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HEALTH AND SAFETY CODE - HSC

DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS [24000 - 27007] (*Division 20 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 6.5. Hazardous Waste Control [25100 - 25259] (*Chapter 6.5 added by Stats. 1972, Ch. 1236.*)

ARTICLE 12. Financial Responsibility and Closure and Maintenance of Facilities [25245 - 25249] (*Article 12 added by Stats. 1982, Ch. 90, Sec. 3.*)

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

(1) Specify the financial assurances to be provided by the owner or operator of a hazardous waste facility that are necessary to respond adequately to damage claims arising out of the operation of that type of facility and to provide for the cost of closure and subsequent maintenance of the facility, including, but not limited to, the monitoring of groundwater and other aspects of the environment after closure. If the facility is required to obtain a permit under the federal act, the financial assurance shall be a trust fund, surety bond, letter of credit, insurance, or any other mechanism authorized under the federal act and the regulations adopted pursuant to the federal act. If the facility is not required to obtain a permit under the federal act, the financial assurance may include any other equivalent financial arrangement acceptable to the department.

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

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

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

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

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

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

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

(Amended by Stats. 2009, Ch. 500, Sec. 52. (AB 1059) Effective January 1, 2010.)

25245.4. (a) (1) (A) On and before September 30, 1996, a facility or transportable treatment unit operating pursuant to a permit-by-rule is exempt from any standard or regulation requiring the provision of financial assurances for the costs of closing a treatment

unit of the facility authorized under a permit-by-rule or closing the transportable treatment unit that is adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245.

(B) On and after October 1, 1996, a facility or transportable treatment unit operating pursuant to a permit-by-rule under the regulations adopted by the department regarding transportable treatment units and fixed treatment units, which are contained in Chapter 45 (commencing with Section 67450.1) of Division 4.5 of Title 22 of the California Code of Regulations, shall provide financial assurances for the costs of closing a treatment unit of the facility authorized under a permit-by-rule under those regulations, or closing the transportable treatment unit, as specified in the standards and regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245 and subdivision (d), unless the facility or transportable treatment unit is exempt from those financial assurance requirements pursuant to this chapter. A facility operating pursuant to a permit-by-rule which operates not more than 30 days in any calendar year is not required to provide financial assurances for the costs of closure of such a treatment unit pursuant to paragraph (1) of subdivision (a) of Section 25245.

(2) A facility or transportable treatment unit operating pursuant to a permit-by-rule is exempt from any standard or regulation requiring the provision of financial assurances for third-party liability that is adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245.

(3) A facility or transportable treatment unit operating pursuant to a permit-by-rule is not required to provide financial assurances for postclosure maintenance pursuant to paragraph (2) of subdivision (a) of Section 25245, unless the department determines, pursuant to the regulations adopted by the department, that the facility is required to obtain a postclosure permit.

(b) (1) (A) On and before September 30, 1996, a conditionally authorized generator who treats waste pursuant to Section 25200.3 is exempt from any standard or regulation requiring the provision of financial assurance for the costs of closing the conditionally authorized units that is adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245.

(B) On and after October 1, 1996, a conditionally authorized generator who treats waste pursuant to Section 25200.3 shall provide financial assurances for the costs of closing the conditionally authorized units, as specified in the standards and regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245 and subdivision (d).

(2) A generator operating under a grant of conditional authorization pursuant to Section 25200.3 shall not be required to provide financial assurances for third-party liability damages pursuant to paragraph (1) of subdivision (a) of Section 25245.

(3) A generator operating under a grant of conditional authorization pursuant to Section 25200.3, shall not be required to provide financial assurances for postclosure maintenance pursuant to paragraph (2) of subdivision (a) of Section 25245, unless the department determines, pursuant to the regulations adopted by the department that the generator is required to obtain a postclosure permit.

