

CHAPTER 1804

An act to add Sections 66963.1 and 66780.8 to the Government Code, and to amend and renumber Section 25117.7 of, to add Sections 25117.2, 25173.5, 25200.1, and 25200.2 to, to add Article 3.5 (commencing with Section 25135) and Article 8.7 (commencing with Section 25199) to Chapter 4.5 of Division 20 of, and to repeal Sections 25135.8 and 25204 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 30, 1986. Filed with Secretary of State September 30, 1986.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2948, Tanner. Hazardous waste: management plans and facility siting procedures.

(1) Existing law requires counties and cities to adopt general plans and requires counties to adopt a solid waste management plan, the hazardous waste portion of which is subject to review by the State Department of Health Services.

This bill would authorize a county, in lieu of preparing the hazardous waste portion of the solid waste management plan, to adopt, by September 30, 1988, a county hazardous waste management plan pursuant to guidelines adopted by the department, and would specify the procedures for the preparation, revision, adoption, approval, and amendment of these plans. The bill would authorize a county to delegate the authority to prepare the plan to a city, a joint powers agency, or any other special planning agency. The bill would authorize a city, or 2 or more cities acting jointly within a county, to prepare the county hazardous waste management plan if the county in which the city or cities are located does not elect to prepare a plan. The bill would authorize specified councils of governments to adopt regional hazardous waste management plans. The bill would require the Southern California Association of Governments to transfer the responsibility to prepare the regional plan to the Southern California Hazardous Waste Management Authority, if the authority is created by a joint powers agreement. The bill would prohibit any person from establishing or expanding an offsite facility, unless the city's or county's legislative body finds that the establishment or expansion is consistent with the county hazardous waste management plan.

The bill would create, within the Hazardous Waste Control Account in the General Fund, the Hazardous Waste Management Planning Subaccount and would authorize the department to expend the moneys in the subaccount, upon appropriation by the Legislature, for the purpose of paying for the costs of the state

department in administering the program, and for providing grants to councils of governments, counties, and cities in carrying out these provisions.

The bill would transfer to the Hazardous Waste Management Planning Subaccount \$10,000,000 of the funds appropriated to the Hazardous Control Account from the proceeds received by the state from any settlements under specified provisions of the Outer Continental Shelf Lands Act.

(2) Existing law imposes a fee upon the operator of a hazardous waste disposal site for the purpose of funding specified activities concerning hazardous waste regulation.

This bill would authorize a city or county in which there is located an offsite, multuser hazardous waste facility, as defined, to impose a tax, for general purposes, or a user fee upon the operation of the facility, up to an amount equal to 10% of the facility's annual gross receipts for hazardous waste treated, stored, or disposed of at that facility, except as specified.

(3) Existing law requires public agencies to approve applications for development projects, as defined, within specified time periods, including projects for the discharge or disposal of waste. Existing law also requires the department to issue hazardous waste facilities permits to use and operate hazardous waste facilities.

This bill would expressly provide that the development project approval provisions apply to the making of a land use decision or the issuance of a permit, as defined, by a public agency, for a hazardous waste facility project which is not a land disposal facility.

The bill would also establish procedures for the approval and review of applications for a land use decision concerning a hazardous waste facility project, as defined, by a local agency. The bill would require the Office of Permit Assistance in the Office of Planning and Research to perform specified duties concerning a hazardous waste facility project, including providing information and assistance, and convening meetings on project applications. The bill would require that a person applying to a local agency for a land use decision concerning an offsite hazardous waste facility to pay a fee, as established by the Office of Permit Assistance, and would require the office to deposit these fees in the Local Agency Technical Assistance Account, which the bill would create in the General Fund. The money in the account would be available for expenditure by the office, upon appropriation by the Legislature, to make technical assistance grants to local agencies. The bill would specify procedures for the processing of applications by public agencies for hazardous waste facilities projects pending certain judicial actions.

The bill would also establish procedures for appealing a local agency land use decision concerning the siting and construction, or expansion of, an offsite hazardous waste facility serving more than one hazardous waste generator. The bill would require an appeal to be authorized by the Governor or the Governor's designee, would

provide for the establishment of an appeal board to review the appeal, and would specify the procedures and determinations which the appeal board is required to follow in agreeing with, reversing, or modifying a local agency's land use decision.

The bill would prohibit the department from issuing a hazardous waste facility permit after January 1, 1987, unless the department makes a specified finding.

The bill would prohibit the department from issuing a permit to a hazardous waste land disposal facility which commences operation after January 1, 1987, except as specified, and the department would also be required to prohibit the land disposal of untreated hazardous waste after January 1, 1990, except as specified. This provision would not become operative if SB 1500 is enacted and becomes operative.

(4) The bill would also make a statement of legislative intent and would make conforming changes.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$500,000 statewide and other procedures for claims whose statewide costs exceed \$500,000.

This bill would impose a state-mandated local program by requiring cities, counties, and districts to take specified actions concerning planning for hazardous waste management and making land use decisions for hazardous waste facilities and by creating certain crimes concerning payment of a fee to operate a hazardous waste facility.

The bill would provide that reimbursement shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$500,000, shall be payable from the State Mandates Claims Fund, except that, for certain costs, the bill would provide that no reimbursement is required for a specified reason.

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

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) The quality of life of the citizens of this state is based upon a large variety of consumer goods produced by the manufacturing economy of the state. The complex industrial processes that produce these goods also generate waste byproducts, some of which are hazardous to the public health and the environment.

(2) Safe and responsible management of hazardous wastes is one of the most important environmental problems facing the state at the present time. This management is critical to the protection of the public health and the environment and also to the economic growth of the state. If environmentally sound hazardous waste facilities are

not available to effectively manage the hazardous wastes produced by the many industries of the state, the state's economic activity will be hampered and cannot prosper, public health and the environment will be threatened by the increased illegal disposal, and the use of outmoded disposal practices will continue.

(3) A solution to the safe and responsible management of hazardous wastes requires an effective planning process that involves local and state governments, the public, and industry. The process must provide a more expeditious method than presently exists for siting needed hazardous waste management facilities and granting the necessary permits. The process also must provide a means for ensuring that needed facilities are environmentally sound, do not pose a threat to the public health and safety, and will not be rejected because of local opposition.

(4) A solution to the safe and responsible management of hazardous wastes also requires improved programs of waste source reduction and recycling, and encouraging onsite treatment of hazardous wastes, as preferable to the siting of new land disposal facilities. The goal of this act, which recognizes the long-term health, environmental, and economic risks of hazardous waste land disposal, is to prevent hazardous waste from being permanently disposed into land, or emitted into the air, without being processed by an economically and technically feasible alternative technology. Attaining this goal will require the development of feasible programs which should result in the reduction of the volume and hazard of hazardous wastes at their source, and the development of expanded recycling programs for hazardous wastes. This goal also requires that, as an alternative to traditional land disposal methods, residuals repositories be utilized for the byproducts of preferred hazardous waste treatment technologies. Because of the threat to public health and safety posed by the traditional land disposal of hazardous wastes, it is necessary that these methods of dealing with hazardous wastes come quickly into place.

(5) The safe transport of hazardous wastes from the source of generation to the point of ultimate disposal is an important element in the total management of hazardous waste. Strong enforcement of existing law regarding the manifest system, vehicle safety, and emergency response preparedness must be assured to provide for the full protection of public health and the environment.

(6) Monitoring of hazardous waste management facilities and the effective enforcement of existing federal and state hazardous waste regulations are also essential to protect the public health and environment and to meet the public's concerns regarding the acceptance of needed new hazardous waste management facilities.

(7) An assurance of an adequate system which provides for full compensation for injury and damage found to be caused by hazardous waste is central to protecting the public health, safety, and welfare.

(b) The Legislature, therefore, declares that it is in the public interest to establish a state policy that has the objective of ensuring that safe, effective, and economical facilities for the management of hazardous wastes are available when they are needed, and that these facilities are of a type, and operated and monitored in a manner, which protects public health and the environment. The principles underlying this policy include all of the following:

(1) Because the state's economy and quality of life are dependent on many substances and products that result in the production of hazardous wastes, all Californians must share in the responsibility for finding safe and effective solutions to the management and disposal of hazardous wastes, including efforts to reduce the amount and hazard of this waste.

(2) Local government, state government, the public, and industry need to form a partnership in an effort to plan for, and site, needed treatment and disposal facilities.

