the changes, if approved by the Legislature, can be implemented as part of the program by January 1, 1996.

(b) The secretary shall work in close consultation with the Environmental Protection Agency, and shall implement this chapter only to the extent that doing so will not result in this state losing its authorization or delegation to implement the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.), the Federal Water Pollution Control Act, (33 U.S.C. Sec. 1251 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Sec.11001 et seq.), and any other applicable federal laws.

(c) The secretary shall adopt regulations necessary for the orderly administration and implementation of the unified program. The secretary shall adopt those regulations 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, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare.

As added by SB 1082 (Calderon), Stats. 1993, c. 418.

Chapter 6.95. Hazardous Materials Release Response Plans and Inventory

ARTICLE 1. BUSINESS AND AREA PLANS

25503.5. (a) (1) A business, except as provided in subdivisions (b), (c), and (d), shall establish and implement a

business plan for emergency response to a release or threatened release of a hazardous material in accordance with the standards prescribed in the regulations adopted pursuant to Section 25503, if the business handles a hazardous material or a mixture containing a hazardous material that has a quantity at any one time during the reporting year that is any of the following:

(A) Equal to, or greater than, a total weight of 500 pounds or a total volume of 55 gallons.

(B) Equal to, or greater than, 200 cubic feet at standard temperature and pressure, if the substance is compressed gas.

(C) If the substance is a radioactive material, it is handled in quantities for which an emergency plan is required to be adopted pursuant to Part 30 (commencing with Section 30.1), Part 40 (commencing with Section 40.1), or Part 70 (commencing with Section 70.1), of Chapter 1 of Title 10 of the Code of Federal Regulations, or pursuant to any regulations adopted by the state in accordance with those regulations.

(2) In meeting the requirements of this subdivision, a business may, if it elects to do so, use the format adopted pursuant to Section 25503.4.

(b) (1) Oxygen, nitrogen, and nitrous oxide, ordinarily maintained by a physician, dentist, podiatrist, veterinarian, or pharmacist, at his or her office or place of business, stored at each office or place of business in quantities of not more than 1,000 cubic feet of each material at any one time, are exempt from this section and from Section 25505. The administering agency may require a one-time inventory of these materials for a fee not to exceed fifty dollars ($50) to pay for the costs incurred by the agency in processing the inventory forms.

(2) (A) Lubricating oil is exempt from this section and Sections 25505 and 25509, for a single business facility, if the total volume of each type of lubricating oil handled at that facility does not exceed 55 gallons and the total volume of all types of lubricating oil handled at that facility does not exceed 275 gallons, at any one time.

(B) For purposes of this paragraph, "lubricating oil" means any oil intended for use in an internal combustion crankcase, or the transmission, gearbox, differential, or hydraulic system of an automobile, bus, truck, vessel, plane, heavy equipment, or other machinery powered by an internal combustion or electric powered engine. "Lubricating oil" does not include used oil, as defined in subdivision (a) of Section 25250.1.

(c) (1) Hazardous material contained solely in a consumer product for direct distribution to, and use by, the general public is exempt from the business plan requirements of this chapter unless the administering agency has found, and has provided notice to the business handling the product, that the handling of certain quantities of the product requires the submission of a business plan, or any portion thereof, in response to public health, safety, or environmental concerns.

(2) In addition to the authority specified in paragraph (4), the administering agency may, in exceptional circumstances, following notice and public hearing, exempt from the inventory provisions of this chapter any hazardous substance specified in subdivision (p) of Section 25501 if the administering agency finds that the hazardous substance would not pose a present or potential danger to the environment or to human health and safety if the hazardous substance was released into the environment. The administering agency shall specify in writing the basis for granting any exemption under this paragraph. The administering agency shall send a notice to the office within five days from the effective date of any exemption granted pursuant to this paragraph.

(3) The administering agency, upon application by a handler, may exempt the handler, under conditions that the administering agency determines to be proper, from any portion of the business plan, upon a written finding that the exemption would not pose a significant present or potential hazard to human health or safety or to the environment or affect the ability of the administering agency and emergency rescue personnel to effectively respond to the release of a hazardous material, and that there are unusual circumstances justifying the exemption. The administering agency shall specify in writing the basis for any exemption under this paragraph.

(4) The administering agency, upon application by a handler, may exempt a hazardous material from the inventory provisions of this chapter upon proof that the material does not pose a significant present or potential hazard to human health and safety or to the environment if released into the workplace or environment. The administering agency shall specify in writing the basis for any exemption under this paragraph.

(5) An administering agency shall exempt a business operating a farm for purposes of cultivating the soil or raising or harvesting any agricultural or horticultural commodity from filing the information in the business plan required by subdivisions (b) and (c) of Section 25504 if all of the following requirements are met:

(A) The handler annually provides the inventory of information required by Section 25509 to the county agricultural commissioner before January 1 of each year.

(B) Each building in which hazardous materials subject to this chapter are stored is posted with signs, in accordance with regulations that the office shall adopt, that provide notice of the storage of any of the following:

(i) Pesticides.

(ii) Petroleum fuels and oil.

(iii) Types of fertilizers.

(C) Each county agricultural commissioner forwards the inventory to the administering agency within 30 days from the date of receipt of the inventory.

(6) The administering agency shall exempt a business operating an unstaffed remote facility located in an isolated sparsely populated area from the hazardous materials business plan and inventory requirements of this article if the facility is not otherwise subject to the requirements of applicable federal law, and all of the following requirements are met:

(A) The types and quantities of materials onsite are limited to one or more of the following:

(i) Five hundred standard cubic feet of compressed inert gases (asphyxiation and pressure hazards only).

(ii) Five hundred gallons of combustible liquid used as a fuel source.

(iii) Two hundred gallons of corrosive liquids used as electrolytes in closed containers.

(iv) Five hundred gallons of lubricating and hydraulic fluids.

(v) Twelve hundred gallons of flammable gas used as a fuel source.

(B) The facility is secured and not accessible to the public.

(C) Warning signs are posted and maintained for hazardous materials pursuant to the California Fire Code.

(D) A one-time notification and inventory is provided to the administering agency along with a processing fee in lieu of the existing fee. The fee shall not exceed the actual cost of processing the notification and inventory, including a verification inspection if necessary.

(E) If the information contained in the initial notification or inventory changes and the time period of the change is longer than 30 days, the notification or inventory shall be resubmitted within 30 days to the administering agency to reflect the change, along with a processing fee, in lieu of the existing fee, that does not exceed the actual cost of processing the amended notification or inventory, including a verification inspection, if necessary.

(F) The administering agency shall forward a copy of the notification and inventory to those agencies that share responsibility for emergency response.

(G) The administering agency may require an unstaffed remote facility to submit a hazardous materials business plan and inventory in accordance with this article if the agency finds that special circumstances exist such that development and maintenance of the business plan and inventory is necessary to protect public health and safety and the environment.

(d) Onpremise use, storage, or both, of propane in an amount not to exceed 300 gallons that is for the sole purpose of heating the employee working areas with that business is exempt from this section, unless the administering agency finds, and provides notice to the business handling the propane, that the handling of the onpremise propane requires the submission of a business plan, or any portion thereof, in response to public health, safety, or environmental concerns.

(e) The administering agency shall provide all information obtained from completed inventory forms, upon request, to emergency rescue personnel on a 24-hour basis.

(f) The administering agency shall adopt procedures to provide for public input when approving any applications submitted pursuant to paragraph (3) or (4) of subdivision (c).

As added by AB 2185 (M. Waters), Stats. 1985, c. 1167, and amended by AB 2187 (M. Waters), Stats. 1986, c. 463, and AB 1081 (Allen), Stats. 1989, c. 874, and SB 2858 (Garamendi), Stats. 1990, c. 824, and SB 428 (Hart), Stats. 1992, c. 504, and AB 1451 (Umberg), Stats. 1993, c. 630, and AB 403 (LaMalfa), Stats 2005, c. 388.

DIVISION 24. COMMUNITY DEVELOPMENT AND HOUSING

PART 1. COMMUNITY REDEVELOPMENT LAW

Chapter 4. Redevelopment Procedures and Activities

ARTICLE 12.5. HAZARDOUS SUBSTANCE RELEASE CLEANUP

(Article 12.5 as added by AB 3193 (Polanco), Stats. 1990, c. 1119)

33459. For purposes of this article, the following terms shall have the following meanings:

(a) "Department" means the Department of Toxic Substances Control.

(b) "Director" means the Director of Toxic Substances Control.

(c) "Hazardous substance" means any hazardous substance as defined in subdivision (h) of Section 25281, and any reference to hazardous substance in the definitions referenced in this section shall be deemed to refer to hazardous substance, as defined in this subdivision.

(d) "Local agency" means a single local agency that is one of the following:

(1) A local agency authorized pursuant to Section 25283 to implement Chapter 6.7 (commencing with Section 25280) of, and Chapter 6.75 (commencing with Section 25299.10) of, Division 20.

(2) A local officer who is authorized pursuant to Section 101087 to supervise a remedial action.

(e) "Qualified independent contractor" means an independent contractor who is any of the following:

(1) An engineering geologist who is certified pursuant to Section 7842 of the Business and Professions Code.

(2) A geologist who is registered pursuant to Section 7850 of the Business and Professions Code.

(3) A civil engineer who is registered pursuant to Section 6762 of the Business and Professions Code.

(f) "Release" means any release, as defined in Section 25320.

(g) "Remedy" or "remove" means any action to assess, evaluate, investigate, monitor, remove, correct, clean up, or abate a release of a hazardous substance or to develop plans for those actions. "Remedy" includes any action set forth in Section 25322 and "remove" includes any action set forth in Section 25323.

(h) "Responsible party" means any person described in subdivision (a) of Section 25323.5 of this code or subdivision (a) of Section 13304 of the Water Code.

As added by AB 3193 (Polanco), Stats. 1990, c. 1113, and amended by Gov. Reorg. Plan No. 1 of 1991, and AB 175 (Polanco), Stats. 1993, c. 163, and SB 1425 (Kelley), Stats. 1996, c. 623, and AB 871 (Wayne), Stats. 1998, c. 430, and SB 1898 (Polanco), Stats. 1998, c. 438, and AB 2481 (Frommer), Stats. 2002, c. 999, and AB 1702 (Assembly Environmental Safety and Toxic Materials Committee), Stats. 2003, c. 42.

33459.1. (a) (1) An agency may take any actions that the agency determines are necessary and that are consistent with other state and federal laws to remedy or remove a

release of hazardous substances on, under, or from property within a project area, whether the agency owns that property or not, subject to the conditions specified in subdivision (b). Unless an administering agency has been designated under Section 25262, the agency shall request cleanup guidelines from the department or the California regional water quality control board before taking action to remedy or remove a release. The department or the California regional water quality control board shall respond to the agency's request to provide cleanup guidelines within a reasonable period of time. The agency shall thereafter submit for approval a cleanup or remedial action plan to the department or the California regional water quality control board before taking action to remedy or remove a release. The department or the California regional water quality control board shall respond to the agency's request for approval of a cleanup or remedial action plan within a reasonable period of time.

(2) The agency shall provide the department and local health and building departments, the California regional water quality control board, with notification of any cleanup activity pursuant to this section at least 30 days before the commencement of the activity. If an action taken by an agency or a responsible party to remedy or remove a release of a hazardous substance does not meet, or is not consistent with, a remedial action plan or cleanup plan approved by the department or the California regional water quality control board, the department or the California regional water quality control board that approved the cleanup or remedial action plan may require the agency to take, or cause the taking of, additional action to remedy or remove the release, as provided by applicable law. If an administering agency for the site has been designated under Section 25262, any requirement for additional action may be imposed only as provided in Sections 25263 and 25265. If methane or landfill gas is present, the agency shall obtain written approval from the California Integrated Waste Management Board prior to taking that action.

(b) Except as provided in subdivision (c), an agency may take the actions specified in subdivision (a) only under one of the following conditions:

(1) There is no responsible party for the release identified by the agency.

(2) A party determined by the agency to be a responsible party for the release has been notified by the agency or has received adequate notice from the department, a California regional water quality control board, the Environmental Protection Agency, or other governmental agency with relevant authority and has been given 60 days to respond and to propose a remedial action plan and schedule, and the responsible party has not agreed within an additional 60 days to implement a plan and schedule to remedy or remove the release that is acceptable to the agency and that has been found by the agency to be consistent, to the maximum extent possible, with the priorities, guidelines, criteria, and regulations contained in the National Contingency Plan and published pursuant to Section 9605 of Title 42 of the United States Code for similar releases, situations, or events.

(3) The party determined by the agency to be the responsible party for the hazardous substance release entered into an agreement with the agency to prepare a remedial action plan for approval by the department, the California regional water quality control board, or the appropriate local agency and to implement the remedial action plan in accordance with an agreed schedule, but failed to prepare the remedial action plan, failed to implement the remedial action plan in accordance with the agreed schedule, or otherwise failed to carry out the remedial action in an appropriate and timely manner. Any action taken by the agency pursuant to this paragraph shall be consistent with any agreement between the agency and the responsible party and with the requirements of the state or local agency that approved or will approve the remedial action plan and is overseeing or will oversee the preparation and implementation of the remedial action plan.

(c) Subdivision (b) does not apply to either of the following agencies:

(1) An agency taking actions to investigate or conduct feasibility studies concerning a release.

(2) An agency taking the actions specified in subdivision (a) if the agency determines that conditions require immediate action.

(d) An agency may designate a local agency in lieu of the department or the California regional water quality control board to review and approve a cleanup or remedial action plan and to oversee the remediation or removal of hazardous substances from a specific hazardous substance release site in accordance with the following conditions:

(1) The local agency may be so designated if it is designated as the administering agency under Section 25262. In that event, the local agency, as the administering agency, shall conduct the oversight of the remedial action in accordance with Chapter 6.65 (commencing with Section 25260) and all provisions of that chapter shall apply to the remedial action.

(2) The local agency may be so designated if cleanup guidelines were requested from a California regional water quality control board, and the site is an underground storage tank site subject to Chapter 6.7 (commencing with Section 25280) of Division 20, the local agency has been certified as a certified unified program agency pursuant to Section 25404.1, the State Water Resources Control Board has entered into an agreement with the local agency for oversight of those sites pursuant to Section 25297.1, the local agency determines that the site is within the guidelines and protocols established in, and pursuant to, that agreement, and the local agency consents to the designation.

(3) A local agency may not consent to the designation by an agency unless the local agency determines that it has adequate staff resources and the requisite technical expertise and capabilities available to adequately supervise the remedial action.

(4) (A) Where a local agency has been designated pursuant to paragraph (2), the department or a California regional water quality control board may require that a local agency withdraw from the designation, after providing the

agency with adequate notice, if both of the following conditions are met:

(i) The department or a California regional water quality control board determines that an agency's designation of a local agency was not consistent with paragraph (2), or makes one of the findings specified in subdivision (d) of Section 101480.

(ii) The department or a California regional water quality control board determines that it has adequate staff resources and capabilities available to adequately supervise the remedial action, and assumes that responsibility.

(B) Nothing in this paragraph prevents a California regional water quality control board from taking any action pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(5) Where a local agency has been designated pursuant to paragraph (2), the local agency may, after providing the agency with adequate notice, withdraw from its designation after making one of the findings specified in subdivision (d) of Section 101480.

(e) To facilitate redevelopment planning, the agency may require the owner or operator of any site within a project area to provide the agency with all existing environmental information pertaining to the site, including the results of any Phase I or subsequent environmental assessment, as defined in Section 25200.14, any assessment conducted pursuant to an order from, or agreement with, any federal, state or local agency, and any other environmental assessment information, except that which is determined to be privileged. The person requested to furnish the information shall be required only to furnish that information as may be within their possession or control, including actual knowledge of information within the possession or control of any other party. If environmental assessment information is not available, the agency may require the owner of the property to conduct an assessment in accordance with standard real estate practices for conducting phase I or phase II environmental assessments.

As added by AB 3193 (Polanco), Stats. 1990, c. 1113, and amended by AB 175 (Polanco), Stats. 1993, c. 163, and SB 1425 (Kelley), Stats. 1996, c. 623, and SB 1684 (Polanco), Stats. 2002, c. 1004.

33459.2. REPEALED.

As added by AB 3193 (Polanco), Stats. 1990, c. 1113, and amended by AB 175 (Polanco), Stats. 1993, c. 163, and SB 1425 (Kelley), Stats. 1996, c. 623, and repealed by SB 1684 (Polanco), Stats. 2002, c. 1004.

33459.3. (a) Notwithstanding any other provision of law, except as provided in Section 33459.7, an agency that undertakes and completes an action, as specified in subdivision (c), to remedy or remove a hazardous substance release on, under, or from property within a redevelopment project, in accordance with a cleanup or remedial action plan prepared by a qualified independent contractor and approved by the department or a California regional water quality control board or the local agency, as appropriate, pursuant to subdivision (b), is not liable, with respect to that release only, under Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), or Chapter 6.8 (commencing with Section 25300), of Division 20 of this code, or any other state or local law providing liability for remedial or removal actions for releases of hazardous substances. If the remedial action was also performed pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20, and a certificate of completion is issued pursuant to subdivision (b) of Section 25264, the immunity from agency action provided by the certificate of completion, as specified in subdivision (c) of Section 25264, shall apply to the agency, in addition to the immunity conferred by this section. In the case of a remedial action performed pursuant to Chapter 6.65 (commencing with Section 25260) of Division 20, and for which the administering agency is a local agency, the limitations on the certificate of completion set forth in paragraphs (1) to (6), inclusive, of subdivision (c) of Section 25264 are limits on any immunity provided for by this section and subdivision (c) of Section 25264.

(b) Upon approval of any cleanup or remedial action plan, pursuant to applicable statutes and regulations, the director or the California regional water quality control board or the local agency, as appropriate, shall acknowledge, in writing, that upon proper completion of the remedial or removal action in accordance with the plan, the immunity provided by this section shall apply to the agency.

(c) Notwithstanding any provision of law or policy providing for certification by a person conducting a remedial or removal action that the action has been properly completed, a determination that a remedial or removal action has been properly completed pursuant to this section shall be made only upon the affirmative approval of the director or the California regional water quality control board or the local agency, as appropriate.

(d) The approval of a cleanup or remedial action plan under this section by a local agency shall also be subject to the concurrent approval of the department or a California regional water quality control board when the agency receiving the approval was formed by the same entity of which the local agency is a part.

(e) Upon proper completion of a remedial or removal action, as specified in subdivision (c), the immunity from agency action provided by the certificate of completion provided pursuant to subdivision (c) of Section 25264 and the immunity provided by this section extends to all of the following, but only for the release or releases specifically identified in the approved cleanup or remedial action plan and not for any subsequent release or any release not specifically identified in the approved cleanup or remedial action plan:

(1) Any employee or agent of the agency, including an instrumentality of the agency authorized to exercise some, or all, of the powers of an agency within, or for the benefit of, a redevelopment project and any employee or agent of the instrumentality.

(2) Any person who enters into an agreement with an agency for the redevelopment of property, if the agreement requires the person to acquire property affected by a hazardous

substance release or to remove or remedy a hazardous substance release with respect to that property.

(3) Any person who acquires the property after a person has entered into an agreement with an agency for redevelopment of the property as described in paragraph (2).

(4) Any person who provided financing to a person specified in paragraph (2) or (3).

(f) Notwithstanding any other provision of law, the immunity provided by this section does not extend to any of the following:

(1) Any person who was a responsible party for the release before entering into an agreement, acquiring property, or providing financing, as specified in subdivision (e).

(2) Any person specified in subdivision (a) or (e) for any subsequent release of a hazardous substance or any release of a hazardous substance not specifically identified in the approved cleanup or remedial action plan.

(3) Any contractor who prepares the cleanup or remedial action plan, or conducts the removal or remedial action.

(4) Any person who obtains an approval, as specified in subdivision (b), or a determination, as specified in subdivision (c), by fraud, negligent or intentional nondisclosure, or misrepresentation, and any person who knows before the approval or determination is obtained or before the person enters into an agreement, acquires the property or provides financing, as specified in subdivision (e), that the approval or determination was obtained by these means.

(g) The immunity provided by this section is in addition to any other immunity of an agency provided by law.

(h) This section does not impair any cause of action by an agency or any other party against the person, firm, or entity responsible for the hazardous substance release which is the subject of the removal or remedial action taken by the agency or other person immune from liability pursuant to this section.

(i) This section does not apply to, or limit, alter, or restrict, any action for personal injury, property damage, or wrongful death.

(j) This section does not limit liability of a person described in paragraph (3) or (4) of subdivision (e) for damages under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

(k) The agency shall reimburse the department, the California regional water quality control board, and the local agency for costs incurred in reviewing or approving cleanup or remedial action plans pursuant to this section.

As added by AB 3193 (Polanco), Stats. 1990, c. 1113, and amended by AB 175 (Polanco), Stats. 1993, c. 163, and SB 1425 (Kelley), Stats. 1996, c. 623.

33459.4. (a) Except as provided in Section 33459.7, if a redevelopment agency undertakes action to remedy or remove, or to require others to remedy or remove, a release of hazardous substance, any responsible party or parties shall be liable to the redevelopment agency for the costs incurred in the action. An agency may not recover the costs of goods and services that were not procured in accordance with applicable procurement procedures. The amount of the costs shall include the interest on the costs accrued from the date of expenditure and reasonable attorneys fees and shall be recoverable in a civil action. Interest shall be calculated based on the average annual rate of return on an agency's investment of surplus funds for the fiscal year in which costs were incurred.

(b) The only defenses available to a responsible party shall be the defenses specified in subdivision (b) of Section 26323.6.

(c) The scope and standard of liability for any costs recoverable pursuant to this section shall be the scope and standard of liability under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sec. 960l et seq.); provided, however, that any reference to hazardous substance therein shall be deemed to refer to hazardous substance as defined in subdivision (b) of Section 33459.

(d) An action for recovery of costs of a remedy or removal undertaken by a redevelopment agency under this section shall be commenced within three years after completion of the remedy or removal.

(e) The action to recover costs provided by this section is in addition to, and is not to be construed as restricting, any other cause of action available to a redevelopment agency.

As added by AB 3193 (Polanco), Stats. 1990, c. 1113.

33459.5. Except as provided in Section 33459.3, nothing in this article shall limit the powers of the State Water Resources Control Board or a California regional water quality control board to enforce Division 7 (commencing with Section 13000) of the Water Code.

As added by AB 3193 (Polanco), Stats. 1990, c. 1113.

33459.6. REPEALED.

As added by AB 3193 (Polanco), Stats. 1990, c. 1113, and repealed by AB 2874 (Epple), Stats. 1992, c. 711.

33459.7. REPEALED.

As added by AB 3193 (Polanco), Stats. 1990, c. 1113, and amended by AB 175 (Polanco), Stats. 1993, c. 163, and repealed by SB 1684 (Polanco), Stats. 2002, c. 1004.

33459.8. If an agency undertakes any action to remedy or remove a release of hazardous substances on, under, or from property within a project area, the agency shall amend its redevelopment plan and follow the same procedure, as specified, and the legislative body is subject to the same restrictions as provided for in Article 4 (commencing with Section 33330), for the adoption of a redevelopment plan if the agency determines that as a result of the remedial or removal action, it will also be taking any of the following actions:

(a) Proposing to add new territory to the project area.

(b) Increasing either the limitation on the amount of funds to be allocated to the agency or the time limit on the establishing of loans, advances, and indebtedness established pursuant to subdivisions (1) and (2) of Section 33333.2.

(c) Lengthening the period during which the redevelopment plan is effective.

(d) Merging project areas.

(e) Adding significant additional capital improvement projects.

As added by AB 3193 (Polanco), Stats. 1990, c. 1113.

DIVISION 25.5. CALIFORNIA GLOBAL WARMING SOLUTIONS ACT OF 2006

PART 1. GENERAL PROVISIONS

Chapter 2. Findings and Declarations

(Chapter 2 as added by AB 32 (Núñez), Stats. 2006, c. 488)

38501. The Legislature finds and declares all of the following:

(a) Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

(b) Global warming will have detrimental effects on some of California's largest industries, including agriculture, wine, tourism, skiing, recreational and commercial fishing, and forestry. It will also increase the strain on electricity supplies necessary to meet the demand for summer air-conditioning in the hottest parts of the state.

(c) California has long been a national and international leader on energy conservation and environmental stewardship efforts, including the areas of air quality protections, energy efficiency requirements, renewable energy standards, natural resource conservation, and greenhouse gas emission standards for passenger vehicles. The program established by this division will continue this tradition of environmental leadership by placing California at the forefront of national and international efforts to reduce emissions of greenhouse gases.

(d) National and international actions are necessary to fully address the issue of global warming. However, action taken by California to reduce emissions of greenhouse gases will have far-reaching effects by encouraging other states, the federal government, and other countries to act.

(e) By exercising a global leadership role, California will also position its economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to reduce emissions of greenhouse gases. More importantly, investing in the development of innovative and pioneering technologies will assist California in achieving the 2020 statewide limit on emissions of greenhouse gases established by this division and will provide an opportunity for the state to take a global economic and technological leadership role in reducing emissions of greenhouse gases.

(f) It is the intent of the Legislature that the State Air Resources Board coordinate with state agencies, as well as consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing this division.

(g) It is the intent of the Legislature that the State Air Resources Board consult with the Public Utilities Commission in the development of emissions reduction measures, including limits on emissions of greenhouse gases applied to electricity and natural gas providers regulated by the Public Utilities Commission in order to ensure that electricity and natural gas providers are not required to meet duplicative or inconsistent regulatory requirements.

(h) It is the intent of the Legislature that the State Air Resources Board design emissions reduction measures to meet the statewide emissions limits for greenhouse gases established pursuant to this division in a manner that minimizes costs and maximizes benefits for California's economy, improves and modernizes California's energy infrastructure and maintains electric system reliability, maximizes additional environmental and economic co-benefits for California, and complements the state's efforts to improve air quality.

(i) It is the intent of the Legislature that the Climate Action Team established by the Governor to coordinate the efforts set forth under Executive Order S-3-05 continue its role in coordinating overall climate policy.

As added by AB 32 (Núñez), Stats. 2006, c. 488.

PART 7. MISCELLANEOUS PROVISIONS

38592. (a) All state agencies shall consider and implement strategies to reduce their greenhouse gas emissions.

(b) Nothing in this division shall relieve any person, entity, or public agency of compliance with other applicable federal, state, or local laws or regulations, including state air and water quality requirements, and other requirements for protecting public health or the environment.

As added by AB 32 (Núñez), Stats. 2006, c. 488.

38598. (a) Nothing in this division shall limit the existing authority of a state entity to adopt and implement greenhouse gas emissions reduction measures.

(b) Nothing in this division shall relieve any state entity of its legal obligations to comply with existing law or regulation.

As added by AB 32 (Núñez), Stats. 2006, c .488.

DIVISION 26. AIR RESOURCES

PART 2. STATE AIR RESOURCES BOARD

Chapter 4.5. Rice Straw Demonstration Project

(Chapter 4.5 as added by SB 318 (Thompson), Stats. 1997, c. 745)

39750. The Legislature hereby finds and declares that the Connelly-Areias-Chandler Rice Straw Burning Reduction Act was enacted in 1991 to phase down rice straw burning and improve the air quality for the citizens of the state. This creates an additional significant cost to rice growers, with

potential adverse impacts on the farming communities, including lost farm production; lost state, local and federal tax revenues; lost jobs; and reduction of wildlife habitat in the rice fields. The commercial technologies that could utilize straw, making it a commodity rather than a waste disposal problem, have not developed in the rice growing areas because of the lack of marketplace risk capital to take technologies from the laboratory stage to demonstration projects. To retain the public benefits from having a viable rice growing industry in California and to improve air quality, there is a need to provide cost-sharing grants for the development of demonstration projects for new rice straw technologies in the marketplace.

As added by SB 318 (Thompson), Stats. 1997, c. 318.

39751. The Rice Straw Demonstration Project Grant Fund is hereby created in the State Treasury. The fund shall be administered by the state board for the purpose of developing demonstration projects for new rice straw technologies in the rice straw growing regions of California.

As added by SB 318 (Thompson), Stats. 1997, c. 318, and amended by SB 1794 (Ortiz), Stats. 2000, c. 1019.

39752. The state board shall provide cost-sharing grants for the development of demonstration projects for new rice straw technologies according to criteria developed by the state board, in consultation with the University of California and the Department of Food and Agriculture, and adopted at a noticed public hearing held by the state board. The criteria shall include, but shall not be limited to, all of the following:

(a) Proposed projects shall use a technology that could use significant volumes of rice straw annually if it is commercialized, based upon various factors, including potential markets and viability of the technology in meeting market demands.

(b) The state board shall provide a grant of not more than 50 percent of the cost for each demonstration project.

(c) Public and private support shall be demonstrated for proposed projects, including local community support from the rice growing community where the project would be located.

(d) The grants shall be authorized and allocated during the 2000–01, 2001–02, and 2002–03 fiscal years. Grants may be expended, under the grant agreement, during a period not to exceed three years from the date that the grant is awarded.

(e) Preference shall be given to projects located within the rice growing regions of the Sacramento Valley and which may be replicated throughout the region.

(f) Projects should demonstrate all of the following:

(1) Technical and economic feasibility.

(2) The capability to become profitable within five years.

(3) Cost-effectiveness.

(4) The extent to which the program mitigates or avoids adverse environmental impacts.

(g) This section shall not become operative until moneys are appropriated for deposit in the Rice Straw Demonstration Project Grant Fund, created pursuant to Section 39751, by the Legislature, or until moneys are transferred to that fund by any other entity.

As added by SB 318 (Thompson), Stats. 1997, c. 745, and amended by SB 1794 (Ortiz), Stats. 2000, c. 1019, and SB 1097 (Senate Budget and Fiscal Review Committee), Stats. 2004, c. 225.

39753. It is the intent of the Legislature that funding for purposes of this chapter be provided in the annual Budget Act. The state board may use not more than 10 percent of the rice straw technology demonstration cost-sharing funds for administrative and project review costs in carrying out the grant program.

As added by SB 318 (Thompson), Stats. 1997, c. 318.

Chapter 4.7. Agricultural Biomass Utilization Account

(Chapter 4.7 as added by AB 2514 (Thompson), Stats. 2000, c. 1017)

39760. The Legislature hereby finds and declares that the rice industry has led many other commodity groups in developing alternatives to open-field burning. In order to aid in the continuation of this role of leadership within the agricultural industry and to enable the transition to a free-market utilization of biomass, funds are needed to provide grants to persons that utilize agricultural biomass and rice straw.

As added by AB 2514 (Thompson), Stats. 2000, c. 1017.

39761. For the purposes of this chapter, the following terms mean:

(a) "Department" means the Department of Food and Agriculture.

(b) "Secretary" means the Secretary of Food and Agriculture.

As added by AB 2514 (Thompson), Stats. 2000, c. 1017.

39762. (a) (1) The Agricultural Bio mass Utilization Account is hereby created in the Department of Food and Agriculture Fund.

(2) The sum of 10 million dollars ($10,000,000) is hereby appropriated from the General Fund to the Agricultural Biomass Utilization Account for expenditure for the purposes identified in subdivision (b).

(b) The account shall be administered by the department, in consultation with the State Air Resources Board and the California Integrated Waste Management Board, for the purpose of providing grants to persons that utilize agricultural bio mass as a means of avoiding landfill use, preventing air pollution, and enhancing environmental quality.

(c) Moneys in the account shall include moneys transferred from the General Fund pursuant to subdivision (a) and any moneys solicited by the secretary from other sources.

(d) The secretary shall actively solicit funds from other federal, state, and private sources with the goal of initially supplementing and eventually supplanting the appropriation from the General Fund made pursuant to subdivision (a).

(e) The department may implement similar grant programs for other commodity groups that are used for the

purposes set forth in paragraphs (1) to (6), inclusive, of subdivision (e) of Section39763.

(f) The department shall not utilize more than 7 percent of the funds described in subdivision (a) for the administration of the account.

As added by AB 2514 (Thompson), Stats. 2000, c. 1017.

39763. (a) The funds appropriated by paragraph (2) of subdivision (a) of Section 39762, less administrative costs, shall be dedicated for grants to persons that utilize rice straw.

(b) Grants shall be provided pursuant to this chapter in a manner to be determined by the department, and shall include, but shall not be limited to, grants on a per-ton basis and a per-project basis.

(c) On or before July 1 of each year, the secretary shall set the per-ton grant level in an amount of not less than twenty dollars ($20) per ton of rice straw so utilized.

(d) Grants shall not be provided pursuant to this section for the purchase of any rice straw for which a tax credit has been claimed pursuant to Section 17052.10 of the Revenue and Taxation Code.

(e) A per-ton grant may be provided pursuant to this chapter only if the applicant is the "end-user" of agricultural biomass. For purposes of this subdivision, "end user" means a person who uses agricultural biomass for any of the following purposes:

(1) Processing.

(2) Generating energy.

(3) Manufacturing.

(4) Exporting.

(5) Preventing erosion.

(6) Any other environmentally sound purpose, excluding open-field burning, as determined to be appropriate by the department.

(f) Criteria to be considered by the department in determining whether to award a grant pursuant to this chapter shall include, but shall not be limited to, the following:

(1) Quantity of biomass to be utilized.

(2) Whether the proposed use offers other environmental or public policy benefits, including but not limited to, landfill avoidance, pollution prevention, electrical generation, and sustainability.

(3) The degree to which the proposed grant would assist in moving the commodity group toward an eventual free market utilization of biomass without the assistance of government.

(g) The secretary shall select grant recipients in consultation with the State Air Resources Board, the Integrated Waste Management Board, and the advisory committee created pursuant to subdivision (l) of Section 41865 from a list of potential grantees recommended by the Department of Food and Agriculture.

As added by AB 2514 (Thompson), Stats. 2000, c. 1017.

PART 4. NONVEHICULAR AIR POLLUTION CONTROL

Chapter 2. Basinwide Mitigation for Cogeneration and Resource Recovery Projects

41606. (a) (1) It is the intent of the Legislature to reduce air pollution from open field burning in the state and to improve air quality and protect the public health through new incentives for biomass facilities to increase their use of agricultural waste that would otherwise be burned in open fields in the state.

(2) It is the further intent of the Legislature that the initial incentives paid pursuant to this section provide an effective incentive for the use of qualified agricultural biomass purchased from July 1, 2003, through December 31, 2003, inclusive, in order to maximize air quality benefits during the 2003–04 fiscal year.

(b) For purposes of this section:

(1) "Qualified agricultural biomass" means agricultural residues that are purchased after July 1, 2003, that historically have been open-field burned in the jurisdiction of the air district from which the agricultural residues are derived, as determined by the air district, excluding urban and forest wood products, that include either of the following:

(A) Field and seed crop residues, including, but not limited to, straws from rice and wheat.

(B) Fruit and nut crop residues, including, but not limited to, orchard and vineyard pruning and removals.

(2) "Facility" means any facility located in California that meets all of the following criteria:

(A) As of July 1, 2003, converted and continues to convert qualified agricultural biomass to energy.

(B) Is permitted with best available control technology to reduce emissions, has emissions control equipment in good working order, and is in compliance with its operating permit, as determined by the air pollution control district or air quality management district in which the facility operates.

(C) Demonstrates a significant net increase in utilization of qualified agricultural biomass as compared to usage without grant moneys pursuant to this section. A "significant net increase" means an increase of at least 10 percent in purchases of qualified agricultural biomass above the average annual tonnage purchased by the facility in the previous five years of operation prior to the implementation of the Agricultural Biomass-to-Energy Incentive Grant Program pursuant to former Part 3 (commencing with Section 1101) of Division 1 of the Food and Agricultural Code, as repealed by the act adding this section.

(c) (1) The State Energy Resources Conservation and Development Commission shall, upon determining that a facility is eligible for funding, provide incentives to the facility, consistent with this section.

(2) The State Energy Resources Conservation and Development Commission shall complete the issuance of incentive payments for qualified agricultural biomass purchased from July 1, 2003, through December 31, 2003, inclusive, within 90 days of the effective date of this section.

(3) In providing incentives pursuant to this section, the State Energy Resources Conservation and Development Commission shall provide incentive payments in the amount of ten dollars ($10) for each ton of qualified agricultural biomass received by a facility and converted into energy. The State Energy Resources Conservation and Development Commission may increase the incentive payment for types or sources of qualified agricultural biomass that require greater incentives to achieve meaningful increases in usage by facilities, as determined by the State Energy Resources Conservation and Development Commission.

(4) Notwithstanding any other provision of law, the receipt of incentives pursuant to this section does not make a facility ineligible for any other production subsidy, rebate, buydown, or other incentive funded through electricity surcharges, except that receipt of incentives funded through electricity surcharges shall preclude receipt of biomass-to-energy incentives financed by the General Fund.

(5) The State Energy Resources Conservation and Development Commission, in consultation with the California Environmental Protection Agency, may adopt guidelines governing the incentives authorized under this section at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this paragraph may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this section shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code. Adoption of guidelines shall not delay the timing of the payment of incentives that are required by paragraph (2).

(6) Awards made pursuant to this section are grants, subject to appeal to the State Energy Resources Conservation and Development Commission upon a showing that factors other than those contained in this section, and any guidelines adopted pursuant to this section, were a substantial factor in making the award. Any actions taken by an applicant to apply for, become, or remain eligible for an award, shall not be the rendering of goods, services, or a direct benefit to the State Energy Resources Conservation and Development Commission.

(d) Facilities receiving incentive payments pursuant to this section are not eligible to receive emission reduction credits for any qualified agricultural biomass for which a facility has received an incentive payment. Generators or suppliers of qualified agricultural biomass may not receive emission reduction credits for any qualified agricultural biomass for which a facility has received an incentive payment. For purposes of this section, "emission reduction credits" means a credit for a reduction in the emission of an air contaminant that is banked and is available to offset increases in emissions pursuant to Section 40709, and the regulations adopted pursuant to that section.

As added by SB 704 (Florez), Stat. 2003, c. 480.

Chapter 3. Emission Limitations

ARTICLE 1. GENERAL LIMITATIONS

41700. Except as otherwise provided in Section 41705, no person shall discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of person or to the public, or which endanger the comfort, repose, health, or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.

As added by Stats. 1975, c. 957.

41705. (a) Section 41700 does not apply to odors emanating from any of the following:

(1) Agricultural operations necessary for the growing of crops or the raising of fowl or animals.

(2) Operations that produce, manufacture, or handle compost, as defined in Section 40116 of the Public Resources Code, if the odors emanate directly from the compost facility or operations.

(3) Operations that compost green material or animal waste products derived from agricultural operations, and that return similar amounts of the compost produced to that same agricultural operations source, or to an agricultural operations source owned or leased by the owner, parent company, or subsidiary conducting the composting operation. The composting operation may produce an incidental amount of compost not exceeding 2,500 cubic yards of compost, which may be given away or sold annually.

(b) If a district receives a complaint pertaining to an odor emanating from a compost operation exempt from Section 41700 pursuant to paragraph (2) or (3) of subdivision (a), that is subject to the jurisdiction of an enforcement agency under Division 30 (commencing with Section 40000) of the Public Resources Code, the district shall, within 24 hours or by the next working day, refer the complaint to the enforcement agency.

(c) This section shall become inoperative on April 1, 2003, unless the California Integrated Waste Management Board adopts and submits regulations governing the operation of organic composting sites to the Office of Administrative Law pursuant to subdivision (c) of Section 43209.1 of the Public Resources Code on or prior to that date.

As added by Stats. 1975, c. 957, and amended by AB 59 (Sher), Stats. 1995, c. 952, and SB 675 (Costa), Stats. 1997, c. 788, and AB 88 (Costa), Stats. 2001, c 424, and SB 3034 (Assembly Judiciary Committee), Stats. 2002, c. 664.

41705. (a) Section 41700 shall not apply to odors emanating from agricultural operations necessary for the growing of crops or the raising of fowl or animals.

(b) This section shall become operative on April 1, 2003, unless the California Integrated Waste Management Board adopts and submits regulations governing the operation of organic composting sites to the Office of Administrative

Law pursuant to subdivision (c) of Section 43209.1 of the Public Resources Code on or prior to that date.

As added by AB 59 (Sher), Stats. 1995, c. 952, and amended by SB 675 (Costa), Stats. 1997, c. 788, and SB 88 (Costa), Stats. 2001, c. 424, and AB 3034 (Assembly Judiciary Committee), Stats. 2002, c. 664.

ARTICLE 3. AGRICULTURAL BURNING

41865.5. Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 2001, the State Air Resources Board, in consultation with the Department of Food and Agriculture, and in cooperation with the State Energy Resources Conservation and Development Commission and the California Integrated Waste Management Board, shall prepare and submit to the Legislature recommendations for ensuring consistency and predictability in the supply of rice straw for cost-effective uses, including, but not limited to, recommendations for methods of harvesting, storing, and distributing rice straw for off-field uses. Off-field uses may include, but are not limited to, the production of energy and fuels, construction materials, pulp and paper, and livestock feed.

As added by SB 1186 (Ortiz), Stats. 1999, c. 640.

Chapter 4. Enforcement

ARTICLE 1. PERMITS

42315. (a) No district shall issue or renew a permit for the construction of, renew a permit for the operation of, or issue a determination of compliance for, any project which burns municipal waste or refuse-derived fuel unless all of the following conditions have been met:

(1) The project will not prevent or interfere with the attainment or maintenance of state and federal ambient air quality standards.

(2) The project will comply with all applicable emission limitations established prior to issuance of the permit or the determination of compliance.

(3) The project will, after issuance of the permit or determination of compliance, comply with toxic air contaminant control measures adopted by the district pursuant to Section 39666, and regulations adopted by the district pursuant to Section 41700 for the protection of public health. Notwithstanding Section 42301.5, compliance with this subdivision shall be consistent with a reasonable schedule, as determined by the district.

(4) (A) A health risk assessment is performed and is submitted by the district to both the state board and the Office of Environmental Health Hazard Assessment for review. The state board shall review and, within 15 days, notify the district and the applicant as to whether the data pertaining to emissions and their impact on ambient air quality are adequate for completing its review pursuant to this subdivision, and what additional data, if any, are required to complete its review. Within 45 days of receiving the health risk assessment, the state board shall submit its comments in writing to the district, on the data pertaining to emissions and their impact on ambient air quality. The district shall forward a copy of the comments of the state board to the office. The office shall review and, within 90 days of receiving the health risk assessment, shall submit its comments to the district on the data and findings relating to health effects.

(B) For purposes of complying with the requirements of this paragraph, the Office of Environmental Health Hazard Assessment may select a qualified independent contractor to review the data and findings relating to health effects. In those cases, the review by the independent contractor shall comply with the following requirements:

(i) Be performed in a manner consistent with guidelines provided by the office.

(ii) Be reviewed by the office for accuracy and completeness.

(iii) Be submitted by the office to the district in accordance with the schedules established by this paragraph.

(C) Notwithstanding Section 6103 of the Government Code, the district shall reimburse the Office of Environmental Health Hazard Assessment, or a qualified independent contractor designated by the office pursuant to subparagraph (B), for its actual costs incurred in reviewing a health risk assessment for any project subject to this section.

(D) An application for any project which burns municipal waste or refuse-derived fuel is not complete until both of the following have been accomplished:

(i) The health risk assessment has been performed and is submitted to the district.

(ii) The state board and the Office of Environmental Health Hazard Assessment, or a qualified independent contractor designated by the office pursuant to subparagraph (B) have completed their review pursuant to this paragraph, and have submitted their comments to the district, unless the state board and the office have failed to submit their comments to the district within 90 days and the district makes a finding that the application contains sufficient information for the district to begin its initial review.