(c) Notwithstanding any other provision of law, a person who treats waste pursuant to a grant of conditional exemption under this chapter is exempt, for those activities, from any standards or regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245 and is not required to provide financial assurances for the costs of closing the treatment units or for damage claims arising out of the operations of the unit pursuant to paragraph (1) of subdivision (a) of Section 25245, or to provide financial assurances for postclosure maintenance pursuant to paragraph (2) of subdivision (a) of Section 25245, unless the department determines, pursuant to the regulations adopted by the department, that the person is required to obtain a postclosure permit.

(d) (1) On or before February 1, 1996, the department shall adopt regulations to implement subparagraph (B) of paragraph (1) of subdivision (a) and subparagraph (B) of paragraph (1) of subdivision (b).

(2) The regulations adopted pursuant to this subdivision may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) The adoption of regulations pursuant to this subdivision is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(Amended by Stats. 1996, Ch. 999, Sec. 9. Effective January 1, 1997.)

25246. (a) Each owner or operator of a hazardous waste facility shall submit hazardous waste facility closure and postclosure plans to the department and to the California regional water quality control board for the region in which the facility is located. The plans shall contain the owner's or operator's estimate of the cost of closure and subsequent maintenance, shall conform to the regulations adopted by the department and shall comply with applicable state laws relating to water quality protection and monitoring.

(b) The plans specified in subdivision (a) shall be submitted to the department with the application for a hazardous waste facilities permit or when otherwise requested by the department. The plans shall be submitted to the California regional water quality control board with a report of waste discharge submitted in accordance with Section 13260 of the Water Code. An owner or operator who has submitted a request for, or received a hazardous waste facilities permit prior to, the adoption of the standards and regulations

pursuant to Section 25245 shall submit the plans within 180 days after the department issues a written request for the plans. Prior to actual closure of the facility, the plans shall be updated if requested by the department. However, no owner or operator shall be required to revise or amend a closure plan after the department notifies the owner or operator in writing that the closure of the facility has been completed in accordance with the approved closure plan.

(c) An owner or operator who has not submitted facility closure and postclosure plans shall submit the plans at least 180 days prior to closure of the hazardous waste facility.

(d) This section does not apply to any person operating under a permit-by-rule, a conditional authorization, or a conditional exemption, pursuant to this chapter or the regulations adopted by the department.

(Amended by Stats. 1995, Ch. 640, Sec. 22. Effective January 1, 1996.)

25246.1. (a) (1) The department shall request, and an owner or operator of a facility shall submit to the department for review and approval, a written cost estimate for corrective action if all of the following are met:

(A) The department has identified a release or releases of a hazardous waste or hazardous waste constituent into the environment from the facility.

(B) The source of the release or releases of a hazardous waste or hazardous waste constituent is a hazardous waste facility, hazardous waste management unit, or an activity regulated by the department under this chapter.

(C) The department determines that corrective action is necessary at the facility, either during the active life of the facility or pursuant to an order or agreement for corrective action.

(2) The written cost estimate for corrective action required by paragraph (1) shall be based on available data, the history of releases, and facility activities.

(b) (1) Other than for an obligation for corrective action described in subdivision (a), the department shall request, and an owner or operator of a facility or a respondent or proponent required to conduct corrective action at a facility from which releases that necessitate corrective action have occurred shall submit to the department for review and approval, a written cost estimate to cover activities associated with necessary corrective action if the department determines that corrective action is necessary at any site undergoing a response action, as defined in Part 2 (commencing with Section 78000) of Division 45, overseen by the department pursuant to its authority in any of the following circumstances:

(A) The department has issued an order, entered into an agreement, or otherwise initiated action with respect to a release at the site, as defined in Part 2 (commencing with Section 78000) of Division 45, pursuant to Article 1 (commencing with Section 78650) of Chapter 4 of, or Article 10 (commencing with Section 79130) of Chapter 5 of, Part 2 of Division 45 or Section 78870, 79005, 79055, 79060, or 79065.

(B) The source of the release or releases, as defined in Part 2 (commencing with Section 78000) of Division 45, is a hazardous waste facility, hazardous waste management unit, or an activity regulated by the department under this chapter.

(C) The department is conducting, or has conducted, oversight of the site investigation and response action at the site at the request of the responsible party, as defined in Part 2 (commencing with Section 78000) of Division 45.