(3) Even though suitable sites for treatment and disposal facilities may be limited, it is necessary that all local communities in the state be willing to share the burden of hazardous waste management and that all local governments consider the feasibility and appropriateness of identifying suitable sites for treatment and disposal facilities in their general plans.

(4) While local land use planning and health, safety, and environmental requirements must be the basis for siting needed hazardous waste facilities, local facility siting decisions may not adequately consider the waste management needs of the region or of the state. Because of the need to consider the region's or state's waste management needs, procedures should be established for appealing the local rejection of needed and technically and environmentally sound hazardous waste facilities to a body with a regional or statewide perspective. However, an appeal of a hazardous waste facility, pursuant to Section 25199.9 of the Health and Safety Code, which is proposed for a rural area and which would receive hazardous waste from urban areas should not be approved, unless the hazardous waste facility is found consistent with the applicable city or county general plan and the county hazardous waste management plan, as specified in subdivision (f) of Section 25199.11 of the Health and Safety Code.

SEC. 2. Section 65963.1 is added to the Government Code, to read:

65963.1. Except as otherwise provided in Article 3.7 (commencing with Section 25199) of Chapter 6.5 of Division 20 of the Health and Safety Code, this chapter applies to the making of a land use decision or the issuance of a permit for a hazardous waste facility project by a public agency, as defined in Section 25199.1 of the Health and Safety Code, including, but not limited to, all of the following actions:

(a) The approval of land use permits and conditional use permits,

the granting of variances, the subdivision of property, and the modification of existing property lines pursuant to this division or Division 2 (commencing with Section 66410) of Title 7, and, for purposes of this chapter, "project" includes an activity requiring any of those actions.

(b) The issuance of hazardous waste facility permits by the State Department of Health Services pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(c) The issuance of waste discharge requirements by California regional water quality control boards pursuant to Article 4 (commencing with Section 13260) of Chapter 4 of Division 7 of the Water Code.

(d) The issuance of authority to construct permits by the district board of an air pollution control district or an air quality management district pursuant to Division 26 (commencing with Section 39000) of the Health and Safety Code.

(e) The issuance of solid waste facilities permits by the enforcement agency pursuant to Article 2 (commencing with Section 66796.30) of Chapter 3 of Title 7.3.

SEC. 3. Section 66780.8 is added to the Government Code, to read:

66780.8. In lieu of preparing a hazardous waste portion of the county solid waste plan as provided in this article, a county may, at its discretion, prepare a county hazardous waste management plan for the management of all hazardous wastes produced in the county. If a county decides to prepare a hazardous waste management plan instead of the hazardous waste portion of a county solid waste plan, the county shall notify the department of the decision. The county hazardous waste management plan shall be prepared, adopted, and approved pursuant to Article 3.5 (commencing with Section 25135) of Chapter 6.5 of Division 20 of the Health and Safety Code.

A county may delegate the authority to prepare the county hazardous waste management plan to a city, an agency established by a joint powers agreement, or any other special planning agency.

SEC. 4. Section 25117.2 is added to the Health and Safety Code, to read:

25117.2. "Hazardous waste management" means the disposal, handling, processing, storage, and treatment of hazardous waste.

SEC. 5. Section 25117.7 of the Health and Safety Code is amended and renumbered to read:

25117.1. "Hazardous waste facility" means any structure, other appurtenances, and improvements on the land, and all contiguous land, used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste.

SEC. 6. Article 3.5 (commencing with Section 25135) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

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Article 3.5. Hazardous Waste Management Plans

25135. (a) The Legislature finds and declares as follows:

(1) An effective planning process involving public and private sector participation exists at the county level for establishing new, or expanding existing, solid waste facilities, but an equivalent process has not been established at the local level to plan for the management of hazardous wastes.

(2) Counties are presently required to prepare solid waste management plans for all waste disposal within each county and for all waste originating in each county. While the department has requested that counties include in their solid waste management plans a hazardous waste management element, there is not presently a clear mandate that they do so.

(3) Hazardous waste management planning at the local level has been hampered because the department has not provided the counties with adequate and comprehensive planning guidelines, there is a lack of accurate data on hazardous waste generation, handling, and disposal practices, adequate funding has not been available, and local expertise in hazardous waste planning has not been developed.

(4) The failure to plan for the safe and effective management of hazardous wastes has contributed to the public's general uncertainty in viewing proposals to site hazardous waste facilities at various locations throughout the state. Because advance planning has not taken place, local governments are not prepared to consider siting proposals and the public has not received adequate answers to questions concerning the need for proposed facilities.

(5) Safe and responsible management of hazardous wastes is one of the most important environmental problems facing the state at the present time. It is critical to the protection of the public health and the environment, and to the economic growth of the state. If environmentally sound hazardous waste facilities are not available to effectively manage the hazardous wastes produced by the many industries of the state, economic activity will be hampered and the economy cannot prosper.

(b) The Legislature, therefore, declares that it is in the public interest to establish an effective process for hazardous waste management planning at the local level. This process is consistent with the responsibility of local governments to assure that adequate treatment and disposal capacity is available to manage the hazardous wastes generated within their jurisdictions.

(c) It is the intent of the Legislature that the hazardous waste management plans prepared pursuant to this article serve as the primary planning document for hazardous waste management at the local level; that the plans be integrated with other local land use planning activities to ensure that suitable locations are available for needed hazardous waste facilities; that land uses adjacent to, or near,

hazardous waste facilities, or proposed sites for these facilities, are compatible with their operation; and that the plans are prepared with the full and meaningful involvement of the public, environmental groups, civic associations, generators of hazardous wastes, and the hazardous waste management industry.

(d) It is further the intent of the Legislature, in enacting this article, to define the respective responsibilities of state and local governments in hazardous waste management planning; to establish a comprehensive planning process in which state and local government, the public, and industry jointly develop safe and effective solutions for the management and disposal of hazardous wastes; to ensure that local governments are assisted adequately by the state in carrying out their responsibilities; and to provide funding for local-level planning.

25135.1. (a) For purposes of this article, and unless the context indicates otherwise, "county" means a county that notifies the department that it will prepare a county hazardous waste management plan in accordance with this article and receives a grant pursuant to Section 25135.8. "County" also means any city, or two or more cities within a county acting jointly, which notifies the department that it will prepare a county hazardous waste management plan in accordance with subdivision (c).

(b) A county may, at its discretion, and after notification to the department, prepare a county hazardous waste management plan for the management of all hazardous waste produced in the county. A county hazardous waste management plan prepared pursuant to this article shall serve in lieu of the hazardous waste portion of the county solid waste plan provided for in Article 2 (commencing with Section 66780) of Chapter 2 of Title 7.3 of the Government Code. The county hazardous waste management plan shall be prepared in cooperation with the affected cities in the county and the advisory committee appointed pursuant to Section 25135.2, in accordance with the guidelines adopted by the department pursuant to Section 25135.5, and in accordance with the schedule specified in Section 25135.6.

(c) On or before March 31, 1987, every county shall notify the department and the cities within the county whether the county has elected to prepare a county hazardous waste management plan pursuant to this article. A city, or two or more cities acting jointly, located within a county which elects not to prepare a county hazardous waste management plan or which fails to make an election, on or before March 31, 1987, to prepare a plan, may, at the city's or cities' discretion, elect to undertake the preparation of the plan. The city or cities shall be deemed to be acting in place of the county for purposes of this article and may apply for funding to pay the cost of preparing the plan pursuant to subdivision (c) of Section 25135.8. However, the city or cities may not receive funding pursuant to subdivision (c) of Section 25135.8, unless the proposal to prepare

a county hazardous waste management plan by the city or cities is approved by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county and the proposal is received by the department on or before June 30, 1987.

(d) The county hazardous waste management plan authorized by subdivision (b) or (c) shall serve as the primary planning document for hazardous waste management in the county and shall be prepared as a useful informational source for local government and the public. The plan shall include, but is not limited to, all of the following elements:

(1) An analysis of the hazardous waste stream generated in the county, including an accounting of the volumes of hazardous wastes produced in the county, by type of waste, and estimates of the expected rates of hazardous waste production until 1994, by type of waste.

(2) A description of the existing hazardous waste facilities which treat, handle, recycle, and dispose of the hazardous wastes produced in the county, including a determination of the existing capacity of each facility.

(3) An analysis of the potential in the county for recycling hazardous waste and for reducing the volume and hazard of hazardous waste at the source of generation.

(4) A consideration of the need to manage the small volumes of hazardous waste produced by businesses and households.