(E) This paragraph shall not apply to an application for permit renewal for any project otherwise subject to this section.

(5) The district finds and determines, based upon the health risk assessment, comments from the state board and the Office of Environmental Health Hazard Assessment, and any other relevant information, that no significant increase in the risk of illness or mortality, including, but not limited to increases in the risk of cancer and birth defects, is anticipated as a result of air pollution from the construction and operation of the project. This paragraph shall not apply to an application for permit renewal for any project otherwise subject to this section.

(6) Prior to, and during, commercial operation of the project, periodic monitoring of emissions, including, but not limited to, toxic air contaminants, is performed pursuant to specifications established by the district.

(b) This section does not prohibit a district from requiring ambient air monitoring under any other provision of law.

(c) This section does not apply to any project which does any of the following:

(1) Exclusively burns digester gas produced from manure or other animal solid or semisolid waste.

(2) Exclusively burns methane gas produced from a disposal site as defined in Section 66714.1 of the Government Code, which is used only for the disposal of solid waste as defined in Section 66719 of the Government Code.

(3) Exclusively burns forest, agricultural, wood, or other biomass wastes.

Nothing in this subdivision is intended to prohibit a district from requiring those projects to meet one or more of the conditions of this section.

(d) Nothing in this section prohibits the permit applicant from entering into a contract with any person pursuant to which the person may enforce this section or any other provision of law.

As added by AB 3989 (Sher), Stats. 1986, c. 1134, and amended by Gov. Reorg. Plan No. 1 of 1991.

DIVISION 27. CALIFORNIA POLLUTION CONTROL FINANCING ACT

Chapter 1. California Pollution Control Financing Authority

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS

44508. (a) "Project" and "pollution control facility," respectively, mean any land, building, improvement thereto, work, property or structure, real or personal, providing or designed to provide for the control, reduction, abatement, elimination, remediation, or prevention of pollution, including, but not limited to, hydrostatic control facilities, dust collectors, smoke bags, settling ponds, filtration plants, sewage disposal facilities, garbage disposal facilities, recycling facilities, dumps, filling grounds, chlorination ponds, treatment works, water utility property, soil excavation and removal, construction, operation, and maintenance of systems that extract, contain, or treat groundwater, soil vapor, gas, or leachate, and all other structures, systems, or facilities now or hereafter developed or useful in the control of pollution of any type or character, including any structure, equipment, or other facilities for the purpose of the purchase, production, distribution, or sale of water, or of reducing, treating, neutralizing, or cooling the temperature of any liquid, gaseous, or solid or hazardous waste substance or discharge resulting from the process of manufacture, industry, or commerce, or from the development, processing, or recovery of any natural resource or the generation of electricity, steam heat, or manufactured gas, together with the recovery, treatment, neutralizing, stabilizing, or cooling equipment, facilities, plants, or structures necessary to reduce, control, remediate, or eliminate pollution, and any and all facilities which may hereafter be developed through science, study, and investigation to aid and assist in the control of pollution or the removal or treatment of any substance that might otherwise cause or contribute to pollution, and including the use of renewable energy resource devices or the development of an energy conservation program where that action is designed to reduce onsite emissions or pollutants.

(b) "Project" also means payment by a party for the party's share of the cost of remediation of pollution at a contaminated site for which the party is a de minimis or de micromis responsible party, and the party has been accorded that status in an expedited final settlement or other settlement with the United States Environmental Protection Agency, reached in accordance with subsection (g) of Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and the regulations and guidance issued by the United States Environmental Protection Agency pursuant to that act.

As added by Stats. 1975, c. 957, and amended by AB 2646 (Bates), Stats. 1980, c. 794, and AB 2537 (Moore), Stats. 1992, c. 643, and AB 1909 (Wayne), Stats. 1998, c. 1008, and SB 1119 (Alarcón), Stats. 1999, c. 756.

44535. (a) The authority may separately approve financing for projects, the purpose of which is to prevent, remediate, or reduce environmental pollution resulting from the disposal of solid, hazardous, or liquid waste.

(b) The following projects shall be considered for financing:

(1) Projects utilizing recognized resource recovery or energy conversion processes.

(2) Projects utilizing new technologies or processes for resource recovery or energy conversion.

(3) Projects utilizing technologies designed to reduce the level of pollutants found in water.

(4) Recycled water facilities.

(5) Water main replacements.

(6) Water filtration facilities.

(7) Projects for the disposal of agricultural wastes.

(8) Soil excavation and removal, and construction, operation, and maintenance of systems that extract, contain, or treat groundwater, soil vapor, gas, or leachate.

(9) Other projects for the reduction or remediation of environmental pollution resulting from the disposal of solid, hazardous, or liquid waste, including, but not limited to, payment of the cost to remediate environmental pollution by a party that is a de minimis responsible party, in accordance with the standards for an expedited final settlement specified in subdivision (g) of Section 9622 of Title 42 of the United States Code, or a de micromis responsible party, under the regulations adopted by the Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(c) The projects specified in subdivision (b) may include elements that provide for new refuse removal vehicles, transfer stations, resource recovery or energy conversion plants, source separation, or any solid or liquid waste disposal facilities involved in resource recovery systems. "Solid, hazardous, or liquid waste disposal facilities" means any property, or portion thereof, used for the collection, storage,

treatment, utilization, processing, or final disposal of solid, hazardous, or liquid waste in resource recovery systems.

As added by AB 980 (Knox), Stats. 1979, c. 839, and amended by AB 2537 (Moore), Stats. 1992, c. 643, and AB 1247 (Setencich), Stats. 1995, c. 28, and SB 318 (Thompson), Stats. 1997, c. 745, and AB 1909, Stats. 1998, c. 1008, and SB 1119 (Alarcón), Stats. 1999, c. 756.

ARTICLE 8. CAPITAL ACCESS LOAN PROGRAM FOR SMALL BUSINESSES

44559.1. As used in this article, unless the context requires otherwise:

(a) "Authority" means the California Pollution Control Financing Authority.

(b) "California Capital Access Fund" means a fund created within the authority to be used for purposes of the program.

(c) "Executive Director" means the Executive Director of the California Pollution Control Financing Authority.

(d) (1) "Financial institution" means a federal- or state-chartered bank, savings association, credit union, not-for-profit community development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of these entities. A consortium of those entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in the consortium does not exceed 49 percent.

(2) "Financial institution" also includes a lending institution that has executed a participation agreement with the Small Business Administration under the guaranteed loan program pursuant to Part 120 (commencing with Section 120.1) of Chapter I of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter I of Title 13 of the Code of Federal Regulations, and a small business investment company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter I of Title 13 of the Code of Federal Regulations.

(3) A financial institution described in paragraph (2) shall be domiciled or have its principal office in the State of California.

(e) "Loss reserve account" means an account in the State Treasury or any financial institution that is established and maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purposes of the following:

(1) Depositing all required fees paid by the participating financial institution and the qualified business.

(2) Depositing contributions made by the state and, if applicable, the federal government or other sources.

(3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.

(f) "Participating financial institution" means a financial institution that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article and as may be required by any applicable federal law providing matching funding.

(g) "Passive real estate ownership" means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate.

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

(h) "Program" means the Capital Access Loan Program created pursuant to this article.

(i) "Qualified business" means a small business concern that meets both of the following criteria, regardless of whether the small business concern has operations that affect the environment:

(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit that is authorized to conduct business in the state.

(2) It has its primary business location within the boundaries of the state.

(j) (1) "Qualified loan" means a loan or a portion of a loan made by a participating financial institution to a qualified business for any business activity that has its primary economic effect in California. A qualified loan may be made in the form of a line of credit, in which case the participating financial institution shall specify the amount of the line of credit to be covered under the program, which may be equal to the maximum commitment under the line of credit or an amount that is less than that maximum commitment. A qualified loan made under the program may be made with the interest rates, fees, and other terms and conditions agreed upon by the participating financial institution and the borrower.

(2) "Qualified loan" does not include any of the following:

(A) A loan for the construction or purchase of residential housing.

(B) A loan to finance passive real estate ownership.

(C) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

(D) A loan, the proceeds of which will be used in any manner that could cause the interest on any bonds previously issued by the authority to become subject to federal income tax.

(k) "Severely affected community" means any area classified as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), any area, as designated by the executive director, contiguous to the boundaries of a military base designated for closure pursuant to Section 2687 of Title 10 of the United States Code, as amended, and any other comparable economically distressed geographic area so designated by the executive director from time to time.

(l) "Small Business Assistance Fund" means a fund created within the authority pursuant to Section 44548.

(m) "Small business concern" has the same meaning as in Section 632 of Title 15 of the United States Code, or as otherwise provided in regulations of the authority.

As added by AB 1496 (Peace), Stats. 1993, c. 1164, and amended by AB 253 (Bronshvag), Stats. 1994, c. 1163, and SB 1119 (Alarcón), Stats. 1999, c. 756, and AB 2805 (Papan), Stats. 2000, c. 913, and SB 1986 (Costa), Stats. 2000, c. 915, and AB 29 (Papan), Stats. 2001, c 160.

44559.8. Notwithstanding this article, the authority may facilitate the development of a secondary market for a loan enrolled in the capital access loan program by providing security for that loan, thereby increasing participation in the program by financial institutions and improving access to capital for small businesses. For purposes of this section, the actions that the authority may take include, but are not necessarily limited to, assigning all, or a portion of, any loss reserve account to any other entity in connection with providing security for a loan, including a trustee of a securitization trust, transferring an enrolled loan from a participating financial institution to a securitization trust, and assisting underwriters in marketing a loan to the secondary market.

As added by SB 1119 (Alarcón), Stats. 1999, c 756.

DIVISION 37. REGULATION OF ENVIRONMENTAL PROTECTION

(Added by SB 1082 (Calderon), Stats. 1993, c. 418)

57000. For purposes of this division, the following terms have the following meaning:

(a) "Agency" means the California Environmental Protection Agency.

(b) "Council" means the California Environmental Policy Council established by Section 71017 of the Public Resources Code.

(c) "Secretary" means the Secretary for Environmental Protection.

As added by SB 1082 (Calderon), Stats. 1993, c. 418, and amended by SB 1916 (Sher), Stats. 1998, c. 881.

57001. (a) Except as provided in subdivision (f), each office, board, and department within the agency shall, on or before December 31, 1995, implement a fee accountability program for the fees specified in subdivision (d). That fee accountability program shall be designed to encourage more efficient and cost-effective operation of the programs for which the fees are assessed, and shall be designed to ensure that the amount of each fee is not more than is reasonably necessary to fund the efficient operation of the activities or programs for which the fee is assessed.

(b) Before implementing the fee accountability program required by this section, each board, department, and office within the agency shall conduct a review of the fees identified in subdivision (d) which it assesses. The purpose of this review shall be to determine what changes, if any, should be made to all of the following, in order to implement a fee system which accomplishes the purposes set forth in subdivision (a):

(1) The amount of the fee.

(2) The manner in which the fee is assessed.

(3) The management and workload standards of the program or activity for which the fee is assessed.

(c) The fee accountability program of each board, department, or office within the agency shall include those elements of the requirements of Section 25206 which the secretary determines are appropriate in order to accomplish the purposes set forth in subdivision (a).

(d) This section applies to the following fees:

(1) The fee assessed pursuant to subdivision (d) of Section 13146 of the Food and Agricultural Code to develop data concerning the environmental fate of a pesticide when the registrant fails to provide the required information.

(2) The surface impoundment fees assessed pursuant to Section 25208.3.

(3) The fee assessed pursuant to Section 43203 to recover the costs of the State Air Resources Board in verifying manufacturer compliance on emissions from new vehicles prior to retail sale.

(4) The fee assessed pursuant to Section 44380 to recover the costs of the State Air Resources Board and the Office of Environmental Health Hazard Assessment in implementing and administering the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Part 6 (commencing with Section 44300) of Division 26).

(5) The fee assessed pursuant to Section 43212 of the Public Resources Code to recover the costs of the California Integrated Waste Management Board when it assumes the responsibilities of the local enforcement agency.

(6) The fee assessed pursuant to Section 43508 of the Public Resources Code to recover the costs of the California Integrated Waste Management Board in reviewing closure plans.

(7) The water rights permit fees assessed pursuant to Chapter 8 (commencing with Section 1525) of Part 2 of Division 2 of the Water Code.

(8) The fee assessed pursuant to subdivision (c) of Section 13260 of the Water Code for waste discharge requirements, including, but not limited to, requirements for storm water discharges, and the fee assessed pursuant to subdivision (i) of Section 12360 of the Water Code for National Pollution Discharge Elimination System permits.

(9) The costs assessed pursuant to Section 13304 of the Water Code to recover the costs of the State Water Resources Control Board or the California regional water quality control boards in implementing and enforcing cleanup and abatement orders.

(e) If a board, department, or office within the agency determines that the amount of a fee that is fixed in statute should be increased in order to implement a fee accountability system which accomplishes the purposes of subdivision (a), it shall notify the Legislature, and make recommendations concerning appropriate increases in the statutorily fixed fee

amount. For fees whose amount is not fixed in statute, the board, department, or office may increase the fee only if it makes written findings in the record that it has implemented a fee accountability program which complies with this section.

(f) The Department of Toxic Substances Control shall be deemed to be in compliance with this section if it complies with Section 25206.

As added by SB 1082 (Calderon), Stats. 1993, c. 418.

57002. The agency shall conduct a study by surveying state, regional, and local agencies charged with implementing air quality, water quality, toxics, solid waste, and hazardous waste laws and regulations to determine how much revenue is derived from fines and penalties and to what purposes that revenue is directed. The study should include a review of the extent to which those funds are used to support state, regional, and local agency operations.

As added by SB 1082 (Calderon), Stats. 1993, c. 418.

57003. (a) Before a board, department or office within the agency adopts chemical risk assessment guidelines or policies for evaluating the toxicity of chemicals or prepares a health evaluation of a chemical that will be used in the regulatory process of another board, department, or office, the board, department, or office shall first convene a public workshop at which the guidelines, policies, or health evaluation may be discussed. The public workshop shall be designed to encourage a constructive dialogue between the scientists employed by the board, department, or office that prepared the proposed guidelines or policies or health evaluation and scientists not employed by that board, department, or office and to evaluate the degree to which the proposed guidelines or policies or health evaluation are based on sound scientific methods, knowledge, and practice. Following the workshop, the agency shall revise the guidelines, policies, or health evaluation, as appropriate, and circulate it for public comment for a period of at least 30 days.

(b) In any case where the guidelines, policies, or health evaluations described in subdivision (a) are proposed, or are being prepared, pursuant to a statutory requirement that specifies a procedure or a time period for carrying out the requirement, the requirements of subdivision (a) do not authorize a delay or a postponement in carrying out the statutory requirement.

As added by SB 1082 (Calderon), Stats. 1993, c. 418.

57004. (a) For purposes of this section, the following terms have the following meanings:

(1) "Rule" means either of the following:

(A) A regulation, as defined in Section 11342.600 of the Government Code.

(B) A policy adopted by the State Water Resources Control Board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) that has the effect of a regulation and that is adopted in order to implement or make effective a statute.

(2) "Scientific basis" and "scientific portions" mean those foundations of a rule that are premised upon, or derived from, empirical data or other scientific findings, conclusions, or assumptions establishing a regulatory level, standard, or other requirement for the protection of public health or the environment.

(b) The agency, or a board, department, or office within the agency, shall enter into an agreement with the National Academy of Sciences, the University of California, the California State University, or any similar scientific institution of higher learning, any combination of those entities, or with a scientist or group of scientists of comparable stature and qualifications that is recommended by the President of the University of California, to conduct an external scientific peer review of the scientific basis for any rule proposed for adoption by any board, department, or office within the agency. The scientific basis or scientific portion of a rule adopted pursuant to Chapter 6.6 (commencing with Section 25249.5) of Division 20 or Chapter 3.5 (commencing with Section 39650) of Division 26 shall be deemed to have complied with this section if it complies with the peer review processes established pursuant to these statutes.

(c) No person may serve as an external scientific peer reviewer for the scientific portion of a rule if that person participated in the development of the scientific basis or scientific portion of the rule.

(d) No board, department, or office within the agency shall take any action to adopt the final version of a rule unless all of the following conditions are met:

(1) The board, department, or office submits the scientific portions of the proposed rule, along with a statement of the scientific findings, conclusions, and assumptions on which the scientific portions of the proposed rule are based and the supporting scientific data, studies, and other appropriate materials, to the external scientific peer review entity for its evaluation.

(2) The external scientific peer review entity, within the timeframe agreed upon by the board, department, or office and the external scientific peer review entity, prepares a written report that contains an evaluation of the scientific basis of the proposed rule. If the external scientific peer review entity finds that the board, department, or office has failed to demonstrate that the scientific portion of the proposed rule is based upon sound scientific knowledge, methods, and practices, the report shall state that finding, and the reasons explaining the finding, within the agreed-upon timeframe. The board, department, or office may accept the finding of the external scientific peer review entity, in whole, or in part, and may revise the scientific portions of the proposed rule accordingly. If the board, department, or office disagrees with any aspect of the finding of the external scientific peer review entity, it shall explain, and include as part of the rulemaking record, its basis for arriving at such a determination in the adoption of the final rule, including the reasons why it has determined that the scientific portions of the proposed rule are based on sound scientific knowledge, methods, and practices.

(e) The requirements of this section do not apply to any emergency regulation adopted pursuant to subdivision (b) of Section 11346.1 of the Government Code.

(f) Nothing in this section shall be interpreted to, in any way, limit the authority of a board, department, or office within the agency to adopt a rule pursuant to the requirements of the statute that authorizes or requires the adoption of the rule.

As added by SB 1082 (Calderon), Stats. 1993, c. 418, and amended by SB 1320 (Sher), Stats. 1997, c. 295, and AB 1822 (Wayne), Stats. 2000, c. 1060.

57005. (a) Commencing January 1, 1994, each board, department, and office within the agency, before adopting any major regulation, shall evaluate the alternatives to the requirements of the proposed regulation that are submitted to the board, department, or office pursuant to paragraph (7) of subdivision (a) of Section 11346.5 of the Government Code and consider whether there is a less costly alternative or combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed regulatory requirements.

(b) For purposes of this section, "major regulation" means any regulation that will have an economic impact on the state's business enterprises in an amount exceeding ten million dollars ($10,000,000), as estimated by the board, department, or office within the agency proposing to adopt the regulation in the assessment required by subdivision (a) of Section 11346.3 of the Government Code.

(c) On or before December 31, 1994, after consulting with the Secretary of Trade and Commerce, the director or executive officer of each board, department, and office within the agency, and after receiving public comment, the secretary shall adopt guidelines to be followed by the boards, departments, and offices within the agency concerning the methods and procedures to be used in conducting the evaluation required by this section.

As added by SB 1082 (Calderon), Stats. 1993, c. 418, and amended by SB 523 (Kopp), Stats. 1995, c. 938

57007. (a) The agency, and the offices, boards, and departments within the agency, shall institute quality government programs to achieve increased levels of environmental protection and the public's satisfaction through improving the quality, efficiency, and cost-effectiveness of the state programs that implement and enforce state and federal environmental protection statutes. These programs shall be designed to increase the level of environmental protection while expediting decision-making and producing cost savings. The secretary shall create an advisory group comprised of state and local government, business, environmental, and consumer representatives experienced in quality management to provide guidance in that effort. The secretary shall develop a model quality management program that local agencies charged with implementing air quality, water quality, toxics, solid waste, and hazardous waste laws and regulations may use at their discretion.

(b) The agency, and each board, department, and office within the agency, shall submit a biennial report to the Governor and Legislature, no later than December 1 with respect to the previous two fiscal years, reporting on the extent to which these state agencies have attained their performance objectives, and on their continuous quality improvement efforts.

(c) Nothing in this section abrogates any collective bargaining agreement or interferes with any established employee rights.

(d) For purposes of this section, "quality government program" means all of the following:

(1) A process for obtaining the views of employees, the regulated community, the public, environmental organizations, and governmental officials with regard to the performance, vision, and needs of the agency implementing the quality government program.

(2) A process for developing measurable performance objectiveness using the views of the persons and organizations specified in paragraph (1).

(3) Processes for continually improving quality and for training agency personnel, using the information obtained from implementing paragraphs (1) and (2).

As added by SB 1916 (Sher), Stats. 1998, c. 881, and amended by SB 1191 (Speier), Stats. 2001, c. 745, and AB 2701 (Runner), Stats. 2004, c. 644.

57012. (a) Each agency listed in subdivision (d) shall maintain a list of all instruments and agreements restricting land uses imposed by that agency under Section 1471 of the Civil Code or any provision of law that is administered by that agency, in accordance with all of the following requirements:

(1) The list shall provide a description of location for each property that, at a minimum, provides the street address and the assessor's parcel number. If a street address or assessor's parcel number is not available, or if a street address or assessor's parcel number does not adequately describe the property affected by the instrument or agreement restricting land use, the list shall include a description of location or the location's geographic coordinates.

(2) The list shall provide a description of any restricted uses of the property, contaminants known to be present, and any remediation of the property, if known, that would be required to allow for its unrestricted use. The recorded instrument or agreement restricting land uses may be provided in lieu of the description required by this paragraph.

(3) Each agency shall update its list as new instruments and agreements restricting land uses are recorded and as instruments and agreements restricting land uses on properties are changed.

(b) Each agency listed in subdivision (d) shall display the list required under subdivision (a) on that agency's Web site, and shall make the list available to the public upon request.

(c) The California Environmental Protection Agency shall oversee the implementation of this section. In overseeing the implementation of this section, the California Environmental Protection Agency shall do all of the following:

(1) Maintain on its Web site hyperlinks to the individual lists posted pursuant to this section.

(2) Provide a search function that is able to search and retrieve information from each of the individual lists posted pursuant to this section.

(3) Create and post a list of all instruments and agreements restricting land uses that have been sent pursuant to subdivision (e) of Section 1471 of the Civil Code. The list created and posted pursuant to this paragraph shall meet all of the following requirements:

(A) The list shall identify the entity or jurisdiction that imposed the instrument or agreement restricting land uses.

(B) The list shall include the information required by paragraphs (1) and (2) of subdivision (a).

(C) The list shall be maintained for informational purposes only.

(D) The list shall contain a notation that information regarding the listed properties has been provided voluntarily, that the list is not all-inclusive, and that there may be additional sites where instruments or agreements restricting land uses have been imposed by other entities that have not been included on the list.

(d) This section applies to the California Environmental Protection Agency and to all of the following entities within the agency:

(1) The California Integrated Waste Management Board.

(2) The State Water Resources Control Board, and each California regional water quality control board.

(3) The Department of Toxic Substances Control.

As added by AB 2436 (Frommer), Stats. 2002, c. 592.

DIVISION 104. ENVIRONMENTAL HEALTH

PART 3. PRODUCT SAFETY

Chapter 10. Polybrominated Diphenyl Ethers

(Chapter 10 as added by AB 302 (Chan), Stats. 2003, c. 205.)

108920. The Legislature finds and declares all of the following:

(a) Chemicals known as brominated flame retardants (BFRs) are widely used in California. To meet stringent fire standards, manufacturers add BFRs to a multitude of products, including plastic housing of electronics and computers, circuit boards, and the foam and textiles used in furniture.

(b) Polybrominated diphenyl ether (PBDE), which is a subcategory of BFRs, has increased fortyfold in human breast milk since the 1970s. Women in California carry more PBDEs in their bodies than anyone else studied in the world.

(c) PBDE has the potential to disrupt thyroid hormone balance and contribute to a variety of developmental deficits, including low intelligence and learning disabilities. PBDE may also have the potential to cause cancer.

(d) Substantial efforts to eliminate BFRs from products have been made throughout the world, including private and public sectors. These efforts have made available numerous alternatives safe to human health while meeting stringent fire standards. To meet market demand, it is in the interest of California manufacturers to eliminate the use of BFRs.

(e) In order to protect the public health and the environment, the Legislature believes it is necessary for the state to develop a precautionary approach regarding the production, use, storage, and disposal of products containing brominated fire retardants.

As added by AB 302 (Chan), Stats. 2003, c. 205.

108921. For purposes of this chapter, the following definitions apply:

(a) "OctaBDE" means octabrominated diphenyl ether or any technical mixture in which octabrominated diphenyl ether is a predominate congener.

(b) "PBDE" means polybrominated diphenyl ether.

(c) "PentaBDE" means pentabrominated diphenyl ether or any technical mixture in which pentabrominated diphenyl ether is a predominate congener.

(d) "Congener" means a specific PBDE molecule.

(e) "Process" does not include the processing of metallic recyclables containing PBDEs that is conducted in compliance with all applicable federal, state, and local laws.

(f) "Product" means a product manufactured on or after June 1, 2006.

(g) "Metallic recyclable" has the same meaning as a metallic discard, as defined in Section 42161 of the Public Resources Code.

(h) "Recycle" has the same meaning as defined in Section 40180 of the Public Resources Code.

(i) "Technical mixture" means a PBDE mixture that is sold to a manufacturer. A technical mixture is named for the predominant congener in the mixture, but is not exclusively made up of that congener.

As added by AB 302 (Chan), Stats. 2003, c. 205, and amended by AB 2587 (Chan), Stats. 2004, c. 641.

108922. On and after June 1, 2006, a person may not manufacture, process, or distribute in commerce a product, or a flame-retarded part of a product, containing more than one-tenth of 1 percent of pentaBDE or octaBDE, except for products containing small quantities of PBDEs that are produced or used for scientific research on the health or environmental effects of PBDEs.

As added by AB 302 (Chan), Stats. 2003, c. 205, and amended by AB 2587 (Chan), Stats. 2004, c. 641.

108923. On or before March 1, 2004, the Senate Office of Research shall submit to the President pro Tempore of the Senate and the Senate Environmental Quality Committee recommendations regarding the regulation of PBDE, including relevant findings and rulings by the European Union.

As added by AB 302 (Chan), Stats. 2003, c. 205.

113225. REPEALED.

As added by SB 1360 (Senate Health and Human Services Committee), Stats. 1995, c. 415, and repealed by AB 3263 (Ackerman), Stats. 1996, c. 990. (Note: See PRC Section 42350)

PART 9. RADIATION

Chapter 8. Radiation Control Law

ARTICLE 3. CONTROL AGENCY

115010.5. The department shall, by regulation, establish and collect a fee for the issuance or renewal of a license to dispose of low-level radioactive waste pursuant to this chapter. The fees collected shall be sufficient to cover the state's cost in reviewing the application, issuing or renewing the license, and inspecting and conducting oversight of the licensee.

As added by AB 2214 (Keeley), Stats. 2002, c. 513.

ARTICLE 17. SOUTHWESTERN LOW LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT

115261. (a) The department may not issue a license to dispose of low-level radioactive waste pursuant to this chapter, or renew a license that has been issued by the department pursuant to this chapter, unless the department determines that the siting, design, operation, and closure of the facility will, at a minimum, comply with the performance requirements and objectives of the Nuclear Regulatory Commission specified in Part 61 of Title 10 of the Code of Federal Regulations.

(b) The department may not issue a license to dispose of low-level radioactive waste pursuant to this chapter, or renew a license that has been issued by the department pursuant to this chapter, unless the disposal facility is sited, designed, constructed, and operated to do all of the following:

(1) Consist of multiple, engineered barriers to provide for the retention of the radioactive waste within the engineered barriers to last not less than 500 years, using best available technology.

(2) Provide visual inspection or remote monitoring to detect potential or actual releases of low-level radioactive waste from the engineered barriers.

(3) Provide methods to prevent potential releases or remediate actual releases of low-level radioactive waste from the engineered barriers when monitoring detects potential or actual releases.

(4) Be sited in a location and with soils and hydrology that, if the engineered barriers fail, the natural site characteristics would minimize migration of radioactive materials.

(c) A facility for the disposal of low-level radioactive waste may not use shallow land burial.

(d) (1) The department may issue a license to dispose of low-level radioactive waste pursuant to this chapter only if the department determines there is a preponderance of scientific evidence that there is not a hydrologic pathway whereby the Colorado River or any other agricultural or drinking water source could be contaminated with radioactive waste and harm public health or the environment.

(2) The proposed Ward Valley low-level radioactive disposal site in San Bernardino County may not serve as the state's low-level radioactive disposal facility for purposes of Article 5 of the compact.

(3) The state may not accept ownership or any other property rights to the site of the Ward Valley low-level radioactive waste disposal facility.

(e) For the purposes of this section, the following terms have the following meanings:

(1) "Commission" means the United States Nuclear Regulatory Commission.

(2) "Compact" means the Southwestern Low-Level Radioactive Waste Disposal Compact described in Section 115255.

(3) "Department" means the Department of Health Services.

(4) "Low-level radioactive waste" has the same meaning as defined in Article 2 of the compact.

(5) "Low-level radioactive waste disposal facility," or "facility" means all contiguous land and structures, other appurtenances, and improvements, on the land used for the disposal of low-level radioactive waste.

(6) "Shallow land burial" means the disposal of low-level radioactive waste in or within the upper 30 meters of the earth's surface without the use of additional confinement by engineered barriers. Shallow land burial does not include the disposal of low-level radioactive waste if the disposal facility meets the requirements of subdivisions (b) and (c).

(f) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

As added by AB 2214 (Keeley), Stats. 2002, c. 513.

ARTICLE 19. RADIOACTIVE WASTE REDUCTION

(Article 19 as added by AB 2214 (Keeley), Stats. 2002, c. 513)

115273. In implementing this chapter, the department, consistent with other requirements imposed by this chapter to protect public health and safety, shall promote the reduction of low-level radioactive waste generated, both in volume and radioactivity, by encouraging waste reduction practices, including, but not limited to, all of the following:

(a) The minimization of waste produced by employing best practices to reduce the amount of contaminated materials;

(b) The substitution and use of nonradioactive materials or radioactive materials with shorter radioactive half-lives; and

(c) The compaction of low-level radioactive waste to reduce the volume of waste that must be transported and disposed of in the state.

As added by AB 2214 (Keeley), Stats. 2002, c. 513.

PART 10. RECREATIONAL SAFETY

Chapter 4. Safe Recreational Land Use

ARTICLE 1. PLAYGROUNDS

115736. (a) The State Department of Social Services shall convene a working group to develop recommendations for minimum safety requirements for playgrounds at child care centers.

(b) The working group shall include, but not be limited to, child care center operators, including representatives of the Professional Association for Childhood Education, the California Child Care Health Program, the Children's Advocacy Institute, the State Department of Health Services, and certified playground inspectors.

(c) The working group shall use the national guidelines published by the United States Consumer Product Safety Commission and those regulations adopted pursuant to this article as a reference in developing its recommendations. However, the Department of Social Services shall determine minimum safety requirements that are protective of child health on playgrounds at child care centers.

(d) The working group shall submit its playground safety recommendations to the State Department of Social Services by September 1, 2001.

(e) The working group shall submit its recommendations to the Legislature by November 1, 2001.

As added by SB 1619 (Alpert), Stats. 2000, c. 550.

ARTICLE 4. SAFE PLAYGROUND FACILITIES AND RECYCLED MATERIALS (REPEALED)

(Article 4 as added by AB 1055 (Villaraigosa and Keeley), Stats. 1999, c. 712, and repealed by its own terms on January 1, 2004)

115810–115816. REPEALED.

As added by AB 1055 (Villaraigosa and Keeley), Stats. 1999, c. 712, and repealed by its own terms on January 1, 2004).

PART 13. PROHIBITED WASTE DISPOSAL

(Part 13 as added by SB 1360 (Senate Health and Human Services Committee), Stats. 1995, c. 415)

Chapter 4. Waste and Waste Disposal

(Chapter 4 as added by SB 1360 (Senate Health and Human Services Committee), Stats. 1995, c. 415)

ARTICLE 6. PROHIBITED WASTE DISPOSAL IN PUBLIC PLACES

(Article 6 as added by SB 1360 (Senate Health and Human Services Committee), Stats. 1995, c. 415, and amended by AB 1992 (Canciamilla), Stats. 2006, c. 416)

117550. For purposes of this article, "solid waste" has the same meaning as that term is defined in Section 40191 of the Public Resources Code.

As added by SB 1360 (Senate Health and Human Services Committee), Stats. 1995, c. 415, and repealed and added by AB 1992 (Canciamilla), Stats. 2006, c. 416.

117555. A person who places, deposits, or dumps, or who causes to be placed, deposited, or dumped, or who causes or allows to overflow, sewage, sludge, cesspool or septic tank effluent, accumulation of human excreta, or solid waste, in or upon a street, alley, public highway, or road in common use or upon a public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of the property, or upon private property without the owner's consent, is guilty of a misdemeanor.

This section does not apply to the placing, depositing, or dumping of solid waste upon private property by the owner, or a person authorized by the owner, of the private property, except that the placing, depositing, or dumping of the solid waste shall not create a public health and safety hazard, nuisance, or a fire hazard, as determined by a local enforcement agency, as defined in Section 40130 of the Public Resources Code, local health department, local fire department or fire district, or the Department of Forestry and Fire Protection.

As added by SB 1360 (Senate Health and Human Services Committee), Stats. 1995, c. 415, and amended by AB 1992 (Canciamilla), Stats. 2006, c. 416.

117560. A state fish and game warden, police officer of a city, sheriff, deputy of a sheriff, person described in subdivision (i) of Section 830.7 of the Penal Code, and any other peace officer of the State of California, within his or her respective jurisdiction, shall enforce this article.

As added by SB 1360 (Senate Health and Human Services Committee), Stats. 1995, c. 415, and amended by AB 1992 (Canciamilla), Stats. 2006, c. 416.

PART 14. MEDICAL WASTE

Chapter 2. Definitions

117671. "Home-generated sharps waste" means hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications derived from a household, including a multifamily residence or household.

As added by SB 1305 (Figueroa), Stats. 2006, c. 64.

117700. Medical waste does not include any of the following:

(a) Waste generated in food processing or biotechnology that does not contain an infectious agent as defined in Section 117675.

(b) Waste generated in biotechnology that does not contain human blood or blood products or animal blood or blood products suspected of being contaminated with infectious agents known to be communicable to humans.

(c) Urine, feces, saliva, sputum, nasal secretions, sweat, tears, or vomitus, unless it contains fluid blood, as provided in subdivision (d) of Section 117635.

(d) Waste which is not biohazardous, such as paper towels, paper products, articles containing nonfluid blood, and other medical solid waste products commonly found in the facilities of medical waste generators.

(e) Hazardous waste, radioactive waste, or household waste, including, but not limited to, home-generated sharps waste, as defined in Section 117671.

(f) Waste generated from normal and legal veterinarian,

agricultural, and animal livestock management practices on a farm or ranch.

As added by AB 109, Stats. 1990, c. 1613, and amended by AB 961, Stats. 1992, c. 54, and SB 372 (Wright), Stats. 1995, c. 877, and SB 1966 (Wright), Stats. 1996, c. 536, and SB 1497 (Committee on Health and Human Services), Stats. 1996, c. 1023, and SB 1305 (Figueroa), Stats. 2006, c. 64.

Chapter 8. Treatment

118215. (a) Except as provided in subdivisions (b) and (c), a person generating or treating medical waste shall ensure that the medical waste is treated by one of the following methods, thereby rendering it solid waste, as defined in Section 40191 of the Public Resources Code, prior to disposal:

(1) (A) Incineration at a permitted medical waste treatment facility in a controlled-air, multichamber incinerator, or other method of incineration approved by the department which provides complete combustion of the waste into carbonized or mineralized ash.

(B) Treatment with an alternative technology approved pursuant to paragraph (3), which, due to the extremely high temperatures of treatment in excess of 1300 degrees Fahrenheit, has received express approval from the department.

(2) Steam sterilization at a permitted medical waste treatment facility or by other sterilization, in accordance with all of the following operating procedures for steam sterilizers or other sterilization:

(A) Standard written operating procedures shall be established for biological indicators, or for other indicators of adequate sterilization approved by the department, for each steam sterilizer, including time, temperature, pressure, type of waste, type of container, closure on container, pattern of loading, water content, and maximum load quantity.

(B) Recording or indicating thermometers shall be checked during each complete cycle to ensure the attainment of 121° Centigrade (250° Fahrenheit) for at least one-half hour, depending on the quantity and density of the load, to achieve sterilization of the entire load.

Thermometers shall be checked for calibration annually. Records of the calibration checks shall be maintained as part of the facility's files and records for a period of three years or for the period specified in the regulations.

(C) Heat-sensitive tape, or another method acceptable to the enforcement agency, shall be used on each biohazard bag or sharps container that is processed onsite to indicate the attainment of adequate sterilization conditions.

(D) The biological indicator Bacillus stearothermophilus, or other indicator of adequate sterilization as approved by the department, shall be placed at the center of a load processed under standard operating conditions at least monthly to confirm the attainment of adequate sterilization conditions.

(E) Records of the procedures specified in subparagraphs (A), (B), and (D) shall be maintained for a period of not less than three years.

(3) (A) Other alternative medical waste treatment methods which are both of the following:

(i) Approved by the department.

(ii) Result in the destruction of pathogenic micro-organisms.

(B) Any alternative medical waste treatment method proposed to the department shall be evaluated by the department and either approved or rejected pursuant to the criteria specified in this subdivision.

(b) A medical waste may be discharged to a public sewage system without treatment if it is not a biohazardous waste of a type described in either subdivision (a) or (b) of Section 117635, it is liquid or semiliquid, and its discharge is consistent with waste discharge requirements placed on the public sewage system by the California regional water quality control board with jurisdiction.

(c) (1) A medical waste that is a biohazardous waste of a type described in subdivision (a) of Section 117635 may be treated by a chemical disinfection if the medical waste is liquid or semiliquid and the chemical disinfection method is recognized by the National Institutes of Health, the Centers for Disease Control and Prevention, or the American Biological Safety Association, and if the use of chemical disinfection as a treatment method is identified in the site's medical waste management plan.

(2) If the waste is not treated by chemical disinfection, in accordance with paragraph (1), the waste shall be treated by one of the methods specified in subdivision (a).

(3) Following treatment by chemical disinfection, the medical waste may be discharged to the public sewage system if the discharge is consistent with waste discharge requirements placed on the public sewage system by the California regional water control board, and the discharge is in compliance with the requirements imposed by the owner or operator of the public sewage system. If the chemical disinfection of the medical waste causes the waste to become a hazardous waste, the waste shall be managed in accordance with the requirements of Chapter 6.5 (commencing with Section 25100) of Division 20.

Formerly §25090, added by AB 1641 (Mojonnier), Stats. 1990, c. 1614, and amended by AB 3427 (Filante), Stats. 1992, c. 878, and SB 372 (Wright), Stats. 1995, c. 877; renumbered §118215 and amended by SB 1497 (Senate Health and Human Services Committee), Stats. 1996, c. 1023, and SB 1966 (Wright), Stats. 1996, c. 536, and SB 407 (Alpert), Stats. 1999, c. 139.

Chapter 9. Containment and Storage

118286. (a) On or after September 1, 2008, no person shall knowingly place home-generated sharps waste in any of the following containers:

(1) Any container used for the collection of solid waste, recyclable materials, or greenwaste.

(2) Any container used for the commercial collection of solid waste or recyclable materials from business establishments.

(3) Any roll-off container used for the collection of solid waste, construction, and demolition debris, greenwaste, or other recyclable materials.

(b) On or after September 1, 2008, home-generated sharps waste shall be transported only in a sharps container, or

other containers approved by the enforcement agency, and shall only be managed at any of the following:

(1) A household hazardous waste facility pursuant to Section 25218.13.

(2) A "home-generated sharps consolidation point" as defined in subdivision (b) of Section 117904.

(3) A medical waste generator's facility pursuant to Section 118147.

(4) A facility through the use of a medical waste mail-back container approved by the department pursuant to subdivision (b) of Section 118245.

As added by SB 1305 (Figueroa), Stats. 2006, c. 64.

EXCERPTS FROM PUBLIC CONTRACT CODE

DIVISION 2. GENERAL PROVISIONS

PART I. ADMINISTRATIVE PROVISIONS

Chapter 6. Awarding of Contracts

(Chapter 6 as added by Stats. 1986, c. 1230)

6615. For all state contracts, and, to the extent feasible, all federally funded contracts awarded pursuant to Chapter 1 (commencing with Section 10100), Chapter 2 (commencing with Section 10290), Chapter 2.5 (commencing with Section 10700), Chapter 3 (commencing with Section 12100), Chapter 3.5 (commencing with Section 12120), and Chapter 3.6 (commencing with Section 12125) of Part 2 of Division 2 shall be in compliance with Section 12205.

As added by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

PART 2. CONTRACTING BY STATE AGENCIES

Chapter 1. State Contract Act

ARTICLE 7. CONTRACT REQUIREMENTS

10233. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1915 (Marks), Stats. 1994, c. 942, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

Chapter 2. State Acquisition of Goods and Services

ARTICLE 3. COMPETITIVE BIDDING AND OTHER ACQUISITION PROCEDURES

10308.5. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1915 (Marks), Stats. 1994, c. 942, and AB 2890 (Assembly Consumer Protection, Governmental Efficiency, and Economic Development Committee), Stats. 2000, c. 776, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

ARTICLE 4. CONTRACTS FOR SERVICES

10354. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1915 (Marks), Stats. 1994, c. 942, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

ARTICLE 7.6. RECYCLED OIL MARKETS

(Article 7.6 as added by AB 1570 (Sher), Stats. 1989, c. 1226)

10405. The following definitions govern the construction of this article:

(a) "Department" means the Department of Toxic Substances Control.

(b) "Industrial oil" means any compressor, turbine, or bearing oil, hydraulic oil, metal-working oil, or refrigeration oil.

(c) "Lubricating oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox, or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment, or machinery powered by an internal combustion engine.

(d) "Procuring agency" means any state agency or any person contracting with that agency with respect to work performed under a contract for lubricating oil or industrial oil.

(e) "Recycled oil" means recycled oil, as defined in subdivision (c) of Section 25250.1 of the Health and Safety Code.

(f) "Used oil" means used oil, as defined in subdivision (a) of Section 25250.1 of the Health and Safety Code.

(g) "Virgin oil" means oil which has been refined from crude oil and which has not been used or contaminated with impurities.

As added by AB 1570 (Sher), Stats. 1989, c. 1226, and amended by the Gov. Reorg. Plan No. 1 of 1991.

10406. Every procuring agency shall continuously review and revise its procedures and specifications for the purchase of lubricating oil and industrial oil to eliminate any exclusion of recycled oils and any requirement that oils be manufactured from virgin materials. This section does not prohibit a local agency from purchasing virgin oil products for exclusive use in vehicles whose warranties expressly prohibit the use of products containing recycled oil.

As added by AB 1570 (Sher), Stats. 1989, c. 1226, and amended by AB 2076 (Sher), Stats. 1991, c. 817, and AB 3073 (Sher), Stats. 1992, c. 1101, and SB 648 (Senate Environmental Quality Committee), Stats. 2002, c. 408.

10407. Every procuring agency shall require that purchases of lubricating oil and industrial oil be made from the seller whose oil product contains the greater percentage of recycled oil, unless the procuring agency certifies that a specific oil product containing recycled oil is any of the following:

(1) Not reasonably available within a reasonable period of time.

(2) Unable to meet the reasonable performance standards of the procuring agency, including any warranty requirement.

(3) Available only at a cost greater than the cost of available virgin oil products.

As added by AB 1570 (Sher), Stats. 1989, c. 1226.

10408. (a) Every procuring agency shall establish and maintain an affirmative program for procuring oils containing the maximum content of recycled oil.