(2) The written cost estimate required pursuant to paragraph (1) shall be based on available data, the history of releases, and activities at the site, as defined in Part 2 (commencing with Section 78000) of Division 45.

(c) An owner or operator may satisfy the requirements of this section by demonstrating to the department that it has provided financial assurance for corrective action to the State Water Resources Control Board or a California regional water quality control board for the same release identified by the department.

(d) For facilities for which sole jurisdiction has been granted pursuant to subdivision (b) of Section 25204.6, the department shall not require additional financial assurances unless it is the lead agency or is directed by the lead agency that has sole jurisdiction pursuant to subdivision (b) of Section 25204.6. This section does not alter the State Water Resources Control Board's rules and regulations regarding financial assurances.

(Amended by Stats. 2022, Ch. 258, Sec. 66. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258.)

25246.2. (a) All of the following requirements apply if a written cost estimate for corrective action is required pursuant to Section 25246.1:

(1) A corrective action cost estimate shall be based on, and be no less stringent than, the ASTM International Standard E2150.

(2) (A) An owner or operator of a facility requiring corrective action under department oversight shall submit the corrective action cost estimate to the department within 60 days of the department's request.

(B) If the department determines that the corrective action cost estimate is substantially incomplete or includes substantially unsatisfactory information, the department shall provide a written notice of deficiency to the owner or operator of the hazardous waste facility or a respondent or proponent required to conduct corrective action under department oversight at a facility within 60 days of receipt of the corrective action cost estimate.

(C) The owner or operator of the hazardous waste facility or a respondent or proponent required to conduct corrective action under department oversight at a facility shall submit a revised corrective action cost estimate based on the information provided in the written notice of deficiency within 30 days.

(D) The department shall approve or deny the revised corrective action cost estimate within 30 days of receipt of the revised corrective action cost estimate.

(E) If the corrective action cost estimate does not address the information provided in the written notice of deficiency, as determined by the department, the department shall deny the revised corrective action cost estimate and shall, within 60 days of denial of the corrective action cost estimate, develop its own corrective action cost estimate that will be the approved corrective action cost estimate for the facility.

(3) Within 90 days of approval by the department of a corrective action cost estimate, the owner or operator of a hazardous waste facility or a respondent or proponent required to conduct corrective action under department oversight at a facility shall fund the approved corrective action cost estimate or enter into a schedule of compliance for assurances of financial responsibility for completing the corrective action.

(4) If the owner or operator of a hazardous waste facility or a respondent or proponent required to conduct corrective action under department oversight at a facility is required to submit a financial assurance mechanism for corrective action, the financial assurances shall be in the form of a trust fund, surety bond, letter or credit, insurance, or any other mechanism authorized under the federal act and the regulations adopted by the department for financial assurance mechanisms.

(5) The financial assurances for an owner or operator of a hazardous waste facility or a respondent or proponent required to conduct corrective action under department oversight at a facility that is required to submit a financial assurance mechanism for corrective action shall be governed by Article 11 (commencing with Section 79180) of Chapter 5 of Part 2 of Division 45.

(b) The department may adopt, and revise, when appropriate, standards and regulations to implement this section. Additionally, the department may adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to implement this section. The adoption of these regulations shall be declared an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare for purposes of Sections 11346.1 and 11349.6 of the Government Code.

(Amended by Stats. 2022, Ch. 258, Sec. 67. (AB 2327) Effective January 1, 2023. Operative January 1, 2024, pursuant to Sec. 130 of Stats. 2022, Ch. 258.)

25247. (a) The department shall review each plan submitted pursuant to Section 25246 and shall approve the plan if it finds that the plan complies with the regulations adopted by the department and complies with all other applicable state and federal regulations.

(b) The department shall not approve the plan until at least one of the following occurs:

(1) The plan has been approved pursuant to Section 13227 of the Water Code.

(2) Sixty days expire after the owner or operator of an interim status facility submits the plan to the department. If the department denies approval of a plan for an interim status facility, this 60-day period shall not begin until the owner or operator resubmits the plan to the department.