(5) A determination of the need for additional hazardous waste facilities to properly manage the volumes of hazardous wastes currently produced or that are expected to be produced during the planning period.

(6) An identification of those hazardous waste facilities that can be expanded to accommodate projected needs and an identification of general areas or specific sites for new hazardous waste facilities determined to be needed. In lieu of this facility and site identification, the plan may instead include siting criteria to be utilized in selecting sites for new hazardous waste facilities. If siting criteria are included in the county hazardous waste management plan, the plan shall also designate general areas where the criteria might be applicable.

(7) A statement of goals, objectives, and policies for the siting of hazardous waste facilities and the general management of hazardous wastes through the year 2000.

(8) A schedule which describes county and city actions necessary to implement the hazardous waste management plan through the year 2000, including the assigning of dates for carrying out the actions.

(e) In addition to the elements of the plan required by subdivision (d), a county may include a description of any additional local programs which the county determines to be necessary to provide

for the proper management of hazardous wastes produced in the county. These programs may include, but are not limited to, public education, enforcement, surveillance, transportation, and administration.

(f) The inclusion of an element in a county hazardous waste management plan pursuant to subdivision (d) or (e) does not authorize the county to adopt a program which the county is not otherwise authorized to adopt under any other provision of law.

25135.2. (a) Each county shall establish an advisory committee of at least seven members to assist the county in the preparation and administration of the county hazardous waste management plan. The board of supervisors of the county shall appoint the members who are not city representatives to the advisory committee, including at least one representative of industry, one representative of an environmental organization, and one representative of the public. The advisory committee shall also consist of at least three members to represent cities appointed by the city selection committee specified in Article 11 (commencing with Section 50270) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. The board of supervisors shall, to the extent possible, appoint other members that have expertise concerning aspects of hazardous waste management planning, including, but not limited to, engineering, geology, and water quality.

(b) The advisory committee shall do all of the following:

(1) Advise the county staff, the board of supervisors of the county, and the staff, mayors, and council members of the cities within the county, on issues related to the development, approval, and administration of the county hazardous waste management plan.

(2) Hold informal public meetings and workshops to provide the public with information, and to receive comments, during the preparation of the county hazardous waste management plan.

(c) If a city or group of cities are preparing the county hazardous waste management plan pursuant to subdivision (c) of Section 25135.1, the city or cities shall establish the advisory committee, using the qualifications and representation specified in subdivision (a).

25135.3. The Association of Bay Area Governments, the Southern California Association of Governments, the Sacramento Area Council of Governments, and the Association of Monterey Bay Area Governments may, at the discretion of their governing boards, prepare a regional hazardous waste management plan to serve as a resource document and to identify hazardous waste management issues, needs, and solutions at the regional level. A council of governments specified in this subdivision shall include in the regional plan additional counties affected by the regional plan, at the request of the councils of governments for those counties. A council of governments shall prepare the regional plan pursuant to the following procedure:

(a) A council of governments specified in this subdivision may

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apply to the department for funding pursuant to paragraph (3) of subdivision (b) of Section 25135.8.

(b) On or before December 31, 1987, a council of governments which receives funding from the department shall prepare a draft regional hazardous waste management plan and submit the draft plan to the department. The council of governments shall involve the public with the preparation of the draft plan, to the fullest extent possible, by public hearings, informational meetings, and other appropriate forums that offer the public the opportunity to respond to clearly defined alternative objectives, policies, and actions.

(c) From January 1, 1988, to March 31, 1988, the council of governments shall conduct hearings on the draft regional hazardous waste management plan, in the number determined appropriate by the council of governments. The council of governments shall provide affected local jurisdictions, the public, industry, business organizations, and the hazardous waste management industry with a full opportunity to comment orally and in writing on the draft plan.

(d) On or before March 31, 1988, the department shall review the draft plan, and provide the council of governments with comments on the draft plan.

(e) After conducting the review and comment period required by subdivision (c), the council of governments shall revise, as appropriate, the draft regional hazardous waste management plan.

(f) On or before September 30, 1988, the council of governments shall complete and adopt the plan.

(g) On or before October 1, 1988, the council of governments shall submit the final regional hazardous waste management plan adopted by its governing board to the department for review and approval. The department shall approve the regional plan if the department determines that all of the following requirements are met:

(1) The regional plan is consistent with the guidelines for the preparation of regional hazardous waste management plans adopted by the department.

(2) The regional plan applies the methods, techniques, and policies established by the department to analyze the waste stream and to determine whether there is a need for additional or expanded hazardous waste facilities to safely manage and properly dispose of the hazardous waste produced within the region.

(h) Throughout the process of preparing a regional hazardous waste management plan, a council of governments shall cooperate and consult with representatives and staff of affected counties and cities.

(i) Notwithstanding subdivisions (a) to (h), inclusive, of this section, if, pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, a joint powers agreement provides for the creation of the Southern California Hazardous Waste Management Authority, the Southern California Association of Governments shall, if it has elected to prepare a

regional hazardous waste management plan pursuant to this section, transfer the responsibility for preparing the regional hazardous waste management plan and all funds received pursuant to subdivision (b) of Section 25135.8 to the authority, if the governing board of the authority requests the transfer by the adoption of a resolution. If the transfer takes place, the authority shall comply with this section in the same manner as this section applies to the association. If the transfer of responsibility and funds authorized by this subdivision takes place and the authority is dissolved at any time before the regional hazardous waste management plan is approved by the department, the association shall prepare the regional hazardous waste management plan and any remaining funds received pursuant to subdivision (b) of Section 25135.8 shall be transferred back to the association.

25135.4. (a) No person shall establish or expand an offsite facility, unless the legislative body of the city or county in which the new offsite facility, or the expansion of an existing offsite facility, is proposed makes a determination that the facility or expansion is consistent with the county hazardous waste management plan.

(b) This section applies only to proposed new offsite facilities, or expansions of existing offsite facilities, if an approval action pursuant to Title 7 (commencing with Section 65000) of the Government Code is necessary.

(c) This section does not apply to cities or counties which do not have an approved county hazardous waste management plan.

25135.5. (a) The department shall, pursuant to this section, provide direction and technical data to counties and regional councils of governments to assist them in preparing planning documents for the management of hazardous wastes produced within their jurisdictions.

(b) The department shall do all of the following:

(1) On or before June 30, 1987, after conducting a workshop with county and city government officials and industry and environmental representatives, prepare and transmit to counties and regional councils of governments guidelines for the preparation and adoption of county and regional hazardous waste management plans. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the preparation and transmittal of these guidelines. The guidelines shall include, but are not limited to, all of the following:

(A) A listing of types or categories of hazardous wastes that can be used in characterizing the hazardous waste stream in each county or region.

(B) Methods for determining the capacity of the hazardous waste facilities that currently manage the hazardous wastes in the county or region and for assessing the capacity of these hazardous waste facilities to manage these hazardous wastes in the future.

(C) Methods for assessing the need to establish new, or expand

existing, capacity for the management of hazardous wastes produced in each county or region.

(D) Methods for estimating the amounts of hazardous waste produced by small businesses and households.

(2) On or before June 30, 1987, provide to each county and regional council of governments, all of the following information:

(A) Available data on the types and quantities of hazardous wastes produced in the county or region. The department shall inform the counties and regional councils of governments of the strengths and limitations of the data.

(B) A listing of the hazardous waste facilities that have received hazardous waste permits or grants of interim status in each county or region. The listing shall specify whether the facilities are onsite or offsite facilities and whether the facilities are used for the storage, treatment, transfer, recycling, or disposal of hazardous waste.

(C) A listing of producers of hazardous wastes known to the department in the county or region.

(D) An assessment of overall needed capacities for treating and disposing of hazardous wastes at the state and regional levels through the year 1994.

(E) A description of state policies and programs concerning the management of hazardous waste, including, but not limited to, the policies and programs for recycling various types of hazardous wastes, requiring the treatment of particular types of hazardous wastes, restricting the disposal to land of particular types or categories of hazardous wastes, encouraging the reduction of the amounts of hazardous waste produced at the source of production, and any other policies and programs that affect the need for additional management capacity in various types of hazardous waste facilities.

(F) An assessment of the potential for recycling, or reducing the volume of, various types of hazardous wastes in various classes of industry.

25135.6. (a) A county shall prepare, review, and adopt the county hazardous waste management plan pursuant to the schedule specified in this section.