(b) An affirmative program shall include, but not be limited to, all of the following:

(1) The placement of descriptions of the preference for recycled oil products in publications used to solicit bids from suppliers.

(2) Description of the recycled oil procurement program at bidders' conferences.

(3) Discussion of the preference program in lubricating oil and industrial oil procurement solicitations or invitations to bid.

(4) Efforts to inform industry trade associations about the preference program.

As added by AB 1570 (Sher), Stats. 1989, c. 1226.

10409. Every local agency, as defined in Section 17518 of the Government Code, shall purchase lubricating oil and industrial oil from the seller whose oil product contains the greater percentage of recycled oil, if the availability, fitness, quality, and price of the recycled oil product is otherwise equal to, or better than, virgin oil products. This section shall not prohibit a local agency from purchasing virgin oil products for exclusive use in vehicles whose warranties expressly prohibit the use of products containing recycled oil.

As added by AB 1570 (Sher), Stats. 1989, c. 1226, and amended by AB 2076 (Sher), Stats. 1991, c. 817, and AB 3073 (Sher), Stats. 1992, c. 1101.

Chapter 2.1. University of California Competitive Bidding

ARTICLE 2. MATERIALS, GOODS, AND SERVICES

10507. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1915 (Marks), Stats. 1994, c. 942, and AB 571 (Machado), Stats. 1996, c. 319, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

10507.5. It is the intent of the Legislature to encourage the procurement of recycled paper products by the University of California by developing guidelines to encourage the procurement of recycled paper products where suitable for the uses intended and where the quality is equal and the price is equal or less than nonrecycled paper products. It is also the intent of the Legislature that the regents report annually to the Legislature, the Governor, and the California Integrated Waste Management Board commencing January 1, 1991, on the percentage of the total dollar amount of recycled paper products purchased or procured under this article.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1761 (Vuich), Stats. 1990, c. 586.

10507.7. Except as provided for in this article, the Regents of the University of California shall let all contracts involving an expenditure of more than fifty thousand dollars ($50,000) annually for goods and materials to be sold to the University of California to the lowest responsible bidder meeting specifications, or else reject all bids. Contracts for services to be performed, other than personal or professional services, involving an expenditure of fifty thousand dollars ($50,000) or more annually shall be made or entered into with the lowest responsible bidder meeting specifications, or else all bids shall be rejected. If the regents deem it to be for the best interest of the university, the regents may, on the refusal or failure of the successful bidder for materials, goods, or services to execute a tendered contract, award it to the second lowest responsible bidder meeting specifications. If the second lowest responsible bidder fails or refuses to execute the contract, the regents may likewise award it to the third lowest responsible bidder meeting specifications.

As added by AB 2556 (Harris), Stats. 1984, c. 1128, and renumbered by AB 4 (Eastin), Stats. 1989, c. 1094.

Chapter 2.5 California State University Contract Law

ARTICLE 8.5. RECYCLED PAPER (REPEALED)

(Article 8.5 as added by AB 4 (Eastin), Stats. 1989, c. 1094, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590)

10855. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1915 (Marks), Stats. 1994, c. 942, and AB 571 (Machado), Stats. 1996, c. 319, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

10860. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1761 (Vuich), Stats. 1990, c. 586, and SB 1915 (Marks), Stats. 1994, c. 942, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

Chapter 4. State Agency Buy Recycled Campaign

(Chapter 4 as added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590)

ARTICLE 1. GENERAL PROVISIONS

(Article 1 as added by AB 4 (Eastin), Stats. 1989, c. 1094)

12150. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12153. The Legislature finds and declares all of the following:

(a) It is the policy of the state to conserve and protect resources for future citizens as well as the current population of the state.

(b) It is in the best interest of the people of the state that the state alter its perception of solid waste to instead look upon this waste as resources that can be recovered and reused.

(c) It is in the best interest of reducing the increasing burden on communities disposing of the state's solid waste for the state to take a role in developing an integrated state solid waste management policy, which includes source reduction, recycling, composting, market development, incineration, and landfills. Since recycling is a necessary component of this policy, the state shall encourage the use of recycled products to ensure that the state's industries have sufficient and adequate markets for products regeneratively utilizing the state's solid waste as recycled resources.

(d) It is the policy of the state to encourage the expansion of businesses located in California and, to whatever extent possible, to look favorably on California businesses in the recycling industry, which include, but are not limited to, those California businesses that manufacture, distribute, or act as brokers for, recycled products.

(e) Market development is the key to moving beyond the uneven collection of recyclable materials to stable resource recovery and reuse. Because of existing local collection programs, significant quantities of recycled resources such as the following are today available for purchase: fine grades of paper, high-quality paper products, plastics, retreaded automobile tires, rerefined lubricating oil, reused automotive parts, reclaimed solvents, recycled asphalt, recycled concrete, carpet or geotextiles composed of recycled plastics, compost and co-compost products, and steel products.

(f) In making these findings, the Legislature declares that the policy and intent of this chapter is to set an example for the state and nation to encourage the purchase of products utilizing recycled resources.

(g) It is the intent of the Legislature, whenever economically feasible and as markets allow, to continually expand the policies of the state to utilize recycled resources in the daily operations of the state. This includes, but is not limited to, the procurement and purchase of recycled materials, the use of recycled resources in the performance of a service or project for the state, and the purchase of equipment used for the collection and sale of waste materials generated by the state.

(h) It is the intent of the Legislature that the Department of General Service work with all state departments, agencies, the Legislature, the California Integrated Waste Management Board, and the Department of Conservation to draft, establish, and implement policies that ensure the procurement and use of recycled resources.

(i) It is also the intent of the Legislature to encourage local public agencies and private companies to adopt policies to maximize the use of recycled resources.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1761 (Vuich), Stats. 1990, c. 586, and SB 1174 (Killea), Stats. 1995, c. 427.

12155. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1761 (Vuich), Stats. 1990, c. 586, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12156. (a) Except as provided in subdivision (b), no state agency shall purchase any printer or duplication cartridge for which the manufacturer, wholesaler, distributor, retailer, or remanufacturer places restrictions on the recycling or remanufacturing of that cartridge by any other person. For purposes of this section, these restrictions include, but are not limited to, all of the following:

(1) Reducing the price of the cartridge in exchange for any agreement not to remanufacture the cartridge.

(2) A licensing agreement on the cartridge that forbids remanufacturing.

(3) Any contract that forbids the remanufacturing or recycling of the cartridge.

(b) Notwithstanding subdivision (a), a manufacturer, wholesaler, distributor, retailer, or remanufacturer who establishes a recycling or remanufacturing program that is available to its customers may enter into signed agreements with those customers consenting to the return of the used cartridge to the manufacturer, wholesaler, distributor, retailer, or remanufacturer, only for either of the following purposes:

(1) Recycling and remanufacturing, for purposes of making the remanufactured cartridge available for purchase.

(2) Recycling.

(c) Each state agency shall print a statement on the cover of its printer or duplicator cartridge bid packages, or in some other noticeable place in the bid packet, notifying all bidders that it is unlawful to prohibit a printer or duplication cartridge that is sold to the state from being recycled or remanufactured, except as specified in subdivision (b).

(d) This section does not authorize any violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code) or the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code).

(e) As used in this section, the following terms mean:

(1) "Printer or duplication cartridge" means a cartridge, including, but not limited to, a toner or ink cartridge, used in printer or duplication equipment for business or personal use.

(2) "Recycled" means a printer or duplication cartridge that would otherwise become solid waste, but which has undergone a process of collecting, sorting, cleansing, treating, or reconstituting, and which has been returned for the manufacture of new products or the remanufacture of used cartridges.

(3) "Remanufactured" means a printer or duplication cartridge that has served its intended end use, but, rather than being discarded or disposed of, has instead been restored, renovated, repaired, or recharged, without substantial alteration of its form.

As added by AB 1497 (Floyd and Oller), Stats. 1999, c. 910.

12157. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1174 (Killea), Stats. 1995, c. 427, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12158. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12159. REPEALED.

As added by AB 11 (Eastin), Stats. 1993, c. 960, and AB 626 (Sher), Stats. 1996, c. 1038, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

ARTICLE 2. RECYCLED PAPER PRODUCTS

(Article 2 as added by AB 4 (Eastin), Stats. 1989, c. 1094)

12160. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12161. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1915 (Marks), Stats. 1994, c. 942, and AB 571 (Machado), Stats. 1996, c. 319, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats, 2005, c. 590.

12162. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by AB 11 (Eastin), Stats. 1993, c. 960, and SB 1915 (Marks), Stats. 1994, c. 942, and AB 3358 (Ackerman), Stats. 1996, c. 1041, and SB 827 (Sher), Stats. 1999, c. 816, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12162.5 REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094.

12163. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1915 (Marks), Stats. 1994, c. 942, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12164. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12164.5. (a) It is the intent of the Legislature that for the current state waste paper collection program, the California Integrated Waste Management Board shall provide participating locations with public information awareness and training to state and legislative employees. Additionally, the California Integrated Waste Management Board shall provide training for personnel, including but not limited to, state and buildings and grounds personnel, responsible for the collection of waste materials. This training shall include, but is not limited to, educating and training the personnel concerning the separation and collection of recyclable materials.

(b) It is also the intent of the Legislature that the California Integrated Waste Management Board continue the current state waste paper collection program and use this program as a model to develop a plan for other waste materials generated by state and legislative employees.

(c) It is also the intent of the Legislature that the department, in consultation with the California Integrated Waste Management Board, shall submit a new recycling plan, which includes but is not limited to, the collection and sale of waste materials generated by state and legislative employees. This plan shall be submitted to the appropriate legislative policy committees on or before August 31, 1990. The plan may be phased in utilizing those office facilities and collecting those waste materials most conducive to operation of a source separation program, but shall be fully implemented by June 1, 1991.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1761 (Vuich), Stats. 1990, c. 586, and SB 960 (Hart), Stats. 1991, c. 1012.

12165. (a) After implementing a recycling plan pursuant to subdivision (c) of Section 12164.5, the California Integrated Waste Management Board shall establish, implement, and maintain a recycling plan for the Legislature, which may include all legislative offices and individual members' district offices; all state offices whether in state-owned buildings or leased facilities in Sacramento, Los Angeles, and San Francisco Counties; and in any other areas that the board determines to be feasible. The plan shall include the provisions for the recycling of office paper, corrugated cardboard, newsprint, beverage containers (as defined in Section 14503 of the Public Resources Code), waste oil, and any other material at the discretion of the board.

(b) The collection program for each product and each location shall be reevaluated by the board on or before January 1, 1994. Subsequently, the board, upon the determination that inclusion of any particular material type would result in a net revenue loss to the state, shall have the discretion to exclude that material from the program, and shall report its conclusions and recommendations to the Legislature. In determining the net revenue loss for the collection of a specified waste material, the board shall include the avoided cost to dispose of the waste material. The plan shall provide either for the collection and sale of materials to private brokers, recycling plants, or nonprofit organizations, or the operation of these entities by the state, or a combination thereof. The plan shall be implemented at the earliest possible date.

(c) The board shall provide participating locations with public awareness information and training to state and legislative employees, including, but not limited to, the proper separation and disposal of recyclable resources. Additionally, the board shall provide training for personnel, including, but not limited to, state buildings and grounds personnel, responsible for the collection of waste materials. This training shall include, but is not limited to, educating and training the personnel concerning the separation and collection of recyclable materials.

(d) No individual, group of individuals, state office, agency, or its employees shall establish a similar collection program or enter into agreement for a similar program unless approved by the board.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 960 (Hart), Stats. 1991, c. 1012.

12166. The California Integrated Waste Management Board may contract as necessary for the recycling of products which have been returned pursuant to Section 12165.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 960 (Hart), Stats. 1991, c. 1012.

12167. Revenues received from this plan or any other activity involving the collection and sale of recyclable materials in state and legislative offices located in state-owned and state-leased buildings, such as the sale of waste materials through recycling programs operated by the California Integrated Waste Management Board or in agreement with the board, shall be deposited in the Integrated Waste Management Account in the Integrated Waste Management Fund and are hereby continuously appropriated to the board, without regard to fiscal years, until June 30, 1994, for the purposes of offsetting recycling program costs. On and after July 1, 1994, the funds in the Integrated Waste Management Account may be expended by the board, only upon appropriation by the Legislature, for the purpose of offsetting recycling program costs.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 960 (Hart), Stats. 1991, c. 1012, and AB 3521 (Tanner), Stats. 1992, c. 1116.

12167.1. Notwithstanding Section 12167, upon approval by the California Integrated Waste Management Board, revenues derived from the sale of recyclable materials by state agencies and institutions that do not exceed two thousand dollars ($2,000) annually are hereby continuously appropriated, without regard to fiscal years, for expenditure by those state agencies and institutions for the purposes of offsetting recycling program costs. Revenues that exceed two thousand dollars ($2,000) annually shall be available for expenditure by those state agencies and institutions when appropriated by the Legislature. Information on the quantities of recyclable materials collected for recycling shall be provided to the board on an annual basis according to a schedule determined by the board and participating agencies.

As added by SB 960 (Hart), Stats. 1991, c. 1012, and amended by AB 3521 (Tanner), Stats. 1992, c. 1116.

12168. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12169. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and repealed by SB 1106, Stats. 2005, c. 590.

ARTICLE 2.1. RECYCLED FLUID, PAINT, AND SOLVENT (REPEALED)

(Article 2.1 as added by SB 734 (Rosenthal), Stats. 1993, c. 959, and amended by AB 2067 (Cunneen), Stats. 1998, c. 880, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590)

12170. REPEALED.

As added by SB 734 (Rosenthal), Stats. 1993, c. 959, and amended by AB 2067 (Cunneen), Stats. 1998, c. 880, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12171. REPEALED.

As added by AB 2067 (Cunneen), Stats. 1998, c. 880, and repealed by SB 2202 (Senate Environmental Quality Committee), Stats. 2000, c. 740.

ARTICLE 3. COMPOST AND CO-COMPOST PRODUCTS

(Article 3 as added by AB 4 (Eastin), Stats. 1989, c. 1094)

12180. The Legislature hereby finds and declares that it is the policy of the state to encourage the use of marketable end products which are produced as a result of superior waste management by counties, cities, and local agencies.

The Legislature further finds and declares that it is in the public interest to provide special consideration for the state purchase of co-compost and compost products because these products substantially reduce the need for solid waste disposal facilities, such as landfills, and will assist the state in providing new alternatives for the alarming decrease in available solid waste disposal facilities, such as landfills.

As added by AB 4 (Eastin), Stats. 1989, c. 1094.

12181. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12182. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by AB 2661 (Chandler), Stats. 1992, c. 1207, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12183. (a) All state departments and agencies, including, but not limited to, the Department of Transportation, the Department of Water Resources, the Department of Forestry and Fire Protection, and the Department of Parks and Recreation, shall give purchase preference to compost and cocompost products when they can be substituted for, and cost no more than, the cost of regular fertilizer or soil amendment products, or both, if the cocompost products meet all applicable state standards and regulations, as determined by appropriate testing. The product preference shall include, but not be limited to, the construction of noise attenuation barriers and safety walls, highway planting projects, and recultivation and erosion control programs.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1852 (Committee on Judiciary), Stats. 2006, c. 538.

12183.5. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1761 (Vuich), Stats. 1990, c. 586, and repealed by AB 2211 (Sher), Stats. 1992, c. 280.

12184. It is the intent of the Legislature, in enacting this article, that the revenues derived from the state purchase of co-compost products will be used by counties, cities, and local agencies to offset the costs of construction, operation, and maintenance of co-compost waste disposal facilities.

As added by AB 4 (Eastin), Stats. 1989, c. 1094.

12185. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats 2005. c. 590.

ARTICLE 4. RECYCLED MATERIALS, GOODS, AND SUPPLIES

(Article 4 as added by AB 4 (Eastin), Stats. 1989, c. 1094)

12200. For the purpose of this article, the following definitions shall apply:

(a) "Board" means the California Integrated Waste Management Board, as defined pursuant to Section 40110 of the Public Resources Code.

(b) "Business" includes bidders, contractors, and other interested parties that provide services to, or sell products to, the state.

(c) "Department" means the Department of General Services.

(d) "Director" means the Director of General Services.

(e) "Postconsumer material" means a finished material that would have been disposed of as a solid waste, having completed its life cycle as a consumer item, and does not include manufacturing wastes.

(f) "Product categories" include paper products, printing, and writing papers, compost, cocompost, or mulch, glass, oil, plastic, paint, tires, tire-derived products, antifreeze, and metal.

(g) "Purchase" means any contractual agreement that state agencies use to obtain goods or materials.

(h) "Recycled products" mean goods or materials that meet the requirements identified in Section 12209, including any good or material that has been reused or refurbished without substantial alteration of its original form.

(i) "Reportable purchase" means the purchase of any goods or materials, with recycled content or not, that may be reported or categorized or classified within one of the product categories identified in Section 12207.

(j) "Reportable recycled product purchase" means the purchase of any goods or materials that meet the requirements identified in Section 12209, that may be reported or categorized or classified within one of the product categories identified in Section 12207, including any good or material that has been reused or refurbished without substantial alteration of its original form.

(k) "SABRC" means the State Agency Buy Recycled Campaign.

(l) "Secondary material" means fragments of finished products or finished products of a manufacturing process, that has converted a resource into a commodity of real economic value, but does not include excess virgin resources of the manufacturing process, such as fibers recovered from wastewater, trimmings of paper machine rolls, mill broke, plastic, or metal trimmings, or shavings, or other residue from a manufacturing process. Secondary material does not include postconsumer material, so that the secondary material plus the postconsumer material plus the virgin material adds up to 100 percent of the product.

(m) "State agency" means each entity identified in Section 11000 of the Government Code, and includes the California State University.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1915 (Marks), Stats. 1994, c. 942, and SB 1174 (Killea), Stats. 1995, c. 427, and SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12201. (a) The Legislature finds and declares that it is the policy of the state to conserve and protect its resources. The Legislature further finds and declares that the use of recycled products produced as the result of the superior waste management efforts by the state and local governmental entities will help conserve resources.

(b) It is the intent of the Legislature that the state pursue all feasible measures to improve markets for recycled products including, but not limited to, bid evaluation preferences for purchases made by the state.

(c) If fitness and quality are equal, each state agency shall purchase recycled products instead of nonrecycled products whenever recycled products are available at the same or a lesser total cost than nonrecycled products.

As added by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12203. Each state agency shall ensure each of the following:

(a) At least 50 percent of reportable purchases are recycled products.

(b) The requirements specified in this article apply to all reportable purchases of state agencies for product categories listed in this article.

(c) The reportable purchases of state agencies shall meet each requirement for, and be applied to the total dollar amount of, each specified product category as defined in this article. The purchase of a recycled product from one category may not be applied toward the requirements for, or the total dollar amount of, any other category listed in this article.

(d) Each state agency shall require the businesses with whom it contracts to use, to the maximum extent economically feasible in the performance of the contract work, recycled products.

As added by SB 1106 (Senate Environmental Quality Committee) Stats. 2005, c. 590.

12205. (a) (1) All state agencies shall require all businesses to certify in writing the minimum percentage, if not the exact percentage, of postconsumer material in the products, materials, goods, or supplies offered or sold to the state regardless of whether the product meets the requirements of Section 12209. The certification shall be furnished under penalty of perjury. The certification shall be provided regardless of content, even if the product contains no recycled material.

(2) With respect to printer or duplication cartridges that comply with the requirements of subdivision (e) of Section 12156, the certification required by this subdivision shall specify that the cartridges so comply.

(3) A state agency may waive the certification requirement if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet Web site.

(b) (1) All businesses shall certify in writing to the contracting officer or his or her representative the minimum percentage, if not the exact percentage, of postconsumer material in the products, materials, goods, or supplies being offered or sold to the state regardless of whether the product meets the requirements of Section 12209. The certification shall be furnished under penalty of perjury. The certification shall be provided regardless of content, even if the product contains no recycled material.

(2) With respect to printer or duplication cartridges that comply with the requirements of subdivision (e) of Section 12156, the certification required by this subdivision shall specify that the cartridges so comply.

(3) A state agency may waive the certification requirement if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet Web site.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by AB 11 (Eastin), Stats. 1993, c. 960, and SB 1174 (Killea), Stats. 1995, c. 427, and SB 827 (Sher), Stats. 1999, c. 816, and SB 1697 (O'Connell), Stats. 2002, c. 363, and repealed and added by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12207. This article applies to the purchase of goods and materials from the following product categories:

(a) Paper products, including, but not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, and hanging files, building insulation and panels, corrugated boxes, tissue, and toweling.

(b) Printing and writing papers including, but not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications.

(c) Mulch, compost, and cocompost products including soil amendments, erosion controls, soil toppings, ground covers, weed suppressants, and organic materials used for water conservation.

(1) "Compost" means a product that meets the following requirements:

(A) It results from the controlled biological decomposition of organic materials, including, but not limited to, yard trimmings and wood byproducts that are separated from the municipal solid waste stream at the source of generation or at a centralized facility, or other source of organic materials.

(B) It is produced by a public or private supplier that is in compliance with the board's composting operations regulatory requirements.

(2) "Cocompost" means a product that meets the following requirements:

(A) It results from the controlled biological decomposition of a blend of organic materials, including, but not limited to, yard trimmings and wood byproducts that are separated from the municipal solid waste stream at the source of generation or at a centralized facility, and also including, but not limited to, biosolids or other comparable substitutes such as livestock, horse, or other animal manure, food residues, or fish processing byproducts.

(B) It is produced by a public or private supplier that is in compliance with the board's composting operations regulatory requirements.

(3) "Mulch" means a product that meets the following requirements:

(A) It results from the mechanical breakdown (chipping and grinding) of materials, including, but not limited to, yard trimmings and wood byproducts that are separated from the municipal solid waste stream at the source of generation or at a centralized facility.

(B) It is produced by a public or private supplier that is in compliance with the board's composting operations regulatory requirements.

(d) Glass products including, but not limited to, windows, test tubes, beakers, laboratory or hospital supplies, fiberglass (insulation), reflective beads, tiles, construction blocks, desktop accessories, flat glass sheets, loose-grain abrasives, deburring media, liquid filter media, and containers.

(e) Lubricating oils including, but not limited to, any oil intended for use in a crankcase, transmission, engine, power steering, gearbox, differential chainsaw, transformer dielectric fluid, cutting, hydraulic, industrial, or automobile, bus, truck, vessel, plane, train, heavy equipment, or machinery powered by an internal combustion engine.

(f) (1) Plastic products including, but not limited to, printer or duplication cartridges, diskette, carpet, office products, plastic lumber, buckets, wastebaskets, containers, benches, tables, fencing, clothing, mats, packaging, signs, posts, binders, sheet, buckets, building products, garden hose, and trays.

(2) For purposes of this subdivision, "printer or duplication cartridges" has the same meaning as described in paragraph (2) of subdivision (f) of Section 12209.

(g) Paint, including, but not limited to, water-based paint, graffiti abatement, interior and exterior, and maintenance.

(h) Antifreeze, including recycled antifreeze, and antifreeze containing a bittering agent or made from polypropylene or other similar nontoxic substance.

(i) Tires including, but not limited to, truck and bus tires, and those used on fleet vehicles and passenger cars.

(j) Tire-derived products including, but not limited to, flooring, mats, wheelchair ramps, playground cover, parking bumpers, bullet traps, hoses, bumpers, truck bedliners, pads, walkways, tree ties, road surfacing, wheel chocks, rollers, traffic control products, mudflaps, and posts.

(k) Metal including, but not limited to, staplers, paper clips, steel furniture, desks, pedestals, scissors, jacks, rebar, pipe, plumbing fixtures, chairs, ladders, file cabinets, shelving, containers, lockers, sheet metal, girders, building and construction products, bridges, braces, nails, and screws.

As added by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12209. For purposes of this article, the following minimum content requirements apply:

(a) Recycled paper products shall consist of at least 30 percent, by fiber weight, postconsumer fiber.

(b) (1) Recycled printing and writing paper shall consist of at least 30 percent, by fiber weight, postconsumer fiber.

(2) Printed newspapers that meet the requirements of Chapter 15 (commencing with Section 42750) of Part 3 of Division 30 of the Public Resources Code shall be considered in compliance with the requirements of this section.

(c) For recycled compost, cocompost, and mulch, at least 80 percent of the product shall consist of materials, including, but not limited to, the materials listed in subdivision (c) of Section 12207, that would otherwise be normally disposed of in landfills.

(d) For recycled glass, the total weight shall consist of at least 10 percent postconsumer material.

(e) Rerefined lubricating oil shall have a base oil content consisting of at least 70 percent rerefined oil.

(f) (1) For recycled plastic products, other than printer or duplication cartridges, the total weight shall consist of at least 10 percent postconsumer material.

(2) Recycled printer or duplication cartridges shall comply with either the requirements set forth in subdivision (e)

of Section 12156 or the general requirement for recycled plastic products set forth in paragraph (1).

(g) Recycled paint shall have a recycled content consisting of at least 50 percent postconsumer paint. Preconsumer or secondary paint does not qualify as "recycled paint" pursuant to this subdivision. If paint containing 50 percent postconsumer content is unavailable, or is restricted by a local air quality management district, a state agency may substitute paint with at least 10 percent postconsumer content.

(h) Recycled antifreeze fluid shall have a recycled content of at least 70 percent postconsumer materials.

(i) Retreaded tires must use an existing casing that has undergone an approved or accepted recapping or retreading process, in accordance with Chapter 7 (commencing with Section 42400) of Part 3 of Division 30 of the Public Resources Code.

(j) For tire-derived products, the total content shall consist of at least 50 percent recycled used tires.

(k) For recycled metal products, the total weight shall consist of at least 10 percent postconsumer material.

(l) For reused or refurbished products, there is no minimum content requirement.

As added by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12210. REPEALED

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 648 (Senate Environmental Quality Committee), Stats. 2002, c. 408, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12211. (a) Each state agency shall report annually to the board their progress in meeting the recycled product purchasing requirements using the SABRC report format provided by the board.

(b) On or before October 31 of each year, the department shall provide to the board the following information:

(1) A list, by category, of individual reportable recycled products, materials, goods, and supplies that were available for purchase by state agencies from a statewide-use contract, agreement, or schedule during the previous fiscal year.

(2) A list, by category, of all reportable products, materials, goods, and supplies that were available for purchase by state agencies from a statewide-use contract, agreement, or schedule, including contract, agreement, or schedule tracking numbers, during the previous fiscal year.

(c) The board shall annually provide an agency-specific report to the Legislature identifying all state agency SABRC reporting figures.

(d) Every three years, the board shall provide, as part of the report described in subdivision (c), recommendations to the Legislature for changes necessary to increase the purchase of recycled content products, materials, goods, and supplies and improve SABRC program efficiency.

As added by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12213. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12215. Each state agency may, at the discretion of the individual agency director or his or her designee, print a statement on recycled products selected by the agency director. This statement shall be determined by the department, in consultation with the board, and shall be similar to the following: "Contains at least ____ percent postconsumer material."

As added by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12217. (a) If at any time a requirement has not been met, the department, in consultation with the board, shall review purchasing policies and shall make recommendations for immediate revisions to ensure that the recycled product purchasing requirements are met.

(b) In determining purchasing specifications, with the exception of any specifications that have been established to preserve the public health and safety, all state purchasing specifications shall be established in a manner that results in the maximum state purchase of recycled products.

(c) If a recycled product, as defined in subdivision (h) of Section 12200, costs more than the same product made with virgin material, the state agency shall, if feasible, purchase fewer of those more costly products or apply the cost savings, if any, gained from buying other recycled products towards the purchase of those more costly products to meet the solid waste diversion goals of Section 41780.

(d) Each state agency shall establish purchasing practices that ensure the purchase of goods and materials that may be recycled or reused. Each state agency shall continue activities for the collection, separation, and recycling of recyclable materials and may appoint a recycling coordinator to assist in implementing this section.

(e) To assist the state in meeting the requirements of this article, each state agency, and the department, in consultation with the board, may also establish recycled product-only bids, cooperative purchasing arrangements, or other mechanisms to meet the requirements for recycled products and to encourage the maximum state purchase of recycled products.

(f) The department, in consultation with the board, shall review and revise the purchasing specifications used by state agencies in order to eliminate restrictive specifications and discrimination against the purchase of recycled products and to ensure that they are drafted in a manner that results in the maximum state purchase of recycled products. All contract provisions impeding the consideration of recycled products shall be deleted in favor of performance standards.

(g) Any state agency that is required to submit an SABRC report to the board, pursuant to Section 12211, is subject to a review conducted by the board or its designee.

As added by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12225. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1761 (Vuich), Stats. 1990, c. 586, and SB 1915 (Marks), Stats. 1994, c. 942, and SB 975 (Senate Judiciary Committee), Stats. 1995, c. 91, and SB 648 (Senate Environmental Quality Committee), Stats. 2002, c. 408, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

12226. REPEALED.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and repealed by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

Chapter 5. Recycled Product Procurement by the Legislature

(Chapter 5 as added by AB 4 (Eastin), Stats. 1989, c. 1094)

ARTICLE 1. GENERAL PROVISIONS

(Article 1 as added by AB 4 (Eastin), Stats. 1989, c. 1094)

12300. Unless otherwise provided, this chapter shall apply to all purchases made on behalf of the Legislature, whether made by the Senate Committee on Rules, the Assembly Committee on Rules, the Joint Rules Committee, or any other agency of the Legislature.

As added by AB 4 (Eastin), Stats. 1989, c. 1094.

12301. The following definitions govern the interpretation of this chapter:

(a) "Department" means the Department of General Services.

(b) "Board" means the California Integrated Waste Management Board, as defined pursuant to Section 40110 of the Public Resources Code.

(c) "Recycled paper product" means all paper and woodpulp products containing postconsumer and secondary materials. "Postconsumer material" means a finished material that would normally be disposed of as a solid waste, having completed its life cycle as a consumer item. "Secondary material" means fragments of finished products or finished products of a manufacturing process, which has converted a virgin resource into a commodity of real economic value, and includes postconsumer material, but does not include fibrous waste generated during the manufacturing process such as fibers recovered from wastewater or trimmings of paper machine rolls (mill broke), wood slabs, chips, sawdust, or other wood residue from a manufacturing process. "Recycled paper product" means a paper product with not less than 50 percent, by fiber weight, consisting of secondary and postconsumer material with not less than 10 percent of fiber weight consisting of postconsumer material.

For high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, and for other uncoated printing and writing papers, such as writing and office paper, book paper, cotton fiber paper containing 25 to 75 percent cotton fiber, and cover stock, the minimum content standard shall be no less than 20 percent of fiber weight of postconsumer materials beginning December 31, 1994. The minimum content standard shall be increased to 30 percent of fiber weight of postconsumer materials beginning on December 31, 1998.

(d) (1) Except as provided in paragraph (2), "recycled product" means all materials, goods, and supplies, excluding paper products, no less than 50 percent of the total weight of which consists of secondary and postconsumer material with not less than 10 percent of its total weight consisting of postconsumer material. A recycled product shall include any product that could have been disposed of as solid waste having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of its form. "Postconsumer material" means a finished material that would have been disposed of as a solid waste, having completed its life cycle as a consumer item, and does not include manufacturing wastes. "Secondary material" means fragments of finished products or finished products of a manufacturing process, which has converted a resource into a commodity of real economic value, and includes postconsumer material, but does not include excess virgin resources of the manufacturing process.

(2) "Recycled product" also means other flat rolled steel products no less than 25 percent of the total weight of which consists of secondary and postconsumer material, with not less than 10 percent of total weight consisting of postconsumer material. Products made with flat rolled steel meeting these content percentages include, but are not limited to, automobiles, cans, appliances, and office furniture and supplies.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1761 (Vuich), Stats. 1990, c. 586, and SB 1915 (Marks), Stats. 1994, c. 942, and SB 1174 (Killea), Stats. 1995, c. 427, and AB 571 (Machado), Stats. 1996, c. 319.

12305. This chapter applies to the procurement and purchase of the following materials, goods, and supplies, or products containing the following recycled resources, and meeting the specified content requirements pursuant to either subdivision (c) or (d) of Section 12301, whichever is applicable:

(a) Paper products, that include, but are not limited to, fine grades of paper, corrugated boxes, newsprint, tissue, and toweling.

(b) Glass.

(c) Oil.

(d) Plastic.

(e) Solvents and paint, including water-based paint.

(f) Tires.

(g) Steel.

(h) Antifreeze.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1174 (Killea), Stats. 1995, c. 427, and SB 1697 (O'Connell), Stats. 2002, c. 363.

12305.5. If a recycled product costs more than the same product made with virgin material, the Legislature shall purchase fewer of those more costly products or apply cost savings, if any, gained from buying other recycled products towards the purchase of those more costly products.

As added by AB 11 (Eastin), Stats. 1993, c. 960, and amended by SB 827 (Sher), Stats. 1999, c. 816.

12306. This chapter does not apply to the procurement and purchase of asphalt concrete and portland cement concrete pavement.

As added by AB 4 (Eastin), Stats. 1989, c. 1094.

ARTICLE 2. RECYCLED PAPER PRODUCTS

(Article 2 as added by AB 4 (Eastin), Stats. 1989, c. 1094)

12310. (a) On and after January 1, 1997, at least 50 percent of the total dollar amount of paper products purchased or procured by the Legislature shall be purchased as a recycled paper product, as defined in Section 12301. In addition, at least 25 percent of the total fine writing and printing paper purchased by the Legislature shall be recycled paper products, as defined in Section 12301.

If at any time the requirement for recycled products has not been met, the Legislature and the department, in consultation with the board, shall review the procurement policies of the Legislature and shall make recommendations for immediate revisions to ensure that each requirement is met. Revisions include, but are not limited to, raising the purchasing preference and altering the requirements for each or all recycled products. The department, in consultation with the board, shall present its conclusions and recommendations on these revisions of procurement policies to the Legislature in the department's biennial report pursuant to Section 12225.

(b) When contracting with the Legislature for the sale of recycled paper products, the contractor shall certify in writing to the contracting officer or his or her representative, that the recycled paper products offered contain the minimum percentage of waste materials required by subdivision (c) of Section 12301. The contractor shall specify the minimum, if not the exact, percentage of recycled product in the paper product, including both the secondary and postconsumer material content. This certification shall be furnished under penalty of perjury.

(c) The Legislature may, in consultation with the board, print a symbol on paper products selected by the Legislature. The symbol shall be similar to the following:

Printed on recycled paper. This symbol shall be printed only on paper products meeting the definition of recycled paper products in Section 12301.

(d) This section shall not prevent the Legislature from using existing stocks of paper products.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by AB 11 (Eastin), Stats. c. 960, and SB 1915 (Marks), Stats. 1994, c. 942, and SB 827 (Sher), Stats. 1999, c. 816.

ARTICLE 3. RECYCLED MATERIALS, GOODS, AND SUPPLIES

(Article 3 as added by AB 4 (Eastin), Stats. 1989, c. 1094)

12320. (a) The Legislature shall require contractors to certify in writing to the contracting officer, or his or her representative, whether the materials, goods, or supplies offered contain the minimum percentage of recycled product required by subdivision (d) of Section 12301. The contractor shall specify the minimum, if not exact, percentage of recycled product in the product, both the secondary and postconsumer material content. This certification shall be furnished under penalty of perjury.

(b) The Legislature, in consultation with the department and the board, shall review and revise the procurement specifications used by the Legislature in order to eliminate discrimination against the procurement or purchase of recycled products whenever quality of a recycled product is reasonably equal to the same product manufactured with virgin resources. In determining procurement specifications, with the exception of any specifications that have been established to preserve the public health and safety, all legislative procurement and purchasing specifications shall be established in a manner that results in the maximum legislative procurement and purchase of recycled products.

(c) The Legislature, in consultation with the board, shall establish purchasing practices that ensure, to the maximum extent feasible, the purchase of materials, goods, and supplies that may be recycled or reused when discarded.

(d) The Legislature shall give purchase preference to recycled products when all of the following apply:

(1) The product meets applicable standards.

(2) The product can be substituted for a comparable nonrecycled product.

(3) The product costs no more than a comparable nonrecycled product.

(e) To encourage the use of postconsumer waste, the Legislature's specifications shall require recycled product contracts to be awarded to the bidder whose product contains the greater percentage of postconsumer material if the fitness and quality and price meet the requirements in subdivision (d) of Section 12301 and Section 12310.

(f) The Legislature shall set the following goals for purchases made by the Legislature or any individual or group of individuals purchasing on behalf of the Legislature:

(1) By January 1, 1991, at least 10 percent of legislative purchases are of recycled products.

(2) By January 1, 1993, at least 20 percent of legislative purchases are of recycled products.

(3) By January 1, 1995, at least 40 percent of legislative purchases are of recycled products.

(4) The goals specified in this subdivision shall be applied to the purchase by the Legislature of products described in subdivisions (b), (c), (d), (e), (f), and (g) of Section 12305 and shall be applied to the total dollar amount of the combined purchases of those products.

Each specified goal shall be met for each product listed pursuant to Section 12305. If at any time a goal has not been met, the Legislature and the department, in consultation with the board, shall review procurement policies of the Legislature and shall make recommendations for immediate revisions to ensure that each goal is met. Revisions include, but are not limited to, raising the purchasing preference and altering the goals for all or each recycled product. The department, in consultation with the board, shall present its conclusions and recommendations on these revisions of procurement policies

to the Legislature in the department's annual report pursuant to Section 12225.

As added by AB 4 (Eastin), Stats. 1989, c. 1094, and amended by SB 1915 (Marks), Stats. 1994, c. 942, and SB 1174 (Killea), Stats. 1995, c. 427.

Chapter 6. Environmentally Preferable Purchasing

(Chapter 6 as added by AB 498 (Chan), Stats. 2002, c. 575)

12400. For purposes of this chapter, "environmentally preferable purchasing" means the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose. This comparison shall take into consideration, to the extent feasible, raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, disposal, energy efficiency, product performance, durability, safety, the needs of the purchaser, and cost.

As added by AB 498 (Chan), Stats. 2002, c. 575.

12401. The Department of General Services, in consultation with the California Environmental Protection Agency, members of the public, industry, and public health and environmental organizations, shall provide state agencies with information and assistance regarding environmentally preferable purchasing including, but not limited to, the following:

(a) The promotion of environmentally preferable purchasing.

(b) The development and implementation of a strategy to increase environmentally preferable purchasing. This may include the development of statewide policies, guidelines, programs, and regulations.

(c) The coordination with other state and federal agencies, task forces, workgroups, regulatory efforts, research and data collection efforts, and other programs and services relating to environmentally preferable purchasing.

(d) The development and implementation, to the extent fiscally feasible, of training programs designed to instill the importance and value of environmentally preferable purchasing.

(e) The development, to the extent fiscally feasible, of an environmentally preferable purchasing best practices manual for state purchasing employees.

As added by AB 498 (Chan), Stats. 2002, c. 575.

12401.5. Within existing resources, the Department of General Services shall designate a single point of contact for state agencies, suppliers, and other interested parties to contact regarding environmentally preferable purchasing issues.

As added by AB 498 (Chan), Stats. 2002, c. 575.

12402. Nothing contained in this chapter shall prohibit, limit, or supersede recycled content requirements pursuant to any other provision of law.

As added by AB 498 (Chan), Stats. 2002, c. 575.

12403. Nothing contained in any policy regarding environmentally preferable purchasing may be construed as requiring the acquisition of goods or services that do not perform adequately for their intended use, exclude adequate competition, or are not available at a reasonable price in a reasonable period of time.

As added by AB 498 (Chan), Stats. 2002, c. 575.

12404. Manufacturers, vendors, or other nongovernmental entities contracting with the Department of General Services shall certify in writing that any environmental attribute claims they make concerning their products and services are consistent with the Federal Trade Commission's Guidelines for the Use of Environmental Marketing Terms.

As added by AB 498 (Chan), Stats. 2002, c. 575.

PART 3. CONTRACTING BY LOCAL AGENCIES

Chapter 3.5. Recycled Product Procurement Mandates Pertaining to Local Governments

(Chapter 3.5 as added by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590)

22150. (a) If fitness and quality are equal, each local public entity shall purchase recycled products, as defined in Section 12200, instead of nonrecycled products whenever recycled products are available at the same or a lesser total cost than nonrecycled items.

(b) A local public entity may give preference to suppliers of recycled products.

(c) A local public entity may define the amount of this preference.

As added by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

22151. In bids in which the local government has reserved the right to make multiple awards, the recycled product preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of firms offering recycled products in the contract award.

As added by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

22152. (a) All local public entities shall require all business, as defined in Section 12200, to certify in writing the minimum, if not exact, percentage of postconsumer materials in the products, materials, goods, or supplies, offered or sold. All contract provisions impeding the consideration of recycled products shall be deleted in favor of performance standards.

(b) With respect to printer or duplication cartridges that comply with the requirements of subdivision (e) of Section 12156, the certification required by this subdivision shall specify that the cartridges so comply.

As added by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

22153. All printing contracts made by any local public entity shall provide that the paper used shall meet the recycled content requirements of Section 12209.

As added by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590.

22154. (a) All businesses shall certify in writing to the contracting officer, or his or her representative, the minimum, if not exact, percentage of postconsumer material in the products, materials, goods, or supplies being offered or sold to any local public entity.

(b) With respect to printer or duplication cartridges that comply with the requirements of subdivision (e) of Section 12156, the certification required by this subdivision shall specify that the cartridges so comply.

(c) A local public entity may waive the certification requirement if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet Web site.

As added by SB 1106 (Senate Environmental Quality Committee), Stats. 2005, c. 590, and amended by SB 420 (Simitian), Stats. 2006, c. 392.

EXCERPTS FROM PUBLIC UTILITIES CODE

DIVISION 1. REGULATION OF PUBLIC UTILITIES

PART 1. PUBLIC UTILITIES ACT

Chapter 2.3. Electrical Restructuring

ARTICLE 6. REQUIREMENTS FOR THE PUBLIC UTILITIES COMMISSION

(Article 6 as added by AB 1890 (Brulte), Stats. 1996, c. 854)

367. The commission shall identify and determine those costs and categories of costs for generation-related assets and obligations, consisting of generation facilities, generation-related regulatory assets, nuclear settlements, and power purchase contracts, including, but not limited to, restructurings, renegotiations or terminations thereof approved by the commission, that were being collected in commission-approved rates on December 20, 1995, and that may become uneconomic as a result of a competitive generation market, in that these costs may not be recoverable in market prices in a competitive market, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that these additions are necessary to maintain the facilities through December 31, 2001. These uneconomic costs shall include transition costs as defined in subdivision (f) of Section 840, and shall be recovered from all customers or in the case of fixed transition amounts, from the customers specified in subdivision (a) of Section 841, on a nonbypassable basis and shall:

(a) Be amortized over a reasonable time period, including collection on an accelerated basis, consistent with not increasing rates for any rate schedule, contract, or tariff option above the levels in effect on June 10, 1996; provided that, the recovery shall not extend beyond December 31, 2001, except as follows:

(1) Costs associated with employee-related transition costs as set forth in subdivision (b) of Section 375 shall continue until fully collected; provided, however, that the cost collection shall not extend beyond December 31, 2006.

(2) Power purchase contract obligations shall continue for the duration of the contract. Costs associated with any buy-out, buy-down, or renegotiation of the contracts shall continue to be collected for the duration of any agreement governing the buy-out, buy-down, or renegotiated contract; provided, however, no power purchase contract shall be extended as a result of the buy-out, buy-down, or renegotiation.