(3) The director finds that immediate approval of the plan is necessary to protect public health, safety, or the environment.

(c) Any action taken by the department pursuant to this section is subject to Section 25204.5.

(d) (1) To the extent consistent with the federal act, the department shall impose the requirements of a hazardous waste facility postclosure plan on the owner or operator of a facility through the issuance of an enforcement order, entering into an enforceable agreement, or issuing a postclosure permit.

(A) A hazardous waste facility postclosure plan imposed or modified pursuant to an enforcement order, a permit, or an enforceable agreement shall be approved in compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(B) Before the department initially approves or significantly modifies a hazardous waste facility postclosure plan pursuant to this subdivision, the department shall provide a meaningful opportunity for public involvement, which, at a minimum, shall include public notice and an opportunity for public comment on the proposed action.

(C) For the purposes of subparagraph (B), a "significant modification" is a modification that the department determines would constitute a class 3 permit modification if the change were being proposed to a hazardous waste facilities permit. In determining whether the proposed modification would constitute a class 3 modification, the department shall consider the similarity of the modification to class 3 modifications codified in Appendix I of Chapter 20 (commencing with Section 66270.1) of Division 4.5 of Title 22 of the California Code of Regulations. In determining whether the proposed modification would constitute a class 3 modification, the department shall also consider whether there is significant public concern about the proposed modification, and whether the proposed change is so substantial or complex in nature that the modification requires the more extensive procedures of a class 3 permit modification.

(2) This subdivision does not limit or delay the authority of the department to order any action necessary at a facility to protect public health or safety.

(3) If the department imposes a hazardous waste facility postclosure plan in the form of an enforcement order or enforceable agreement, in lieu of issuing or renewing a postclosure permit, the owner or operator who submits the plan for approval shall, at the time the plan is submitted, enter into a cost reimbursement agreement pursuant to Section 25205.7 and upon commencement of the postclosure period shall pay the fee required by paragraph (9) of subdivision (c) of Section 25205.4. For purposes of this paragraph and paragraph (9) of subdivision (c) of Section 25205.4, the commencement of the postclosure period shall be the effective date of the postclosure permit, enforcement order, or enforceable agreement.

(4) In addition to any other remedy available under state law to enforce a postclosure plan imposed in the form of an enforcement order or enforcement agreement, the department may take any of the following actions:

(A) File an action to enjoin a threatened or continuing violation of a requirement of the enforcement order or agreement.

(B) Require compliance with requirements for corrective action or other emergency response measures that the department deems necessary to protect human health and the environment.

(C) Assess or file an action to recover civil penalties and fines for a violation of a requirement of an enforcement order or agreement.

(e) Subdivision (d) does not apply to a postclosure plan for which a final or draft permit has been issued by the department on or before December 31, 2003, unless the department and the facility mutually agree to replace the permit with an enforcement order or enforceable agreement pursuant to the provisions of subdivision (d).

(f) On or before January 1, 2018, the department shall adopt regulations to impose postclosure plan requirements pursuant to subdivision (d).

(g) If the department determines that a postclosure permit is necessary to enforce a postclosure plan, the department may, at any time, rescind and replace an enforcement order or an enforceable agreement issued pursuant to this section by issuing a postclosure permit for the hazardous waste facility, in accordance with the procedures specified in the department's regulations for the issuance of postclosure permits.

(h) Nothing in this section may be construed to limit or delay the authority of the department to order any action necessary at a facility to protect public health or safety, or the environment.

(Amended by Stats. 2016, Ch. 676, Sec. 1.5. (SB 1325) Effective January 1, 2017.)

25248. The owner or operator of a facility for which closure and postclosure plans have been approved shall carry out the plans during the closure and postclosure period required by law.

(Amended by Stats. 1988, Ch. 1631, Sec. 42.)

25249. On the effective date of this article, any operator subject to former Division 7.5 (commencing with Section 14000) of the Water Code shall be subject to this article.

(Added by Stats. 1982, Ch. 90, Sec. 3. Effective March 2, 1982.)