(b) On or before December 31, 1987, each county, with the cooperation of affected local jurisdictions and the advisory committee established pursuant to Section 25135.2, shall prepare a draft county hazardous waste management plan and submit the draft plan to the department. The county shall involve the public with the preparation of the draft county hazardous waste management plan, to the fullest extent possible, by public hearings, informational meetings, and other appropriate forums that offer the public the opportunity to respond to clearly defined alternative objectives, policies, and actions.

(c) From January 1, 1988, to March 31, 1988, inclusive, the county

shall conduct hearings on the draft county hazardous waste management plan, in the number determined appropriate by the county. The county shall provide affected local jurisdictions, the public, industry, business organizations, and the hazardous waste management industry with the full opportunity to comment orally and in writing on the draft county hazardous waste management plan.

(d) On or before March 31, 1988, the department shall review the draft plan, and provide each county with comments which specify the changes or additions which are required to be made to the draft plan to result in a final plan which can be approved by the department pursuant to Section 25135.7.

(e) After conducting the review and comment period required by subdivision (c), each county shall revise, as appropriate, the draft county hazardous waste management plan.

(f) The revised county hazardous waste management plan shall be approved by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county. On or before September 30, 1988, the county shall adopt the revised county hazardous waste management plan as the final county hazardous waste management plan.

25135.7. (a) A county shall submit the final county hazardous waste management plan adopted by the county to the department for review and approval on or before October 1, 1988. If a county shows the department that the county has made substantial progress towards completing the county hazardous waste management plan and needs more time to complete the plan, the department may extend this date to February 1, 1989. The department shall, on or before December 31, 1988, or on or before April 30, 1989, if the county is given a time extension, review and either approve or disapprove the county hazardous waste management plan. The department shall approve the county hazardous waste management plan if the department makes all of the following determinations:

(1) The plan substantially complies with the guidelines for the preparation of hazardous waste management plans adopted by the department.

(2) The plan applies the methods, techniques, and policies established by the department to analyze the waste stream and to determine whether there is a need for additional or expanded hazardous waste facilities to safely manage and properly dispose of the hazardous waste generated within the county.

(3) If the plan contains a determination pursuant to paragraph (5) of subdivision (c) of Section 25135.1 that there is a need for additional or expanded hazardous waste facilities, the plan proposes general areas, or, as determined appropriate by the county, proposes specific sites which may be suitable locations for a facility. However, if the plan instead contains siting criteria for selecting sites for new hazardous waste facilities, the plan shall propose general areas where

the criteria might be applicable.

(4) If the county preparing the plan has entered into a formal agreement with other counties to manage hazardous waste, the agreement is documented.

(b) Within 90 days after the department approves a county hazardous waste management plan, the county shall either incorporate the plan, by reference, into the county's general plan or enact an ordinance which requires that all applicable zoning, subdivision, conditional use permit, and variance decisions are consistent with the county hazardous waste management plan.

(c) Any amendment to an adopted county hazardous waste management plan requires the approval of the department, the county, and a majority of the cities within the county which contain a majority of the population of the incorporated area of the county.

25135.8. (a) There is hereby established, within the Hazardous Waste Control Account, the Hazardous Waste Management Planning Subaccount. Money deposited in the subaccount shall be used to compensate the department, and to provide grants to councils of governments and counties, for their costs in administering this article.

(b) The moneys in the Hazardous Waste Management Planning Subaccount may be expended by the department, upon appropriation by the Legislature, to administer this article and to provide grants to councils of governments and to counties for expenses incurred in preparing regional and county hazardous waste management plans. On July 1, 1987, the department shall disburse four million dollars (\$4,000,000), upon appropriation by the Legislature, from the subaccount to counties and councils of governments, and on or before January 1, 1988, and July 1, 1988, respectively, the department shall disburse three million dollars (\$3,000,000), upon appropriation by the Legislature, from the subaccount to counties and councils of governments.

The disbursement on or before each of these dates shall be in accordance with the following formula:

(1) Each county shall receive an allocation based on the amount of hazardous waste produced in the county. For purposes of determining the amount of the allocations, the department shall prepare an updated assessment of hazardous waste generation in each county which does not include hazardous waste resulting from site cleanup activities. Based on this assessment, the department shall allocate as follows:

(A) Six thousand dollars (\$6,000) to each county which generates less than 100 tons per year of hazardous waste.

(B) Nine thousand dollars (\$9,000) to each county which generates 100 or more tons, but less than 10,000 tons, per year of hazardous waste.

(C) Thirty thousand dollars (\$30,000) to each county which generates 10,000 or more tons, but less than 30,000 tons, per year of

hazardous waste.

(D) Forty-five thousand dollars (\$45,000) to each county which generates 30,000 or more tons, but less than 100,000 tons, per year of hazardous waste.

(E) Seventy-five thousand dollars (\$75,000) to each county which generates 100,000 or more tons, but less than 150,000 tons, per year of hazardous waste.

(F) Ninety thousand dollars (\$90,000) to each county which generates 150,000 or more tons, but less than 350,000 tons, per year of hazardous waste.

(G) One hundred twenty thousand dollars (\$120,000) to each county which generates 350,000 or more tons, but less than 500,000 tons, per year of hazardous waste.

(H) One hundred fifty thousand dollars (\$150,000) to each county which generates 500,000 or more tons per year of hazardous waste.

(2) One hundred seventy-five thousand dollars (\$175,000) may be reserved by the department from the disbursements made on July 1, 1987, and on or before July 1, 1988, to pay for its costs in administering this article and to make additional allocations to counties that demonstrate the need for additional funding to complete county hazardous waste management plans in excess of the funding provided by paragraphs (1) and (3).

(3) The amount remaining, after the allocation under paragraph (1) has been made and the amount required by paragraph (2) has been reserved, shall be distributed to the counties and to the councils of governments whose governing boards have decided to prepare a regional hazardous waste management plan pursuant to subdivision (b) of Section 25135.3 and have notified the department of that decision. The department shall do both of the following:

(A) Distribute funds to the counties on a prorated basis based on the amount of hazardous waste produced in each county in proportion to the amount of hazardous waste produced in the state, as assessed by the department pursuant to paragraph (1).

(B) Distribute to each council of governments one-half of the total amount allocated to the county which is located in the region represented by the council of governments and which received the largest allocation pursuant to paragraph (1) and subparagraph (A) of this paragraph, as compared to the other counties located in that region.

(c) A city or two or more cities within a county which are eligible to receive funding pursuant to subdivision (c) of Section 25135.1 shall be allocated from the subaccount the amount specified in paragraph (1) of subdivision (a) that would be allocated to the county in which the city or cities are located if the county had elected to prepare the plan.

(d) This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1989, deletes or extends that date.

SEC. 7. Section 25173.5 is added to the Health and Safety Code, to read:

25173.5. (a) Except as provided in subdivision (b), the legislative body of a city or county may impose and enforce a tax, for general purposes, or may impose a user fee on the operation of an offsite, multiuser hazardous waste facility located within the jurisdiction of the city or county. The tax or the user fee imposed shall not exceed 10 percent of the facility's annual gross receipts for the treatment, storage, or disposal of hazardous waste at the facility.

(b) A city or county shall not impose a tax or a user fee adopted pursuant to subdivision (a) upon any of the following:

(1) An existing hazardous waste facility for which a tax is authorized pursuant to Section 25149.5.

(2) An offsite, multiuser hazardous waste facility that began operations before January 1, 1987, and was issued a hazardous waste facilities permit pursuant to Section 25200, or was granted interim status pursuant to Section 25200.5, before January 1, 1987.

(3) That portion of the gross receipts of the hazardous waste facility that derives from the recycling of hazardous wastes.

SEC. 8. Article 8.7 (commencing with Section 25199) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 8.7. Procedures for the Approval of New Facilities

25199. (a) The Legislature finds and declares as follows:

(1) Existing laws require numerous permits before a hazardous waste facility can be constructed and operated. The permits are issued by governmental agencies, at both the state and local levels under land use planning, zoning, hazardous waste, air quality, water quality, and solid waste management laws.

(2) The approval of hazardous waste facilities is not currently a coordinated process. The failure to coordinate the issuance of multiple permits, licenses, land use approvals, and other types of authorizations causes lengthy and costly delays. The end result of the process cannot be predicted, with any degree of certainty, by either the proponent of a project to site and construct a facility or by the concerned public.