(3) Costs associated with contracts approved by the commission to settle issues associated with the Biennial Resource Plan Update may be collected through March 31, 2002; provided that only 80 percent of the balance of the costs remaining after December 31, 2001, shall be eligible for recovery.

(4) Nuclear incremental cost incentive plans for the San Onofre nuclear generating station shall continue for the full term as authorized by the commission in Decision 96-01-011 and Decision 96-04-059; provided that the recovery shall not extend beyond December 31, 2003.

(5) Costs associated with the exemptions provided in subdivision (a) of Section 374 may be collected through March 31, 2002, provided that only fifty million dollars ($50,000,000) of the balance of the costs remaining after December 31, 2001, shall be eligible for recovery.

(6) Fixed transition amounts, as defined in subdivision (d) of Section 840, may be recovered from the customers specified in subdivision (a) of Section 841 until all rate reduction bonds associated with the fixed transition amounts have been paid in full by the financing entity.

(b) Be based on a calculation mechanism that nets the negative value of all above market utility-owned generation-related assets against the positive value of all below market utility-owned generation related assets. For those assets subject to valuation, the valuations used for the calculation of the uneconomic portion of the net book value shall be determined not later than December 31, 2001, and shall be based on appraisal, sale, or other divestiture. The commission's determination of the costs eligible for recovery and of the valuation of those assets at the time the assets are exposed to market risk or retired, in a proceeding under Section 455.5, 851, or otherwise, shall be final, and notwithstanding Section 1708 or any other provision of law, may not be rescinded, altered or amended.

(c) Be limited in the case of utility-owned fossil generation to the uneconomic portion of the net book value of the fossil capital investment existing as of January 1, 1998, and appropriate costs incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that the additions are necessary to maintain the facilities through December 31, 2001. All "going forward costs" of fossil plant operation, including operation and maintenance, administrative and general, fuel and fuel transportation costs, shall be recovered solely from independent Power Exchange revenues or from contracts with the Independent System Operator, provided that for the purposes of this chapter, the following costs may be recoverable pursuant to this section:

(1) Commission-approved operating costs for particular utility-owned fossil powerplants or units, at particular times when reactive power/voltage support is not yet procurable at market-based rates in locations where it is deemed needed for the reactive power/voltage support by the Independent System Operator, provided that the units are otherwise authorized to recover market-based rates and provided further that for an electrical corporation that is also a gas corporation and that

serves at least four million customers as of December 20, 1995, the commission shall allow the electrical corporation to retain any earnings from operations of the reactive power/voltage support plants or units and shall not require the utility to apply any portions to offset recovery of transition costs. Cost recovery under the cost recovery mechanism shall end on December 31, 2001.

(2) An electrical corporation that, as of December 20, 1995, served at least four million customers, and that was also a gas corporation that served less than four thousand customers, may recover, pursuant to this section, 100 percent of the uneconomic portion of the fixed costs paid under fuel and fuel transportation contracts that were executed prior to December 20, 1995, and were subsequently determined to be reasonable by the commission, or 100 percent of the buy-down or buy-out costs associated with the contracts to the extent the costs are determined to be reasonable by the commission.

(d) Be adjusted throughout the period through March 31, 2002, to track accrual and recovery of costs provided for in this subdivision. Recovery of costs prior to December 31, 2001, shall include a return as provided for in Decision 95-12-063, as modified by Decision 96-01-009, together with associated taxes.

(e) (1) Be allocated among the various classes of customers, rate schedules, and tariff options to ensure that costs are recovered from these classes, rate schedules, contract rates, and tariff options, including self-generation deferral, interruptible, and standby rate options in substantially the same proportion as similar costs are recovered as of June 10, 1996, through the regulated retail rates of the relevant electric utility, provided that there shall be a firewall segregating the recovery of the costs of competition transition charge exemptions such that the costs of competition transition charge exemptions granted to members of the combined class of residential and small commercial customers shall be recovered only from these customers, and the costs of competition transition charge exemptions granted to members of the combined class of customers, other than residential and small commercial customers, shall be recovered only from these customers.

(2) Individual customers shall not experience rate increases as a result of the allocation of transition costs. However, customers who elect to purchase energy from suppliers other than the Power Exchange through a direct transaction, may incur increases in the total price they pay for electricity to the extent the price for the energy exceeds the Power Exchange price.

(3) The commission shall retain existing cost allocation authority, provided the firewall and rate freeze principles are not violated.

As added by AB 1890 (Brulte), Stats. 1996, c. 854, and amended by SB 477 (Peace), Stats. 1997, c. 275.

368. Each electrical corporation shall propose a cost recovery plan to the commission for the recovery of the uneconomic costs of an electrical corporation's generation-related assets and obligations identified in Section 367. The commission shall authorize the electrical corporation to recover the costs pursuant to the plan where the plan meets the following criteria:

(a) The cost recovery plan shall set rates for each customer class, rate schedule, contract, or tariff option, at levels equal to the level as shown on electric rate schedules as of June 10, 1996, provided that rates for residential and small commercial customers shall be reduced so that these customers shall receive rate reductions of no less than 10 percent for 1998 continuing through 2002. These rate levels for each customer class, rate schedule, contract, or tariff option shall remain in effect until the earlier of March 31, 2002, or the date on which the commission-authorized costs for utility generation-related assets and obligations have been fully recovered. The electrical corporation shall be at risk for those costs not recovered during that time period. Each utility shall amortize its total uneconomic costs, to the extent possible, such that each year during the transition period its recorded rate of return on the remaining uneconomic assets does not exceed its authorized rate of return for those assets. For purposes of determining the extent to which the costs have been recovered, any over-collections recorded in Energy Costs Adjustment Clause and Electric Revenue Adjustment Mechanism balancing accounts, as of December 31, 1996, shall be credited to the recovery of the costs.

(b) The cost recovery plan shall provide for identification and separation of individual rate components such as charges for energy, transmission, distribution, public benefit programs, and recovery of uneconomic costs. The separation of rate components required by this subdivision shall be used to ensure that customers of the electrical corporation who become eligible to purchase electricity from suppliers other than the electrical corporation pay the same unbundled component charges, other than energy, a bundled service customer pays. No cost shifting among customer classes, rate schedules, contract, or tariff options shall result from the separation required by this paragraph. Nothing in this provision is intended to affect the rates, terms, and conditions or to limit the use of any Federal Energy Regulatory Commission-approved contract entered into by the electrical corporation prior to the effective date of this provision.

(c) In consideration of the risk that the uneconomic costs identified in Section 367 may not be recoverable within the period identified in subdivision (a) of Section 367, an electrical corporation that, as of December 20, 1995, served more than four million customers, and that was also a gas corporation that served less than four thousand customers, shall have the flexibility to employ risk management tools, such as forward hedges, to manage the market price volatility associated with unexpected fluctuations in natural gas prices and the out-of-pocket costs of acquiring the risk management tools shall be considered reasonable and collectible within the transition freeze period. This subdivision applies only to the transaction costs associated with the risk management tools and shall not include any losses from changes in market prices.

(d) In order to ensure implementation of the cost recovery plan, the limitation on the maximum amount of cost recovery for nuclear facilities that may be collected in any year adopted by the commission in Decision 96-01-011 and Decision 96-04-059 shall be eliminated to allow the maximum opportunity to collect the nuclear costs within the transition cap period.

(e) As to an electrical corporation that is also a gas corporation serving more than four million California customers, so long as any cost recovery plan adopted in accordance with this section satisfies subdivision (a), it shall also provide for annual increases in base revenues, effective January 1, 1997, and January 1, 1998, equal to the inflation rate for the prior year plus two percentage points, as measured by the consumer price index. The increase shall do both of the following:

(1) Remain in effect pending the next general rate case review, which shall be filed not later than December 31, 1997, for rates which would become effective in January 1999. For purposes of any commission-approved performance-based ratemaking mechanism or general rate case review, the increases in base revenue authorized by this subdivision shall create no presumption that the level of base revenue reflecting those increases constitute the appropriate starting point for subsequent revenues.

(2) Be used by the utility for the purposes of enhancing its transmission and distribution system safety and reliability, including, but not limited to, vegetation management and emergency response. To the extent the revenues are not expended for system safety and reliability, they shall be credited against subsequent safety and reliability base revenue requirements. Any excess revenues carried over shall not be used to pay any monetary sanctions imposed by the commission.

(f) The cost recovery plan shall provide the electrical corporation with the flexibility to manage the renegotiation, buy-out, or buy-down of the electrical corporation's power purchase obligations, consistent with review by the commission to assure that the terms provide net benefits to ratepayers and are otherwise reasonable in protecting the interests of both ratepayers and shareholders.

(h) An example of a plan authorized by this section is the document entitled "Restructuring Rate Settlement" transmitted to the commission by Pacific Gas and Electric Company on June 12, 1996.

As added by AB 1890 (Brulte), Stats. 1996, c. 854.

ARTICLE 7. RESEARCH, ENVIRONMENTAL, AND LOW-INCOME FUNDS

(Article 7 as added by AB 1890 (Brulte), Stats. 1996, c. 854)

381. (a) To ensure that the funding for the programs described in subdivision (b) and Section 382 are not commingled with other revenues, the commission shall require each electrical corporation to identify a separate rate component to collect the revenues used to fund these programs. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage.

(b) The commission shall allocate funds collected pursuant to subdivision (a), and any interest earned on collected funds, to programs that enhance system reliability and provide in-state benefits as follows:

(1) Cost-effective energy efficiency and conservation activities.

(2) Public interest research and development not adequately provided by competitive and regulated markets.

(3) In-state operation and development of existing and new and emerging eligible renewable energy resources, as defined in Section 399.12.

(c) The Public Utilities Commission shall order the respective electrical corporations to collect and spend these funds at the levels and for the purposes required in Section 399.8.

(d) Each electrical corporation shall allow customers to make voluntary contributions through their utility bill payments as either a fixed amount or a variable amount to support programs established pursuant to paragraph (3) of subdivision (b). Funds collected by electrical corporations for these purposes shall be forwarded in a timely manner to the appropriate fund as specified by the commission.

As added by AB 1890 (Brulte), Stats. 1996, c. 854, and amended by SB XX2 (Alarcón), Stats. 2001, c. 11, and SB 1250 (Perata), Stats. 2006, c. 512.

383. REPEALED.

As added by AB 1890 (Brulte), Stats. 1996, c. 854, and amended by SB 1191 (Speier), Stats. 2001, c. 745 and repealed by SB 1250 (Perata), Stats. 2006, c. 512.

383.5. REPEALED.

As added by SB 90 (Sher), Stats. 1997, c. 905, and amended by SB 1194 (Sher), Stats. 2000, c. 1050, and AB 995 (Wright), Stats. 2000, c. 1051, and SB 662 (Senate Judiciary Committee), Stats. 2001, c. 159, and SB 1038 (Sher), Stats. 2002, c. 515, and as repealed by SB 183 (Sher), Stats. 2003, c. 666, and as amended by SB 168 (Senate Energy, Utilities, and Communications Committee), Stats. 2003, c. 733, and as repealed by SB 1891 (Senate Energy, Utilities, and Communications Committee), Stats. 2004, c. 694.

ARTICLE 9. STATE AGENCIES

(Article 9 as added by AB 1890 (Brulte), Stats. 1996, c. 854)

389. (a) The Secretary of the California Environmental Protection Agency, in consultation with interested stakeholders including relevant state and federal agencies, boards, and commissions, shall evaluate and recommend to the Legislature public policy strategies that address the feasibility of shifting costs from electric utility ratepayers, in whole or in part, to other classes of beneficiaries. This evaluation also shall address the quantification of benefits attributable to the solid-fuel biomass industry and implementation requirements, including statutory amendments and transition period issues that may be relevant, to bring about equitable and effective allocation of solid-fuel biomass electricity costs that ensure the retention of the economic and environmental benefits of the biomass industry while promoting measurable reduction in real costs to ratepayers. This evaluation shall be in

coordination with the California Energy Resources Conservation and Development Commission's efforts pursuant to subdivision (b) of Section 383, addressing renewable policy implementation issues. The Secretary of the California Environmental Protection Agency shall submit a final report to the Legislature, using existing agency resources, prior to March 31, 1997.

(b) The Secretary of the California Environmental Protection Agency, in consultation with relevant state and federal agencies, boards, and commissions, and with representatives of the solid-fuel biomass industry, shall prepare and submit to the Legislature an annual report on the existence, status, and progress of any public policy measures for cost-shifting developed as a result of the recommendations made pursuant to subdivision (a), on or before March 31 of each year from 1999 to 2001, inclusive. A report prepared pursuant to this subdivision shall not exceed 10 pages.

As added by AB 1890 (Brulte), Stats. 1996, c. 854, and amended by AB 2273 (Woods), Stats. 1998, c. 816.

Chapter 4. Regulation of Public Utilities

ARTICLE 3. EQUIPMENT, PRACTICES, AND FACILITIES

787. (a) Any public utility, or its contractor, to whom an excavation permit has been issued by any local agency for the installation, removal, maintenance, or repair of underground facilities may backfill the permitted excavation in any public road or highway with native soil if all of the following conditions are met:

(1) The native soil is competent soil.

(2) Compaction meets the local agency's requirements using industry standards for testing compaction.

(3) The public utility or its contractor has no physical evidence of, or substantial reason to believe that there has been, contamination of the soil from hazardous wastes.

(4) Within 30 days prior to compaction, a local agency has not provided the public utility or its contractor with physical evidence of, or substantial reason to believe that there has been, contamination of the soil from hazardous wastes.

(b) If a local agency has determined through prior experience that the public utility that is applying for, or benefiting from, the excavation permit has previously neglected to adequately fill or compact prior excavations, whether directly or through its contractors, the local agency may, as a condition of the excavation permit do either or both of the following:

(1) Require the public utility to post a bond, with a term not exceeding one year, amounting to two times the cost for the local agency to repair the backfill work, if done improperly, or any related collateral damage.

(2) Require the public utility to submit a report from a registered soils engineer that the proper compaction of the excavation has been achieved.

(c) For purposes of this section:

(1) "Competent soil" means soils that can be treated to bring their moisture content into the optimum range, and that can achieve the compaction required by the local agency.

(2) "Local agency" means any city or county agency.

(3) "Public utility" means any electrical corporation, gas corporation, heat corporation, water corporation, telephone corporation, pipeline corporation, sewer corporation, telegraph corporation, where the service is performed for, or the commodity delivered to, the public or any portion thereof.

As added by SB 846 (Bergeson), Stats. 1991, c. 1060.

DIVISION 4. LAWS RELATING TO UTILITY CORPORATIONS AND THEIR EMPLOYEES

Chapter 1. Railroad Corporation

ARTICLE 10. RAILROAD SAFETY AND EMERGENCY PLANNING AND RESPONSE

(Article 10 as added by SB 48 (Thompson), Stats. 1991, c. 766)

7710. For purposes of this article, the following definitions shall apply:

(a) "Commission" shall mean the Public Utilities Commission.

(b) "Director" means the Director of the Office of Emergency Services.

(c) "Fund" means the Rail Accident Prevention and Response Fund created pursuant to Section 7713.

(d) "Office" means the Office of Emergency Services.

(e) "Prevention account" means the Hazardous Spill Prevention Account created, pursuant to Section 7714, in the Railroad Accident Prevention and Response Fund.

(f) "Secretary" means the Secretary of the California Environmental Protection Agency.

As added by SB 48 (Thompson), Stats. 1991, c. 766.

7711. The commission shall annually report to the Legislature, on or before July 1, on sites on railroad lines in the state it finds to be hazardous. The report shall include, but not be limited to, information on all of the following:

(a) A list of all railroad derailment accident sites in the state on which accidents have occurred within at least the previous five years. The list shall describe the nature and probable causes of the accidents, if known, and shall indicate whether the accidents occurred at or near sites that the commission has determined, pursuant to subdivision (b), pose a local safety hazard.

(b) A list of all railroad sites in the state that the commission determines, pursuant to Section 20106 of Title 49 of the United States Code, pose a local safety hazard. The commission may submit in the annual report the list of railroad sites submitted in the immediate prior year annual report, and may amend or revise that list from the immediate prior year as necessary. Factors that the commission shall consider in determining a local safety hazard may include, but need not be limited to, all of the following:

(1) The severity of grade and curve of track.

(2) The value of special skills of train operators in negotiating the particular segment of railroad line.

(3) The value of special railroad equipment in negotiating the particular segment of railroad line.

(4) The types of commodities transported on or near the particular segment of railroad line.

(5) The hazard posed by the release of the commodity into the environment.

(6) The value of special railroad equipment in the process of safely loading, transporting, storing, or unloading potentially hazardous commodities.

(7) The proximity of railroad activity to human activity or sensitive environmental areas.

(8) A list of the root causes and significant contributing factors of all train accidents or derailments investigated.

(c) In determining which railroad sites pose a local safety hazard pursuant to subdivision (b), the commission shall consider the history of accidents at or near the sites. The commission shall not limit its determination to sites at which accidents have already occurred, but shall identify potentially hazardous sites based on the criteria enumerated in subdivision (b) and all other criteria that the commission determines influence railroad safety. The commission shall also consider whether any local safety hazards at railroad sites have been eliminated or sufficiently remediated to warrant removal of the site from the list required under subdivision (b).

As added by SB (Thompson), Stats. 1991, c. 766, and amended by AB 1658 (Assembly Utilities and Commerce Committee), Stats. 1999, c. 1005, and AB 2701 (Runner), Stats. 2004, c. 644, and AB 1935 (Bermudez), Stats. 2006, c. 885.

7711.1. The commission shall collect and analyze near-miss data generated from incidents occurring at railroad crossings and along the rail right-of-way. For purposes of this section, "near-miss" includes a runaway train or any other uncontrolled train movement that threatens public health and safety reported to the commission pursuant to Section 7661.

As added by AB 1935 (Bermudez), Stats. 2006, c. 885.

7711.5. (a) The Special Railroad Safety Task Force is hereby created.

(b) The task force shall be comprised of the following:

(1) A representative of the safety division of the commission, to be designated by the commission.

(2) A representative of the Office of Emergency Services, to be designated by the Director of the Office of Emergency Services.

(3) At least one representative of an administering agency, as defined in Section 25501 of the Health and Safety Code, to be designated by the commission.

(4) At least one representative of emergency rescue personnel, as defined in Section 25501 of the Health and Safety Code, to be designated by the commission.

(5) A representative of the Department of the California Highway Patrol, to be designated by the Commissioner of the California Highway Patrol.

(6) Two representatives of rail labor, one from each of the labor unions representing railroad operating employees, which are the United Transportation Union and the Brotherhood of Locomotive Engineers, to be designated by the individual labor union.

(7) Two representatives of each class I railroad operating in California, with expertise in rail operations, equipment, and track, to be designated by the commission.

(8) A representative of a short-line railroad, as defined in Section 99317.1, with expertise in rail operations, equipment, and track, to be designated by the commission.

(9) A representative of local government with expertise in land use planning, to be designated by the League of California Cities.

(10) A representative of the public commuter rail industry, with expertise in rail operations, equipment, and track, to be designated by the commission.

(11) The commission shall invite a representative of the United States Department of Transportation Federal Railroad Administration to participate in the special task force.

(c) Members of the task force shall be appointed within 60 days after the operative date of this section.

(d) Members shall serve without compensation, but shall be reimbursed for necessary travel expenses incurred in the performance of task force duties.

(e) The task force shall meet monthly from January 2007 to December 2007, inclusive, and shall establish operating procedures at its first meeting.

(f) A majority of the task force shall constitute a quorum for the transaction of business.

(g) The task force shall be headed by a chairperson, selected by the task force from among its members.

(h) The duties of the task force shall include, but not be limited to, all of the following:

(1) Identify threats from vandalism or terrorism that are not adequately addressed by existing rail safety programs and make recommendations to address those threats in the future.

(2) Identify any deficiencies in current land use planning affecting rail safety and make recommendations for changes in land use planning to lessen risks to the public and environment.

(3) Identify any deficiencies for responding to railroad emergencies and make recommendations for changes to improve emergency response.

(i) No later than 90 days after the last meeting of the task force, the task force shall submit a written report to the commission setting forth the findings and recommendations of the task force as described in paragraphs (1), (2), and (3) of subdivision (h).

(j) The commission shall provide staff support to the task force to support the requirements of this section.

(k) The commission shall incorporate the findings and recommendations of the task force into the July 1, 2008, report to the Legislature pursuant to Section 7711.

(l) This section shall become inoperative on July 1, 2008, and, as of January 1, 2009, is repealed unless a later enacted statute that becomes operative on or before January 1, 2009, deletes or extends the date on which it becomes inoperative and is repealed.

As added by AB 158 (Bermudez), Stats. 2006, c. 697.

7712. On or before January 1, 1993, the commission shall adopt regulations, based on its findings and not

inconsistent with federal law. The commission may amend or revise the regulations as necessary thereafter, to reduce the potential railroad hazards identified in Section 7711. In adopting the regulations, the commission shall consider at least all of the following:

(a) Establishing special railroad equipment standards for trains operated on railroad sites identified as posing a local safety hazard pursuant to subdivision (b) of Section 7711. These standards may include, but need not be limited to, standards for all of the following:

(1) Sizes, numbers, and configurations of locomotives.

(2) Brakes.

(b) Establishing special train operating standards for trains operated over railroad sites identified as posing a local safety hazard pursuant to subdivision (b) of Section 7711. These standards may include, but need not be limited to, standards for all of the following:

(1) Length, weight, and weight distribution of trains.

(2) Speeds and accelerations of trains.

(3) Hours of allowable travel.

(c) Establishing special training, personnel, and performance standards for operators of trains that travel on railroad sites identified as posing a local safety hazard pursuant to subdivision (b) of Section 7711.

(d) Establishing special inspection and reporting standards for trains operated on railroad sites identified as posing a local safety hazard pursuant to subdivision (b) of Section 7711.

As added by SB (Thompson), Stats. 1991, c. 766, and amended by AB 2701 (Runner), Stats. 2004, c. 644.

7713. (a) The Rail Accident Prevention and Response Fund is hereby created in the State Treasury, and the money in the fund is available for appropriation by the Legislature. The secretary shall administer the fund and the prevention account in accordance with this article, and shall develop and adopt regulations and guidelines necessary to carry out and enforce this article.

(b) The State Board of Equalization shall implement the collection of the fee imposed pursuant to Section 7714.5 in accordance with regulations adopted pursuant to Section 7713.

(c) The adoption of regulations pursuant to this section shall be considered by the Office of Administrative Law as an emergency necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted by the secretary and the State Board of Equalization pursuant to this section shall be filed with, but not repealed by, the Office of Administrative Law, and shall remain in effect until revised or repealed by the secretary.

As added by SB 48 (Thompson), Stats. 1991, c. 766.

7714. (a) The Hazardous Spill Prevention Account in the Railroad Accident Prevention and Response Fund is hereby created. The moneys deposited in the prevention account shall be subject to annual appropriation in the Budget Act or other appropriation by the Legislature. The amount deposited in the prevention account and available for appropriation shall not exceed three million dollars ($3,000,000) in any calendar year.

(b) The moneys in the prevention account may be expended by the secretary for any of the following purposes:

(1) Creation, support, and maintenance of the Railroad Accident Prevention and Immediate Deployment Force created by subdivision (a) of Section 7718.

(2) Creation, support, maintenance, and implementation of the state railroad accident prevention and immediate deployment plan developed pursuant to subdivision (b) of Section 7718.

(3) Creation, support, and maintenance of programs, data registries, equipment, and facilities to respond to, and contain, toxic releases resulting from surface transportation accidents. Expenditures pursuant to this paragraph may be for the purpose of any of the following:

(A) Acquisition and maintenance of specialized equipment and supplies.

(B) Support of specialized facilities.

(C) Creation and support of a state-level and local toxic emergency response teams to provide immediate onsite response capability in the event of large scale releases of toxic substances resulting from surface transportation accidents.

(4) Support for specialized training for state and local emergency response officials in techniques for prevention of, and response to, toxic releases resulting from surface transportation accidents.

(5) Support for research, data collection, and studies into technologies and techniques for prevention of, response to, and mitigation of, toxic releases resulting from surface transportation accidents.

(6) To provide economic assistance to persons, entities, and communities that suffer direct or indirect economic damages from a surface transportation accident.

As added by SB 48 (Thompson), Stats. 1991, c. 766.

7714.5. (a) In accordance with regulations adopted pursuant to Section 7713, the secretary shall establish a fee schedule, which shall be paid by each surface transporter of hazardous materials in California in an amount sufficient to fund the appropriation from the prevention account and to maintain a prudent reserve of two months' operating costs, less amounts transferred from the response account pursuant to subdivision (d).

(b) The secretary shall, to the extent practicable, identify programs, equipment, and facilities applicable to specific surface transportation modes, and shall establish fees for each surface transportation mode to cover the costs of the programs, equipment, and facilities applicable to that specific surface transportation mode. Fees to cover the costs of programs, equipment, and facilities applicable to all or several surface transportation modes shall be paid in equal shares by surface transportation modes.

(c) The secretary may authorize payment of fees through contributions in kind of equipment, materials, or services.

(d) For the purposes of the fees authorized by this section, "surface transportation mode" shall not include pipelines subject to the fee assessed pursuant to Section 51019 of the Government code or any natural gas pipeline.

(e) This section shall become inoperative on December 31, 1995.

As added by SB 48 (Thompson), Stats. 1991, c. 766.

7718. (a) The Railroad Accident Prevention and Immediate Deployment Force is hereby created in the California Environmental Protection Agency. The force shall be responsible for providing immediate onsite response capability in the event of large-scale releases of toxic materials resulting from surface transportation accidents and for implementing the state hazardous materials incident prevention and immediate deployment plan. This force shall act cooperatively and in concert with existing local emergency response units. The force shall consist of representatives of all of the following:

(1) Department of Fish and Game.

(2) California Environmental Protection Agency.

(3) State Air Resources Board.

(4) California Integrated Waste Management Board.

(5) California regional water quality control boards.

(6) Department of Toxic Substances Control.

(7) Department of Pesticide Regulation.

(8) Office of Environmental Health Hazard Assessment.

(9) State Department of Health Services.

(10) Department of the California Highway Patrol.

(11) Department of Food and Agriculture.

(12) Department of Forestry and Fire Protection.

(13) Department of Parks and Recreation.

(14) Department of Boating and Waterways.

(15) California Public Utilities Commission.

(16) Any other potentially affected state, local, or federal agency.

(17) Office of Emergency Services.

(b) The California Environmental Protection Agency shall develop a state railroad accident prevention and immediate deployment plan in cooperation with the State Fire Marshal, affected businesses, and all of the entities listed in paragraphs (1) to (17), inclusive, of subdivision (a).

(c) The plan specified in subdivision (b) shall be a comprehensive set of policies and directions that every potentially affected state agency and business shall follow if there is a railroad accident to minimize the potential damage to the public health and safety, property, and environment that might result from accidents involving railroad activities in the state.

As added by SB 48 (Thompson), Stats. 1991, c. 766.

7720. (a) (1) When an appropriate prosecuting agency determines that any person has engaged in, is engaging in, or is about to engage in, any acts or practices which constitute, or which shall constitute, a violation of any provision of this chapter or of any rule, regulation, permit, covenant, standard, requirement, or order issued, promulgated, or executed pursuant to this chapter, the city attorney or district attorney of the jurisdiction in which these acts or practices have occurred, are occurring, or shall occur, or the Attorney General, may make application to the superior court or to the commission for an order enjoining these acts or practices or an order directing compliance with this chapter.

(2) A temporary restraining order, preliminary or permanent injunction, or other order may be issued under this subdivision upon a showing that any person has engaged in, is engaging in, or is about to engage in, the acts or practices set forth in paragraph (1).

(b) Notwithstanding any other provision of law, in any civil action brought pursuant to this chapter in which a temporary restraining order, or preliminary or permanent injunction is sought, it shall not be necessary for the moving party to allege or prove either of the factors set forth in paragraphs (1) and (2) at any stage of the proceeding. The temporary restraining order or preliminary or permanent injunction may issue without allegations or proof of either of the following factors:

(1) That irreparable damage shall occur should the relief sought not be granted.

(2) That the remedy at law is inadequate.

As added by SB 48 (Thompson), Stats. 1991, c. 766.

7721. Every civil action commenced pursuant to this article for civil or criminal penalties authorized by this article shall be brought by the city attorney, the district attorney, or the Attorney General in the name of the people of the State of California, and any actions relating to the same event, transaction, or occurrence may be joined or consolidated, or may be coordinated pursuant to Section 404 of the Code of Civil Procedure or Division II (commencing with Rule 1501) of Title Four of the California Rules of Court.

As added by SB 48 (Thompson), Stats. 1991, c. 766.

7722. Any civil action brought in the superior court pursuant to this article shall be brought in the county in which the spill, discharge, or violation occurred, the county in which the principal place of business of the defendant is located, or the county in which the defendant is doing business in this state.

As added by SB 48 (Thompson), Stats. 1991, c. 766.

7723. The civil and criminal penalties provided in this article are separate and in addition to, and do not supersede or limit, any other civil or criminal remedy.

As added by SB 48 (Thompson), Stats. 1991, c. 766.

7724. (a) Any person who commits any of the following acts, shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16, 24, or 36 months:

(1) Except as provided by Section 7724.1, knowingly fails to follow the direction or order of the secretary or the commission arising from a rail accident or release of a hazardous or potentially hazardous commodity from a railcar.

(2) Knowingly causes, or aids or abets in, the discharge or spill of, a hazardous or potentially hazardous commodity from a railcar, unless the discharge is authorized by the United

States, the state, or another agency with appropriate jurisdiction.

(3) Knowingly fails to comply with the regulations adopted pursuant to Section 7712, and that failure results in a rail accident or release of hazardous material or creates a significant risk of accident or release of hazardous material.

(b) The court shall also impose upon a person convicted of violating subdivision (a), a fine not to exceed five hundred thousand dollars ($500,000) for each violation. For purposes of this subdivision, each day or partial day that a violation occurs is a separate violation.

(c) The court shall also impose upon a person convicted of violating paragraph (1) of subdivision (a), a fine equal to twice the cost of abating, repairing, and responding to the cost associated with the illegal discharge of a hazardous or potentially hazardous commodity from a railcar as a result of a rail accident.

As added by SB 48 (Thompson), Stats. 1991, c. 766.

7724.1. (a) If a person reasonably, and in good faith, believes that the directions or orders given by the secretary or the commission would substantially endanger the public safety or the environment, the person may refuse to act in compliance with the orders or directions of the secretary or the commission. The person shall state, at the time of the refusal, the reasons why the person refuses to follow the orders or directions of the secretary or the commission. The person shall give the secretary or the commission written notice of the reasons for the refusal within 48 hours of refusing to follow the orders or directions of the secretary or the commission.

(b) In any civil or criminal proceeding commenced pursuant to Section 7724, the burden of proof shall be on the responsible party or potentially responsible party to demonstrate, by clear and convincing evidence, why the refusal to follow the orders or directions of the secretary or the commission was justified under the circumstances.

As added by SB 48 (Thompson), Stats. 1991, c. 766.

7724.5. (a) Any person who commits any of the acts set forth in paragraphs (1) to (3), inclusive, shall be liable for a civil penalty not to exceed one hundred thousand dollars ($100,000) for each violation of a separate provision or, for a continuing violation, for each day that violation occurs:

(1) Negligent failure to follow the direction or order of the secretary in connection with a rail accident or the release of a hazardous commodity from a railcar.

(2) Knowingly engaging in, or causing the discharge or spill of a hazardous commodity from a railcar or highway carrier, unless that discharge is authorized by the United States, by the state, or by another governmental agency with appropriate jurisdiction.

(3) Negligent failure to comply with any regulation adopted pursuant to Section 7712.

(b) Any person who commits any of the acts set forth in paragraphs (1) to (3), inclusive, shall be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each violation of a separate provision or, for a continuing violation, for each day that violation occurs:

(1) Failure to follow the direction or order of the secretary in connection with a rail accident or the release of a hazardous commodity from a railcar.

(2) Engaging in, or causing the discharge or spill of a hazardous commodity from a railcar or highway carrier, unless that discharge is authorized by the United States, by the state, or by another governmental agency with appropriate jurisdiction.

(3) Failure to comply with any regulation adopted pursuant to Section 7712.

As added by SB 48 (Thompson), Stats. 1991, c. 766.

7725. Twenty-five percent of penalties and fines collected pursuant to any action brought under Sections 7724 and 7724.5 shall be paid to the governmental agency or office which prosecutes the action. The remainder of the penalties and fines collected pursuant to this article shall be deposited into the fund.

As added by SB 48 (Thompson), Stats. 1991, c. 766.

7726. (a) When the secretary or the commission determines that any person has engaged in, is engaged in, or threatens to engage in, any practice or act which constitutes a violation of this article, or any regulation or order issued, adopted, or executed pursuant to this article, the secretary or commission may issue an order requiring that person to cease and desist.

(b) Any cease and desist order issued by the secretary or commission may be subject to such terms and conditions as the secretary or commission may determine are necessary to ensure compliance with this article.

(c) Any cease and desist order issued by the secretary or commission shall become null and void 90 days after issuance.

(d) A cease and desist order issued by the secretary or commission shall be effective upon the issuance thereof, and copies shall be served immediately by certified mail upon the person or governmental agency being charged with the actual or threatened violation.

(e) The commission may authorize its executive director to exercise the commission's authority to issue cease and desist orders pursuant to this section.

As added by SB 48 (Thompson), Stats. 1991, c. 766.

7727. Notwithstanding any other provision of law, this chapter shall not be construed to make a reference to the California Environmental Protection Agency for the purposes of compliance with Provision 2 of Item 3400-002-044 of Section 2.00 of the Budget Act of 1991.

As added by SB 48 (Thompson), Stats. 1991, c. 766.

DIVISION 6. MUNICIPAL UTILITY DISTRICT ACT

Chapter 6. Powers and Functions of District

ARTICLE 5. UTILITY WORKS AND SERVICE

12827. The board of a district that has owned and operated an electric distribution system for at least eight years

and has a population of 250,000 or more may engage in programs to encourage economic development that benefits its ratepayers.

As added by AB 783 (Polanco), Stats. 1994, c. 53.

EXCERPTS FROM REVENUE AND TAXATION CODE

DIVISION 2. OTHER TAXES

PART 1. SALES AND USE TAXES

Chapter 4. Exemptions

ARTICLE 1. GENERAL EXEMPTIONS

6364. There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of and the storage, use, or other consumption in this state of:

(a) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

(b) Containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this part.

(c) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

(d) Containers, when sold or leased without the contents to persons who place food products for human consumption in the container for shipment, provided the food products will be sold, whether in the same container or not, and whether the food products are remanufactured or repackaged prior to sale.

(e) For purposes of this section, "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers."

As added by Stats. 1943, c. 699, and amended by SB 1210 (Baca), Stats. 1999, c. 758 (operatie April 1, 2000).

6377. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, any of the following:

(1) Tangible personal property purchased for use by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point any raw materials are received by the qualified person and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered property to its completed form, including packaging, if required.

(2) Tangible personal property purchased for use by a qualified person to be used primarily in research and development.

(3) Tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any property described in paragraph (1) or (2).

(4) Tangible personal property purchased for use by a contractor purchasing that property either as an agent of a qualified person or for the contractor's own account and subsequent resale to a qualified person for use in the performance of a construction contract for the qualified person who will use the tangible personal property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or as a research or storage facility for use in connection with the manufacturing process. This exemption shall not apply to any tangible personal property that is used primarily in administration, general management, or marketing.

(b) For purposes of this section:

(1) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(2) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(3) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (a).

(4) "Process" means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified taxpayer's manufacturing, processing, refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(5) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(6) "Qualified person" means any person that is both of the following:

(A) A new trade or business. In determining whether a trade or business activity qualifies as a new trade or business, the following rules shall apply:

(i) In any case where a person purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by that person (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including, real, personal, tangible, and intangible property) used by that

person (or any related person) in the conduct of his or her trade or business exceed 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the person (or any related person). For purposes of this subparagraph only, the following rules shall apply:

(I) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the month following the quarterly period in which the person (or any related person) first uses any of the acquired trade or business assets in his or her business activity.

(II) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring person (or related person).

(ii) In any case where a person (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months ("prior trade or business activity"), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the person's (or any related person's) current or prior trade or business activities in this state.

(iii) In any case where a person, including all related persons, is engaged in trade or business activities wholly outside of this state and that person first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in clause (i)), the trade or business activity shall be treated as a new business.

(iv) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the person as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of clause (i).

(v) "Related person" means any person that is related to that person under either Section 267 or 318 of the Internal Revenue Code.

(vi) "Acquire" includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(B) Engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.

(7) Notwithstanding paragraph (6), "qualified person" shall not include any person who has conducted business activities in a new trade or business for three or more years.

(8) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(9) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(10) "Tangible personal property" does not include any of the following:

(A) Consumables with a normal useful life of less than one year, except as provided in subparagraph (E) of paragraph (10).

(B) Furniture, inventory, equipment used in the extraction process, or equipment used to store finished products that have completed the manufacturing process.

(C) Any property for which a credit is claimed under either Section 17053.49 or 23649.

(11) "Tangible personal property" includes, but is not limited to, all of the following:

(A) Machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, computers, data processing equipment, and computer software, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party.

(C) Property used in pollution control that meets or exceed standards established by this state or any local or regional governmental agency within this state.

(D) Special purpose buildings and foundations used as an integral part of the manufacturing, processing, refining, or fabricating process, or that constitute a research or storage facility used during the manufacturing process. Buildings used solely for warehousing purposes after completion of the manufacturing process are not included.

(E) Fuels used or consumed in the manufacturing process.

(F) Property used in recycling.

(c) No exemption shall be allowed under this section unless the purchaser furnishes the retailer with an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe, and the retailer subsequently furnishes the board with a copy of the exemption certificate. The exemption certificate shall contain the sales price of the machinery or equipment that is exempt pursuant to subdivision (a).

(d) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(e) (1) Notwithstanding subdivision (a), the exemption provided by this section shall not apply to any sale or use of property which, within one year from the date of purchase, is either removed from California or converted from an exempt use under subdivision (a) to some other use not qualifying for the exemption.

(2) Notwithstanding subdivision (a), on or after January 1, 1995, the exemption established by this section shall not apply with respect to any tax levied pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35 of Article XIII of the California Constitution.

(f) If a purchaser certifies in writing to the seller that the property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax, and within one year from the date of purchase, the purchaser (1) removes that property outside California, (2) converts that property for use in a manner not qualifying for the exemption, or (3) uses that property in a manner not qualifying for the exemption, the purchaser shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the property at the time the property is so removed, converted, or used, and the sales price of the property to the purchaser shall be deemed the gross receipts from that retail sale.

(g) (1) This section shall remain in effect until the date specified in paragraph (2), on which date this section shall cease to be operative, and as of that date is repealed.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report annually to the Legislature with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

(h) This section applies to leases of tangible personal property classified as "continuing sales" and "continuing purchases" in accordance with Sections 6006.1 and 6010.1. The exemption established by this section shall apply to the rentals payable pursuant to such a lease, provided the lessee is a qualified person and the property is used in an activity described in subdivision (a). Rentals which meet the foregoing requirements are eligible for the exemption for a period of six years from the date of commencement of the lease. At the close of the six-year period from the date of commencement of the lease, lease receipts are subject to tax without exemption.

As added by SB 671 (Alquist), Stats. 1993, c. 881, and amended by SB 676 (Alquist), Stats. 1994, c. 751, and SB 38 (Lockyer), Stats. 1996, c. 954.

PART 10. PERSONAL INCOME TAX

Chapter 2. Imposition of Tax

17052.14. REPEALED.

As added by SB 432 (Alquist), Stats. 1989, c. 1090, and amended by SB 2894 (Alquist), Stats. 1990, c. 1055, and SB 426 (Morgan), Stats. 1991, c. 472, and SB 1684 (L. Greene), Stats. 1992, c. 1295, and repealed by SB 678 (Greene), Stats. 1994, c. 48.

17053.49. (a) (1) A qualified taxpayer shall be allowed a credit against the "net tax," as defined in Section 17039, equal to 6 percent of the qualified cost of qualified property that is placed in service in this state.

(2) In the case of any qualified costs paid or incurred on or after January 1, 1994, and prior to the first taxable year of the qualified taxpayer beginning on or after January 1, 1995, the credit provided under paragraph (1) shall be claimed by the qualified taxpayer on the qualified taxpayer's return for the first taxable year beginning on or after January 1, 1995. No credit shall be claimed under this section on a return filed for any taxable year commencing prior to the qualified taxpayer's first taxable year beginning on or after January 1, 1995.

(b) (1) For purposes of this section, "qualified cost" means any cost that satisfies each of the following conditions:

(A) Except as otherwise provided in this subparagraph, is a cost paid or incurred by the qualified taxpayer for the construction, reconstruction, or acquisition of qualified property on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i). In the case of any qualified property constructed, reconstructed, or acquired by the qualified taxpayer (or any person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) pursuant to a binding contract in existence on or prior to January 1, 1994, costs paid pursuant to that contract shall be subject to allocation as follows: contract costs shall be allocated to qualified property based on a ratio of costs actually paid prior to January 1, 1994, and total contract costs actually paid. "Cost paid" shall include, without limitation, contractual deposits and option payments. To the extent of costs allocated, whether or not currently deductible or depreciable for tax purposes, to a period prior to January 1, 1994, the cost shall be deemed allocated to property acquired before January 1, 1994, and is thus not a "qualified cost."

(B) Except as provided in paragraph (2) of subdivision (d) and subparagraph (B) of paragraph (3) of subdivision (d), is an amount upon which the qualified taxpayer has paid, directly or indirectly, as a separately stated contract amount or as determined from the records of the qualified taxpayer, sales or use tax under Part 1 (commencing with Section 6001).

(C) Is an amount properly chargeable to the capital account of the qualified taxpayer.

(2) (A) For purposes of this subdivision, any contract entered into on or after January 1, 1994, that is a successor or replacement contract to a contract that was binding prior to January 1, 1994, shall be treated as a binding contract in existence prior to January 1, 1994.

(B) If a successor or replacement contract is entered into on or after January 1, 1994, and the subject of the successor or replacement contract relates both to amounts for the construction, reconstruction, or acquisition of qualified property described in the original binding contract and to costs for the construction, reconstruction, or acquisition of qualified property not described in the original binding contract, then the portion of those amounts described in the successor or replacement contract that were not described in the original binding contract shall not be treated as costs paid or incurred pursuant to a binding contract in existence on or prior to January 1, 1994, under subparagraph (A) of paragraph (1).

(3) (A) For purposes of this section, an option contract in existence prior to January 1, 1994, under which a qualified taxpayer (or any other person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) had an option to acquire qualified property, shall be treated as a binding contract under the rules in paragraph (2). For purposes of this subparagraph, an option contract shall not include an option under which the optionholder will forfeit an amount less than 10 percent of the fixed option price in the event the option is not exercised.

(B) For purposes of this section, a contract shall be treated as binding even if the contract is subject to a condition.

(4) For purposes of this subdivision, in the case of any qualified taxpayer engaged in those lines of business described in Codes 7371 to 7373, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "the first taxable year beginning on or after January 1, 1998," shall be substituted for "January 1, 1994," in each place in which it appears.

(c) (1) For purposes of this section, "qualified taxpayer" means any taxpayer engaged in those lines of business described in Codes 2011 to 3999, inclusive, or Codes 7371 to 7373, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 23649 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, the term "pass-through entity" means any partnership or S corporation.