(3) Present procedures for approving hazardous waste facilities do not provide meaningful opportunities for public involvement and are not suitably structured to allow the public to make its concerns known and to cause these concerns to be taken into consideration.

(4) A formal administrative process for reviewing local discretionary land use decisions on applications to site and construct a hazardous waste facility has not been established and made available to interested persons who wish to appeal these decisions.

(b) The Legislature, therefore, declares that there is a critical need to clarify the requirements that must be met, and the basic procedures that must be followed, in connection with the approval

of hazardous waste facilities.

(c) It is the intent of the Legislature, in enacting this article, to establish the means to expedite the approval of needed hazardous waste facilities; to ensure that new hazardous waste facilities are not sited unless the facility operator provides financial assurance that the operator can respond adequately to damage claims arising out of the operation of the facility; to ensure that the facilities comply with applicable laws and regulations; to clarify the procedures to be followed in approving a facility; to establish specific means to give the concerned public a voice in decisions relating to the siting and issuance of permits for hazardous waste facilities; and to establish a process for appealing local decisions on applications for land use approval for hazardous waste facilities.

25199.1. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Appeal board" means an appeal board established pursuant to Section 25199.10.

(b) "Hazardous waste facility project" means a project undertaken for the purpose of siting and constructing a new hazardous waste facility or for the purpose of significantly expanding or modifying an existing hazardous waste facility that is being used or operated under a permit issued pursuant to Section 25200 or a grant of interim status pursuant to Section 25200.5. Unless expressly provided otherwise, "hazardous waste facility project" includes a specified hazardous waste facility project.

(c) "Interested person" means a person who participated in one or more public meetings or hearings held to consider an application for a land use decision for a specified hazardous waste facility project. "Participation" includes, but is not limited to, the giving of oral or written testimony at a meeting or hearing, submission of questions at a meeting or hearing, or attendance at the meeting or hearing.

(d) "Land disposal facility" means a hazardous waste facility where hazardous waste is disposed in, on, under, or to the land.

(e) "Land use decision" means a discretionary decision of a local agency concerning a hazardous waste facility project, including the issuance of a land use permit or a 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.

(f) "Lead agency" means the public agency that has the principal responsibility for approving a hazardous waste facility project.

(g) "Local agency" means any public agency, other than a state agency.

(h) "Permit" means a permit, license, certificate, requirement, or other entitlement for use required to site or construct a hazardous waste facility. "Permit" includes, but is not limited to, all of the following:

(1) A hazardous waste facility permit issued by the department

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pursuant to this chapter.

(2) Waste discharge requirements issued by a California regional water quality control board pursuant to Article 4 (commencing with Section 13260) of Chapter 4 of Division 7 of the Water Code.

(3) An authority to construct permit issued by an air pollution control district or air quality management district pursuant to Division 26 (commencing with Section 39000).

(4) A solid waste facilities permit issued by the enforcement agency pursuant to Article 2 (commencing with Section 66796.30) of Chapter 3 of Title 7.3 of the Government Code.

(i) "Proponent" means any person applying to a public agency for a permit or a land use decision concerning a specified hazardous waste facility project.

(j) "Public agency" means any state agency or any local agency.

(k) "Responsible agency" means any public agency, other than the lead agency, which has the authority to issue a permit or make a land use decision.

(l) "Significantly expand or modify" means to expand or modify an existing hazardous waste facility, including a specified hazardous waste facility, in a manner so that a land use decision and an environmental impact report are required.

(m) "Specified hazardous waste facility" means an offsite facility which serves more than one producer of hazardous waste.

(n) "Specified hazardous waste facility project" means a project undertaken for the purpose of siting and constructing a new specified hazardous waste facility or for the purpose of significantly expanding or modifying an existing specified hazardous waste facility that is being used or operated under a permit issued pursuant to Section 25200 or a grant of interim status pursuant to Section 25200.5.

(o) "State agency" means any agency, board, or commission of state government. "State agency" also includes an air pollution control district and an air quality management district.

(p) "Technical review" means the review of an application for a hazardous waste facility project by a state agency to determine if the facility meets the applicable statutes and regulations.

25199.2. Except as otherwise provided in this article, Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code applies to all public agencies which make a land use decision or issue a permit for a hazardous waste facility project, as specified in Section 65963.1 of the Government Code. The public agency shall perform the duties and carry out the actions required by Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code in connection with applications submitted to the public agency for a hazardous waste facility project, unless otherwise specified in this article.

25199.3. (a) Notwithstanding any other provision of law, an applicant for a hazardous waste facility project may submit applications for a land use decision and for one or more permits to

the appropriate public agencies simultaneously. Unless a state agency is prohibited by statute from approving a permit before the granting of a local land use decision, the state agency shall not refuse to issue a permit for a hazardous waste facility project on the grounds that the applicant has not been granted a land use permit, except that the state agency may provide that the permit shall not become effective until the applicant is granted a local land use permit.

(b) Any public agency may request another public agency to jointly review applications for a permit or land use decision for a hazardous waste facility project. A public agency may consolidate, with other public agencies, public meetings and hearings permitted or required by law or regulation for the issuance of a permit or the making of a land use decision for a hazardous waste facility project.

(c) The department shall coordinate the technical review of applications for permits for hazardous waste facility projects that are received by state agencies.

(d) Upon the request of a local agency, the department, and any other state agency that is authorized to issue a permit for a hazardous waste facility project, shall provide technical assistance to a local agency that is reviewing an application for a land use decision for the project.

25199.4. The Office of Permit Assistance in the Office of Planning and Research shall, for any proposed hazardous waste facility project, do all of the following:

(a) Assist in identifying state and local permits required for the proposed hazardous waste facility project.

(b) Convene meetings or conferences, as necessary, prior to the submittal of applications for permits to state and local agencies, for the purpose of determining the scope of the hazardous waste facility project, identifying the questions that state and local agencies will have concerning the project, and determining decisionmaking schedules.

(c) Assist state and local agencies in consolidating public meetings and hearings permitted or required by law or regulation for approval of the permits for the project.

(d) Encourage the joint review and processing of applications for permits.

(e) Work with the applicant and public agencies to ensure that decisionmaking deadlines are met.

(f) Call meetings or conferences to resolve questions or mediate disputes arising from applications for a permit for a hazardous waste facility project.

25199.5. (a) At the request of an applicant, the legislative body of a local agency shall, within 60 calendar days after the local agency has determined that an application for a land use decision for a hazardous waste facility project is complete, issue an initial written determination on whether the hazardous waste facility project is consistent with both of the following:

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(1) The applicable local general plan and zoning ordinances in effect at the time the application was received.

(2) The county hazardous waste management plan authorized by Article 3.5 (commencing with Section 25135), if the plan is in effect at the time of the application.

(b) The local agency shall send a copy of the written determination made pursuant to subdivision (a) to the applicant.

(c) The determination required by subdivision (a) does not prohibit a local agency from making a different determination when the final land use decision is made, if the final determination is based on information which was not considered at the time the initial determination was made.

25199.6. (a) Notwithstanding Section 65952 of the Government Code, a responsible agency for a hazardous waste facility project that is a land disposal facility shall approve or disapprove all permits for the project within one of the following periods of time, whichever is longer:

(1) Within one year from the date on which the lead agency approved or disapproved the permit for the project.

(2) Within one year from the date on which completed applications for permits for the project were received, and accepted as complete, by the responsible agency.

(b) Subdivision (b) of Section 65956 of the Government Code does not apply to the failure of a lead agency or responsible agency to approve or disapprove a permit for a hazardous waste facility project within the time limits established by Sections 65950 and 65952 of the Government Code and subdivision (a) of this section. If a lead agency or a responsible agency fails to act within those time limits, the applicant may file an action pursuant to Section 1065 of the Code of Civil Procedure to compel the agency to approve or disapprove the permit for the project within a reasonable time, as the court may determine.

25199.7. (a) At least 90 days before filing an application for a land use decision for a specified hazardous waste facility project with a local agency, the proponent shall file a notice of intent to make the application with the Office of Permit Assistance in the Office of Planning and Research and with the applicable city or county. The notice of intent shall contain a complete description of the nature, function, and scope of the project. The Office of Permit Assistance shall immediately notify affected state agencies of the notice of intent. The local agency shall publish a notice in a newspaper of general circulation in the area affected by the proposed project, shall post notices in the location where the proposed project is located, and shall notify, by a direct mailing, the owners of contiguous property, as shown in the latest equalized assessment role. The local agency shall impose a fee upon a project applicant equal to the cost of notification required by this section.

(b) A proponent may not file an application for a land use decision

for a specified hazardous waste facility project with a local agency unless the proponent has first complied with subdivision (a).

(c) Within 90 days after a notice of intent is filed with the Office of Permit Assistance pursuant to subdivision (a), the office shall convene a public meeting in the affected city or county to inform the public on the nature, function, and scope of the proposed specified hazardous waste facility project and the procedures that are required for approving applications for the project.

(d) Within 90 days after receiving a notice of the filing of a notice of intent, the legislative body of the affected local agency shall appoint a seven member local assessment committee.

(1) The membership of the committee shall be broadly constituted to reflect the makeup of the community, and shall include three representatives of the community at large, two representatives of environmental or public interest groups, and two representatives of affected businesses and industries. Members of local assessment committees selected pursuant to this subdivision shall have no direct financial interest, as defined in Section 87103 of the Government Code, in the proposed specified hazardous waste facility project.

(2) The local assessment committee shall do all of the following:

(A) Negotiate with the proponent for the proposed hazardous waste facility project on the detailed terms of, provisions of, and conditions for, project approval which would protect the public health, safety, and welfare, and the environment of the city or county and would promote the fiscal welfare of the city or county through special benefits and compensation.

(B) Represent generally, in negotiation with the project proponent, the interests of the residents of the city or county and the interests of adjacent communities.

(C) Receive and expend the technical assistance grants made available pursuant to subdivision (g).

(D) Adopt rules and procedures which are necessary to perform its duties.

(E) Advise the legislative body of the city or county of the terms, provisions, and conditions for project approval which have been agreed upon by the committee and the proponent, and of any additional information which the committee deems appropriate. The legislative body of the city or county may use this advice for its independent consideration of the project.

(3) The legislative body of the affected jurisdiction shall provide staff resources to assist the local assessment committee in performing its duties.

(4) A local assessment committee established pursuant to this subdivision shall cease to exist after final administrative action by state and local agencies has been taken on the permit applications for the project for which the committee was convened.

(e) A local agency shall notify the Office of Permit Assistance

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within 10 days after an application for a land use decision for a specified hazardous waste facility project is accepted as complete by the local agency and, within 60 days after receiving this notice, the Office of Permit Assistance shall convene a meeting of the lead and responsible agencies for the project, the proponent, the local assessment committee, and the interested public, for the purpose of determining the issues which concern the agencies that are required to approve the project and the issues which concern the public. The meeting shall take place in the jurisdiction where the application has been filed.

(f) Following the meeting required by subdivision (e), the proponent and the local assessment committee appointed pursuant to subdivision (d) shall meet and confer on the specified hazardous waste facility project proposal for the purpose of establishing the terms and conditions under which the project will be acceptable to the community.

(g) A proponent for a specified hazardous waste facility project shall pay a fee, established by the Office of Permit Assistance, equal to the cost of hiring independent consultants to review the project. The Office of Permit Assistance shall deposit these fees in the Local Agency Technical Assistance Account, which account is hereby created within the General Fund. The moneys in that account may be expended by the Office of Permit Assistance, upon appropriation by the Legislature, to make technical assistance grants to the local assessment committee to enable the committee to hire an independent consultant to assist the committee in reviewing the project and negotiating terms and conditions with the proponent.

(h) If the local assessment committee and the proponent cannot resolve any differences through the meetings, the Office of Permit Assistance may recommend the use of a mediator. The proponent shall pay one-half of the costs of this mediation and the remaining costs shall be paid, upon appropriation by the Legislature, from the General Fund.

(i) This section applies only to a specified hazardous waste facility project.

25199.8. (a) If an action or proceeding has been commenced in any court to attack, review, set aside, void, or annul the acts or decisions of a lead agency for a specified hazardous waste facility project on the grounds of noncompliance with Division 13 (commencing with Section 21000) of the Public Resources Code, the proponent may, notwithstanding the action or proceeding, request the responsible agencies for the specified hazardous waste facility project to continue to process applications for approval of permits for the project received and accepted as complete by each responsible agency. If a responsible agency receives such a request, the time limits specified in Section 65952 of the Government Code shall apply, except that, in the case of an application for a permit for a land disposal facility, the time limits specified in subdivision (a) of Section

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25199.6 shall apply.

(b) Except as provided in subdivision (d), if any action or proceeding is commenced to review the acts or decisions of a lead or responsible agency for a specified hazardous waste facility project, the proponent may petition the court to stay the action or proceeding. The court, in its discretion, may stay the action or proceeding until all public agencies for the project have completed reviewing and approving or disapproving the applications for permits for the project. The proponent may, at any time prior to completion of these actions by the lead or responsible agencies, file a petition with the court requesting that the action or proceeding be permitted to proceed and, upon receiving such a petition, the court shall discontinue the stay.

(c) Notwithstanding subdivision (b), a court may enjoin a lead or responsible agency from approving a permit or license if the court finds that the approval would result in an imminent or substantial endangerment of the public health or the environment or if there are other compelling reasons that the action or proceeding should not be stayed.

(d) Subdivision (b) does not apply to an action or proceeding which alleges that a lead or responsible agency has not complied with Division 13 (commencing with Section 21000) of the Public Resources Code.

25199.9. (a) A proponent may file an appeal of a land use decision made by a local agency for a specified hazardous waste facility project with the Governor or the Governor's designee pursuant to subdivision (b), (c), or (d) and any interested person may file an appeal of a land use decision made by a local agency for a specified hazardous waste facility project pursuant to subdivision (e). The proponent or an interested person shall file the appeal within 30 calendar days after the date the local agency takes final action on the land use decision. If the proposed project would accept or manage both hazardous waste and solid waste, the appeal shall relate only to the local land use decision concerning the hazardous waste portion of the proposed facility. Any decisions of an appeal board involving the proposed facility shall affect only the hazardous waste portion of the local land use decision.

(b) If an application for a land use decision for a specified hazardous waste facility project is disapproved by a local agency, the proponent for the specified hazardous waste facility project may file an appeal of the disapproval with the Governor or the Governor's designee. The Governor or the Governor's designee may authorize an appeal of a disapproval pursuant to this subdivision only if the proponent has applied for, and obtained, all permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies.

(c) Notwithstanding subdivision (b), if an application for a land

use decision for a specified hazardous waste facility project is disapproved by a local agency before an environmental impact report for the project is prepared and certified, as specified in Section 21151 of the Public Resources Code, or before a negative declaration for the project is adopted pursuant to subdivision (c) of Section 21060 of the Public Resources Code, the proponent may file an appeal of the disapproval with the Governor or the Governor's designee.

Within 30 days after an appeal is filed pursuant to this subdivision, the Governor or the Governor's designee may convene an appeal board, pursuant to Section 25199.10. The appeal board shall thereafter be the lead agency for the specified hazardous waste facility project and shall perform the duties specified in, and carry out the actions required by, Division 13 (commencing with Section 21000) of the Public Resources Code. The proponent may apply for those permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies, at any time before or after the appeal board's compliance with actions required by Division 13 (commencing with Section 21000) of the Public Resources Code. The time limits specified in Section 65952 of the Government Code and subdivision (a) of Section 25199.6 apply to these responsible agencies except that, for the purposes of these time limits, the date when the appeal board has complied with all actions required by Division 13 (commencing with Section 21000) of the Public Resources Code shall be deemed equivalent to the date when a lead agency decides to approve or disapprove a project. After the proponent has applied for and obtained these permits, the proponent for the specified hazardous waste facility project may request the Governor or the Governor's designee to authorize the appeal. The Governor or the Governor's designee may authorize an appeal of a disapproval pursuant to this subdivision only if the proponent has applied for, and obtained, all permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies.

(d) If an application for a land use decision for a specified hazardous waste facility project is approved by a local agency, the proponent for the specified hazardous waste facility project may file an appeal of one or more conditions imposed by the land use decision with the Governor or the Governor's designee. An appeal filed under this subdivision shall specify the particular condition or conditions imposed by the land use decision that are appealed and shall be based solely on the grounds that the condition or conditions imposed on the operation of the facility by the land use decision are so onerous and restrictive that their imposition is the same as a disapproval of the application for a land use decision. However, the Governor or the Governor's designee shall not authorize an appeal pursuant to this subdivision unless the proponent has applied for, and obtained, all

permits for the specified hazardous waste facility project which can be obtained prior to its construction from those responsible agencies which are state agencies.