(3) The Franchise Tax Board may prescribe regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the effect of this section through splitups, shell corporations, partnerships, tiered ownership structures, sale-leaseback transactions, or otherwise.

(d) For purposes of this section, "qualified property" means property that is described as any of the following:

(1) Tangible personal property that is defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, that is primarily used for any of the following:

(A) For the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered tangible personal property to its completed form, including packaging, if required.

(B) In research and development.

(C) To maintain, repair, measure, or test any property described in this paragraph.

(D) For pollution control that meets or exceeds standards established by the state or by any local or regional governmental agency within the state.

(E) For recycling.

(2) Computers and computer peripheral equipment, as defined in Section 168(i)(2)(B) of the Internal Revenue Code, that is tangible personal property as defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in SIC Codes 7371 to 7373, inclusive, of the SIC Manual, 1987 edition, that is primarily used to develop or manufacture prepackaged software or custom software prepared to the special order of the purchaser who uses the program to produce and sell or license copies of the program as prepackaged software.

(3) The value of any capitalized labor costs that are directly allocable to the construction or modification of property described in paragraph (1) or (2).

(4) In the case of any qualified taxpayer engaged in manufacturing activities described in SIC Code 357 or 367, those activities related to biotechnology described in SIC Code 8731, those activities related to biopharmaceutical establishments only that are described in SIC Codes 2833 to 2836, inclusive, those activities related to space vehicles and parts described in SIC Codes 3761 to 3769, inclusive, those activities related to space satellites and communications satellites and equipment described in SIC Codes 3663 and 3812 (but only with respect to "qualified property" that is placed in service on or after January 1, 1996), or those activities related to semiconductor equipment manufacturing described in SIC Code 3559 (but only with respect to "qualified property" that is placed in service on or after January 1, 1997), "qualified property" also includes the following:

(A) Special purpose buildings and foundations that are constructed or modified for use by the qualified taxpayer primarily in a manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(B) The value of any capitalized labor costs that are directly allocable to the construction or modification of special purpose buildings and foundations that are used primarily in the manufacturing, processing, refining, or fabricating process,

or as a research or storage facility primarily used in connection with a manufacturing process.

(C) (i) For purposes of this paragraph, "special purpose building and foundation" means only a building and the foundation immediately underlying the building that is specifically designed and constructed or reconstructed for the installation, operation, and use of specific machinery and equipment with a special purpose, which machinery and equipment, after installation, will become affixed to or a fixture of the real property, and the construction or reconstruction of which is specifically designed and used exclusively for the specified purposes as set forth in subparagraph (A) ("qualified purpose").

(ii) A building is specifically designed and constructed or modified for a qualified purpose if it is not economical to design and construct the building for the intended purpose and then use the structure for a different purpose.

(iii) For purposes of clause (i) and clause (vi), a building is used exclusively for a qualified purpose only if its use does not include a use for which it was not specifically designed and constructed or modified. Incidental use of a building for nonqualified purposes does not preclude the building from being a special purpose building. "Incidental use" means a use which is both related and subordinate to the qualified purpose. It will be conclusively presumed that a use is not subordinate if more than one-third of the total usable volume of the building is devoted to a use which is not a qualified purpose.

(iv) In the event an entire building does not qualify as a special purpose building, a taxpayer may establish that a portion of a building, and the foundation immediately underlying the portion, qualifies for treatment as a special purpose building and foundation if the portion satisfies all of the definitional provisions in this subparagraph.

(v) To the extent that a building is not a special purpose building as defined above, but a portion of the building qualifies for treatment as a special purpose building, then all equipment which exclusively supports the qualified purpose occurring within that portion and which would qualify as Internal Revenue Code Section 1245 property if it were not a fixture or affixed to the building shall be treated as a cost of the portion of the building which qualifies for treatment as a special purpose building.

(vi) Buildings and foundations which do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to: buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the manufacturing process. A research facility shall not be considered to be used primarily prior to or after, or prior to and after, the manufacturing process if its purpose and use relate exclusively to the development and regulatory approval of the manufacturing process for specific biopharmaceutical products. A research facility which is used primarily in connection with the discovery of an organism from which a biopharmaceutical product or process is developed does not meet the requirements of the preceding sentence.

(5) Subject to the provisions in subparagraph (B) of paragraph (1) of subdivision (b), qualified property also includes computer software that is primarily used for those purposes set forth in paragraph (1) or (2) of this subdivision.

(6) Qualified property does not include any of the following:

(A) Furniture.

(B) Facilities used for warehousing purposes after completion of the manufacturing process.

(C) Inventory.

(D) Equipment used in the extraction process.

(E) Equipment used to store finished products that have completed the manufacturing process.

(F) Any tangible personal property that is used in administration, general management, or marketing.

(G) Any vehicle for which a credit is claimed pursuant to Section 17052.11 or 23603.

(e) For purposes of this section:

1) "Biopharmaceutical activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(2) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(3) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(4) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(5) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (d).

(6) "Process" means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer has altered tangible personal property to its completed form, including packaging, if required. Raw

materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified taxpayer's manufacturing, processing, refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(7) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(8) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(9) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(10) "Small business" means a qualified taxpayer that meets any of the following requirements during the taxable year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars ($50,000,000).

(B) Has net assets of less than fifty million dollars ($50,000,000).

(C) Has a total credit of less than one million dollars ($1,000,000).

(D) For taxable years beginning on or after January 1, 1997, is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and has not received regulatory approval for any product from the United States Food and Drug Administration.

(f) The credit allowed under subdivision (a) shall apply to qualified property that is acquired by or subject to lease by a qualified taxpayer, subject to the following special rules:

(1) A lessor of qualified property, irrespective of whether the lessor is a qualified taxpayer, shall not be allowed the credit provided under subdivision (a) with respect to any qualified property leased to another qualified taxpayer.

(2) For purposes of paragraphs (2) and (3) of subdivision (b), "binding contract" shall include any lease agreement with respect to the qualified property.

(3) (A) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is not treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(i) Except as provided by subparagraph (C) of this paragraph, subparagraphs (A) and (C) of paragraph (1) of subdivision (b) shall not apply.

(ii) Except as provided in subparagraph (B) and clause (iii), the "qualified cost" upon which the lessee shall compute the credit provided under this section shall be equal to the original cost to the lessor (within the meaning of Section 18031) of the qualified property that is the subject of the lease.

(iii) Except as provided in clause (iv), the requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied only if the lessor has made a timely election under either Section 6094.1 or subdivision (d) of Section 6244 and has paid sales tax reimbursement or use tax measured by the purchase price of the qualified property (within the meaning of paragraph (5) of subdivision (g) of Section 6006). For purposes of this subdivision and clause (iv), the amount of original cost to the lessor which may be taken into account under clause (ii) shall not exceed the purchase price upon which sales tax reimbursement or use tax has been paid under the preceding sentence or under clause (iv).

(iv) With respect to leases entered into between January 1, 1994, and the effective date of this clause, the lessor may elect to pay use tax measured by the purchase price of the property by reporting and paying the tax with the return of the lessor for the fourth calendar quarter of 1994. In computing the use tax under the preceding sentence, a credit shall be allowed under Part 1 (commencing with Section 6001) for all sales or use tax previously paid on the lease.

(B) For purposes of applying subparagraph (A) only, the following special rules shall apply:

(i) The original cost to the lessor of the qualified property shall be reduced by the amount of any original cost of that property that was taken into account by any predecessor lessee in computing the credit allowable under this section.

(ii) Clause (i) shall not apply in any case where the predecessor lessee was required to recapture the credit provided under this section pursuant to subdivision (g).

(iii) For purposes of this section only, in any case where a successor lessor has acquired qualified property from a predecessor lessor in a transaction not treated as a sale under Part 1 (commencing with Section 6001), the original cost to the successor lessor of the qualified property shall be reduced by the amount of the original cost of the qualified property that was taken into account by any lessee of the predecessor lessor in computing the credit allowable under this section.

(C) In determining the original cost of any qualified property under this paragraph, only amounts paid or incurred by the lessor on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i), shall be taken into account. In the case of any qualified property constructed, reconstructed, or acquired by a lessor pursuant to a binding contract in existence on or prior to January 1, 1994, the allocation rule specified in subparagraph (A) of paragraph (1) of subdivision (b) shall apply in determining the original cost to the lessor of qualified property.

(D) Notwithstanding subparagraph (A), in the case of any leasing transaction for which the lessee is allowed the credit under this section and thereafter the lessee (or any party related to the lessee within the meaning of Section 267 or 318 of the Internal Revenue Code) acquires the qualified property from the lessor (or any successor lessor) within one year from the date the qualified property is first used by the lessee under the terms of the lease, the lessee's (or related party's)

acquisition of the qualified property from the lessor (or successor lessor) shall be treated as a disposition by the lessee of the qualified property that was subject to the lease under subdivision (g).

(4) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(A) Subparagraph (A) of paragraph (1) of subdivision (b) shall be applied by substituting the term "purchase" for the term "construction, reconstruction, or acquisition."

(B) Subparagraph (C) of paragraph (1) of subdivision (b) shall apply.

(C) The requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied at the time that either the lessor or the qualified taxpayer pays sales or use tax under Part 1 (commencing with Section 6001).

(5) (A) In the case of any leasing transaction described in paragraph (3), the lessor shall provide a statement to the lessee specifying the amount of the lessor's original cost of the qualified property and the amount of that cost upon which a sales or use tax was paid within 45 days after the close of the lessee's taxable year in which the credit is allowable to the lessee under this section.

(B) The statement required under subparagraph (A) shall be made available to the Franchise Tax Board upon request.

(6) For purposes of this subdivision, in the case of any qualified taxpayer engaged in those lines of business described in Codes 7371 to 7373, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "the first taxable year beginning on or after January 1, 1998," shall be substituted for "January 1, 1994," in each place in which it appears. In addition, "the effective date of this paragraph" shall be substituted for "the effective date of this clause" and "fourth calendar quarter of 1998" shall be substituted for "fourth calendar quarter of 1994."

(g) No credit shall be allowed if the qualified property is removed from the state, is disposed of to an unrelated party, or is used for any purpose not qualifying for the credit provided in this section in the same taxable year in which the qualified property is first placed in service in this state. If any qualified property for which a credit is allowed pursuant to this section is thereafter removed from this state, disposed of to an unrelated party, or used for any purpose not qualifying for the credit provided in this section within one year from the date the qualified property is first placed in service in this state, the amount of the credit allowed by this section for that qualified property shall be recaptured by adding that credit amount to the net tax of the qualified taxpayer for the taxable year in which the qualified property is disposed of, removed, or put to an ineligible use.

(h) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years as follows:

(1) Except as provided in paragraph (2), for the seven succeeding years if necessary, until the credit is exhausted.

(2) In the case of a small business, for the nine succeeding years, if necessary, until the credit is exhausted.

(i) (1) This section shall remain in effect until the date specified in paragraph (2), on which date this section shall cease to be operative, and as of that date is repealed.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report to the Legislature annually with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

(j) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1997, except as provided in paragraph (3) of subdivision (d).

(k) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1998.

As added by SB 671 (Alquist), Stats. 1993, c. 881 and amended by SB 676 (Alquist), Stats. 1994, c. 751, and SB 38 (Lockyer), Stats. 1996, c. 954, and SB 1106 (Senate Revenue and Taxation Committee), Stats. 1997, c. 604, and AB 510 (Ashburn), Stats. 1998, c. 49, and AB 2798 (Machado), Stats. 1998, c. 323.

PART 11. CORPORATION TAX LAW

Chapter 3.5. Tax Credits

23612.5. REPEALED.

As added by AB 1308 (Killea), Stats. 1989, c. 1091, and amended by SB 2894 (Alquist), Stats. 1990, c. 1055, and SB 426 (Morgan), Stats. 1991, c. 472, and SB 1684 (L. Greene), Stats. 1992, c. 1295, and repealed by SB 678 (Greene), Stats. 1994, c. 48.

23649. (a) (1) A qualified taxpayer shall be allowed a credit against the "tax," as defined in Section 23036, equal to 6 percent of the qualified cost of qualified property that is placed in service in this state.

(2) In the case of any qualified costs paid or incurred on or after January 1, 1994, and prior to the first taxable year of the qualified taxpayer beginning on or after January 1, 1995, the credit provided under paragraph (1) shall be claimed by the qualified taxpayer on the qualified taxpayer's return for the first taxable year beginning on or after January 1, 1995. No credit shall be claimed under this section on a return filed for any taxable year commencing prior to the qualified taxpayer's first taxable year beginning on or after January 1, 1995.

(b) (1) For purposes of this section, "qualified cost" means any cost that satisfies each of the following conditions:

(A) Except as otherwise provided in this subparagraph, is a cost paid or incurred by the qualified taxpayer for the

construction, reconstruction, or acquisition of qualified property on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i). In the case of any qualified property constructed, reconstructed, or acquired by the qualified taxpayer (or any person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) pursuant to a binding contract in existence on or prior to January 1, 1994, costs paid pursuant to that contract shall be subject to allocation as follows: contract costs shall be allocated to qualified property based on a ratio of costs actually paid prior to January 1, 1994, and total contract costs actually paid. "Cost paid" shall include, without limitation, contractual deposits and option payments. To the extent of cost allocated, whether or not currently deductible or depreciable for tax purposes, to a period prior to January 1, 1994, the cost shall be deemed allocated to property acquired before January 1, 1994, and is thus not a "qualified cost."

(B) Except as provided in paragraph (3) of subdivision (d) and subparagraph (B) of paragraph (4) of subdivision (d), is an amount upon which the qualified taxpayer has paid, directly or indirectly as a separately stated contract amount or as determined from the records of the qualified taxpayer, sales or use tax under Part 1 (commencing with Section 6001).

(C) Is an amount properly chargeable to the capital account of the qualified taxpayer.

(2) (A) For purposes of this subdivision, any contract entered contract to a contract that was binding prior to January 1, 1994, shall be treated as a binding contract in existence prior to January 1, 1994.

(B) If a successor or replacement contract is entered into on or after January 1, 1994, and the subject of the successor or replacement contract relates both to amounts for the construction, reconstruction, or acquisition of qualified property described in the original binding contract and to costs for the construction, reconstruction, or acquisition of qualified property not described in the original binding contract, then the portion of those amounts described in the successor or replacement contract that were not described in the original binding contract shall not be treated as costs paid or incurred pursuant to a binding contract in existence on or prior to January 1, 1994, under subparagraph (A) of paragraph (1).

(3) (A) For purposes of this section, an option contract in existence prior to January 1, 1994, under which a qualified taxpayer (or any other person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) had an option to acquire qualified property, shall be treated as a binding contract under the rules in paragraph (2). For purposes of this subparagraph, an option contract shall not include an option under which the option holder will forfeit an amount less than 10 percent of the fixed option price in the event the option is not exercised.

(B) For purposes of this section, a contract shall be treated as binding even if the contract is subject to a condition.

(4) For purposes of this subdivision, in the case of any qualified taxpayer engaged in those lines of business described in Codes 7371 to 7373, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "the first taxable year beginning on or after January 1, 1998," shall be substituted for "January 1, 1994," in each place in which it appears.

(c) (1) For purposes of this section, "qualified taxpayer" means any taxpayer engaged in those lines of business described in Codes 2011 to 3999, inclusive, or Codes 7371 to 7373, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer shall be made at the entity level and any credit under this section or Section 17053.49 shall be allowed to the passthrough entity and passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, the term "passthrough entity" means any partnership or S corporation.

(3) The Franchise Tax Board may prescribe regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the effect of this section through splitups, shell corporations, partnerships, tiered ownership structures, sale-leaseback transactions, or otherwise.

(d) For purposes of this section, "qualified property" means property that is described as either of the following:

(1) Tangible personal property that is defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, that is primarily used for any of the following:

(A) For the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered tangible personal property to its completed form, including packaging, if required.

(B) In research and development.

(C) To maintain, repair, measure, or test any property described in this paragraph.

(D) For pollution control that meets or exceeds standards established by the state or by any local or regional governmental agency within the state.

(E) For recycling.

(2) Computers and computer peripheral equipment, as defined in Section 168(i)(2)(B) of the Internal Revenue Code, that is tangible personal property as defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in SIC Codes 7371 to 7373, inclusive, of the SIC Manual, 1987 edition, that is primarily used to develop or manufacture prepackaged software or custom software prepared to the special order of the purchaser

who uses the program to produce and sell or license copies of the program as prepackaged software.

(3) The value of any capitalized labor costs that are directly allocable to the construction or modification of property described in paragraph (1) or (2).

(4) In the case of any qualified taxpayer engaged in manufacturing activities described in SIC Code 357 or 367, those activities related to biotechnology described in SIC Code 8731, those activities related to biopharmaceutical establishments only that are described in SIC Codes 2833 to 2836, inclusive, those activities related to space vehicles and parts described in SIC Codes 3761 to 3769, inclusive, those activities related to space satellites and communications satellites and equipment described in SIC Codes 3663 and 3812 (but only with respect to "qualified property" that is placed in service on or after January 1, 1996), or those activities related to semiconductor equipment manufacturing described in SIC Code 3559 (but only with respect to "qualified property" that is placed in service on or after January 1, 1997), "qualified property" also includes the following:

(A) Special purpose buildings and foundations that are constructed or modified for use by the qualified taxpayer primarily in a manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(B) The value of any capitalized labor costs that are directly allocable to the construction or modification of special purpose buildings and foundations that are used primarily in the manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(C) (i) For purposes of this paragraph, "special purpose building and foundation" means only a building and the foundation immediately underlying the building that is specifically designed and constructed or reconstructed for the installation, operation, and use of specific machinery and equipment with a special purpose, which machinery and equipment, after installation, will become affixed to or a fixture of the real property, and the construction or reconstruction of which is specifically designed and used exclusively for the specified purposes as set forth in subparagraph (A) (" qualified purpose").

(ii) A building is specifically designed and constructed or modified for a qualified purpose if it is not economical to design and construct the building for the intended purpose and then use the structure for a different purpose.

(iii) For purposes of clause (i) and clause (vi), a building is used exclusively for a qualified purpose only if its use does not include a use for which it was not specifically designed and constructed or modified. Incidental use of a building for nonqualified purposes does not preclude the building from being a special purpose building. "Incidental use" means a use which is both related and subordinate to the qualified purpose. It will be conclusively presumed that a use is not subordinate if more than one-third of the total usable volume of the building is devoted to a use which is not a qualified purpose.

(iv) In the event an entire building does not qualify as a special purpose building, a taxpayer may establish that a portion of a building, and the foundation immediately underlying the portion, qualifies for treatment as a special purpose building and foundation if the portion satisfies all of the definitional provisions in this subparagraph.

(v) To the extent that a building is not a special purpose building as defined above, but a portion of the building qualifies for treatment as a special purpose building, then all equipment which exclusively supports the qualified purpose occurring within that portion and which would qualify as Internal Revenue Code Section 1245 property if it were not a fixture or affixed to the building shall be treated as a cost of the portion of the building which qualifies for treatment as a special purpose building.

(vi) Buildings and foundations which do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to: buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the manufacturing process. A research facility shall not be considered to be used primarily prior to or after, or prior to and after, the manufacturing process if its purpose and use relate exclusively to the development and regulatory approval of the manufacturing process for specific biopharmaceutical products. A research facility which is used primarily in connection with the discovery of an organism from which a biopharmaceutical product or process is developed does not meet the requirements of the preceding sentence.

(5) Subject to the provisions in subparagraph (B) of paragraph (1) of subdivision (b), qualified property also includes computer software that is primarily used for those purposes set forth in paragraph (1) or (2) of this subdivision.

(6) Qualified property does not include any of the following:

(A) Furniture.

(B) Facilities used for warehousing purposes after completion of the manufacturing process.

(C) Inventory.

(D) Equipment used in the extraction process.

(E) Equipment used to store finished products that have completed the manufacturing process.

(F) Any tangible personal property that is used in administration, general management, or marketing.

(G) Any vehicle for which a credit is claimed pursuant to Section 17052.11 or 23603.

(e) For purposes of this section:

(1) "Biopharmaceutical activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for

human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(2) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(3) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(4) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(5) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (d).

(6) "Process" means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(7) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(8) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(9) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(10) "Small business" means a qualified taxpayer that meets any of the following requirements during the taxable year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars ($50,000,000).

(B) Has net assets of less than fifty million dollars ($50,000,000).

(C) Has a total credit of less than one million dollars ($1,000,000).

(D) For taxable years beginning on or after January 1, 1997, is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and has not received regulatory approval for any product from the United States Food and Drug Administration.

(f) The credit allowed under subdivision (a) shall apply to qualified property that is acquired by or subject to lease by a qualified taxpayer, subject to the following special rules:

(1) A lessor of qualified property, irrespective of whether the lessor is a qualified taxpayer, shall not be allowed the credit provided under subdivision (a) with respect to any qualified property leased to another qualified taxpayer.

(2) For purposes of paragraphs (2) and (3) of subdivision (b), "binding contract" shall include any lease agreement with respect to the qualified property.

(3) (A) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is not treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(i) Except as provided by subparagraph (C) of this paragraph, subparagraphs (A) and (C) of paragraph (1) of subdivision (b) shall not apply.

(ii) Except as provided in subparagraph (B) and clause (iii), the "qualified cost" upon which the lessee shall compute the credit provided under this section shall be equal to the original cost to the lessor (within the meaning of Section 24912) of the qualified property that is the subject of the lease.

(iii) Except as provided in clause (iv), the requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied only if the lessor has made a timely election under either Section 6094.1 or subdivision (d) of Section 6244 and has paid sales tax reimbursement or use tax measured by the purchase price of the qualified property (within the meaning of paragraph (5) of subdivision (g) of Section 6006). For purposes of this subdivision and clause (iv), the amount of original cost to the lessor which may be taken into account under clause (ii) shall not exceed the purchase price upon which sales tax reimbursement or use tax has been paid under the preceding sentence or under clause (iv).

(iv) With respect to leases entered into between January 1, 1994, and the effective date of this clause, the lessor may elect to pay use tax measured by the purchase price of the property by reporting and paying the tax with the return of the lessor for the fourth calendar quarter of 1994. In computing the use tax under the preceding sentence, a credit shall be allowed under Part 1 (commencing with Section 6001) for all sales or use tax previously paid on the lease.

(B) For purposes of applying subparagraph (A) only, the following special rules shall apply:

(i) The original cost to the lessor of the qualified property shall be reduced by the amount of any original cost of

that property that was taken into account by any predecessor lessee in computing the credit allowable under this section.

(ii) Clause (i) shall not apply in any case where the predecessor lessee was required to recapture the credit provided under this section pursuant to subdivision (g).

(iii) For purposes of this section only, in any case where a successor lessor has acquired qualified property from a predecessor lessor in a transaction not treated as a sale under Part 1 (commencing with Section 6001), the original cost to the successor lessor of the qualified property shall be reduced by the amount of the original cost of the qualified property that was taken into account by any lessee of the predecessor lessor in computing the credit allowable under this section.

(C) In determining the original cost of any qualified property under this paragraph, only amounts paid or incurred by the lessor on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i), shall be taken into account. In the case of any qualified property constructed, reconstructed, or acquired by a lessor pursuant to a binding contract in existence on or prior to January 1, 1994, the allocation rule specified in subparagraph (A) of paragraph (1) of subdivision (b) shall apply in determining the original cost to the lessor of qualified property.

(D) Notwithstanding subparagraph (A), in the case of any leasing transaction for which the lessee is allowed the credit under this section and thereafter the lessee (or any party related to the lessee within the meaning of Section 267 or 318 of the Internal Revenue Code) acquires the qualified property from the lessor (or any successor lessor) within one year from the date the qualified property is first used by the lessee under the terms of the lease, the lessee's (or related party's) acquisition of the qualified property from the lessor (or successor lessor) shall be treated as a disposition by the lessee of the qualified property that was subject to the lease under subdivision (g).

(4) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(A) Subparagraph (A) of paragraph (1) of subdivision (b) shall be applied by substituting the term "purchase" for the term "construction, reconstruction, or acquisition."

(B) Subparagraph (C) of paragraph (1) of subdivision (b) shall apply.

(C) The requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied at the time that either the lessor or the qualified taxpayer pays sales or use tax under Part 1 (commencing with Section 6001).

(5) (A) In the case of any leasing transaction described in paragraph (3), the lessor shall provide a statement to the lessee specifying the amount of the lessor's original cost of the qualified property and the amount of that cost upon which a sales or use tax was paid within 45 days after the close of the lessee's taxable year in which the credit is allowable to the lessee under this section.

(B) The statement required under subparagraph (A) shall be made available to the Franchise Tax Board upon request.

(6) For purposes of this subdivision, in the case of any qualified taxpayer engaged in those lines of business described in Codes 7371 to 7373, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "the first taxable year beginning on or after January 1, 1998," shall be substituted for "January 1, 1994," in each place in which it appears. In addition, "the effective date of this paragraph" shall be substituted for "the effective date of this clause" and "fourth calendar quarter of 1998" shall be substituted for "fourth calendar quarter of 1994."

(g) No credit shall be allowed if the qualified property is removed from the state, is disposed of to an unrelated party, or is used for any purpose not qualifying for the credit provided in this section in the same taxable year in which the qualified property is first placed in service in this state. If any qualified property for which a credit is allowed pursuant to this section is thereafter removed from this state, disposed of to an unrelated party, or used for any purpose not qualifying for the credit provided in this section within one year from the date the qualified property is first placed in service in this state, the amount of the credit allowed by this section for that qualified property shall be recaptured by adding that credit amount to the net tax of the qualified taxpayer for the taxable year in which the qualified property is disposed of, removed, or put to an ineligible use. The sale of stock for which an election was made or deemed to have been made pursuant to Section 338(g) or 338(h)(10) of the Internal Revenue Code may not be treated as a disposition of qualified property to an unrelated party for purposes of this subdivision.

(h) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years as follows:

(1) Except as provided in paragraph (2), for the seven succeeding years if necessary, until the credit is exhausted.

(2) In the case of a small business, for the nine succeeding years, if necessary, until the credit is exhausted.

(i) (1) This section shall remain in effect until the date specified in paragraph (2) on which date this section shall cease to be operative, and as of that date is repealed.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report to the Legislature annually with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

(j) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on

or after January 1, 1997, except as provided in paragraph (3) of subdivision (d).

(k) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1998.

As added by SB 671 (Alquist), Stats. 1993, c. 881, and amended by SB 676 (Alquist), Stats. 1994, c. 751, and SB 38 (Lockyer), Stats. 1996, c. 954, and SB 1106 (Senate Revenue and Taxation Committee), Stats. 1997, c. 604, and AB 2798 (Machado), Stats. 1998, c. 323, and AB 1843 (Ackerman) Stats. 2000, c. 862, and SB 1185 (Senate Revenue and Taxation Committee), Stats. 2001, c. 543.

PART 22. HAZARDOUS SUBSTANCES TAX LAW

Chapter 3. Determinations

ARTICLE 1. RETURNS AND PAYMENTS

43152.12. (a) In addition to the requirements imposed pursuant to Section 43152.6, every operator of a facility subject to the fee specified in Section 25205.2 of the Health and Safety Code shall make two prepayments of the fee to the board, which are due and payable on or before the last day of February and the last day of August of each calendar year. Each prepayment shall be accompanied by a prepayment return in a form prescribed by the board.

(b) For purposes of subdivision (a), the amount of each prepayment shall be not less than 50 percent of the applicable fee imposed on the facility, based on the facility's type and size, as stated on the hazardous waste facilities permit, interim status document, or Part A application, or as specified in Sections 25205.1 and 25205.4 of the Health and Safety Code.

(c) The board shall credit the amount of the prepayments against the amount of the fee due and payable for the reporting period in which the prepayments are due.

(d) Any person required to make a prepayment pursuant to this section who fails to make a prepayment by the dates specified in subdivison (a) shall also pay the penalties and interest in accordance with Sections 43155 and 43156.

As added by SB 194 (Torres), Stats. 1991, c. 1123, and amended by AB 1964 (Figueroa), Stats. 1995, c. 630, and AB 1906 (Sher), Stats 1995, c. 637.

ARTICLE 2. DEFICIENCY DETERMINATIONS

43202. (a) Except in the case of fraud, intent to evade this part, authorized rules and regulations, or failure to make a return, every notice of a determination of an additional amount due shall be given within three years after the date when the amount should have been paid or the return was due, or within three years after the return was filed, whichever period expires later. In the case of failure to make a return, the notice of determination shall be mailed within eight years after the date the report or return was due.

(b) The limitation specified in subdivision (a) shall not apply to a liability for the fee imposed pursuant to Section 25205.5 of the Health and Safety Code which is proposed to be determined with respect to a taxpayer if a notice of determination for the fee imposed pursuant to Section 25205.2 of the Health and Safety Code has been given pursuant to Section 43201 or 43350 for the same period and site, or with respect to a taxpayer that has paid the fee imposed by Section 25205.2 of the Health and Safety Code for the same period and site. The notice of determination with respect to the fee imposed pursuant to Section 25205.5 of the Health and Safety Code shall be given within 90 days from the date of final board action or final judicial action, whichever is later, concerning liability for the fee imposed pursuant to Section 25205.2 of the Health and Safety Code.

(c) The limitation specified in subdivision (a) shall not apply to a liability for the fee imposed pursuant to Section 25205.2 of the Health and Safety Code which is proposed to be determined with respect to a taxpayer if a notice of determination for the fee imposed pursuant to Section 25205.5 of the Health and Safety Code has been given pursuant to Section 43201 or 43350 for the same period and site, or with respect to a taxpayer that has paid the fee imposed by Section 25205.5 of the Health and Safety Code for the same period and site. The notice of determination with respect to the fee imposed pursuant to Section 25205.2 of the Health and Safety Code shall be given within 90 days from the date of final board action or final judicial action, whichever is later, concerning liability for the fee imposed pursuant to Section 25205.5 of the Health and Safety Code.

As added by Stats. 1981, c. 756, and amended by SB 704 (Senate Revenue and Taxation Committee), Stats. 1993, c. 1113, and AB 1964 (Figueroa), Stats. 1995, c. 630.

Chapter 5. Overpayments and Refunds

ARTICLE 1. CLAIM FOR REFUND

43452. (a) Except as provided in subdivisions (b), (e), and (f), no refund shall be approved by the board after three years from the date the taxes were due and payable for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 43201) of Chapter 3, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. Except as provided in subdivisions (e) and (f), no credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given to Section 43204.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 43204 if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

(d) No claim for refund of taxes paid under this part shall be accepted, considered, or approved by the board if the claim is founded upon the grounds that the director has improperly or erroneously determined that any substance is a hazardous or extremely hazardous waste. Any appeal of a

determination that a substance is a hazardous or extremely hazardous waste shall be made to the director.

(e) Notwithstanding subdivision (a), the board may within 90 days from the date of final board action or final judicial action, whichever is later, concerning liability for the fee imposed pursuant to Section 25205.5 of the Health and Safety Code, grant a refund or apply a credit pursuant to Section 43451 for any amount of tax, penalty, or interest that has been overpaid concerning a fee imposed pursuant to Section 25205.2 of the Health and Safety Code, if the taxpayer has paid or is being assessed a fee imposed pursuant to Section 25205.5 of the Health and Safety Code for the same period and site.

(f) Notwithstanding subdivision (a), the board may, within 90 days from the date of final board action or final judicial action, whichever is later, concerning liability for the fee imposed pursuant to Section 25205.2 of the Health and Safety Code, grant a refund or apply a credit pursuant to Section 43451 for any amount of tax, penalty, or interest that has been overpaid concerning a fee imposed pursuant to Section 25205.5 of the Health and Safety Code, if the taxpayer has paid or is being assessed a fee imposed pursuant to Section 25205.2 of the Health and Safety Code for the same period and site.

(g) Any overpayment of the fee imposed by Section 25174.1 of the Health and Safety Code by a person submitting hazardous waste for disposal to a hazardous waste facility at which hazardous wastes are disposed who is required to collect the fee shall be credited or refunded by the state to the person who submitted the hazardous waste for disposal. However, if the facility has paid the amount to the board and establishes to the satisfaction of the board that it has not collected the amount from the person submitting the hazardous waste for disposal or has refunded the amount to that person, the overpayment may be credited or refunded by the state to the facility.

As added by Stats. 1991, c. 756, and amended by Stats. 1982, c. 496, and Stats. 1988, c. 1029, and SB 1469 (Calderon), Stats. 1992, c. 852, and AB 1964 (Figueroa), Stats. 1995, c. 630, and SB 2231 (Senate Revenue and Taxation Committee), Stats. 1998, c. 350.

43452.2. Notwithstanding Section 43452, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

As added by AB 3076 (Assembly Revenue and Taxation Committee), Stats. 2006, c. 364.

PART 23. INTEGRATED WASTE MANAGEMENT FEE LAW

(Part 23 as added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 1220 (Eastin), Stats. 1993, c. 656)

Chapter 1. General Provisions and Definitions

(Chapter 1 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45001. This part shall be known, and may be cited, as the Integrated Waste Management Fee Law.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 1220 (Eastin), Stats. 1993, c. 656.

45002. The collection and administration of the fee imposed pursuant to Section 48000 of the Public Resources Code shall be governed by the definitions contained in Chapter 2 (commencing with Section 40l00) of Part 1 of Division 30 of the Public Resources Code, unless expressly superseded by the definitions contained in this part.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 939 (Sher), Stats. 1989, c. 1095, and AB 2092 (Sher), Stats. 1992, c. 105, and AB 1220 (Eastin), Stats. 1993, c. 656.

45003. Except where the context otherwise requires, the definitions contained in this chapter shall govern the construction of this part.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45004. The provisions of this part, insofar as they are substantially the same as existing provisions of law relating to the same subject matter, shall be construed as restatements and continuations and not as new enactments.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45005. Any action or proceeding commenced before this part takes effect, or any right accrued, is not affected by this part, but all procedures taken shall conform to this part as far as possible.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45006. "Person" includes any individual, firm, cooperative organization, fraternal organization, corporation, estate, trust, business trust receiver, trustee, syndicate, this state, any county, city and county, municipality, district, public agency, or subdivision of this state or any other group or combination acting as a unit.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45007. "Board" means the State Board of Equalization.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45008. "In this state" means within the exterior limits of the State of California and includes all territory within those limits owned by or ceded to the United States of America.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45009. "Fee payer" means any person liable for the payment of a fee imposed by Section 48000 of the Public Resources Code.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 939 (Sher), Stats. 1989, c. 1095, and AB 2092 (Sher), Stats. 1992, c. 105, and AB 1220 (Eastin), Stats. 1993, c. 656.

Chapter 2. The Integrated Waste Management Fee

(Chapter 2 as added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 1220 (Eastin), Stats. 1993, c. 656)

ARTICLE 1. IMPOSITION OF FEE

(Article 1 as added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 1220 (Eastin), Stats. 1993, c. 656)

45051. The fee imposed pursuant to Section 48000 of the Public Resources Code shall be administered and collected by the board in accordance with this part.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 939 (Sher), Stats. 1989, c. 1095, and AB 1220 (Eastin), Stats. 1993, c. 656.

45052. REPEALED.

As added by AB 2092 (Sher), Stats. 1992, c. 105, and repealed by AB 1220 (Eastin), Stats. 1993, c. 656.

ARTICLE 2. REGISTRATION AND SECURITY

(Article 2 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45101. Every person who operates a solid waste landfill required to have a solid waste facilities permit pursuant to Chapter 3 (commencing with Section 44001) of Part 4 of the Public Resources Code shall register with the board.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 939 (Sher), Stats. 1989, c. 1095, and AB 1220 (Eastin), Stats. 1993, c. 656.

45102. The board, whenever it deems it necessary to ensure compliance with this part, may require any person subject to this part to place with it any security that the board determines to be reasonable, taking into account the circumstances of that person. Any security in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions shall be held by the board in trust to be used solely in the manner provided by this section. The board may sell the security at public auction if it becomes necessary to do so in order to recover any fee or any amount required to be collected, including any interest or penalty due. Notice of the sale shall be served upon the person who placed the security personally or by mail.

If service is made by mail, the notice shall be addressed to the person at his or her address as it appears in the records of the board. Service shall be made at least 30 days prior to the sale in the case of personal service, and at least 40 days prior to the sale in the case of service by mail. Security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may, however, be sold by the board at private sale at a price not lower than the prevailing market price thereof. Upon any sale, any surplus above the amounts due shall be returned to the person who placed the security.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by SB 180 (Deddeh), Stats. 1991, c. 236.

Chapter 3. Determinations

(Chapter 3 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

ARTICLE 1. REPORTS AND PAYMENTS

(Article 1 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45151. (a) The fee imposed pursuant to Section 48000 of the Public Resources Code is due and payable to the board quarterly on or before the 25th day of the calendar month following the quarterly period for which the fee is due. Each feepayer shall prepare a return in the form as prescribed by the board, which may include, but not be limited to, electronic media, showing the total amount of solid waste subject to the fee, the amount of fee for the period covered by the return, and any other information that the board determines to be necessary. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) The feepayer shall deliver the return, together with a remittance of the amount of fee due, to the office of the board on or before the 25th day of the calendar month following the quarterly period for which the fee is due.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 939 (Sher), Stats. 1989, c. 1095, and repealed, renumbered, and amended by AB 1220 (Eastin), Stats. 1993, c. 656, and AB 1936 (Horton), Stats. 2002, c. 459.

45151.1. Section renumbered in 1993.

As added by AB 2092 (Sher), Stats. 1992, c. 105, and amended and renumbered Section 45151 by AB 1220 (Eastin), Stats. 1993, c. 656.

45152. (a) The board for good cause may extend, for not to exceed one month, the time for making any report or return or paying any amount required to be paid under this part. The extension may be granted at any time if a request therefor is filed with the board within or prior to the period for which the extension may be granted.

(b) Any person to whom an extension is granted shall pay, in addition to the fee, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5 from the date on which the fee would have been due without the extension until the date of payment.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 2092 (Sher), Stats. 1992, c. 105.

45153. (a) Any person who fails to pay any fee to the state or any amount of fee required to be paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 45201), within the time required shall pay a penalty of 10 percent of the fee or amount of the fee in addition to the fee or amount of the fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of the fee required to be paid became due and payable to the state until the date of payment.

(b) Any person who fails to file a return in accordance with the due date set forth in Section 45151, shall pay a penalty of 10 percent of the amount of the surcharge with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the surcharge for which the return is required for any one return.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 2894 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 923, and SB 662 (Senate Judiciary Committee), Stats. 2001, c. 159.

45154. REPEALED.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and repealed by AB 2894 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 923.

45155. (a) If the board finds that a person's failure to make a timely report or return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 45153, 45160, and 45306.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 2092 (Sher), Stats. 1992, c. 105, and AB 1964 (Figueroa), Stats, 1995, c. 630, and AB 2894 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 923, and AB 2898 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 1052.

45156. If the board finds that a person's failure to make a timely return or payment was due to disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of interest provided for by Sections 45152, 45153, 45160, and 45201. Any person seeking to be relieved of interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

As added by AB 3 (Chandler), Stats. 1989 (1st Ex. Sess.), c. 14, and amended by AB 2894 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 923.

45156.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the feepayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during taxable periods commencing on or after January 1, 2000.

As added by AB 1638 (Assembly Revenue and Taxation Committee), Stats. 1999, c. 929, and amended by AB 2894 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 923, and AB 1123 (Assembly Revenue and Taxation Committee), Stats. 2001, c. 251.

45157. (a) If the board finds that a person's failure to make a timely report or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the fees imposed or administered under this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely report or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to the fee under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to the fee, or stating the conditions under which the activity or transaction is subject to the fee.

(3) The liability for fees applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

As added by SB 1898 (Garamendi), Stats. 1990, c. 987.

ARTICLE 1.1. PAYMENT BY ELECTRONIC FUNDS TRANSFER

(Article 1.1 as added by AB 2894 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 923)

45160. (a) Any person whose estimated fee liability under this part averages twenty thousand dollars ($20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit

amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated fee liability under this part averages less than twenty thousand dollars ($20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 45151). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting fees by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of fees with respect to the period for which the return is required.

(e) Any person required to remit fees pursuant to this article who remits those fees by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the fees incorrectly remitted.

(f) Any person who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 45201), within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated fee liability averages twenty thousand dollars ($20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the fees due for any one return. Any person remitting fees by electronic funds transfer shall be subject to the penalties under this section and not Section 45153.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

As added by AB 2894 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 923, and amended by AB 1765 (Assembly Revenue and Taxation Committee), Stats. 2005, c. 519.

45161. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 45160. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

As added by AB 2894 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 923.

45162. (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) "Automated clearinghouse" means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) "Automated clearinghouse debit" means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of the fee. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) "Fedwire transfer" means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state's bank account. Electronic funds transfers pursuant to Section 45160 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

As added by AB 2894 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 923.

45163. (a) Any return, declaration, statement, or other document required to be made under this part that is filed

using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

As added by AB 1936 (Horton), Stats. 2002, c. 459.

ARTICLE 2. DEFICIENCY DETERMINATIONS

(Article 2 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45201. (a) If the board is dissatisfied with the report or return filed or the amount of fee paid to the state by any fee payer, or if no report or return has been filed or no payment or payments of the fees have been made to the state by a fee payer, the board may compute and determine the amount to be paid, based upon any information available to it. One or more additional determinations may be made of the amount of fee due for one, or for more than one period. The amount of fee so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the fee, or any portion thereof, became due and payable until the date of payment. In making a determination, the board may offset overpayments for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) If any part of the deficiency for which a determination of an additional amount due is made is found to have been occasioned by negligence or intentional disregard of this part or regulations adopted by the board pursuant to this part, a penalty of 10 percent of the amount of that determination shall be added, plus interest as provided in subdivision (a).

(c) If any part of the deficiency for which a determination of an additional amount due is made is found to be occasioned by fraud or an intent to evade this part or authorized regulations, a penalty of 25 percent of the amount of the determination shall be added, plus interest as provided in subdivision (a).

(d) The board shall give to the fee payer written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the fee payer at his or her address as it appears in the records of the board. The giving of the notice shall be deemed complete at the time of the deposit of the notice in a United States Post Office, or a mailbox, subpost office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served, and service shall be deemed complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 2092 (Sher), Stats. 1992, c. 105.

45202. Except in the case of fraud, intent to evade this part or rules and regulations adopted under this part, or failure to make a report or return, every notice of a determination of an additional amount due shall be given within three years after the date when the amount was required to have been paid or the report or return was due, or within three years after the report or return was filed, whichever period expires later. In the case of failure to make a report or return, the notice of determination shall be mailed within eight years after the date the report or return was due.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 2092 (Sher), Stats. 1992, c. 105, and SB 704 (Greene), Stats. 1993, c. 1113.

45203. If, before the expiration of the time prescribed in Section 45202 for the mailing of a notice of deficiency determination, the fee payer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

ARTICLE 3. REDETERMINATIONS

(Article 3 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45301. Any person from whom an amount is determined to be due under Article 2 (commencing with Section 45201), or any person directly interested, may petition for a redetermination thereof within 30 days after service upon him or her of notice of the determination. If a petition for redetermination is not filed within the 30-day period, the amount determined to be due becomes final at the expiration thereof.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45302. Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision on the petition for redetermination.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45303. If a petition for redetermination is filed within the 30-day period, the board shall reconsider the amount determined to be due, and, if the person has so requested in his or her petition, the board shall grant him or her an oral hearing and shall give him or her 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45304. The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the 25-percent penalty imposed by subdivision (c) of Section 45201 applies to the amount of the determination as originally made or as increased, the claim for increase shall be asserted within eight years after the date the amount of fee for the period for which the increase is asserted was due.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319 and amended by SB 1852 (Committee on Judiciary), Stats. 2006, c. 538.

45305. The order or decision of the board upon a petition for redetermination shall become final 30 days after service upon the petitioner of notice thereof.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45306. All amounts determined to be due by the board under Article 2 (commencing with Section 45201) are due and payable at the time they become final, and, if not paid when due and payable, a penalty of 10 percent of the amount determined to be due shall be added to the amount due and payable.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45307. Any notice required by this article shall be served personally or by mail in the same manner as prescribed for service of notice by Section 43201.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

ARTICLE 4. JEOPARDY DETERMINATIONS

(Article 4 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45351. If the board finds and determines that the collection of any amount of fee will be jeopardized by delay, it shall thereupon make a determination of the amount of fee due, noting that fact upon the determination, and the amount of the fee shall be immediately due and payable. If the amount of the fee, interest, and penalty specified in the jeopardy determination is not paid, or a petition for redetermination is not filed, within 10 days after the service upon the taxpayer of notice of the determination, the determination becomes final, and the delinquency penalty and interest provided in Section 45153 shall attach to the amount of fee specified therein.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by SB 1881 (Senate Revenue and Taxation Committee), Stats. 2004, c. 527.

45352. The fee payer against whom a jeopardy determination is made may file a petition for the redetermination thereof, pursuant to Article 3 (commencing with Section 45301), with the board within 10 days after the service upon the fee payer of notice of the determination, and he or she shall, within the 10-day period, deposit with the board that security which the board deems necessary to insure compliance with this part. The security may be sold by the board at public sale if it becomes necessary in order to recover any amount due under this part. Notice of the sale may be served upon the person who deposited the security personally or by mail in the same manner as prescribed for service of notice by Section 45201. After that sale, the surplus, if any, above the amount due under this part shall be returned to the person who deposited the security.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45353. In accordance with rules and regulations which the board may adopt, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

(a) To establish that the determination is excessive.

(b) To establish that the sale of property that may be seized after issuance of the jeopardy determination, or any part thereof, shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.

(c) To request the release of all or part of the property to the person.

(d) To request a stay of collection activities.

The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. The person shall not be required to post any security in order to file the application and to obtain the hearing. However, if the person does not deposit, within the 10-day period prescribed in Section 45352, that security which the board deems necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except for sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for an administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section does not affect Section 45351, relating to the finality date of the determination or to penalty or interest.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

Chapter 4. Collection of Fee

(Chapter 4 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

ARTICLE 1. SUIT FOR FEE

(Article 1 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45401. The board may bring any legal action necessary to collect any deficiency in the fee required to be paid, and, upon the board's request, the Attorney General shall bring the action.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45402. In any action brought to enforce the rights of the state with respect to any fee, a certificate by the board showing the delinquency shall be prima facie evidence of the levy of the fee, of the delinquency of the amount of fee, interest, and penalty set forth therein, and of compliance by the board with this part in relation to the computation and levy of the fee. In that action, a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

ARTICLE 2. JUDGMENT FOR FEE

(Article 2 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45451. (a) If any person fails to pay any amount imposed pursuant to this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. A lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are due and payable on the following dates:

(1) For amounts disclosed on a report received by the board before the date the return is delinquent, the date the amount would have been due and payable.

(2) For amounts disclosed on a report filed on or after the date the return is delinquent, the date the return is received by the board or the year following the fee due date pursuant to Section 45151, whichever is later.

(3) For amounts determined under Section 45351, pertaining to jeopardy assessments, the date the notice of the board's finding is mailed or issued.

(4) For all other amounts, the date the assessment is final.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 1220 (Eastin), Stats. 1993, c. 656, and SB 1852 (Senate Judiciary Committee), Stats. 2006, c. 538.

45452. (a) If the board determines that the amount of any fee, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien imposed under this article will not jeopardize the collection of the amount of the fee, interest, and penalties, the board may at any time release all or any portion of the property subject to the lien from the lien or may subordinate the lien to other liens and encumbrances.

(b) If the board finds that the liability represented by the lien imposed under this article, including any interest accrued thereon, is legally unenforceable, the board may release the lien.

(c) A certificate by the board to the effect that any property has been released from a lien or that the lien has been subordinated to other liens and encumbrances is conclusive evidence that the property has been released or that the lien has been subordinated, as provided in the certificate.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

ARTICLE 3. WARRANT FOR COLLECTION

(Article 3 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45501. At any time within three years after any person is delinquent in the payment of any amount required to be paid under this part, or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board, or its authorized representative, may issue a warrant for the enforcement of any lien and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of, and sale pursuant to, a writ of execution.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 3472 (Assembly Local Government Committee), Stats. 1996, c. 829.

45502. The board may pay or advance to the sheriff, marshal, or constable, the same fees, commissions, or expenses for services as are provided by law for similar services pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45503. The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him or her by virtue of the warrant or in any other manner provided in this part for the collection of the fee.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

ARTICLE 4. SEIZURE AND SALE

(Article 4 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45551. Whenever any fee payer is delinquent in the payment of the fee, the board, or its authorized representative, may seize any property, real or personal, of the fee payer, and sell at public auction the property seized, or a sufficient portion thereof, to pay the fee due, together with any penalties imposed for the delinquency and all costs that have been incurred on account of the seizure and sale.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45552. Notice of the sale, and the time and place thereof, shall be given to the delinquent fee payer and to all persons who have an interest of record in the property at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the fee payer or other person at his or her last known residence or place of business in this state as it appears upon the records of the board, if any, and depositing it in the United States registered mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest to the property is to be sold.

(b) One conspicuous place on the property. The notice shall contain a description of the property to be sold, a statement of the amount due, including fees, interest, penalties, and costs, the name of the fee payer, and the further statement that unless the amount due is paid on or before the time fixed

in the notice of the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and the notice.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by SB 2196 (Garamendi), Stats. 1990, c. 1528.

45553. At the sale the property shall be sold by the board, or by its authorized agent, in accordance with law and the notice, and the board shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the fee payer.

As added by AB 2448 (Eastin), Stats. 1987, and amended by Stats. 1988, c. 652.

45554. If, after the sale, the money received exceeds the amount of all fees, penalties, and costs due the state from the fee payer, the board shall return the excess to him or her and obtain his or her receipt. If any persons having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest, the board shall withhold any excess pending a determination of the rights of the respective parties to the excess moneys by a court of competent jurisdiction. If the receipt of the fee payer is not available, the board shall deposit the excess moneys with the Controller, as trustee for the owner, subject to the order of the fee payer, his or her heirs, successors, or assigns.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 2260 (Kuykendall), Stats. 1996, c. 860.

ARTICLE 5. MISCELLANEOUS

(Article 5 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45601. If any fee payer is delinquent in the payment of any obligation imposed by this part, or if any determination has been made against a fee payer which remains unpaid, the board may, not later than three years after the payment becomes delinquent, or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof, personally or by first-class mail, to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the fee payer, or owing any debts to the fee payer. In the case of any state officer, department, or agency, the notice shall be given to the officer, department, or agency prior to the time it presents the claim of the delinquent fee payer to the Controller.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45602. After receiving the notice, the persons so notified shall not transfer or make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days after the receipt of the notice, whichever occurs first.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45603. All persons so notified shall immediately, after receipt of the notice, advise the board of all credits, other personal property, or debts in their possession, under their control, or owing by them. If the notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice, to be effective, shall state the amount, interest, and penalty due from the person and shall be delivered or mailed to the branch or office of the bank at which the deposit is carried or mailed to the branch or office of the bank at which the deposit is carried or at which the credits or personal property are held. Notwithstanding any other provision of law, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall only be effective with respect to an amount not in excess of the amount, interest, and penalty due from the person.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45604. If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld, to the extent of the value of the property or the amount of the debts thus transferred or paid, he or she shall be liable to the state for any indebtedness due under this part from the person with respect to whose obligation the notice was given, if solely by reason of that transfer or disposition, the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45605. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a feepayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any fee, interest, or penalties due from the feepayer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the feepayer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the feepayer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the feepayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by SB 704 (Greene), Stats. 1993, c. 1113, and SB 2232 (Senate Revenue and Taxation Committee), Stats. 1998, c. 609, and SB 45 (Sher), Stats. 1999, c. 991.

45605.5. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a feepayer or other person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 45605 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first date that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

As added by AB 2898 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 1052.

45606. The remedies of the state provided for in this chapter are cumulative, and no action taken by the board or by the Attorney General constitutes an election by the state or any of its officers to pursue any remedy to the exclusion of any other remedy for which provision is made in this part.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45607. The amounts required to be paid by any person under this part together with interest and penalties shall be satisfied first in any of the following cases:

(a) Whenever the person is insolvent.

(b) Whenever the person makes a voluntary assignment of his or her assets.

(c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.

(d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

This section does not give the state a preference over a lien or security interest which was recorded or perfected prior to the time when the state records or files its lien, as provided in Section 7171 of the Government Code.

The preference given to the state by this section is subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45608. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes

to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

As added by AB 583 (Sher), Stats. 1996, c. 1003.

45609. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any fees due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the fee payer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the fee, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of fees, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the fee to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 45306.

As added by AB 1638 (Assembly Revenue and Taxation Committee), Stats. 1999, c. 929, and amended by AB 2898 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 1052.

45609.5. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 45609 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

As added by AB 2898 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 1052.

Chapter 5. Overpayments and Refunds

(Chapter 5 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

ARTICLE 1. CLAIM FOR REFUND

(Article 1 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45651. If the board determines that any amount of fee, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in its records and certify the amount collected in excess of what was legally due and the person from whom it was collected or by whom paid, and credit the excess amount collected or paid on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars ($50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by SB 718 (Senate Revenue and Taxation Committee), Stats. 1995, c. 555, and SB 1827 (Senate Revenue and Taxation Committee), Stats. 1996, c. 1087.

45651.5. Except as provided in Section 48008 of the Public Resources Code, when an amount represented by a person who is a feepayer under this part to a customer as constituting reimbursement for fees due under this part is computed upon an amount that is not subject to that fee or is in excess of that fee amount due and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the fee or is in excess of the fee due, shall be remitted by that person to the State Board of Equalization. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same solid waste from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

As added by AB 1220 (Eastin), Stats. 1993, c. 656, and amended by AB 3629 (Karnette), Stats. 1994, c. 1223, and SB 1827 (Senate Revenue and Taxation Committee), Stats. 1996, c. 1087.

45652. (a) Except as provided in subdivision (b), no refund shall be approved by the board after three years from the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 45201) of Chapter 3, after six months from the date the determinations have become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given pursuant to Section 45204.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 45204 if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by SB 1469 (Calderon), Stats. 1992, c. 852, and SB 1185 (Senate Revenue and Taxation Committee), Stats. 2001, c. 543.

45652.1. (a) The limitation period specified in Section 45652 shall be suspended during any period of a person's life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

As added by AB 2898 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 1052.

45652.2. Notwithstanding Section 45652, a refund of an overpayment of any fee, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

As added by AB 3076 (Assembly Revenue and Taxation Committee), Stats. 2006, c. 364.

45653. Failure to file a claim within the time prescribed in this article constitutes a waiver of all demands against the state on account of the overpayment.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45654. Within 30 days after disallowing any claim, in whole or in part, the board shall serve written notice of its action on the claimant pursuant to Section 45201.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45655. Interest shall be computed, allowed, and paid upon any overpayment of any amount of fee at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the monthly period following the period during which the overpayment was made. For purposes of this section, "monthly period" means the month commencing on the day after the due date of the payment through the same date as the due date in each successive month. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the monthly period following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the fee or amount against which the credit is applied.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by SB 1607 (L. Greene), Stats. 1992, c. 1336, and AB 2160 (Baldwin), Stats. 1996, c. 320, and SB 1827 (Senate Revenue and Taxation Committee), Stats. 1996, c. 1087, and SB 1102 (Senate Revenue and Taxation Committee), Stats. 1997, c. 620.

45656. (a) If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(b) If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action on the claim.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by SB 2230 (Senate Revenue and Taxation Committee), Stats. 1998, c. 420.

ARTICLE 2. SUIT FOR REFUND

(Article 2 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45701. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any office of the state to prevent or enjoin the collection of any fee sought to be collected.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45702. No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally assessed or collected unless a claim for refund or credit has been duly filed.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45703. Within 90 days after the mailing of the notice of the board's action upon a claim for refund or credit, the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in the County of Sacramento for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45704. If the board fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board, consider the claim disallowed and bring an action against the board on the

grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45705. Failure to bring suit or action within the time specified in this article constitutes a waiver of all demands against the state on account of any alleged overpayments.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45706. If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any fees due from the plaintiff, and the balance shall be refunded to the plaintiff.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45707. In any judgment, interest shall be allowed at the modified adjusted rate per annum established pursuant to Section 6591.5, upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45708. A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any fee paid when the action is brought by or in the name of an assignee of the fee payer paying the tax or by any person other than the person who has paid the fee.

As used in this section, "assignee" does not include a person who has acquired the business of the fee payer which gave rise to the fees and who is thereby a successor in interest to the fee payer.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

ARTICLE 3. RECOVERY OF ERRONEOUS REFUNDS

(Article 3 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45751. (a) The Controller may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 45201) or Article 4 (commencing with Section 45351) of Chapter 3. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by SB 2232 (Senate Revenue and Taxation Committee), Stats. 1998, c. 609.

45752. In any action brought pursuant to subdivision (a) of Section 45751, the court may, with the consent of the Attorney General, order a change in the place of the trial.

As added by SB 2232 (Senate Revenue and Taxation Committee), Stats. 1998, c. 609.

45752. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of fee nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 45751, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 45751 on or after January 1, 2000.

As added by AB 1638 (Assembly Revenue and Taxation Committee), Stats. 1999, c. 929.

45753. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 45751, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

As added by SB 2232 (Senate Revenue and Taxation Committee), Stats. 1998, c. 609.

ARTICLE 4. CANCELLATIONS

(Article 4 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45801. If any amount in excess of fifteen thousand dollars ($15,000) has been illegally determined, either by the person filing the return or by the board, the board shall certify to the State Board of Control the amount determined to be in excess of the amount legally due and the person against whom the determination was made. If the State Board of Control approves, it shall authorize the cancellation of the amount upon the records of the board. If an amount not exceeding fifteen thousand dollars ($15,000) has been illegally determined, either by the person filing a return or by the board, the board, without certifying this fact to the State Board of Control, shall authorize the cancellation of the amount upon the records of the board.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

Chapter 6. Administration

(Chapter 6 as added by AB 2448 (Eastin), Stats. 1987, c. 1319.)

ARTICLE 1. ADMINISTRATION

(Article 1 heading as added by SB 1661 (L. Greene), Stats. 1992, c. 438)

45851. The board shall enforce this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45852. The board may make such examinations of the books and records of any fee payer as it may deem necessary in carrying out this part.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45853. The board may employ accountants, auditors, investigators, and other expert and clerical assistance necessary to enforce its powers and perform its duties under this part.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45854. A certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service shall be prima facie evidence in any administrative or judicial proceeding of the fact and regularity of the mailing or personal service in accordance with any requirement of this part for the giving of a notice. Unless otherwise specifically required, any notice provided by this part to be mailed or served may be given either by mailing or by personal service in the manner provided for giving notice of a deficiency determination.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45855. Any information regarding solid wastes which is available to the board shall be made available to the California Integrated Waste Management Board.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 939 (Sher), Stats. 1989, c. 1095.

45855.5. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 3 (commencing with Section 45151), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars ($1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

As added by AB 2898 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 1052.

ARTICLE 2. THE CALIFORNIA TAXPAYERS' BILL OF RIGHTS

(Article 2 as added by SB 1661 (L. Greene), Stats. 1992, c. 438)

45856. The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438.

45857. (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of fee payer complaints and problems, including any fee payer complaints regarding unsatisfactory treatment of fee payers by board employees, and staying actions where fee payers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438.

45858. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

(1) Fee payers newly registered with the board.

(2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered fee payers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of fee payer educational materials currently produced by the board that explain the most common areas of fee payer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to fee payer activities and areas of recurrent fee payer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438, and amended by AB 1638 (Assembly Revenue and Taxation Committee), Stats. 1999, c 929.

45859. The board shall conduct an annual hearing before the full board where industry representatives and individual fee payers are allowed to present their proposals on changes to the Integrated Waste Management Fee Law which may further improve voluntary compliance and the relationship between fee payers and the government.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438, and amended by AB 1220 (Eastin), Stats. 1993, c. 656.

45860. The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and fee payers. As appropriate, statements shall be provided to fee payers with the initial notice of audit, the notice of proposed additional fees, any subsequent notice of fees due, or other substantive notices. Additionally, the board shall include this language for

statements in the annual fee information bulletins that are mailed to taxpayers.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438.

45861. (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438.

45862. The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with fee payers. The development and implementation of the program shall be coordinated with the Taxpayers Rights Advocate.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438, and amended by AB 2211 (Goldsmith), Stats. 1993, c. 589.

45863. The board shall, in cooperation with the California Integrated Waste Management Board, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases which take more time than the appropriate standard timeframe.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438, and amended by AB 1220 (Eastin), Stats. 1993, c. 656.

45864. Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

(a) Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

(b) The conference may be recorded only if prior notice is given to the fee payer and the fee payer is entitled to receive a copy of the recording.

(c) The fee payer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438.

45865. (a) Every fee payer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The fee payer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the fee payer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438, and amended by SB 718 (Senate Revenue and Taxation Committee), Stats. 1995, c. 555, and AB 1638 (Assembly Revenue and Taxation Committee), Stats. 1999, c. 929, and AB 2898 (Assembly Revenue and Taxation Committee), Stats. 2000, c. 1052.

45866. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include integrated waste management fee violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438, and amended by AB 1220 (Eastin), Stats. 1993, c. 656.

45867. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil fee matter in dispute involving a reduction of fee or penalties in settlement, the total of which reduction of fee and penalties in settlement does not exceed five thousand dollars ($5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of fees, or penalties, or total fees and penalties in settlement in excess of five hundred dollars ($500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the fee payers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the fee payer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential information for purposes of Section 45982.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438, and amended by SB 1060 (Senate Revenue and Taxation Committee), Stats. 2003, c. 605, and AB 3076 (Assembly Revenue and Taxation Committee), Stats. 2006, c. 364.

45867.5. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars ($7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars ($7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of

fees is in excess of seven thousand five hundred dollars ($7,500), but less than ten thousand dollars ($10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 23 (commencing with Section 45001), or related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the fee payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the fee payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The fee payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the fee payer's present assets or income.

(B) The fee payer does not have reasonable prospects of acquiring increased income or assets that would enable the fee payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to

administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the fee payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the fee payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the fee payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the fee payer.

(i) When more than one fee payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, fee payers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable fee payer shall reduce the amount of the liability of the other fee payers by the amount of the accepted offer.

(j) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars ($500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the fee payer.

(2) The amount of unpaid fees and related penalties, additions to fee, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state. The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the fee payer or violate the confidentiality provisions of Section 45855. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any fee payer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the fee payer or other person liable for the fee.

(2) The fee payer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a fee payer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the fee payer or other person liable in respect of the fee.

(m) For purposes of this section, "person" means the fee payer, any member of the fee payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the fee payer, or any other corporation or entity owned or controlled by the fee payer, directly or indirectly, or that owns or controls the fee payer, directly or indirectly.

As added by AB 3076 (Assembly Revenue and Taxation Committee), Stats. 2006, c. 364.

45868. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the

event that the expense of the sale process exceeds the liability for which the levy is made.

(b) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to one thousand five hundred dollars ($1,500) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the feepayer or his or her spouse and dependents or family.

(c) The board shall not sell any seized property until it has first notified the feepayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438, and amended by AB 2211 (Goldsmith), Stats. 1993, c. 589, and SB 718 (Senate Revenue and Taxation Committee), Stats. 1995, c. 555.

45868.5. (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 45609 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 45870.

As added by AB 1638 (Assembly Revenue and Taxation Committee), Stats. 1999, c. 929.

45869. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438, and amended by AB 2211 (Goldsmith), Stats. 1993, c. 589.

45870. (a) A fee payer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the fee payer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the fee payer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the fee payer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the feepayer shall be notified in writing of the reason or reasons for the denial of the claim.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438, and amended by AB 2211 (Goldsmith), Stats. 1993, c. 589, and SB 1185 (Senate Revenue and Taxation Committee), Stats. 2001, c. 543.

45871. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the fee payer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the fee payer to prevent the filing or recording of the lien. In the event fee liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not be required with respect to jeopardy determinations issued under Article 4 (commencing with Section 45351) of Chapter 3.

(c) If the board determines that the filing of a lien was in error, it shall mail a release to the fee payer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the fee payer and the entity recording the lien.

(d) When the board releases a lien that has been erroneously filed, notice of that release shall be mailed to the fee payer and, upon the request of the fee payer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will

facilitate the collection of the fee liability or will be in the best interest of the state and the fee payer.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438, and amended by AB 2211 (Goldsmith), Stats. 1993, c. 589, and AB 1638 (Assembly Revenue and Taxation Committee), Stats. 1999, c. 929.

45872. (a) If any officer or employee of the board recklessly disregards board-published procedures, a fee payer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs, including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars ($75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff that contributed to the damages.

(d) Whenever it appears to the court that the fee payer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars ($10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

As added by SB 1661 (L. Greene), Stats. 1992, c. 438 and amended by SB 1852 (Committee on Judiciary), Stats. 2006, c. 538.

Chapter 7. Disposition of Proceeds

(Chapter 7 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45901. All fees, interest, and penalties imposed and all amounts of fee required to be paid to the state pursuant to Section 45051 shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer for deposit in the Integrated Waste Management Account in the Integrated Waste Management Fund.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 939 (Sher), Stats. 1989, c. 1095, and AB 1220 (Eastin), Stats. 1993, c. 656.

45902. REPEALED.

As added by AB 2092 (Sher), Stats. 1992, c. 105, and repealed by AB 1220 (Eastin), Stats. 1993, c. 656.

Chapter 8. Violations

(Chapter 8 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45951. Any person who refuses to furnish any return or report required to be made, or who refuses to furnish a supplemental return or other data required by the board, is guilty of a misdemeanor and subject to a fine not to exceed five hundred dollars ($500) for each offense.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45952. Any person who knowingly or willfully files a false return or report with the board, and any person who refuses to permit the board or any of its representatives to make any inspection or examination for which provision is made in this part, or who fails to keep any records as prescribed by the board, or who fails to preserve the records for the inspection of the board for such time as the board deems necessary, or who alters, cancels, or obliterates entries in the records for the purpose of falsifying the records is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) or more than one thousand dollars ($1,000), by imprisonment in the county jail for not less than one month or more than six months, or by both.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45953. Any person who willfully evades or attempts in any manner to evade or defeat the payment of the fee imposed by this part is guilty of a felony.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45954. Every person convicted for a violation of any provision of this part for which another penalty or punishment is not specifically provided for in this part is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500), by imprisonment in the county jail for not more than six months, or by both.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319

45955. Every person convicted of a felony for a violation of any provision of this part for which another punishment is not specifically provided for in this part shall be punished by a fine of not more than five thousand dollars ($5,000), by imprisonment in the state prison, or by both that fine and imprisonment.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 2367 (LaSuer), Stats. 2006, c. 347.

45956. Any prosecution for violation of any provision of this part shall be instituted within three years after the commission of the offense.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

Chapter 9. Disclosure of Information

(Chapter 9 as added by AB 2448 (Eastin), Stats. 1987, c. 1319)

45981. (a) The board shall provide any information obtained under this part to the California Integrated Waste Management Board.

(b) The California Integrated Waste Management Board and the board may utilize any information obtained pursuant to this part to develop data on the generation or disposal of solid waste within the state. Notwithstanding any other provision of this chapter, the California Integrated Waste Management Board may make waste generation and disposal data available to the public.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 939 (Sher), Stats. 1989, c. 1095.

45982. Neither the California Integrated Waste Management Board, nor any person having an administrative duty under Part 9 (commencing with Section 15600) of Division 3 of Title 2 of the Government Code shall disclose the business affairs, operations, or any other proprietary information pertaining to a fee payer, except a fee payer which is a public agency, which was submitted to the board in a report or return required by this part, or permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not expressly authorized by Section 45981 or this section. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by officers of another state, by the federal government if a reciprocal arrangement exists, or by any other person. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319, and amended by AB 939 (Sher), Stats. 1989, c. 1095, and AB 1515 (Sher), Stats. 1991, c. 717.

45983. Notwithstanding Section 45982, the successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information regarding the determination of any unpaid fee or the amount of fees, interest, or penalties required to be collected or assessed.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

45984. Nothing in this chapter limits or increases public access to information on any aspect of solid waste generation or disposal collected pursuant to other state or local laws, regulations, or ordinances.

As added by AB 2448 (Eastin), Stats. 1987, c. 1319.

PART 24. OIL SPILL RESPONSE, PREVENTION, AND ADMINISTRATION FEES

Chapter 8. Disclosure of Information

55381. (a) If the board collects a fee pursuant to this part on behalf of a state agency or pursuant to an interagency agreement with a state agency, or if the fee collected pursuant to this part is used to fund a program administered by a state agency, the board shall provide that state agency with any and all information obtained under this part relating to that fee.

(b) It shall be unlawful for the board, the state agency for which the board collects the fee, or any person having an administrative duty under this part to make known, in any manner whatsoever, the business affairs, operations, or any other information pertaining to a feepayer which was submitted to the board in a report or return required by this part, or to permit any report or copy thereof to be seen or examined by any person not expressly authorized by subdivision (a) and this subdivision. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.

(c) Notwithstanding subdivision (b), the successors, receivers, trustees, executors, administrators, assignees, and guarantors of a feepayer, if directly interested, may be given information regarding the determination of any unpaid fees or the amount of the fees, interest, or penalties required to be collected or assessed.

As added by SB 1920 (L. Greene), Stats. 1992, c. 407, and amended by SB 704 (Senate Revenue and Taxation Committee), Stats. 1993, c. 1113, and AB 1964 (Figueroa), Stats. 1995, c. 630.

EXCERPTS FROM VEHICLE CODE

DIVISION 5. OCCUPATIONAL LICENSING AND BUSINESS REGULATIONS

Chapter 4. Manufacturers, Transporters, Dealers, and Salesmen

ARTICLE 1. ISSUANCE OF LICENSES AND CERTIFICATES TO MANUFACTURERS, TRANSPORTERS, AND DEALERS

11713.1. It is a violation of this code for the holder of a dealer's license issued under this article to do any of the following:

(a) Advertise a specific vehicle for sale without identifying the vehicle by its model, model-year, and either its license number or that portion of the vehicle identification number that distinguishes the vehicle from all other vehicles of the same make, model, and model-year. Model-year is not required to be advertised for current model-year vehicles. Year models are no longer current when ensuing year models are available for purchase at retail in California. Any advertisement that offers for sale a class of new vehicles in a dealer's inventory, consisting of five or more vehicles, that are all of the same make, model, and model-year is not required to include in the advertisement the vehicle identification numbers or license numbers of those vehicles.

(b) Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, the California tire fee, as defined in Section 42885 of the Public Resources Code, emission testing fees not exceeding fifty dollars ($50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document preparation charge. The dealer document preparation charge shall not exceed fifty-five dollars ($55).

(c) (1) Exclude from an advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of a certificate of compliance or noncompliance pursuant to a statute, finance charges, and a dealer document preparation charge.

(2) The obligations imposed by paragraph (1) are satisfied by adding to the advertisement a statement containing no abbreviations and that is worded in substantially the following form: “Plus government fees and taxes, any finance charges, any dealer document preparation charge, and any emission testing charge.”

(3) For purposes of paragraph (1), “advertisement” means an advertisement in a newspaper, magazine, or direct mail publication that is two or more columns in width or one column in width and more than seven inches in length, or on a Web page of a dealer's Web site that displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

(d) Represent the dealer document preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) Fail to sell a vehicle to a person at the advertised total price, exclusive of taxes, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of a certificate of compliance or noncompliance pursuant to a statute, finance charges, mobilehome escrow fees, the amount of a city, county, or city and county imposed fee or tax for a mobilehome, and a dealer document preparation charge, which charges shall not exceed fifty-five dollars ($55) for the document preparation charge and not to exceed fifty dollars ($50) for emission testing plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed. Advertised vehicles shall be sold at or below the advertised total price, with statutorily permitted exclusions, regardless of whether the purchaser has knowledge of the advertised total price.

(f) (1) Advertise for sale, sell, or purchase for resale a new vehicle of a line-make for which the dealer does not hold a franchise.

(2) This subdivision does not apply to a transaction involving the following:

(A) A mobilehome.

(B) A recreational vehicle as defined in Section 18010 of the Health and Safety Code.

(C) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.

(D) An off-highway motor vehicle subject to identification as defined in Section 38012.

(E) A manufactured home.

(F) A new vehicle that will be substantially altered or modified by a converter prior to resale.

(G) A commercial vehicle with a gross vehicle weight rating of more than 10,000 pounds.

(H) A vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the department.

(g) Sell a park trailer, as specified in Section 18009.3 of the Health and Safety Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term "free" includes merchandise or services offered for sale at a price less than the seller's cost of the merchandise or services.

(i) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as "starting at," "from," "beginning as low as," or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

For purposes of this subdivision, in a newspaper advertisement for a vehicle that is two model-years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be (1) printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price, however, in no case shall the phrase be printed in less than 8-point type size, and (2) be disclosed immediately above, below, or beside the advertised price without intervening words, pictures, marks, or symbols. The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

(j) Use the term "rebate" or similar words, including, but not limited to, "cash back" in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, "cash price" has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(l) Advertise a guaranteed trade-in allowance.

(m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) (1) Use the terms "invoice," "dealer's invoice," "wholesale price," or similar terms that refer to a dealer's cost for a vehicle in an advertisement for the sale of a vehicle or advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer's or distributor's invoice price to a dealer.

(B) A dealer's cost.

(2) This subdivision does not apply to either of the following:

(A) A communication occurring during face-to-face negotiations for the purchase of a specific vehicle if the prospective purchaser initiates a discussion of the vehicle's invoice price or the dealer's cost for that vehicle.

(B) A communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a "commercial purchaser" means a dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.

(o) Violate a law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) Make an untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is "fully factory equipped."

(q) Affix on a new vehicle a supplemental price sticker containing a price that represents the dealer's asking price that exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item that is not included in the manufacturer's suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as "added mark-up."

(r) Advertise an underselling claim, including, but not limited to, "we have the lowest prices" or "we will beat any dealer's price," unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than another licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) Advertise an incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision, "incentive" means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) Display or offer for sale a used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(u) Fail to disclose in writing to the franchisor of a new motor vehicle dealer the name of the purchaser, date of sale, and the vehicle identification number of each new motor vehicle sold of the line-make of that franchisor, or intentionally submit to that franchisor a false name for the purchaser or false date for the date of sale.

(v) Enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

(w) Use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

(x) Fail to disclose, in a clear and conspicuous manner in at least 10-point bold type on the face of a contract for the retail sale of a new motor vehicle that this transaction is, or is not, subject to a fee received by an autobroker from the selling new motor vehicle dealer, and the name of the autobroker, if applicable.

(y) As used in this section, the terms "make" and "model" have the same meaning as is provided in Section 565.3 of Title 49 of the Code of Federal Regulations.

As added by Stats. 1973, c. 1031, and amended by Stats. 1978, c. 1162, and Stats. 1979, c. 278, and Stats. 1979, c. 943, and Stats. 1985, c. 1566, and Stats. 1986, c. 1078, and Stats. 1987, c. 503, and Stats. 1988, c. 1583, and Stats. 1983, c. 1584, and Stats. 1989, c. 622, and Stats. 1990, c. 362, and Stats. 1990, c. 1563, and Stats. 1990, c. 1576, and Stats. 1991, c. 935, and Stats. 1991, c. 1054, and Stats. 1991, c. 1091, and Stats. 1992, c. 1091, and Stats. 1992, c. 1092, and AB 1531 (Sher), Stats. 1993, c. 535, and AB 3539 (Aguiar), Stats. 1994, c. 1253, and AB 770 (Aguiar), Stats. 1995, c. 211, and AB 192 (Cannella), Stats. 1995, c. 585, and AB 2574 (Bowler), Stats. 1996, c. 186, and AB 159 (Floyd), Stats. 1999, c. 230, and AB 1912 (Torlakson), Stats. 2000, c. 566, and AB 2060 (Steinberg), Stats. 2000, c. 773, and SB 481 (Speier), Stats. 2001, c. 441 and SB 1852 (Senate Judiciary Committee), Stats. 2006, c. 538, and SB 44 (Torlakson), Stats. 2006, c. 623.

DIVISION 11. RULES OF THE ROAD

Chapter 12. Public Offenses

ARTICLE 1. DRIVING OFFENSES

23112.7. (a) (1) A motor vehicle used for illegal dumping of waste matter on public or private property is subject to impoundment pursuant to subdivision (c).

(2) A motor vehicle used for illegal dumping of harmful waste matter on public or private property is subject to impoundment and civil forfeiture pursuant to subdivision (d).

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Illegal dumping" means the willful or intentional depositing, dropping, dumping, placing, or throwing of any waste matter onto public or private property that is not expressly designated for the purpose of disposal of waste matter. "Illegal dumping" does not include the discarding of small quantities of waste matter related to consumer goods and that are reasonably understood to be ordinarily carried on or about the body of a living person, including, but not limited to, beverage containers and closures, packaging, wrappers, wastepaper, newspaper, magazines, or other similar waste matter that escapes or is allowed to escape from a container, receptacle, or package.

(2) "Waste matter" means any form of tangible matter described by any of the following:

(A) All forms of garbage, refuse, rubbish, recyclable materials, and solid waste.

(B) Dirt, soil, rock, decomposed rock, gravel, sand, or other aggregate material dumped or deposited as refuse.

(C) Abandoned or discarded furniture; or commercial, industrial, or agricultural machinery, apparatus, structure, or other container; or a piece, portion, or part of these items.

(D) All forms of liquid waste not otherwise defined in or deemed to fall within the purview of Section 25117 of the Health and Safety Code, including, but not limited to, water-based or oil-based paints, chemical solutions, water contaminated with any substance rendering it unusable for irrigation or construction, oils, fuels, and other petroleum distillates or byproducts.

(E) Any form of biological waste not otherwise designated by law as hazardous waste, including, but not limited to, body parts, carcasses, and any associated container, enclosure, or wrapping material used to dispose these matters.

(F) A physical substance used as an ingredient in any process, now known or hereafter developed or devised, to manufacture a controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code, or that is a byproduct or result of the manufacturing process of the controlled substance.

(3) "Harmful waste matter" is a hazardous substance as defined in Section 374.8 of the Penal Code; a hazardous waste as defined in Section 25117 of the Health and Safety Code; waste that, pursuant to Division 30 (commencing with Section 40000) of the Public Resources Code, cannot be disposed in a municipal solid waste landfill without special handling, processing, or treatment; or waste matter in excess of one cubic yard.

(c) (1) Whenever a person, who has one or more prior convictions of Section 374.3 or 374.8 of the Penal Code that are not infractions, is convicted of a misdemeanor violation of Section 374.3 of the Penal Code, or of a violation of Section 374.8 of the Penal Code, for illegally dumping waste matter or harmful waste matter that is committed while driving a motor vehicle of which he or she is the registered owner of the vehicle, or is the registered owner's agent or employee, the court at the time of sentencing may order the motor vehicle impounded for a period of not more than six months.

(2) In determining the impoundment period imposed pursuant to paragraph (1), the court shall consider both of the following factors:

(A) The size and nature of the waste matter dumped.

(B) Whether the dumping occurred for a business purpose.

(3) The cost of keeping the vehicle is a lien on the vehicle pursuant to Chapter 6.5 (commencing with Section 3067) of Title 14 of Part 4 of Division 3 of the Civil Code.

(4) Notwithstanding paragraph (1), a vehicle impounded pursuant to this subdivision shall be released to the legal owner or his or her agent pursuant to subdivision (b) of Section 23592.

(5) The impounding agency shall not be liable to the registered owner for the release of the vehicle to the legal owner or his or her agent when made in compliance with paragraph (4).

(6) This subdivision does not apply if there is a community property interest in the vehicle that is owned by a person other than the defendant and the vehicle is the only vehicle available to the defendant's immediate family that may be operated on the highway with a class A, class B, or class C driver's license.

(d) (1) Notwithstanding Section 86 of the Code of Civil Procedure and any other provision of law otherwise prescribing the jurisdiction of the court based upon the value of the property involved, whenever a person, who has two or more prior convictions of Section 374.3 or 374.8 of the Penal Code that are not infractions, is charged with a misdemeanor violation of Section 374.3 of the Penal Code, or of a violation of Section 374.8 of the Penal Code, for illegally dumping harmful waste matter, the court with jurisdiction over the offense may, upon a motion of the prosecutor or the county counsel in a criminal action, declare a motor vehicle if used by the defendant in the commission of the violation, to be a nuisance, and upon conviction order the vehicle sold pursuant to Section 23596, if the person is the registered owner of the vehicle or the registered owner' s employee or agent.

(2) The proceeds of the sale of the vehicle pursuant to this subdivision shall be distributed and used in decreasing order of priority, as follows:

(A) To satisfy all costs of the sale, including costs incurred with respect to the taking and keeping of the vehicle pending sale.

(B) To the legal owner in an amount to satisfy the indebtedness owed to the legal owner remaining as of the date of the sale, including accrued interest or finance charges and delinquency charges.

(C) To recover the costs made, incurred, or associated with the enforcement of this section, the abatement of waste matter, and the deterrence of illegal dumping.

(3) A vehicle shall not be sold pursuant to this subdivision in either of the following circumstances:

(A) The vehicle is owned by the employer or principal of the defendant and the use of the vehicle was made without the employer's or principal's knowledge and consent, and did not provide a direct benefit to the employer's or principal's business.

(B) There is a community property interest in the vehicle that is owned by a person other than the defendant and the vehicle is the only vehicle available to the defendant's immediate family that may be operated on the highway with a class A, class B, or class C driver' s license.

As added by AB 2253 (Hancock), Stats. 2006, c. 765.

23115. (a) No vehicle transporting garbage, swill, used cans or bottles, wastepapers, waste cardboard, ashes, refuse, trash, or rubbish, or any noisome, nauseous, or offensive matter, or anything being transported for disposal or recycling shall be driven or moved upon any highway unless the load is totally covered in a manner that will prevent the load or any part of the load from spilling or falling from the vehicle.

(b) Subdivision (a) does not prohibit a rubbish vehicle from being without cover while in the process of acquiring its load if no law, administrative regulation, or local ordinance requires that it be covered in those circumstances.

(c) Vehicles transporting wastepaper, waste cardboard, or used cans or bottles, are in compliance with subdivision (a) if appropriate binders including, but not limited to, bands, wires, straps, or netting are used to prevent the load, or any part of the load, from spilling or falling from the vehicle.

(d) This section does not apply to any vehicle engaged in transporting wet waste fruit or vegetable matter, or waste products to or from a food processing establishment.

As added by Stats. 1959, c. 3, and amended by Stats. 1975, c. 1166, and Stats. 1988, c. 1486, and SB 624 (Soto), Stats. 2001, c. 279.

DIVISION 13. TOWING AND LOADING EQUIPMENT

Chapter 5. Transporting Other Loads

ARTICLE 8. WASTE TIRES

(Article 8 as added by AB 2108 (Mazzoni), Stats. 1996, c. 304)

31560. (a) Any person operating a vehicle, or combination of vehicles, in the transportation of waste tires, as defined in Section 42950 of the Public Resources Code, shall be registered with the California Integrated Waste Management Board, unless specifically exempted, as provided in Chapter 19 (commencing with Section 42950) of Part 3 of Division 30 of the Public Resources Code and in regulations adopted by the board to implement that chapter.

(b) It is unlawful and constitutes an infraction for any person engaged in the transportation of waste tires to violate any provision of this article or Section 42951 of the Public Resources Code.

As added by AB 2108 (Mazzoni), Stats. 1996, c. 304, and amended by SB 649 (Senate Environmental Quality Committee), Stats. 2002, c. 625.

RESOLUTIONS

2001 RESOLUTIONS

AJR 4 (LESLIE), STATS. 2001, R. 76
BIOMASS POWER FACILITIES

WHEREAS, California is suffering an energy crisis during the winter of 2001 that threatens to adversely affect the health and safety of Californians through the summer of 2001; and

WHEREAS, Each year in California about 80 million tons of biomass waste are generated from municipal, industrial, agricultural, forestry, and government operations. Most of these materials are currently disposed of via landfills or open-air burning instead of being used for clean energy production; and

WHEREAS, California's biomass-to-energy industry provides a safe and environmentally sound means of converting organic wastes to green energy in a renewable cycle; and

WHEREAS, At least 14 of California's 29 biomass-to-energy facilities depend on wood waste derived from fire hazard reduction, thinning, and forest product manufacturing activities for their fuel supply; and

WHEREAS, Combined, these facilities represent a generating capacity exceeding 260 megawatts, which is enough electricity to serve the needs of more than 300,000 households; and

WHEREAS, It is in the general interest of the state to encourage the continued conversion of biomass-to-energy power generation; and

WHEREAS, Approximately 37 percent of California is comprised of public and private forest lands with 54 percent of those forest lands owned by the federal government; and

WHEREAS, The long-term viability of green biomass-to-energy power generation is dependent on a reliable and adequate biomass waste fuel supply; and

WHEREAS, The unanimous passage of Assembly Joint Resolution No. 69 by the California State Legislature in 2000, called for the establishment of a cohesive strategy to reduce the overabundance of forest fuels and high risk of catastrophic wildfire; now, therefore, be it

RESOLVED, by the Assembly and Senate of the State of California, jointly, That in the interest of ensuring the long-term viability of green biomass-to-energy power generation in our state, the Legislature of the State of California hereby respectfully memorializes the United States Forest Service, the Congress, and the President of the United States to recognize the importance of the biomass industry in California, and to undertake discrete experiments and pilot projects that will reduce fuel loading in the Sierra Nevada and elsewhere in California while at the same time exploring a variety of new generation and fuel transport techniques that are ecologically sound and that are, or will become, cost-effective both for the generation of electricity and the reduction of fire risk ; and be it further

RESOLVED, That the Legislature of the State of California hereby respectfully memorializes the United States Forest Service, Bureau of Land Management, National Park Service, and Environmental Protection Agency to recognize environmental benefits including improved air quality, decreased global-warming gases, and reduced threat of catastrophic forest fires that energy production from biomass waste can provide; and be it further

RESOLVED, That the Legislature of the State of California, in the interest of public health and safety, hereby respectfully memorializes the Congress to encourage the continued operation of the existing biomass-to-energy industry by taking the reasonable measures necessary, including the consideration of tax incentives, to increase the availability and reduce the cost of biomass wastes diverted to powerplants for use as renewable energy or fuels; and be it further

RESOLVED, That the Legislature of the State of California hereby respectfully memorializes the United States Forest Service to utilize an appropriate mix of fire suppression activities and forest management methodologies, including selective thinning, selective harvesting, grazing, the removal of excessive ground fuels, and small-scale prescribed burns, including increased private, local, and state contracts for prefire treatments on lands in the Sierra Nevada national forests of California; and be it further

RESOLVED, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives of the United States, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Environmental Protection Agency, the Chief of the United States Forest Service, the Director of the National Park Service, the Director of the Bureau of Land Management, and each Senator and Representative from California in the Congress of the United States.