(e) If an application for a land use decision for a specified hazardous waste facility project is approved by a local agency, any interested person may file an appeal of the approval with the Governor or the Governor's designee. An appeal may be filed pursuant to this subdivision only if the appeal is based solely on the grounds that the conditions imposed on the project by the land use decision do not adequately protect the public health, safety, or welfare. The Governor or the Governor's designee shall not authorize an appeal pursuant to this subdivision before the proponent for the specified hazardous waste facility project has applied for, and obtained, all permits for the project which can be obtained prior to its construction from those responsible agencies which are state agencies. An interested person filing an appeal pursuant to this subdivision shall state in the appeal why the conditions imposed by the land use decision do not adequately protect the public health, safety, or welfare and shall specify the additional condition or conditions which are necessary to provide that protection.

25199.10. (a) If an appeal is filed pursuant to subdivision (b), (c), (d), or (e) of Section 25199.9, the Governor or the Governor's designee shall determine whether or not the appeal is authorized within five working days after the proponent demonstrates that the proponent has obtained all permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies. If, because the application for the appeal is incomplete, the Governor or the Governor's designee is unable to determine, within five working days, whether or not the appeal should be authorized pursuant to Section 25199.9, the Governor or the Governor's designee may return the application for appeal to the proponent or interested party who filed the appeal. The proponent or interested party shall resubmit the completed application for an appeal within 20 calendar days after receiving the returned appeal and if the proponent or interested party fails to do so, the Governor or the Governor's designee shall not reconsider authorizing the appeal.

(b) If the Governor or the Governor's designee determines that the appeal is authorized, the Governor or the Governor's designee shall convene an appeal board within 30 days after the Governor or the Governor's designee determines that the filing of an appeal is authorized, by requesting the League of California Cities and the County Supervisors Association of California to each nominate persons for appointment to an appeal board, as specified in paragraphs (6) and (7) of subdivision (c).

(c) An appeal board shall consist of seven members, five of whom shall be the members listed in paragraphs (1) to (5), inclusive, and

two of whom shall be separately appointed for each particular appeal, as provided in paragraphs (6) and (7). An appeal board shall consist of the following members:

- (1) The State Director of Health Services.
- (2) The Chairperson of the State Air Resources Board.
- (3) The Chairperson of the State Water Resources Control Board.
- (4) A member of a county board of supervisors appointed by the Senate Committee on Rules who shall be selected from the persons nominated by the County Supervisors Association of California. The appointment shall be for a period of four years, but shall terminate earlier if the appointee does not continue in office as a member of a board of supervisors.
- (5) A member of a city council appointed by the Speaker of the Assembly who shall be selected from the persons nominated by the League of California Cities. The appointment shall be for a period of four years, but shall terminate earlier if the appointee does not continue in office as a member of a city council.

(6) A member of a county board of supervisors appointed by the Speaker of the Assembly who shall be selected from the persons nominated by the County Supervisors Association of California. The member shall be from the county in which the specified hazardous waste facility project which is the subject of the appeal is located. However, if the member appointed pursuant to paragraph (4) is from the county in which the specified hazardous waste facility project is located, the member appointed pursuant to this paragraph shall not be from that same county.

(7) A member of a city council appointed by the Senate Committee on Rules who shall be selected from the persons nominated by the League of California Cities. The member shall be from the city in which the specified hazardous waste facility project which is the subject of the appeal is located, or from the city which the Governor or the Governor's designee determines to be the most directly affected by the project if the project is not located in a city. However, if the member appointed under paragraph (5) is from a city in the county in which the specified hazardous waste facility project is located, the member appointed under this paragraph shall be from a city in a different county.

(d) The appeal board shall issue the final decision upon an appeal in writing, and the members of the appeal board shall sign the decision.

(e) The State Director of Health Services, the Chairperson of the State Air Resources Board, and the Chairperson of the State Water Resources Control Board may designate an alternate to attend any meetings or hearings of an appeal board in that person's place, except that the alternate may not vote on a final decision on an appeal or sign the written decision in place of the person for whom the person serves as alternate.

(f) The Governor or the Governor's designee shall designate staff

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to serve the appeal board.

25199.11. (a) An appeal board established to hear an appeal authorized by the Governor or the Governor's designee pursuant to subdivision (b) or (c) of Section 25199.9 shall follow the procedures and requirements specified in this section.

(b) Within 30 days after the Governor or the Governor's designee determines that the filing of an appeal is authorized pursuant to subdivision (b) or (c) of Section 25199.9, the appeal board shall be convened and a public hearing held in the city or county where the specified hazardous waste facility project is located. At the hearing, the proponent, and the local agency whose land use decision is being appealed, shall present arguments and evidence to the appeal board concerning whether or not the appeal should be accepted.

(c) Within 15 days after the date of the public hearing specified in subdivision (b), the appeal board shall decide whether or not to accept the appeal. The appeal board may accept an appeal only by an affirmative vote of four members of the appeal board. The appeal board shall make its decision based upon the arguments and evidence presented at the hearing. The appeal board's decision shall be in writing, shall be signed by the members who voted in favor of the decision, and shall state the reasons for accepting or rejecting the appeal. The appeal board may accept the appeal if the arguments and evidence presented at the hearing tend to show that, when the local agency's reasons for disapproving the application for a land use decision are weighed against statewide, regional, or county hazardous waste management policies, goals, and objectives, there are compelling reasons to review the disapproval of the application.

(d) If the appeal board accepts the appeal, within 30 days after this acceptance, the appeal board shall conduct an informal workshop on the subject of the appeal in the city or county where the specified hazardous waste facility project is proposed to be located. Within 45 days following acceptance of the appeal, the appeal board shall also hold a public hearing in the community to hear the arguments and evidence for the purpose of making a tentative decision on the appeal. In issuing a decision pursuant to the hearing, the appeal board shall adopt a rebuttable presumption that the land use decision of the local agency disapproving the application is supported by substantial reasons and that, when these reasons are weighed against statewide, regional, or county hazardous waste management policies, goals, and objectives, the reasons for reversing the local agency's action are not compelling. In all matters related to the appeal, including, but not limited to, matters related to the findings required by subdivision (f), the burden of proof shall be with the proponent to rebut this presumption and to establish that there are compelling reasons to reverse the local agency's land use decision.

(e) Within 45 days after the public hearing, the appeal board shall, by an affirmative vote of at least four members, issue a written

decision on the appeal. If the appeal board agrees with the land use decision of the local agency, the appeal board shall state its reasons for this position. If the appeal board agrees with the proponent's appeal, the appeal board shall issue a tentative decision stating that the local agency's land use decision should be reversed.

(f) The appeal board shall not reverse the local agency's land use decision unless the appeal board makes all of the following findings:

(1) That the significant environmental impacts of the specified hazardous waste facility project will be adequately mitigated.

(2) That the specified hazardous waste facility project was consistent with the applicable city or county general plan when the local agency accepted, as complete, the proponent's application for a land use decision. For the purpose of this finding, a project is consistent with the applicable city or county general plan if the appeal board makes one of the following determinations:

(A) The appeal board may determine that a specified hazardous waste facility project that is not a land disposal facility project is consistent with the general plan if the appeal board makes all of the following findings:

(i) The project is proposed to be located in an area zoned and designated in the applicable general plan for industrial use and substantially developed with other industrial facilities which produce, treat, or dispose of hazardous waste onsite and which are served by the same transportation routes as the proposed facility. In addition, the land uses authorized in the applicable general plan and zoning ordinances in the vicinity of the project is compatible with the project.

(ii) There is no clear and express provision in the general plan which states that such a specified hazardous waste facility project is inconsistent with the general plan, or, if there is such a provision, the provision was adopted after January 1, 1983.

(iii) The specified hazardous waste project is consistent, as determined by the appeal board, with the general plan.

(B) The appeal board may determine that a specified hazardous waste facility project is consistent with the applicable city or county general plan if the project is a land disposal facility project, and if all of the following apply:

(i) There is no clear and express provision in the general plan that states that such a specified hazardous waste facility project is inconsistent with the general plan, or, if there is such a provision, the provision was adopted after January 1, 1983.

(ii) The project is consistent, as determined by the appeal board, with the general plan.

(3) That the specified hazardous waste facility is consistent with the county hazardous waste management plan, if such a plan has been adopted by the county, and approved by the department, pursuant to Article 3.5 (commencing with Section 25135).