1994 RESOLUTIONS

ACR 139 (W. BROWN), STATS. 1994, R. 122
BIODEGRADABLE PLASTICS

WHEREAS, Due to its convenience, adaptability and low cost, plastic is a ubiquitous material in modern life, and a variety of plastic materials are used to make a vast array of products; and

WHEREAS, According to the 1993 Annual Report of the California Integrated Waste Management Board, more than 2.6 million tons of plastics are disposed of annually in California, and less than 3 percent of this amount is recycled; and

WHEREAS, Many products made from plastics are designed to be disposed of after limited use, rather than being reused or recycled; and

WHEREAS, Despite the technical capability for some products containing plastics to be recycled, the vast majority

of those products cannot be recycled conveniently by consumers; and

WHEREAS, The improper disposal of plastics can damage the environment and pose life-threatening hazards to birds, fish, and other wildlife; and

WHEREAS, Plastic materials that are degradable by exposure to earth, water, or sunlight have been developed for a wide variety of commercial applications; and

WHEREAS, State and local governments are the single largest purchasers in the state, accounting for approximately 8 percent of California's gross product; and

WHEREAS, The state has established programs to increase state purchasing of products made with recycled materials, including plastic, but there is no specific program to encourage state purchasing of biodegradable plastics; now therefore, be it

RESOLVED by the Assembly of the State of California, the Senate thereof concurring, That state agencies act expeditiously to increase their purchase of biodegradable plastics to the maximum extent feasible; and be it further

RESOLVED, That the California Integrated Waste Management Board and other appropriate state agencies analyze the efficacy of biodegradable plastics, including an analysis of potential impacts resulting from the mixing of biodegradable plastic resins with other plastic resins, as one means of reducing the state's solid waste stream and protecting public health and safety and the environment; and be it further

RESOLVED, That the board adopt standards and specifications, as appropriate, for biodegradable plastics to ensure that the state continues to benefit from new technological development of those plastics; and be it further

RESOLVED, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor, the California Integrated Waste Management Board, and the Office of Procurement within the Department of General Services.

1993 RESOLUTIONS

ACR 57 (EASTIN), STATS. 1993, R. 104
CALIFORNIA MATERIALS EXCHANGE PROGRAM

WHEREAS, The California Materials Exchange Program (CALMAX) was created by the California Integrated Waste Management Board in l991 to encourage participation by the general public, business, government, and industry in all phases of integrated waste management; and

WHEREAS, The program has successfully completed its first year of operation; and

WHEREAS, The program provides a forum for the exchange of reusable materials between businesses, thereby diverting over ll0,000 tons of materials that would otherwise be disposed of at landfills; and

WHEREAS, The program has gained wide acceptance and visibility as an unprecedented "direct action" program by participants and colleagues in the field for its efforts in waste management; and

WHEREAS, The program has been commended nationally by other exchange programs for its pioneering implementation of the first materials exchange program in the world to exclusively target nonhazardous solid waste; and

WHEREAS, The program has successfully demonstrated its role in stimulating markets for recyclable materials, and has been a successful vehicle whereby businesses can access inexpensive or free feedstock; and

WHEREAS, The program is the primary alternative provided by the board to business and industry to help meet the goals of the California Integrated Waste Management Act of 1989; now, therefore, be it

RESOLVED by the Assembly of the State of California, the Senate thereof concurring, That the Legislature commends the California Integrated Waste Management Board for establishing the California Materials Exchange Program; and extends to the board sincere appreciation for a program that contributes dynamically to the reduction of solid waste and the stimulation of markets for recyclable materials; and be it further

RESOLVED, That the Chief Clerk of the Assembly transmit copies of this resolution to the members of the California Integrated Waste Management Board.

AJR 32 (BORNSTEIN), STATS. 1993, R. 80
SOLID WASTE: TAXATION

WHEREAS, Under federal tax policy, solid waste disposal facilities are eligible for tax-exempt financing, but facilities utilizing recovered materials are not; and

WHEREAS, The special tax treatment of solid waste disposal facilities may discourage the siting and construction of facilities utilizing recovered materials in favor of solid waste disposal facilities; and

WHEREAS, The preferential tax treatment for solid waste disposal facilities contradicts the Environmental Protection Agency's Solid Waste Management Hierarchy, which favors source reduction, reuse, and recycling activities over disposal activities in an integrated waste management strategy; and

WHEREAS, Federal tax policy also determines eligibility for California Pollution Control Financing Authority (CPCFA) financing, and facilities utilizing recovered materials are currently ineligible for that financing; and

WHEREAS, one method to make facilities utilizing recovered materials eligible for CPCFA tax-exempt financing is to modify their federal tax status to allow those facilities utilizing at least 50 percent secondary materials, whether they are manufacturing, processing, or collection facilities, to be eligible for tax-exempt financing equivalent to the tax-exempt financing available to entities operating under the solid waste facilities tax exemption; now, therefore, be it

RESOLVED by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California urges that the federal definition of solid waste facilities for tax treatment purposes be modified to allow facilities utilizing recovered materials to be eligible for tax-exempt financing; and be it further

RESOLVED, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

1992 RESOLUTIONS

AJR 70 (EASTIN), STATS. 1992, R. 79
FEDERAL TAX SUBSIDIES: RECYCLED AND VIRGIN MATERIALS

WHEREAS, Public support has generated remarkable growth in glass, metal, and paper recycling; and

WHEREAS, Special tax treatment for virgin materials may decrease the use of recycled materials; and

WHEREAS, Federal tax laws presently allow a mining firm to deduct a fixed percentage of annual gross income from the sale of minerals as a business expense when computing takes and to deduct or defer development and exploration expenditures in connection with mineral mining; and

WHEREAS, Glass is made primarily from minerals, such as silica sand, feldspar, limestone, and natural soda ash; and

WHEREAS, Special tax treatment provided to a mining firm improves cash flow, reduces the present value of taxes paid, and could be considered an interest-free loan from government, which may favor use of virgin mineral and metal resources over recycled glass or metal; and

WHEREAS, Federal tax laws presently allow private timber growers to (1) amortize forestation or reforestation expenditures, including seed, labor, and equipment costs, up to ten thousand dollars ($10,000) per year over a seven-period, (2) receive a special 10 percent tax credit for direct reforestation costs, and (3) distribute interest for capital costs over the entire timber production period; and

WHEREAS, The federal government assists the timber industry by selling timber on federal land at below costs, in some instances, thereby possibly resulting in below-cost wood pulp, and by providing technical assistance programs designed to improve timber management, including, for example, insect and disease control and fire protection; and

WHEREAS, Paper is made from wood pulp, which comes from timber; and

WHEREAS, Special tax treatment provided to a timber grower defers taxes to the future, improves cash flow, reduces timber prices, and could be considered a no-interest, long-term government loan, which may favor use of virgin timber resources over recycled paper and newsprint; and

WHEREAS, The sale of national forest timber rights at prices far below their actual value also curtails use of recycled paper; and

WHEREAS, Special tax treatment shifts a portion of the cost of obtaining virgin materials from the consumer to the taxpayer and, therefore, makes virgin materials appear less costly in the marketplace than they really are; and

WHEREAS, Virgin material producers enjoy tax benefits not available to recycled materials, thus creating some inefficiency in the market; and

WHEREAS, Any increase in the use of recycled materials in manufactured products requires a level playing field with virgin materials; and

WHEREAS, The estimated cost to the federal government for special tax treatment for virgin timber and minerals alone was eight hundred four million dollars ($804,000,000) for fiscal year 1989, according to the Congressional Office of Technology Assessment; and

WHEREAS, One method to increase the use of recycled materials in manufacturing processes is to provide tax incentives to motivate industries to substitute recycled materials for virgin materials; now, therefore, be it

RESOLVED by the Assembly and the Senate of the State of California, jointly, That the federal government level the playing field for recycled materials used in product manufacturing by (1) phasing out tax subsidies for specified virgin materials, (2) taxing specified virgin materials contained in selected items, (3) providing tax advantages for recycled materials used in manufacturing products, or (4) any combination of these measures; and be it further

RESOLVED, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

AJR 101 (SHER), STATS. 1992, R. 128
RESOURCE CONSERVATION AND RECOVERY ACT: REAUTHORIZATION: SOLID WASTE

WHEREAS, Pending federal legislation related to the reauthorization of the Resource Conservation and Recovery Act (RCRA) has the potential of preempting the California Integrated Waste Management Act of 1989 and, if enacted, would force California cities and counties to revise their integrated waste management plans in order to meet new federal specifications; and

WHEREAS, The California Integrated Waste Management Act of 1989 includes the same waste diversion goals as those contemplated in the proposed federal legislation: 25 percent diversion of solid waste from landfills by 1995 and 50 percent diversion by the year 2000; and

WHEREAS, At least $30 million has already been spent by local governments since the California Integrated Waste Management Act of 1989 became law in developing local plans to meet state regulatory requirements; and

WHEREAS, The proposed RCRA reauthorization specifies actual diversion programs which conflict with those programs which are mandated in the California Integrated Waste Management Act of 1989; and

WHEREAS, Forcing California cities and counties to comply with the federal diversion programs would cause local governments and the State of California to spend millions of additional dollars in order to meet proposed new planning requirements; and

WHEREAS, New federal requirements to meet similar goals would force local governments to spend funds for additional unnecessary planning, instead of for programs

which are needed for the implementation of the solid waste diversion programs, including programs to "reduce, reuse, and recycle"; and

WHEREAS, The California Integrated Waste Management Board, the California State Association of Counties, the League of California Cities, the Solid Waste Association of North America, and the Southern California Association of Governments have jointly requested the California Congressional Delegation to seek amendments to grandfather the California Integrated Waste Management Act of 1989 into the RCRA reauthorization; now, therefore, be it

RESOLVED by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to recognize that the overall goals of both the federal and state programs are similar, and to allow the planning provisions of the California Integrated Waste Management Act of 1989 to supersede the provisions of the RCRA reauthorization; and be it further

RESOLVED, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

1991 RESOLUTIONS

SCR 17 (MORGAN), STATS. 1991, R. 54
CALIFORNIA MARINE DEBRIS ACTION PLAN

WHEREAS, The California coast is one of the most magnificent coastlines in the world, providing a habitat for abundant and diverse species of marine mammals, fish, and birds, including several endangered species; and

WHEREAS, The coastal environment supports crucial economic resources important to all Californians, including a renewable commercial and sportfishing industry, and an annual multimillion dollar tourist and recreation industry; and

WHEREAS, Marine debris threatens fishing and boating safety due to plastic rope and line fouling propellers and plastic bags and sheeting clogging seawater intakes and evaporators, possibly stranding a mariner at sea as well as causing engine failures, costly repairs, and annoying delays; and

WHEREAS, Marine wildlife becomes entangled and ingests marine debris which often leads to death; and

WHEREAS, Marine debris poses hazards for marine recreational users because divers become entangled in nearly invisible ghost nets and beach users step on broken glass and may encounter syringes; and

WHEREAS, Marine debris profoundly diminishes the pristine, scenic quality of the coastline and could lead to a serious decline in tourism and recreational activities; and

WHEREAS, Approximately 140 million people visit California's beaches each year; and

WHEREAS, Marine debris is a serious problem in California and will likely worsen with population increases along the coast; and

WHEREAS, Marine debris transcends borders and washes into critical marine wildlife habitats, including the Point Reyes National Seashore, Ano Nuevo State Reserve, and the Channel Islands National Marine Sanctuary; and

WHEREAS, Marine debris is costly for coastal communities to clean off the beach, with Los Angeles County alone having spent over $5 million in 1989 to clean its beaches, and the cost continues to increase; and

WHEREAS, A diverse cross-section of government agencies, industry, educational representatives, scientists, citizen organizations, and concerned individuals worked together to develop the California Marine Debris Action Plan, which includes recommendations for state agency action on eliminating marine debris from the California coastline; now, therefore, be it

RESOLVED by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California supports the recommendations made in the California Marine Debris Action Plan; and be it further

RESOLVED, That the Secretary of the Senate transmit copies of this resolution to the Governor and to the Secretary of Environmental Affairs.

SCR 27 (VUICH), STATS. 1991, R. 71
WASTE: AGRICULTURAL AND URBAN: TRANSFORMATION

WHEREAS, Various federal and state laws regulate the agricultural industry and provide for waste management; and

WHEREAS, Wastes from plants and animals, derived either in urban or rural areas, are like in character, and, with present technology, may be transformed to usable renewable commodities through hydrolysis, fermentation, distillation, composting, or anaerobic digestion; and

WHEREAS, Over 50 million tons of urban waste is generated annually in the state, 7.5 million tons of which is of plant origin that is disposed at landfill sites; and

WHEREAS, Over 10.5 million tons of agricultural waste is produced annually in the state, over 1.2 million tons of which is disposed by field burning; and

WHEREAS, Over 500,000 tons of sewage sludge is generated annually in the state, 60 percent of which is disposed at landfill sites and 12 percent is applied as agricultural soil amendments; and

WHEREAS, Anaerobic digestion of animal waste or sewage sludge reduces the risk of pathogenic exposure and water contamination and produces recoverable fuel, including methane, and high-grade nutrient rich organic fertilizer usable on plants that are not used for food; and

WHEREAS, The development of integrated infrastructures to transform these wastes would reduce the amount of waste disposed at landfill sites, reduce field burning, and lead to greater production of organic fertilizers; and

WHEREAS, The transformation of these wastes in rural areas would encourage the producers of agricultural products to grow feedstock to supplement transformation and further reduce dependence on federal subsidy programs; and

WHEREAS, The disposal of urban waste of plant or animal origin at landfill sites is subject to tipping charges and the costs of collecting agricultural waste often exceed the market price of a transformed commodity; and

WHEREAS, Linking the transformation processes, utilizing both urban and rural plant or animal waste, offsets collection and transformation costs of like commodities for conversion to valuable, renewable resources; and

WHEREAS, The application of technology and techniques to develop new uses of these commodities and their transformation processes would lead to creation of goods and services that may be marketed for profit as renewable resources that could create new jobs in the rural areas and favorably impact on the quality of life in this state; now, therefore, be it

RESOLVED by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California requests the Department of Food and Agriculture, as the lead agency, to develop an adaptive strategy for the utilization of agricultural waste and urban plant and animal wastes for the purpose of developing new commodities, that are not usable for food or feed, for widespread commercial use. The adaptive strategy shall include, but not be limited to, the following:

(a) The Legislature requests the Director of Food and Agriculture, in consultation with the Secretary of Environmental Affairs, to determine which urban wastes have like characteristics as agricultural wastes.

(b) The Department of Food and Agriculture may request funding for research, development, and demonstration projects in the Budget Act and from all federal grant sources, including requests for grants from alternative agricultural research and commercialization programs, the production and marketing of alcohols and industrial hydrocarbons from agricultural commodities and forest products programs, biomass energy demonstration projects, and composting research and extension programs, as provided by federal law.

(c) The Legislature requests the department, in cooperation with growers, waste handlers, and others, to demonstrate technologies that convert urban and agricultural wastes to usable, renewable commodities and that reduce the volume of organic material disposed at landfill sites and field burning; and be it further

RESOLVED, That for purposes of this measure, "agricultural wastes" means solid wastes of plant or animal origin that result from the production and processing of agricultural products, including manures, orchard and vineyard prunings, and produce residues; and be it further

RESOLVED, That the Secretary of the Senate transmit a copy of this resolution to the Director of Food and Agriculture.

EXCERPTS FROM UNCODIFIED LAW

2006 UNCODIFIED LAW

AB 1535 (NÚÑEZ), STATS. 2006, C. 437

Notwithstanding Provision (19) of Item 6110-485 of Section 2.00 of the Budget Act of 2006 (Ch. 47, Stats. 2006), the funds reappropriated in that provision shall be available to school districts, charter schools, and county offices of education for equipment, supplies, and professional development related to the establishment and operation of a three-year instructional school garden program pursuant to Article 8.5 (commencing with Section 51795) of Chapter 5 of Part 28 of the Education Code.

AB 2449 (LEVINE), STATS. 2006, C. 845

(a) The Legislature finds and declares all of the following:

(1) On a global level, the production of plastic bags has significant environmental impacts each year, including the use of over 12 million barrels of oil, and the deaths of thousands of marine animals through ingestion and entanglement.

(2) Each year, an estimated 500 billion to 1 trillion plastic bags are used worldwide, which is over one million bags per minute, and of which billions of bags end up as litter each year.

(3) Most plastic carryout bags do not biodegrade which means that the bags break down into smaller and smaller toxic bits that contaminate soil and waterways and enter into the food web when animals accidentally ingest those materials.

(b) It is the intent of the Legislature, in enacting Chapter 5.1 (commencing with Section 42250) Part 3 of Division 30 of the Public Resources Code, to encourage the use of reusable bags by consumers and retailers and to reduce the consumption of single-use bags.

SB 1305 (FIGUEROA), STATS. 2006, C. 64

The Legislature finds and declares all of the following:

(a) The development of a safe, convenient, and cost-effective infrastructure for the collection of millions of home-generated sharps, and the public education programs to promote safe disposal of these sharps, will require a cooperative effort by the State Department of Health Services, the California Integrated Waste Management Board, local governments, large employers, dispensing pharmacies, as well as health care, solid waste, pharmaceutical industries, and manufacturers of sharps.

(b) Since mail-back programs utilizing containers that have been approved by the United States Postal Service offer one of the most convenient alternatives for the collection and destruction of home-generated sharps, local government and private sector stakeholders are encouraged to implement mail-back programs and to promote their use prior to September 1, 2008.

(c) Local governments, the California Integrated Waste Management Board, the State Department of Health Services, solid waste service providers, and manufacturers and dispensers of sharps are further encouraged to include information on their Web sites, and other public materials, that identify locations that accept home-generated sharps and provide information about available mail-back programs.

(d) It is the intent of the Legislature that the California Integrated Waste Management Board and the State Department of Health Services, to the extent resources are available, continue to monitor the state's progress in developing the infrastructure for the collection of home-generated sharps and inform the appropriate policy committees of any need for subsequent legislation to achieve the purposes of this act.

2005 UNCODIFIED LAW

AB 338 (LEVINE), STATS. 2005, C. 709

The Legislature finds and declares all of the following:

(a) Thirty-two million scrap tires are currently generated in California each year.

(b) By the year 2020, more than 43,000,000 scrap tires will be generated each year in California.

(c) There are currently up to 6,000,000 tires in legal and illegal scrap tire piles.

(d) Twenty-five percent of California scrap tires, more than 8,000,000 tires, are disposed of in landfills or stockpiled in legal or illegal dumps.

(e) Crumb rubber from recycled scrap tires can be used as an additive for making asphalt for highway construction and repair.

(f) It is state policy to not discard scrap tires in landfills or legal or illegal stockpiles, and to find alternative uses for recycling tires that have been generated in California.

It is the intent of the Legislature that the Department of Transportation explore all feasible means to stimulate increased usage of crumb rubber throughout the 12 regional districts to help expand the marketplace for crumb rubber in the state.

2004 UNCODIFIED LAW

AB 1353 (MATTHEWS), STATS. 2004, C. 597

On or before June 1, 2006, the Senate Office of Research, in consultation with appropriate agencies, shall review and make findings regarding policy options concerning treated wood products.

AB 2176 (MOÑTANEZ), STATS. 2004, C. 879

(a) The Legislature finds and declares all of the following:

(1) Effective resource management techniques include preventing the creation of waste through conscientious purchasing of materials, buying recyclable, reusable,

compostable, and recycled-content products, and reusing materials and goods, as well as resource recovery through recycling and composting.

(2) Experience in this state and others demonstrates that effective resource management conserves natural resources and reduces the need for additional landfill capacity.

(3) Experience also demonstrates that large venues and large events generate substantial quantities of solid waste, primarily corrugated cardboard, food waste, and compostables such as animal bedding; and reusable and recyclable materials such as beverage containers, paper, and glass.

(4) The community conservation corps has originated innovative recycling programs through partnerships formed with an assortment of schools, public agencies, and local organizations. These partnerships supplement existing services, further state and county waste studies, and assist in establishing conservation goals.

(b) Accordingly, it is the intent of the Legislature, in enacting this act, to do all of the following:

(1) Encourage increased opportunities for effective resource management for all consumers through implementation or reduction, reuse, and recycling plans for large venues and large events, including, but not limited to, large private, nonprofit, or publicly owned stadiums, sports arenas, theaters, halls, amusement parks, zoos, airports, fairgrounds, museums, and other large venue businesses.

(2) Make effective solid waste reduction, reuse, and recycling opportunities available and convenient to consumers, and urge cities and counties to adopt ordinances that facilitate solid waste reduction, reuse, and recycling opportunities at large venues and events, to enhance the overall success of solid waste reduction, reuse, and recycling in the state.

(3) Create a mechanism to aid cities and counties in complying with waste diversion requirements set forth in the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000) of the Public Resources Code).

(4) Encourage operators of large venues and large events to meet with their local agency's recycling coordinator, or other official designated by a local agency, community conservation corps, recyclers, or the solid waste enterprise providing solid waste handling, whether by exclusive franchise with the local agency or by a permit, contract, or nonexclusive franchise, to do all of the following:

(A) Determine the solid waste reduction, reuse, and recycling programs that are appropriate for the large venue or large event.

(B) Develop solid waste reduction, reuse, and recycling rates, and a plan that would achieve those solid waste reduction, reuse, and recycling rates.

(C) Determine a timeline for implementation of the solid waste reduction, reuse, and recycling plan and solid waste reduction, reuse, and recycling rates.

(5) Encourage operators of large venues and large events to include solid waste reduction, reuse, and recycling elements in their design and operating plans, including, but not limited to, adequate space for waste reduction, reuse, and recycling activities, developing partnerships with community groups to encourage reuse of materials, when appropriate, and negotiating solid waste handling and recycling contracts that promote waste reduction, reuse, and recycling.

(6) Encourage operators of large venues and large events to purchase recyclable, reusable, compostable, and recycled-content products.

AB 2277 (DYMALLY), STATS. 2004, C. 880

The Legislature finds and declares all of the following:

(a) Chapter 3.5 (commencing with Section 42160) of Part 3 of Division 30 of the Public Resources Code was enacted in 1991 to divert large metallic discards, including major appliances and vehicles, from landfills and to ensure that hazardous materials, defined as "materials that require special handling," are removed from metallic discards before they are crushed or shredded for metals recycling.

(b) A May 2004 report by the California Research Bureau, "Appliance Recycling and Materials Requiring Special Handling: Improving the Effectiveness of the Metallic Discards Act," finds that "there are likely widespread violations" of the requirement to remove materials that require special handling from appliances, and that compliance is probably weakest for removal of mercury switches and thermostats and PCB capacitors.

(c) The report finds that there is strong circumstantial evidence that violations of Chapter 3.5 (commencing with Section 42160) of Part 3 of Division 30 of the Public Resources Code lead to the release of harmful substances into the environment. The failure to remove hazardous materials from appliances before they are crushed or shredded for metals recycling results in the combustion of mercury, PCBs, and other hazardous materials in thermal combustion units and the release of these contaminants to land, water, and air.

(d) The report also finds that there are strong incentives for appliance recyclers not to comply with the law, including a lack of inspection and enforcement at appliance recycling facilities and an inability of enforcement agencies to know which facilities are processing appliances for metals recycling. The report recommends that accountability under the act be improved by requiring appliance processors to be licensed and requiring shredders only to accept appliances from licensed parties that certify that materials that require special handling have been removed.

SB 50 (SHER), STATS. 2004, C. 863

(a) The Director of Finance shall transfer, as a loan, up to five million dollars ($5,000,000) from the General Fund, and up to twenty-five million dollars ($25,000,000) from any special fund authorized by law, to the California Integrated Waste Management Board, to implement the changes made to the Electronic Waste Recycling Act by the act adding this section.

(b) Any loan made pursuant to this section shall be repaid on or before November 1, 2005, and shall be repaid prior to making any expenditures pursuant to paragraph (1), (2), (3) or (4) of subdivision (a) of Section 42476 of the Public Resources Code.

SB 1362 (FIGUEROA), STATS. 2004, C. 157

The Legislature hereby finds and declares all of the following:

(a) Every year more than 2 billion needles and syringes are used outside of healthcare settings.

(b) Most of these needles are improperly stored and then are placed into either municipal trash or recycling containers, thereby posing serious health risks to children, workers, and the general public.

(c) Although California has enacted the nation's most comprehensive hazardous and medical waste statutes, those statutes do not provide an adequate framework for programs to safely collect and destroy the millions of needles generated each year by California households.

(d) Accordingly, it is the intent of the Legislature in enacting this act to authorize local agencies to expand the scope of their existing household hazardous waste plans to provide for the safe management of sharps waste.

(e) This act shall be known and may be cited as the Safe Needle Disposal Act of 2004.

2003 UNCODIFIED LAW

AB 844 (NATION), STATS. 2003, C. 645

(a) The Legislature finds and declares all of the following:

(1) Substantial evidence indicates that replacement tires for passenger cars and light trucks are less energy efficient, on average, than tires installed as original equipment.

(2) Improving the energy efficiency of replacement tires for California's passenger and light truck fleet could yield significant economic and environmental benefits without affecting vehicle performance or safety, while also reducing California's vulnerability to oil price increases.

(3) There are strong indications that technologies are available to make replacement tires more energy efficient and longer lasting.

(4) According to a January 2003 report by the State Energy Resources Conservation and Development Commission, titled "California State Fuel Efficient Tire Report: Volume 1," energy efficient tires have the potential to significantly reduce fuel consumption by California drivers, resulting in significant cost and fuel savings. According to the report, adequate tire pressure will also promote fuel savings, and a specified tire testing procedure developed by the Society of Automotive Engineers should be used to measure the fuel efficiency of tires.

(b) It is the intent of the Legislature to provide the statutory framework to ensure that replacement tires sold in California are at least as energy efficient, on average, as original-equipment tires.

(c) It is further the intent of the Legislature that the Replacement Tire Efficiency Program not increase the amount of scrap tires generated within California, nor negatively impact state efforts to manage scrap tires pursuant to the California Tire Recycling Act.

SB 20 (SHER), STATS. 2003, C. 526

The Legislature finds and declares all of the following:

(a) Electronic waste represents one of the fastest growing and hazardous components of California's waste stream.

(b) According to the United States Environmental Protection Agency, more than 4.3 million tons of appliances and consumer electronics were discarded in 1999.

(c) Due to the presence of toxic lead, mercury, or other hazardous or potentially hazardous materials in electronic waste, this waste poses a particular threat to public health and the environment when improperly discarded.

(d) A study conducted by the California Integrated Waste Management Board estimates that California households currently have more than 6,000,000 obsolete computer monitors and television sets "stockpiled" in their homes.

(e) A study for the National Safety Council projects that more than 10,000 computers and televisions become obsolete in California every day. The study further projects that three-quarters of all computers ever purchased in the United States remain stockpiled in storerooms, attics, garages, or basements.

(f) It is estimated that only 20 percent of obsolete computers and televisions are currently recovered for recycling.

(g) Electronic waste recovered for recycling, including devices from California public agencies, has been found to have been illegally handled and discarded in developing countries, posing a significant threat to public health, worker safety, and the environment in those countries.

(h) The collection, handling, and management of electronic waste that is currently recovered represents a costly and growing problem for local governments and nonprofit organizations, including Goodwill Industries and the Salvation Army.

(i) The high technology sector represents a vital and important part of California's economy.

(j) The system to reduce and recycle electronic waste established pursuant to this act should establish strict and enforceable requirements on all regulated entities while being cost-effective and providing flexibility to take advantage of the innovation of the high technology sector.

(k) The system should also ensure that the state will impose compliance obligations uniformly on all regulated entities to ensure that companies accepting their responsibilities are not penalized by the potential noncompliance of other companies.

(l) The system should also be scalable to national, international, and global systems to take into account obligations that may be imposed on manufacturers of hazardous electronic devices beyond those imposed under this act.

(m) The system should ensure that economically viable and sustainable markets are developed and supported for recovered materials and components in order to conserve

resources and maximize business and employment opportunities within California.

(n) The Governor has requested that the Legislature enact legislation in 2003 challenging industries to assume greater responsibility for the recycling and disposal of electronic waste, stating that "California needs a comprehensive and innovative state law that partners with product manufacturers, establishes recycling targets, and provides for the safe recycling and disposal of electronic wastes." The Governor further expressed support for a system that "provides incentives to design products that are less toxic and more recyclable."

The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

2002 UNCODIFIED LAW

AB 498 (CHAN), STATS. 2002, C. 575

The Legislature finds and declares all of the following:

(a) It is the policy of the state to protect human health and environmental well-being.

(b) The purpose of environmentally preferable purchasing is to protect human health and environmental well-being by reducing the procurement of goods and services that result in larger volumes of waste and pollutants.

(c) Goods and services, that result in reduced volumes of waste and pollutants, have additional value when considering future environmental and health costs.

(d) The state, through environmentally preferable purchasing, has the ability to protect human health and environmental well-being by promoting goods and services that result in reduced waste and pollutants.

(e) The Legislature declares that the responsibility of environmentally preferable purchasing shall be that of any agency that does procuring on behalf of the state.

(f) It is the intent of the Legislature, whenever economically feasible and as markets allow, to continually expand the policies of environmentally preferable purchasing in the daily operations of the state.

AB 1400 (COGDILL), STATS. 2002, C. 381

The Legislature finds and declares all of the following:

(a) The County of Mariposa, in cooperation with Yosemite National Park, are working to find a viable solution to divert, from landfill disposal, 50 percent of the region's generated solid waste, as required by the California Integrated Waste Management Act of 1989.

(b) The County of Mariposa and Yosemite National Park annually generate approximately 13,000 tons of mixed solid waste, 600 tons of biosolids, and 180,000 gallons of septage.

(c) The County of Mariposa and Yosemite National Park are proposing to secure a unique type of composting facility that would decompose mixed solid waste and would produce a dry, stable, and inert material.

On or before July 1, 2003, the County of Mariposa shall submit a report to the California Integrated Waste Management Board concerning the county's progress in funding, constructing, and operating a mixed solid waste composting facility in cooperation with Yosemite National Park. The report shall include, but need not be limited to, information regarding all of the following:

(a) Local, state, and federal requirements for the project, status of compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), and permits received.

(b) Technical and economic feasibility, and cost-effectiveness, of the project.

(c) Adverse environmental impacts of the project, and alternatives and mitigation measures for those impacts.

(d) Environmental and public policy benefits of the project, including, but not limited to, landfill avoidance, pollution prevention, and sustainability, including, but not limited to, information regarding whether the project is the most economical and environmentally sound method to divert 50 percent of all solid waste from landfill or transformation through source reduction, recycling, and composting, as required under paragraph (2) of subdivision (a) of Section 41780 of the Public Resources Code, and to exceed that requirement pursuant to subdivision (b) of Section 41780 of the Public Resources Code.

(e) Programs and projects to ensure that noncompostable materials will be properly reduced, reused, and recycled.

(f) Mariposa County and Yosemite National Park education programs for diverting solid waste from landfills.

This act shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

AB 2214 (KEELEY), STATS. 2002, C. 513

The Legislature finds and declares all of the following:

(a) Low-level radioactive waste generally is defined under federal and state laws as all radioactive waste other than spent reactor fuel, high level wastes from reprocessing spent fuel, certain high concentration wastes from nuclear weapons production, and uranium mill tailings. Low-level radioactive waste may include very long-lived materials, including plutonium-239, cesium-137, and strontium-90.

(b) In 1985, the federal Low-Level Waste Policy Amendments Act offered incentives to states to provide for the disposal of low-level radioactive waste, preferably through the establishment of regional compacts. California entered into the Southwestern Low-Level Radioactive Waste Disposal Compact (Section 115255 of the Health and Safety Code) in

1987 with the States of Arizona, North Dakota, and South Dakota. Under this compact, the state agreed to host a disposal facility for low-level radioactive wastes for the first 30 years

(c) Section (C) of Article 2 of the Southwestern Low-Level Radioactive Waste Disposal Compact defines the term "disposal" to mean the permanent isolation of low-level radioactive waste pursuant to requirements established by the Nuclear Regulatory Commission and the Environmental Protection Agency under applicable laws, or by a party state if that state hosts a disposal facility.

(d) Article 5 of the compact requires that a disposal facility shall be approved by the host state in accordance with its laws.

(e) In 1988, Ward Valley in San Bernardino County was selected as the proposed disposal site. Ward Valley is near the Colorado River, which is an important source of water for Arizona, Mexico, and California, providing a water supply to areas such as Blythe, the Imperial Valley, the Coachella Valley, and urban southern California. The design of the facility proposed the shallow land burial of containers of low-level radioactive waste.

(f) Ward Valley land is owned by the federal government and would have to be transferred to the state in order for the Ward Valley disposal facility to be constructed by the state's licensee. The state made significant efforts over a decade to obtain the land from the federal government. In 1999, the United States Bureau of Land Management formally denied the state's request to purchase the Ward Valley land for use as a low-level radioactive waste disposal site, citing, among other matters, questions about the suitability of the site and the extensive studies and tests that would be needed. The state and the state's licensee sued the federal government to require the federal government to transfer the land, but the court found in favor of the federal government.

(g) In the years since Ward Valley was selected as the disposal site, additional information has become available.

(h) There have been seven sites in the United States where commercial low-level radioactive wastes have been disposed. Radioactive materials have migrated in at least six of these sites, including one that has been designated as a site subject to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.), which is also known as the "Federal Superfund Act."

(i) There has been disagreement whether there is a hydrological connection between Ward Valley and the Colorado River. There also has been disagreement whether there is a potential for radioactive wastes disposed of at Ward Valley to contaminate the Colorado River. In 1984, the US Geological Survey found that the Ward Valley aquifer is a basin from which groundwater drains in the southerly direction toward the Colorado River.

(j) In 1993, the California Senate Office of Research released, "How Safe? Issues Raised by the Proposed Ward Valley Low-Level Radioactive Waste Facility." The report raised the following issues:

(1) the potential for waste migration and groundwater contamination, (2) the adequacy of shallow land burial as a disposal method, (3) the lack of consideration of measures to minimize waste disposal, (4) the understatement of the risks of the waste stream, (5) lack of a redundant system for waste containment, (6) the site operator's track record, (7) the potential for importation of out-of-compact wastes, and (8) problems with the low-level radioactive waste classification scheme.

(k) The Ward Valley site, subsequent to its selection as a prospective location for a radioactive waste disposal facility, was designated as critical habitat for the desert tortoise, a threatened species under the endangered species act.

(l) The Ward Valley land is considered sacred by several Native American tribes.

(m) In 2000, at the request of Governor Gray Davis, Richard Atkinson, President of the University of California, chaired a committee that prepared a report entitled, "Management and Disposal of California's Low-Level Radioactive Waste." The report described the four main options: (1) continue the status quo, (2) divide, manage, and dispose of the waste stream by half-life, allowing different criteria to be applied to the design and disposal for each type of waste, (3) build an "Assured Isolation Facility" with the commitment to monitor and maintain the facility until the wastes can be acceptably abandoned or managed in a different manner, and (4) design, site, license, and construct a new disposal facility or relicense an existing disposal facility as a low-level radioactive waste facility. The report did not make recommendations on which option should be adopted.

(n) In 2002, review of the state's licensee's application for renewal of the Ward Valley license was suspended by the State Department of Health Services pending the outcome of litigation related to the license. The department reserved its authority to review the request for renewal, including the requirement that the application for renewal be filed in a timely manner.

The Legislature further finds and declares all of the following:

(a) Given the many problems, concerns, and issues attached to the Ward Valley site and the lack of progress toward construction, it is an appropriate time for the state to reevaluate how it intends to provide for disposal of low-level radioactive waste and to carry out its fiduciary responsibilities to protect public health, the economy, and the environment.

(b) Because of the need to protect public health and the environment, it is appropriate for the state to (1) prohibit shallow land burial of low-level radioactive waste because of the potential for the migration of radioactive waste beyond the site and to groundwater, and (2) require that a facility be designed and constructed to permanently isolate the radioactive waste to protect public health and the environment.

(c) Because of the immense importance of the Colorado River to California, Arizona, and Mexico, it would be inappropriate for the State of California to further consider the proposed Ward Valley low-level radioactive waste disposal site. Thus a low-level radioactive waste disposal facility should be sited elsewhere.

(d) A low-level radioactive waste disposal facility should also be sited to comply with state and federal environmental laws and to recognize the importance of sacred Indian lands.

(e) The Nuclear Regulatory Commission has established standards for the management and disposal of low-level radioactive waste. The state enforces those standards through an agreement with the commission. These standards contain requirements, including the performance objectives for radiation exposure, for the design, operation, and closure of a near-surface disposal facility.

(f) The state may establish alternative standards for the design of a disposal facility, if those standards would, at a minimum, comply with the performance objectives for radiation exposure established by the Nuclear Regulatory Commission.

(g) It is the intent of the Legislature to establish standards for the disposal of low-level radioactive waste to permanently isolate low-level radioactive waste, with the goal of protecting public health and the environment.

AB 2356 (KEELEY), STATS. 2002, C. 591

The Legislature finds and declares the following:

(a) The California Integrated Waste Management Act of 1989 requires all cities and counties to develop source reduction, recycling, and composting programs to achieve a 50 percent reduction in the amount of solid waste disposed of in California. Local governments and waste haulers divert 6,000,000 tons of yard waste annually from landfills to composting facilities, making composting a principal means by which local governments meet the state's landfill diversion requirements.

(b) The success of the state's composting programs, and the economic viability of the California composting industry, are imminently threatened if residential, agricultural, commercial, and public users of compost lose confidence in the quality and safety of the product.

(c) During 2000 and 2001, the herbicide clopyralid was detected in compost produced at composting facilities in Spokane and at Washington State University.

(d) Sampling conducted by an independent laboratory at 29 compost facilities in California in 2002 found clopyralid in compost at 19 of the sites at levels up to 13 ppb. Sampling conducted at composting facilities operated by the Cities of Los Angeles and San Diego detected clopyralid levels as high as 28 ppb.

(e) In a March 6, 2002, statement before the California Integrated Waste Management Board, the department declared that "(R)esidue levels will not need to be at phytotoxic levels in order for (the department) to initiate regulatory action. DPR's goal is to prevent the problem from occurring."

(f) On March 28, 2002, the department initiated cancellation of products containing clopyralid that are registered for use on residential lawns. The department did not cancel the use of products registered for other nonresidential lawn and turf uses.

(g) According to a 1999 Waste Characterization study prepared by the Integrated Waste Management Board, 50.5 percent of leaf and grass waste generated in California comes from residential sites and 49.5 percent comes from nonresidential sites, including, but not limited to, sites such as commercial offices and grounds, public parks, golf courses, and cemeteries.

(h) Lawn care companies typically provide their services to both residential and commercial accounts and dispose of lawn clippings from both residential and nonresidential sites in a similar manner. Many lawn care companies dispose of lawn clippings at a composting facility or at a transfer station for delivery to a composting facility. Because it costs approximately 50 percent less to dispose of lawn clippings at a composting facility instead of a landfill, lawn care companies have a further economic incentive to compost their lawn clippings.

The Legislature further finds and declares:

(a) The composting industry is of vital importance to the well-being of the state because it produces a product that is important and beneficial to the production of agricultural commodities and to the horticultural industry and home gardening. It further produces its product from materials that are diverted from landfills in the state, in furtherance of the state's requirement to divert 50 percent of solid waste from landfills.

(b) Section 12825 of the Food and Agricultural Code authorizes the department to cancel the registration of, or refuse to register, any pesticide that is of less value or greater detriment to the environment than the benefit received by its use; for which there is a reasonable, effective, and practicable alternate material or procedure that is demonstrably less destructive to the environment; or that, when properly used, is detrimental to vegetation, except weeds.

(c) There is an urgent need for the state to take all necessary steps to ensure that pesticides applied to lawn and turf do not persist in compost.

AB 2770 (MATTHEWS), STATS. 2002, C. 840

The sum of one million five hundred thousand dollars ($1,500,000) is hereby appropriated from the Integrated Waste Management Account to the California Integrated Waste Management Board for purposes of preparing the report required by Section 40507.1 of the Health and Safety Code.

SB 1328 (CHESBRO), STATS. 2002, C. 628

It is the intent of the Legislature that the authority granted under this act to provide funding for tribes and special districts under the Farm and Ranch Solid Waste Cleanup and Abatement Program not be construed to authorize the total amount deposited in the Farm and Ranch Solid Waste Cleanup and Abatement Account to be more than one million dollars ($1,000,000) per year, plus interest earned on the money in the account.

2001 UNCODIFIED LAW

AB 560 (JACKSON), STATS. 2001, C. 500

The Legislature finds and declares as follows:

(a) The Watershed Protection Program, the Nonpoint Source Pollution Control Program, and the Coastal Nonpoint Source Control Program were recently established to provide funding for the protection and restoration of beneficial uses of waters of the state.

(b) Local agencies are interested in addressing water pollution problems associated with storm water runoff, including removal of oil and oil byproducts, solid waste, sediment, debris and hydrocarbons, through the acquisition, installation, and maintenance of storm drain inlet filters.

SB 373 (TORLAKSON), STATS. 2001, C. 926

The sum of one million five hundred thousand ($1,500,000) dollars is hereby appropriated from the fees deposited pursuant to Section 48000 of the Public Resources Code in the Integrated Waste Management Fund, for expenditure by the California Integrated Waste Management Board, to provide grants to county offices of education, school districts, and schools to assist in the development and implementation of programs pursuant to Section 42645 of the Public Resources Code. The board may expend not more than 5 percent of the amount appropriated by this section for administrative costs.

The Legislature finds and declares that the fees appropriated by Section 5 of this act are not the proceeds of taxes within the meaning of Article XIII A of the California Constitution, but instead, are the proceeds of fees for all of the following reasons:

(a) The amounts appropriated by Section 5 of this act will be used to provide for grants to teach the concepts of source reduction, recycling, and composting, the goal of which is to reduce the amount of solid waste disposed of in landfills.

(b) Due to the potentially adverse environmental impact of landfill of solid waste and the state's diminishing landfill capacity, the use of the fees paid by operators of solid waste facilities to pay for this education mitigates the future adverse impact of the operation of solid waste facilities.

(c) Decreasing the amount of solid waste sent to landfill, by diverting through recycling and waste reduction, will also benefit the operators of solid waste disposal sites, by decreasing the amount of solid waste that is required to be disposed in landfills.

SB 633 (SHER), STATS. 2001, C. 656

This act shall be known and may be cited as the California Mercury Reduction Act of 2001.

The Legislature finds and declares all of the following:

(a) Mercury is a persistent and toxic pollutant that bioaccumulates in the environment and in the food chain.

(b) Due to the bioaccumulation of mercury and other contaminants in fish, the California Environmental Protection Agency has issued a warning advising that adults and women who are pregnant or who may become pregnant should limit their fish intake from several state waterways.

(c) Increasingly stringent mercury discharge limits for wastewater treatment plants make identification and elimination of unnecessary sources of mercury a critical task where the cost of mercury removal at a wastewater treatment plant is far greater than the societal benefits of continuing use of those products as currently formulated.

(d) The mercury in one fever thermometer is enough to contaminate more than 200 million gallons of water.

(e) There are accurate and safe alternatives to mercury fever thermometers that are readily available and comparable in cost.

(f) Each year, fever thermometers containing an estimated 17 tons of mercury are discarded to municipal solid waste in the United States.