(4) That alternative locations for the specified hazardous waste

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facility project, as identified in the environmental impact report for the project and in the county hazardous waste management plan, if one has been approved by the department, have been adequately considered by the appeal board in determining the appropriateness of the location chosen for the project.

(5) That reversing the local agency's land use decision is consistent with statewide, regional, and county hazardous waste management policies, goals, and objectives. In making this finding, the appeal board shall consider all of the following factors:

(A) Whether or not a need for the specified hazardous waste facility project has been demonstrated.

(B) Whether or not the specified hazardous waste facility project is of a type, and in a location, that conforms to statewide, regional, or local hazardous waste management policies.

(C) Whether or not the specified hazardous waste facility will be operated using the best feasible hazardous waste management technologies.

(g) The local agency whose land use decision is being appealed may reconsider the action and approve the application for the land use decision, consistent with the appeal board's tentative decision, within 60 days after the appeal board issues its tentative decision. If the local agency does not approve the application for the land use decision consistent with the tentative decision within 60 days after the decision is issued, the appeal board shall, by an affirmative vote of at least four members, issue a final decision. If the final decision reverses the local agency's land use decision, the appeal board shall then require the local agency to approve the application for the land use decision and if the local agency does not approve the application for the land use decision, the Attorney General shall bring an action to require the local agency to approve the application for the land use decision for the specified hazardous waste facility project.

25199.13. (a) An appeal board established to hear an appeal authorized by the Governor or the Governor's designee pursuant to subdivision (d) or (e) of Section 25199.9 shall follow the procedures and requirements specified in this section.

(b) Within 30 days after the Governor or the Governor's designee determines that the filing of an appeal is authorized by subdivision (d) or (e) of Section 25199.9, an appeal board shall be convened and a public hearing held in the city or county where the specified hazardous waste facility project is located. At the hearing, the proponent or the interested party and the local agency whose land use decision is being appealed shall present arguments and evidence to the appeal board concerning whether or not the appeal should be accepted.

The arguments and evidence presented to the appeal board for an appeal authorized pursuant to subdivision (d) of Section 25199.9, shall only concern whether or not a condition or conditions imposed on the operation of the facility by the land use decision are so onerous

and restrictive that their imposition is the same as a disapproval of the application for a land use decision. The arguments and evidence presented to the appeal board for an appeal authorized pursuant to subdivision (e) of Section 25199.9, shall only concern whether or not a condition or conditions imposed on the project by the land use decision do not adequately protect the public health, safety, and welfare.

(c) Within 15 days after the date of the public hearing, the appeal board shall decide whether or not to accept the appeal. The appeal board may accept an appeal only by an affirmative vote of five members of the appeal board. The appeal board shall make its decision based upon the arguments and evidence presented at the hearing. The appeal board's decision shall be in writing, shall be signed by the members who voted in favor of the decision, and shall state the reasons for accepting or rejecting the appeal. The appeal board may not accept the appeal unless it finds that the proponent or interested party has demonstrated a substantial likelihood of prevailing on the merits if the appeal is accepted for hearing.

(d) If the appeal board accepts the appeal, within 30 days after this decision, the appeal board shall hold a public hearing in the city or county where the specified hazardous waste facility project is located to hear the arguments and evidence it requires to make a decision on the appeal. The appeal board shall restrict the scope of the hearing to those matters which the appeal board determines are directly related to the subject matter of the appeal. In making a decision pursuant to the hearing, the appeal board shall adopt a rebuttable presumption that the local agency's land use decision is supported by substantial reasons and that there are no compelling reasons to modify it. In all matters related to the appeal, the burden of proof shall be with the proponent or the interested party to rebut this presumption and to establish, by clear and convincing evidence, that there are compelling reasons to modify the local agency's land use decision.

(e) Within 30 days after the public hearing, the appeal board shall, by an affirmative vote of at least five members, issue a decision on the appeal. The decision shall be written, shall be signed by the members in favor of the decision, and shall include the reasons for the decision.

(f) If the appeal is authorized by the Governor or the Governor's designee pursuant to subdivision (d) of Section 25199.9, the appeal board shall not issue a decision modifying the local agency land use decision, unless the appeal board finds that there is clear and convincing evidence that one or more conditions imposed on the facility by the land use decision are so onerous and restrictive that their imposition is the same as a disapproval of the application for a land use decision. If the appeal board agrees with the proponent concerning these conditions, the appeal board shall require the local agency to modify the condition or conditions imposed by the land use

decision, as the appeal board deems necessary. If the local agency does not modify the terms of the local land use decision, as required by the appeal board, the Attorney General shall bring an action to require the local agency to modify the local land use decision in accordance with the determination of the appeal board.

(g) If the appeal is authorized by the Governor or the Governor's designee pursuant to subdivision (e) of Section 25199.9, the appeal board shall not issue a decision approving the appeal of the interested person unless the appeal board finds that there is clear and convincing evidence that the land use decision approved by the local agency failed to impose one or more conditions necessary to protect the public health, safety, or welfare. If the appeal board approves the appeal of the interested person concerning these conditions, the appeal board shall require the local agency to modify the land use decision in accordance with the appeal board's decision. If the local agency does not modify the land use decision as required by the appeal board, the Attorney General shall bring an action to require the local agency to modify the land use decision in accordance with the determination of the appeal board.

25199.14. The final decision of the appeal board concerning an appeal authorized pursuant to Section 25199.9 shall be deemed to be the final administrative action of the appeal board.

SEC. 9. Section 25200.1 is added to the Health and Safety Code, to read:

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.

SEC. 10. Section 25200.2 is added to the Health and Safety Code, to read:

25200.2. (a) Notwithstanding Sections 25200 and 25200.5, the department shall not issue a hazardous waste facilities permit or grant interim status to any person to use and operate a facility which is a hazardous waste land disposal facility unless the facility is a treatment facility or a facility used exclusively for the disposal of treated hazardous wastes or special wastes. This subdivision applies only to hazardous waste land disposal facilities that commence operation on or after January 1, 1987.

(b) The disposal of liquid wastes, liquid hazardous wastes, or hazardous wastes containing free liquids in hazardous waste landfills is prohibited. For purposes of this subdivision, "free liquids" means liquids that readily separate from the solid portion of a hazardous waste under ambient temperature and pressure.

(c) Beginning on January 1, 1990, the department shall prohibit

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the disposal of hazardous wastes that are not treated hazardous wastes into hazardous waste landfills unless the hazardous waste is solid hazardous waste and is produced as a result of removal or remedial action at a hazardous waste site or unless the hazardous waste is a special waste.

(d) For purposes of this section, the following definitions apply:

(1) "Hazardous waste landfill" means a disposal facility, or a part of a facility, where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well.

(2) "Special waste" means a waste which meets the criteria and requirements established in Section 66742 of Title 22 of the California Administrative Code and has been classified as a special waste pursuant to Section 66744 of Title 22 of the California Administrative Code.

(3) "Treated hazardous waste" means the solid residual portion of a hazardous waste which is produced when the hazardous waste is treated by a method, technique, or process, including incineration, that changes the physical, chemical, or biological character or composition of the waste and which is in compliance with at least one of the following:

(A) It meets the criteria and requirements for, and may be managed as, a special waste.

(B) It does not contain any persistent or bioaccumulative toxic substance in excess of the soluble threshold limit concentration for the substance as established in regulations adopted by the department.

(C) It meets treatment standards established by the Environmental Protection Agency pursuant to subsection (m) of Section 201 of the Hazardous and Solid Waste Act Amendments of 1984 (42 U.S.C. Sec. 6924(m)) or, if the department has established equivalent or more stringent treatment standards pursuant to this chapter, it meets the treatment standards established by the department.

SEC. 11. Section 25204 of the Health and Safety Code is repealed.

SEC. 12. The sum of ten million dollars (\$10,000,000) appropriated by Section 21 of Chapter 1440 of the Statutes of 1985 is hereby transferred to the Hazardous Waste Management Planning Subaccount in the Hazardous Waste Control Account for purposes of funding the hazardous waste management planning activities required by Article 3.5 (commencing with Section 25135) of Chapter 6.5 of Division 20 of the Health and Safety Code.

SEC. 13. Section 10 of this act, which adds Section 25200.2 to the Health and Safety Code, shall not become operative if Senate Bill 1500 is enacted and becomes operative.

SEC. 14. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of

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Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars (\$500,000), shall be made from the State Mandates Claims Fund, except that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