(g) An estimated 130 to 180 tons of mercury are in the hood and trunk switches of automobiles currently in use or at automotive recycling yards throughout the United States.

(h) Mercury from consumer products can enter the environment, and ultimately the state's waterways, directly through vaporization or spillage when broken during use, transportation, or disposal.

(i) Any person or business engaged in the dismantling or crushing of motor vehicles is encouraged to remove mercury-containing motor vehicle light switches that are mounted on the hood or trunk of the vehicle, including any housing of the switch.

SB 1127 (KARNETTE), STATS. 2001, C. 406

(a) On or before January 1, 2003, the California Integrated Waste Management Board shall conduct a study of the use and disposal of polystyrene in the state and report to the Governor and the Legislature on the findings and recommendations made by the study.

(b) The study required by subdivision (a) shall do all of the following:

(1) Analyze how polystyrene, including, but not limited to, food service and transport packaging, is being used by consumers before it enters the waste stream, the amount of polystyrene being landfilled annually in the state, the amount being reused and recycled, and the related environmental and public health implications, if any.

(2) Recommend methods for source reducing, reusing, and recycling, and for diverting polystyrene from the state's landfills.

(3) Address the cost of the disposal of polystyrene in volume and weight terms.

(4) Examine and identify current and potential markets for recycled polystyrene products.

2000 UNCODIFIED LAW

SB 876 (ESCUTIA), STATS. 2000, C. 838

The Legislature finds and declares all of the following:

(a) This state generates over 30 million waste tires annually. In addition, over 3 million tires are imported into the state each year. Of these tires, roughly 19 million are recycled annually.

(b) The state's landscape is also blighted by millions of tires illegally dumped or stockpiled. These stockpiles pose serious threats to the public health, safety, and environment, particularly when they are improperly maintained or catch fire. These negative environmental effects include habitat for pests and vectors, toxic smoke and residues, and contaminated air, water, and soil.

(c) This state has the unenviable distinction of having the largest tire problem and the lowest tire recycling fee of any state in the nation. Moreover, this state's tire recycling fee is due to sunset on January 1, 2001.

(d) Within the last 18 months, this state experienced two devastating tire fires; one at the Filbin stockpile in Westley and the other at the Royster stockpile in Tracy. These two fires burned over 8 million tires, resulting in considerable environmental damage to the region and significant adverse impacts to local residents. These two fires also highlighted the need for additional state and local regulatory authority in the waste tire area.

(e) Without significant expansion of existing markets for waste tires, such as rubberized asphalt concrete, playground mats and other surfacing, civil engineering applications, tire derived fuel and the development of new technologies that use waste tires, the tire stockpiles, both legal and illegal, and the environmental threat they pose, will continue to grow.

(f) The California Integrated Waste Management Board's recent tire report, required by Section 42871 of the Public Resources Code, discussed the tire situation in the state, described how other states addressed their tire issues, and detailed enforcement provisions and regulatory actions needed to deal with this state's tire problem.

(g) The purpose of this act is to do all of the following:

(1) Implement many of the enforcement, market development, administrative, and technical recommendations outlined in the California Integrated Waste Management Board's recent report on California's waste tire recycling enhancement program.

(2) Encourage tire manufacturers to promote the use of retreaded and longer-lasting tires, as well as develop recycled-content rubber tires.

(3) Stimulate waste and used tire market development activities, while cleaning up existing waste tire piles and enforcing waste and used tire laws.

(4) Improve the current tire manifest system.

(5) Increase state government's procurement and use of recycled-content tire products, such as rubberized asphalt concrete, crumb rubber products, and civil engineering applications.

1999 UNCODIFIED LAW

AB 1055 (VILLARAIGOSA AND KEELEY), STATS. 1999, C. 712

The Superintendent of Public Instruction shall enter into a memorandum of understanding with the California Integrated Waste Management Board for the purpose of allocating the two million dollars ($2,000,000) appropriated to the Superintendent of Public Instruction by subdivision (bb) of Section 65 of Chapter 78 of the Statutes of 1999, to provide matching grants to local educational agencies for the purpose of improving or replacing schoolsite playground equipment to meet state-mandated playground safety standards, consistent with the Playground Safety and Recycling Act of 1999 established by Article 4 (commencing with Section 115810) of Chapter 4 of Part 10 of Division 104 of the Health and Safety Code, as added by Section 5 of this act.

AB 1102 (JACKSON), STATS. 1999, C. 65

The Legislature finds and declares that Sections 1 and 2 of this act are intended to establish in statute the authority and duties of the positions of deputy secretary for law enforcement and counsel and deputy secretary for external affairs, as created under the Governor's Reorganization Plan No. 1 of 1991, which established the California Environmental Protection Agency. It is the intent of the Legislature that any funding provided in the annual Budget Act for those positions shall be used to implement Sections 12812.2 and 12812.3 of the Government Code.

The Legislature finds and declares that Section 3 of this act is intended to establish in statute the duties and responsibilities of the Secretary for Environmental Protection with regard to establishing the permit assistance centers funded by the Budget Act of 1999. It is the intent of the Legislature to ensure future stable and predictable funding for the centers.

It is the intent of the Legislature in enacting Section 4 of this act to establish the criteria under which funds appropriated in the Budget Act of 1999 to the Secretary of Environmental Protection may be expended for environmental management system pilot projects.

SB 515 (CHESBRO), STATS. 1999, C. 600

The amendments made to Section 48007 of the Public Resources Code by Section 6 of this bill shall not be construed to affect any of the following:

(a) Affect the provisions of Section 41781.3 of the Public Resources Code.

(b) The provisions of Article 1 (commencing with Section 41780) of Chapter 6 of Part 2 of Division 27 of the Public Resources Code and implementing regulations relating to the determination of the base amount from which diversion requirements shall be calculated or what constitutes diversion from disposal and transformation.

(c) The authority of the California Integrated Waste Management Board to permit, adopt standards, or otherwise regulate solid waste disposal, solid waste handling, solid waste

facilities, or solid waste landfills in accordance with Division 30 (commencing with Section 40000) of the Public Resources Code and with the board's implementing regulations.

The Legislature finds and declares that the amendments made to Section 48007 of the Public Resources Code by Section 6 of this act do not constitute a change in, but constitute a clarification of, existing law.

The clarifying amendments made to Section 48007 of the Public Resources Code by Section 6 of this act shall not be effective after January 1, 2002. However, the use, disposal, or placement of solely inert waste prior to January 1, 2002, for purposes of mine reclamation on property where surface mining operations have been conducted shall not be subject to disposal fees imposed pursuant to Section 48000 of the Public Resources Code, and no fee shall be imposed retroactively on and after January 1, 2002.

It is the intent of the Legislature, in enacting this act, to remedy any ambiguity in the applicability of the Integrated Waste Management Fee, as imposed pursuant to Part 23 (commencing with Section 45001) of Division 2 of the Revenue and Taxation Code, to any inert waste disposal facility that is issued a solid waste facility permit prior to January 1, 2002, and to set forth an equitable resolution of the fee applicability issued by establishing a date certain upon which the fee will become applicable to any permitted inert disposal facility.

SB 1210 (BACA), STATS. 1999, C. 758

(a) The California Constitution exempts food products for human consumption from sales or use tax.

(b) California's agricultural food production and processing industries are experiencing significant adversities caused by extreme freezing temperatures and extreme weather patterns, as El Niño and La Niña.

(c) Nineteen other states exempt food containers from sales tax, placing California growers and food processors at a competitive disadvantage.

(d) Food containers originating from foreign countries are exempt from sales tax, placing California growers and food processors at a competitive disadvantage.

(e) Much of California's food production is seasonal.

(f) Advances in food container technology and business practices have made food containers more recyclable.

(g) By encouraging the use of reusable food containers, the environment will benefit through increased use of recyclable food containers and waste reduction.

(h) In order to ensure that food containers are clearly treated the same as food for sales tax purposes, during the upcoming spring and summer seasons, it is necessary that this revision be made in the Sales and Use Tax Law.

1998 UNCODIFIED LAW

AB 117 (ESCUTIA), STATS. 1998, C. 1020

It is the intent of the Legislature that in expending funds from the California Tire Recycling Management Fund during the 1999–2000 fiscal year pursuant to Section 42889 of the Public Resources Code, the California Integrated Waste Management Board emphasize the purposes of permitting, enforcement, and cleanup.

SB 698 (RAINEY), STATS. 1998, C. 44

Notwithstanding the repeal of Section 42298 of the Public Resources Code, as provided in Section 8 of this act, any variance issued by the California Integrated Waste Management Board on or before the effective date of this act shall remain in effect until December 31, 1998, and, for purposes of that variance, the variance shall exempt the variance holder from the requirements of Chapter 5.4 (commencing with Section 42290) of Part 3 of Division 30 of the Public Resources Code, as amended by this act, until December 31, 1998. Nothing in Chapter 5.4 (commencing with Section 42290) of Part 3 of Division 30 of the Public Resources Code, or in any variance issued before the effective date of this act, shall be construed as allowing that variance to continue in effect after December 31, 1998.

SB 2241 (BRULTE), STATS. 1998, C. 811

The Legislature finds and declares that the addition of Sections 49501.3 and 49501.5 to the Public Resources Code, which define the terms "lawfully provided" and "license" for purposes of laws regulating solid waste enterprises, and the changes to Sections 49520 and 49521 of the Public Resources Code that are made by this act do not constitute changes in, but are declaratory of, existing law.

1997 UNCODIFIED LAW

AB 847 (WAYNE), STATS. 1997, C. 884

The Legislature hereby finds and declares all of the following:

(a) Discarded major appliances are solid waste managed pursuant to the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000) of the Public Resources Code), including the provisions of that act governing metallic discards (Chapter 3.5 (commencing with Section 42160) of Part 3 of Division 30 of the Public Resources Code) unless the major appliances are removed from the solid waste stream for the purposes of recycling. However, those major appliances may contain hazardous materials that become hazardous waste when released or removed from the appliance in the discard process.

(b) To avoid hazardous waste contamination of soil and groundwater and contamination of reusable materials derived from metal scrapyards and shredders, and to avoid the illegal disposal of any hazardous waste released or removed from a major appliance, it is in the interests of the state to ensure that those materials are removed from major appliances before they are crushed for transport or transferred to a shredder or baler for recycling and are managed in compliance with Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(c) Any materials that require special handling are required to be removed from major appliances as specified in Section 42175 of the Public Resources Code.

1996 UNCODIFIED LAW

AB 626 (SHER), STATS. 1996, C. 1038

It is the intent of the Legislature that local governments and state agencies that own or operate real property is this state should work cooperatively to meet the requirements of the California Integrated Waste Management Act of 1989 (Division 30 commencing with Section 40000 of the Public Resources Code).

AB 1647 (BUSTAMANTE), STATS. 1996, C. 978

(a) The Legislature hereby finds and declares all of the following:

(1) The diversion of solid waste from disposal at solid waste landfills and the application of landfill cover materials are matters of statewide concern and provisions governing those activities must be applied in a uniform and consistent manner throughout the state.

(2) On January 25, 1995, the California Integrated Waste Management Board adopted a policy regarding the use of alternative daily cover at solid waste landfills and subsequently adopted implementing regulations that were approved by the Office of Administrative Law.

(3) In Natural Resources Defense Council vs. California Integrated Waste Management Board, the trial court's opinion interpreted the meaning of various provisions of the California Integrated Waste Management Act of 1989 and, in its construction of provisions pertaining to alternative daily cover and diversion at solid waste landfills, misinterpreted legislative intent.

(4) The board's policy, as adopted on January 25, 1995, and the implementing regulations, regarding the use of alternative daily cover at solid waste landfills are consistent with applicable statutes.

(5) It is necessary to amend applicable provisions of the act of 1989 to clarify existing law so as to clearly express the legislative intent and to remove any uncertainty as to the authority of the board to adopt the implementing regulations specified in paragraph (4).

(6) It is necessary to amend provisions of the act of 1989 to clarify the intent of existing law that the diversion of solid waste from solid waste disposal is diversion under the act of 1989 for purposes of meeting the requirements of Sections 41780, 41780.1, 41780.2, and 41781 of the Public Resources Code, as distinguished from diversion of solid waste from a solid waste disposal facility.

(b) (1) The Legislature further finds and declares that, at the present time, the amount of green materials generated in California is in excess of the quantity that existing markets can absorb. It is thus in the interests of the state to encourage the expansion of markets for green materials.

(2) It is the intent of the Legislature that the California Integrated Waste Management Board, and other state agencies, continue their efforts to promote the expansion of compost and other markets for green materials, including, but not limited to, the compost market program activities specified in Chapter 5 (commencing with Section 42230) of Part 3 of Division 30 of the Public Resources Code.

SB 1445 (KELLEY), STATS. 1996, C. 757

(a) Division 13 (commencing with Section 21000) of the Public Resources Code shall not apply to the refinancing or defeasance of existing bond indebtedness of the California Pollution Control Financing Authority Solid Waste Revenue Bonds by the County of San Diego or any agency within the County of San Diego. This exemption extends to any and all actions necessary to carry out that refinancing or defeasance, including, but not limited to, the acquisition of the North County Resource Recovery Recycling Facility by the County of San Diego.

(b) The exemption provided in subdivision (a) does not apply to the transfer of title to any asset to any entity other than the County of San Diego. The exemption also does not apply to any change or discontinuance in the operation of the North County Resource Recovery Recycling Facility, or of the San Marcos Landfill. For purposes of Division 13 (commencing with Section 21000) of the Public Resources Code, the refinancing or defeasance of the existing bond indebtedness, together with the acquisition of the North County Resource Recovery Recycling Facility, shall not be treated as part of a different or larger project.

(c) This act is expressly made retroactive and applies to the actions indicated in this section taken on or after June 1, 1996.

1995 UNCODIFIED LAW

SB 1026 (DILLS), STATS. 1995, C. 605

The Department of Transportation shall request the United States Department of Transportation to revise the minimum requirements for asphalt pavement containing recycled rubber set forth in the Intermodal Surface Transportation Efficiency Act of 991(Public Law 102-240) to allow for the use of waste tires as fuel for cement manufacturing plants in addition to, but not in lieu of, their use in asphalt pavement containing recycled rubber, if the department finds that the use of waste tires for fuel production at cement manufacturing plants in this state provides a highly valuable method to augment waste reduction with regard to the recycled rubber requirements of that federal act.

SB 352 (WRIGHT), STATS. 1995, C. 424

It is the intent of the Legislature that solid waste facilities and recycling facilities that process empty aerosol cans and nonempty aerosol cans for the purposes of recycling comply with all applicable federal, state, and local laws, including, but not limited to, employee safety, emergency action, fire prevention, hazardous waste management, and spill response laws and regulations.

SB 426 (LESLIE), STATS. 1995, C. 642

The Legislature finds and declares that it is the public policy of the state that environmental marketing claims, whether explicit or implied, must be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the environmental impact of products and packages. Accurate and useful information about the environmental impact of products and packages will not be available to consumers unless uniform standards for environmental marketing claims, such as the Federal Trade Commission Guidelines for Environmental Marketing Claims, are adopted by the various states.

SB X2 17 (CRAVEN), STATS. 1995, C. 4

(a) Division 13 (commencing with Section 21000) of the Public Resources Code shall not apply to an amendment of Section 4-3-116 of the Orange County Codified Ordinance, as that amendment pertains to the importation of solid waste into Orange County, if all of the following conditions are met:

(1) The amendment is made on or before January 1, 1996.

(2) The amendment consists exclusively of the authorization for the importation of solid waste into the county, and only those conditions established by the county for the importation of that solid waste.

(3) The county holds at least one public hearing on the proposed amendment that is duly noticed to the mayor, city council members, and members of the public within each city in which a solid waste facility that will accept imported solid waste for disposal is located.

(4) The county takes all reasonable feasible actions to mitigate any adverse environmental effects from additional truck traffic to and from solid waste facilities that accept imported solid waste for disposal.

(5) The solid waste facilities permit for each solid waste facility that will accept imported solid waste meets all of the following conditions:

(A) The solid waste facilities permit was issued, modified, or revised within the past five years.

(B) At the time of the issuance, modification, or revision, the solid waste facilities permit was subject to Division 13 (commencing with Section 21000) of the Public Resources Code.

(C) The total tonnage accepted by each solid waste disposal facility after the county authorizes the importation of solid waste into the county by amending Section 4-3-116 of the Orange County Codified Ordinance does not exceed the tonnage authorized in the solid waste facilities permit for each solid waste facility, as it existed on January 1, 1995.

(D) The acceptance of imported solid waste at the solid waste facility does not require any modification of, or revision to, the solid waste facilities permit, or the issuance of any enforcement order that allows increases in tonnages to be accepted at the solid waste facility.

(6) The county has prepared a source reduction and recycling element that complies with Chapter 3 (commencing with Section 41300) and Chapter 6 (commencing with Section 41780) of Part 2 of Division 30 of the Public Resources Code, has received approval from the California Integrated Waste Management Board for the element, and is implementing the element.

(7) The county pays all fees, including any fees required by Section 43501 or 48000 of the Public Resources Code, including any fees owed in arrears, on solid waste disposed of in the county, including any solid waste imported for disposal.

(b) This section shall remain in effect until January 1, 1996, and as of that date is repealed, unless a later enacted statute amends or repeals that date.

1994 UNCODIFIED LAW

SB 1894 (LESLIE), STATS. 1994, C. 625

The Legislature hereby finds and declares that it is the intent of the Legislature that the Local Government Technical Advisory Committee established pursuant to the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000) of the Public Resources Code) should be comprised of members who represent the demographic diversity of the state relative to urban, suburban, and rural areas.

1993 UNCODIFIED LAW

AB 11 (EASTIN), STATS. 1993, C. 960

The Legislature hereby finds and declares the following:

(a) The Purchasing Division of the City of San Jose, which specifies recycled content in its bid solicitations, paid competitive prices or less for recycled-content products in the 1991-92 fiscal year.

(b) The Bureau of Street Maintenance of the City of Los Angeles saved approximately eight million dollars ($8,000,000) in paving material cost over the past five years by using recycled asphalt pavement.

(c) The City of Santa Rosa saves over thirty-three thousand dollars ($33,000) annually by using retreaded tires on the back portion of its city buses.

(d) A California vendor of rerefined oil reports that the quality of rerefined motor oil is the same as virgin motor oil and that costs are competitive.

(e) Some private companies that buy recycled products, such as bond paper, toilet tissue, and cardboard boxes, find that total recycled paper purchases cost no more than 2 to 4 percent more than virgin paper products, which is below the state's 5-percent price preference for recycled paper.

(f) A 1992 study conducted by Integrated Recycling Inc. for the California Integrated Waste Management Board found that many cities and counties are buying recycled content plastic products. Board staff estimates that the cost of recycling plastic products was either less than the cost of virgin products or not more than 5 to 10 percent higher.

(g) Minimum recycled content requirements for glass containers are the major factor influencing the Department of

General Services' and California State University system's high rate for purchases of recycled glass products, which was 79 percent in 1990.

(h) Recycled latex paint, which is very similar to the virgin product in quality consistency, and performance, is offered free of charge to the public by some counties, and is offered for from three dollars ($3) to five dollars ($5) per gallon in other counties to cover collection and transportation costs. A California waste management company has saved thirty thousand dollars ($30,000) in paint costs to date by using rerefined latex paint on its bins.

(i) Compost produced from yard trimmings has been purchased by the state at a slightly lower price that shredded bark for mulching highway landscaping. Co-compost is available in bulk from several commercial producers for under eight dollars ($8) per cubic yard and has been used to diminish the total costs of commercial fertilizers and water usage in the production of San Joaquin Valley cotton.

(j) Substituting recycled materials for virgin resources provides additional savings by (1) extending the life of solid waste landfills, (2) saving solid waste landfill operation and maintenance costs and, consequently, total disposal costs, (3) saving energy, (4) reducing air pollution, (5) conserving water and other significant natural resources, (6) reducing mining wastes, and (7) providing employment opportunities, ranging from water extraction to recycled product manufacturing.

(k) Furthermore, Executive Order W-7-91 states that "California should set the example of leadership in minimizing waste and promoting increased use of recycled products." The Governor's Task Force on Waste Reduction and Recycling has recommended that a coordinator for each state agency should "ensure that all measures are taken to reduce waste, reuse materials when possible, recycle all recyclable items, and procure materials with recycled content...in all state offices and facilities."

(l) Accordingly, the purpose of this act is to do all of the following:

(1) Maximize the state procurement of recycled products, as well as maximize source reduction, by using funds appropriated in the Budget Act. It is recognized that, if certain products made with recycled materials cost more than the same products made with virgin material, a state agency may need to purchase fewer products or apply cost savings from buying other products made with recycled materials toward the purchase of those more costly products.

(2) Assist state agencies in complying with Executive order W-7-91 and the recommendations of the Governor's Task Force on Waste Reduction and Recycling and, as a result, generate new or expanding markets for recycled products and increase recycling-related businesses in the state.

(3) Maximize the amount of secondary and postconsumer waste in products purchased by the state.

(4) Help achieve the goals of the California Integrated Waste Management Board's Market Development Plan, including job creation and the diversion of solid waste from landfills.

AB 440 (SHER), STATS. 1993, C. 1169

(a) The board may reduce the diversion requirements of Section 41780 for a portion of the unincorporated part of a county of the seventh class, as specified in Section 28028 of the Government Code, if the county demonstrates, and the board concurs, based upon substantial evidence in the record, that the achievement of those diversion requirements is not feasible in that area due to both of the following circumstances:

(1) The low population density of the area.

(2) The small quantity of waste generated within the area.

(b) The board shall establish alternative, but less comprehensive, requirements for the area if the board grants a reduction in diversion requirements, which will ensure compliance with this division.

(c) Notwithstanding subdivision (a), it is the intent of the Legislature that any area that is granted a reduction in diversion requirements shall establish programs to meet the requirements of this division to the maximum extent feasible.

AB 1220 (EASTIN), STATS. 1993, C. 656

Of the amount appropriated by Item 3910-00l-387 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993) as amended by this act, in addition to any other approved expenditures for those purposes, the California Integrated Waste Management Board shall expend five million seven hundred fifty thousand dollars ($5,750,000) of the amount appropriated for program 20 for source reduction, public education, and market development programs. The California Integrated Waste Management Board shall expend these funds to augment existing programs and shall not use the funds for administrative purposes.

The sum of seventy-five thousand dollars ($75,000) is hereby appropriated to the California Integrated Waste Management Board from the California Used oil Recycling Fund for expenditure during the 1993-94 fiscal year for the purpose of implementing a pilot program for funding claims submitted by state agencies for providing price preferences for the purchase of recycled products.

AB 2136 (EASTIN), STATS. 1993, C. 655

Of the amount appropriated by subdivision (a) of Item 3910-001-387 of the Budget Act of 1993 (Chapter 55 of the Statutes of 1993), as amended by Section 58.2 of Assembly Bill 1220 of the 1993-94 Regular Session of the Legislature, for l0-Planning and Enforcement, the California Integrated Waste Management Board shall expend three hundred thousand dollars ($300,000) for administrative costs incurred in implementing the program required pursuant to Article 2.5 (commencing with Section 48020) of Chapter 2 of Part 5 of Division 30 of the Public Resources Code.

SB 452 (SENATE BUDGET AND FISCAL REVIEW COMMITTEE), STATS. 1993, C. 60

Notwithstanding subdivision (a) of Section 41850 of the Public Resources Code, for a period of two years after July 1, 1993, the California Integrated Waste Management Board shall not impose any civil penalties for failure to implement a source reduction and recycling element or a household waste element.

SB 951 (HART), STATS. 1993, C. 1076

(a) The California Integrated Waste Management Board shall submit recommendations to the Legislature by January 1, 1994, concerning programs which are needed to develop markets and encourage high levels of recycling for mixed paper waste.

(b) For the purposes of this section only, "mixed paper waste" means used paper stock that consists of a mixture of various qualities of used paper not limited on the basis of fiber content, and includes, but is not limited to, used residential mail, office paper, and other grades of used paper stock that is not otherwise classified.

For this purpose "office paper" means paper waste commonly generated within the office environment, including, but not limited to, envelopes, computer print-out paper, colored ledger paper, and high-grade paper.

1992 UNCODIFIED LAW

AB 2393 (CORTESE), STATS. 1992, C. 357

(a) The California Integrated Waste Management Board shall conduct a study of the presence of heavy metals in packaging and the threat which heavy metals in packaging pose to public health and safety and the environment and report the results of the study to the Governor and the Legislature on or before January 1, 1995.

(b)The report shall include, but need not be limited to, all of the following:

(1) A compilation of data from any studies on heavy metals in packaging which have been completed or undertaken elsewhere, including any studies by the federal Environmental Protection Agency.

(2) The effect of heavy metals in packaging on solid waste landfills and transformation facilities.

(3) Public health and safety and environmental hazards associated with heavy metals in packaging.

(4) Recommendations for any actions which are identified to be needed to reduce or eliminate heavy metals from packaging, including recommendations for how any recommended legislative mandates should be implemented, enforced, and funded.

(c) The board shall fund the report from existing resources.

(d) The board shall consult with the State Department of Health Services and the Office of Environmental Health Hazard Assessment in determining public health and safety hazards associated with heavy metals in packaging.

(e) For purposes of this section, "heavy metal" means any substance listed in Section 22-66261.24 of Title 26 of the California Code of Regulations.

(f) For the purposes of this section, "packaging" means any part of a product package, including, but not limited to, any interior or exterior cushioning, weatherproofing, coating, closure, ink, label, dye, pigment, adhesive, or other additive.

AB 3348 (EASTIN), STATS. 1992, C. 1218

The sum of three million dollars ($3,000,000) is hereby transferred from the Solid Waste Disposal Site Cleanup and Maintenance Account in the Integrated Waste Management Fund to the California Used Oil Recycling Fund as a loan and is appropriated to the California Integrated Waste Management Board for expenditure for the purposes of implementing Chapter 817 of the Statutes of 1991, until revenues are available for these purposes from the tax imposed by Section 48650 of the Public Resources Code. The loan authorized by this section shall be repaid in full, with interest at the Pooled Money Investment Account rate, to the Solid Waste Disposal Site Cleanup and Maintenance Account on or before June 30,1994, by the transfer back into the account of fund from the California Used Oil Recycling Fund.

The following sums are hereby appropriated from the Solid Waste Disposal Site Cleanup and Maintenance Account in the Integrated Waste Management Fund to the State Water Resources Control Board:

(a) (1) Two million five hundred thousand dollars ($2,500,000), as a one-time allocation, but without regard to fiscal year, to complete a review of all solid waste assessment test reports that are required to be submitted to the appropriate regional water quality control boards by July 1,1991, that have been classified in ranks one through five in the Solid Waste Assessment Test (SWAT) program, pursuant to Section 13273 of the Water Code.

(2) The expenditure of these funds shall be subject to the conditions specified in a memorandum of understanding which shall be entered into by the California Integrated Waste Management Board and the State Waster Resources Control Board and which shall include, but need not be limited to, provisions linking the review and ranking of solid waste landfill facilities by the State Water Resources Control Board with the solid waste disposal site cleanup and maintenance program implemented by the California Integrated Waste Management Board.

(b) If Section 13260 of the Water Code is amended during the 1992 portion of the 1991-92 Regular Session to transfer any amount from the Integrated Waste Management Account in the Integrated Waste Management Fund to the Water Protection Fund to regulate solid waste disposal facilities pursuant to Article 4 (commencing with Section 13260) of Chapter 4 of Division 7 of the Water Code, an amount, not to exceed two million two hundred forty-eight thousand dollars ($2,248,000), shall be transferred from the Solid Waste Disposal Site Cleanup and Maintenance Account in the Integrated Waste Management Fund to the Integrated

Waste Management Account in the Integrated Waste Management Fund.

(c) The Legislature encourages the State Water Resources Control Board to complete the review performed pursuant to paragraph (1) of subdivision (a) on or before June 30, 1994.

(a) The State Water Resources Control Board and the California Integrated Waste Management Board shall jointly submit a report, together with recommended legislation, to the Governor and the Legislature not later than March 1, 1993. The report shall describe the regulatory programs and activities of both boards and of the California regional water quality control boards relating to solid waste disposal sites and shall identify areas of regulatory overlap, duplication, and conflict. The recommended legislation shall propose a method for streamlining regulatory authority over solid waste disposal sites between the boards and, where appropriate, between the local enforcement agencies, and the boards. The report and recommended legislation shall include, but need not be limited to, the following elements:

(1) Recommendations for consolidating solid waste disposal site regulatory authority and oversight activities and a method for achieving that consolidation that best minimizes regulatory disruption at solid waste disposal sites, while maintaining full state regulation of those sites. These recommendations shall take into account current legal requirements governing permitting, compliance, inspection, enforcement, closure, postclosure, and cleanup activities at solid waste disposal sites. The recommendations may address the need for a phased approach to any consolidation of regulatory authority and oversight activities. The report and legislation shall specifically address reduced state and local level costs, including potential reductions in the fees required to be paid by disposal facilities to fund state regulatory activities.

(2) Recommendations for how best to implement and achieve the mandated goals of the solid waste assessment testing specified in Section 45700 of the Public Resources Code and carried out pursuant to Section 13273 of the Water Code.

(3) Consideration of the mandated goals and funding allocations of the Solid Waste disposal Site Hazard Reduction Act of 1989 (Part 6 (commencing with Section 4600) of Division 30 of the Public Resources Code) as to whether revisions to that act would better further proper management of solid waste disposal sites and the cleanup of solid waste disposal sites where contamination exists. The portion of the study shall specifically include, but shall not be limited to, an analysis of the existing household hazardous waste grant program, and of methods for providing stable funding sources for these programs at either the state or local level, to ensure that these mandated activities are implemented in the most cost-effective manner.

(4) Consideration of consolidating the fees currently paid by disposal site operators to fund state regulatory activities into one fee to fund the state activities implemented by both boards.

(5) Consideration of the various financial assurance mechanisms required under current state and federal law for solid waste disposal sites, the requirement for operating liability insurance, and as to where these requirements are duplicative or redundant.

(6) A review of the regulatory activities and responsibilities of other state and local agencies with regard to solid waste disposal sites. The report and recommended legislation shall include, where appropriate, suggested methods for addressing regulatory overlap, duplication, or conflict. Any such suggested methods shall be developed in cooperation with the affected state or local agencies.

(b) (1) In preparing the report and suggested legislation pursuant to subdivision (a), the boards shall actively seek input from a wide range of interested parties, including but not limited to, disposal site operators, local governments, environmental and public interest groups, and state and local agencies with regulatory responsibilities relating to solid waste disposal sites.

SB 1919 (HART), STATS. 1992, C. 688

(a) The Legislature hereby finds and declares that there is an urgent need to reduce the amount of mixed paper waste going to the state's overflowing landfills.

(b) The Legislature further finds that mixed paper waste comprises an estimated 35 percent of the municipal solid waste stream, and that while markets exist for some of the mixed paper waste collection and recovery programs now in effect, and additional infrastructure is now being developed to divert increasing amounts of this material from land disposal, reliable markets do not now exist for the diverted material.

(c) The Legislature therefore declares that there is a need for state action to develop markets for mixed paper waste, including, but not limited to, the development of voluntary and mandatory minimum postconsumer content standards, aggregate mass balance requirements, and recovery goals for grades of paper for which those requirements are not yet mandated.

(a) The California Integrated Waste Management Board shall submit recommendations to the Legislature by January 1, 1994, concerning programs which are needed to develop markets and encourage high levels of recycling for mixed paper waste.

(b) For the purposes of this section only, "mixed paper waste" means used paper stock that consists of a mixture of various qualities of used paper not limited on the basis of fiber content, and includes, but is not limited to, used residential mail, office paper, and other grades of used paper stock that is not otherwise classified. For this purpose "office paper" means paper waste commonly generated within the office environment, including, but limited to, envelopes, computer print-out pager, colored ledger paper, and high grade paper.

1991 UNCODIFIED LAW

AB 240 (PEACE), STATS. 1991, C. 805

The Legislature finds and declares all of the following:

(a) The state contains within its borders 108 Native American Indian reservations and rancherias. They range in land area from thousands of acres to 1.3 acres. The latest United States census noted populations ranging from the thousands on a few reservations to zero inhabitants on 10 reservations.

(b) As part of a program of economic development, some tribes have proposed to develop portions of their lands as solid or hazardous waste management facilities for the recycling, disposal, treatment, or storage of wastes on those lands. Natural resources at risk of being contaminated, such as water and air supplies, are common to both Native American reservations and surrounding lands. Once polluted, they are difficult to clean up and threaten the public health and economies of both Native American and surrounding communities.

(c) Economic conditions in Indian country are of concern to both Native Americans and the state. The state desires to encourage tribal economic development that does not conflict with other state policies, such as those mandating comprehensive regulation of waste treatment and storage facilities. The state's regulations regarding these facilities are in some cases more strict than federal standards governing the same field, and thus the state has an interest in ensuring that all facilities within its borders meet or exceed state standards for environmental protection.

(d) The Legislature further finds that these facilities, which are unregulated by state enforcement agencies, could cause adverse environmental "spillover effects," contaminating surface and groundwater, soil, and air used by citizens of the state both on and off reservation and rancheria lands.

(e) The Legislature finds that the state has a compelling interest in asserting authority over these waste disposal facilities to the extent that this jurisdiction is not preempted by federal law.

(f) The state recognizes that there are disagreements as to whether the state may regulate waste management facilities on Indian country. Many Native American communities believe that these issues are not subject to state jurisdiction, whereas the state believes it does have the authority to regulate these facilities. However, the state wishes to avoid jurisdictional conflicts with tribal authorities where possible. In furtherance of this goal, and to promote a spirit of cooperation, the state intends to enter into voluntary enforceable cooperative agreements with individual tribes which provide for adoption by a tribe of permitting, monitoring, enforcement, and other regulatory systems for waste facilities on tribal lands which are at least as protective of public health and safety and the environment as the system provided under state law.

(g) The Legislature finds that Californians living adjacent to Indian country should receive at least the same environmental protections as those provided all Californians.

Nothwithstanding any other provision of law, this chapter shall not be construed to make reference to a "California Environmental Protection Agency" for the purposes of compliance with Provision 2 of Item 3400-002-044 of the Budget Act of 1991.

If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

AB 1520 (SHER), STATS. 1991, C. 718

The sum of one hundred sixty-eight thousand dollars ($168,000) is hereby appropriated from the Integrated Waste Management Account in the Integrated Waste Management Fund to the California Integrated Waste Management Board for purposes of the development and implementation of sludge reuse regulations. Any regulations developed pursuant to this section shall provide for maximum protection of public health and the environment consistent with the requirements of state and federal law.

AB 1760 (EASTIN), STATS. 1991, C. 849

The Legislature finds and declares that the disposal of major appliances and other large metallic discards in solid waste landfills needlessly uses scarce landfill capacity. The Legislature further finds and declares that major appliances, automobile bodies and parts, and other large metallic items can be effectively separated from the waste stream and recycled. Therefore, the Legislature finds and declares that the purpose of this act is to decrease the disposal of recyclable metallic discards at solid waste landfills and to increase recycling of those products.

AB 2061 (POLANCO), STATS. 1991, C. 794

The Legislature finds and declares the following: (a) According to the United States Small Business Administration, small businesses account for more than 50 percent of total private sector employment in the state, excluding sole proprietorships.

(b) According to the California Association of Independent Business, California has approximately two million small business enterprises accounting for 75 percent of the gross state product.

(c) According to the Department of Commerce 1990 Manufacturers' Survey, 57 percent of the 642 manufacturing companies included in the survey have seriously considered relocating from the state or region or restricting expansion due to regulatory issues.

(d) The preservation and well-being of small businesses generally and individually are essential to the public interest in ensuring the availability of goods and services and full employment and the future growth and prosperity of the state's economy.

Sec. 2. It is the intent of the Legislature in enacting this act to do all of the following:

(a) Prevent unnecessary or unreasonable regulations and reporting, recordkeeping, and compliance requirements affecting both small businesses generally and individual parties.

(b) Prevent unnecessary or unreasonable hardship to small businesses and individual parties.

(c) Require state agencies in the proposed adoption or amendment of administrative regulations to assess the economic impact of the regulations on small business enterprises in the state during the processes of enactment, adoption, administration, and enforcement.

(d) Require state agencies to provide evidence in the record to substantiate a determination that a rule or regulation shall have no adverse economic impact on small business.

(e) Require all air districts with populations of 250,000 or more, when proposing to adopt, amend, or repeal a rule or regulation, to perform an assessment, to the extent data are available, of the socioeconomic impacts of the adoption, amendment, or repeals of the rule or regulation.

SB 846 (BERGESON), STATS. 1991, C. 1060

The Legislature finds and declares all of the following:

(a) The State of California is experiencing a critical shortage of landfill space for the state's solid waste.

(b) Pursuant to Division 30 (commencing with Section 4000) of the Public Resources Code, cities and counties are required to devise programs for their jurisdictions to reduce the amounts of solid waste going to landfills.

(c) Current laws in many local jurisdictions require excavations to be backfilled with slurry, and for the native soil from the excavation to be disposed.

(d) Frequently, the only disposal sites available for excavation soil are the state's landfills.

(e) Disposal in landfills of soil that is competent for use as backfill wastes a substantial amount of valuable landfill space.

(f) Allowing alternative uses for this soil will assist cities and counties in reaching the goals specified in the source reduction component of their integrated waste management plans.

SB 960 (HART), STATS. 1991, C. 1012

The Legislature hereby finds and declares that there is an urgent need to reduce the amount of mixed paper waste going to the state's overflowing landfills.

The California Integrated Waste Management Board shall submit recommendations to the Legislature by January 1, 1993, concerning programs which are needed to encourage high levels of recycling for mixed paper waste. As used in this act, "mixed paper waste" means paper stock that consists of a clean sorted mixture of various quantities of paper containing less than 10 percent ground wood stock.

SB 1066 (DILLS), STATS. 1991, C. 1066.

The Legislature finds and declares all of the following:

(a) Over 100,000 tons of trash are dumped in California landfills everyday. Existing landfill sites are rapidly reaching capacity, and few new sites are available.

(b) People in California use over 30,000,000 telephone directories each year, most of which are not recycled due to the materials used in their production.

(c) Telephone directories are another "necessity of modern life" which have become a growing source of municipal solid waste.

(d) The use of recyclable materials in the production of telephone directories will provide numerous economic and environmental benefits to the state.

(e) Recycling outdated telephone directories will save landfill space, reduce energy consumption, and preserve timber resources.

1990 UNCODIFIED LAW

AB 2296 (CORTESE), STATS. 1990, C. 1617

Nothing in this chapter is intended to circumvent the application of or compliance with other federal, state, and local laws, rules, and regulations, including, but not limited to, the California Environmental Quality Act, Division 12 (commencing with Section 21000) of the Public Resource Code.

SB 1813 (MCCORQUODALE), STATS. 1990, C. 711

The Legislature finds and declares that it is desirable to study the recyclability of household batteries and the effect of household batteries on solid waste landfills and transformation facilities. Household batteries include batteries from hearing aids, cameras, watches, computers, calculators, flashlights, lanterns, standby and emergency lighting, portable radio and television sets, meters, toys, clocks, and other batteries typically generated as household waste.

1989 UNCODIFIED LAW

AB 939 (SHER), STATS. 1989, C. 1095

(a) The Legislature finds and declares by this act that it has expressly repealed and not recodified Article 1 (commencing with Section 66700), 3 (commencing with Section 66730), 4 (commencing with Section 66740), and 5 (commencing with Section 66750) of Chapter 1, Articles 2 (commencing with Section 66780), 3 (commencing with Section 66785), and 3.5 (commencing with Section 66788) of Chapter 2, and Article 3 (commencing with Section 66796.45) of Chapter 3 of Title 7.3 of the Government Code.

(b) Except as expressly provided in subdivision (a), the Legislature declares that the recodification of the balance of Title 7.3 (commencing with Section 66700) of the

Government Code by this act is a continuation of, and not a change to, existing law.

(c) The Legislature declares that by this act it has recodified all of Chapters 1 (commencing with Section 4100) to 3 (commencing with Section 4300), inclusive, of Part 2 (commencing with Section 4100) of Division 5 of the Health and Safety Code and that all provisions are a continuation of, and not a change to, existing law. In the event of any conflict or inconsistency between the provisions of Parts 1 (commencing with Section 40000) to Part 7 (commencing with Section 47000), inclusive, and Part 8 (commencing with Section 48000) of Division 30, as enacted by this act, the provisions of Parts 1 to 7, inclusive, shall prevail.

AB 1570 (SHER), STATS. 1989, C. 1226

The Legislature fines and declares as follows:

(a) In 1986, the Legislature enacted Article 13 (commencing with Section 25250) of Chapter 6.5 of Division 20 of the Health and Safety Code, relating to the management of used oil, as defined, which sets forth the requirements for environmentally safe recycling and disposal of used oil.

(b) It is the intent of the Legislature to now establish a program to increase both the supply and demand for recycled oil products in a manner consistent with the definitions and requirements of that article.

(c) The growth of the markets for recycled oil products further serves the state's interests in the preservation of the state's and the nation's dwindling supply of petroleum.

The Legislature further finds and declares as follows:

(a) New technologies currently employed by the recycled oil industry are capable of yielding high quality oils equivalent or superior to virgin oils.

(b) The industrial capability currently exists to readily meet an increase in demand for recycled oil products.

(c) The costs of recycled oil are competitive with those of virgin oil.

SB 1322 (BERGESON), STATS. 1989, C. 1096

The Legislature declares that it is incumbent upon the state to demonstrate a leadership role in implementing the integrated waste management hierarchy of actions specified in Section 40051 in order to assist in accomplishing the goals set forth in this division.

(b) It is the intent of the Legislature to place high priority on implementing state programs that accomplish the following objectives:

(1) Promote changes to manufacturing and consumption habits that result in the reduction of generation of waste.

(2) Increase the procurement of recycled materials by the state.

(3) Improve markets for recyclable materials.

(4) Conduct research and development to improve the technology of recycled materials manufacturing processes.

(5) Inform and educate the public about the integrated waste management hierarchy.

(c) The responsibility for implementation of the integrated waste management hierarchy is borne equally by the government, business and individual citizens. To define the critical role of the state program to the success of local implementation of integrated waste management programs, the Legislature hereby declares the need to identify specific state program actions to reduce the amount of waste generated, enhance the markets for recycled products, increase recycled products procurement by the state, define the role of business and industry in changing wasteful manufacturing practices, and to implement a comprehensive public information and education program to achieve the goals of integrated waste management.

1978 UNCODIFIED LAW

AB 406 (KAPILOFF), STATS. 1978, C. 1125

It is the intent of the Legislature in enacting this measure that plastic rings or similar plastic devices conforming to the requirements of this act be developed, evaluated, and classified at the earliest practicable time. The State Solid Waste Management Board shall report to the Legislature on or before July 1, 1980, describing efforts made by private industry to develop such devices and describing studies and actions undertaken by the board to identify, evaluate, classify, and certify such devices.

Please note: Where there is no abbreviation for a code name, the section referred to is in the Public Resources Code.

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ABBREVIATIONS

BPC	Business and Professions Code
Ed C	Education Code
Fd & Ag C	Food and Agricultural Code
Gov C	Government Code
HNC	Harbors and Navigation Code
HSC	Health and Safety Code
PCC	Public Contract Code
PRC	Public Resources Code
PUC	Public Utilities Code
RTC	Revenue and Taxation Code
VC	Vehicle Code

Please note: Where there is no abbreviation for a code name, the section referred to is in the Public Resources Code.

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