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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 4.5. State Regulation of Existing Hazardous Waste Facilities [25146 - 25149.7]** ( *Article 4.5 added by Stats. 1981, Ch. 244.* )

**25146.** The Legislature finds and declares that the number of hazardous waste disposal facilities is decreasing in the face of increasing demand, and that under present circumstances and law, imbalance between supply and demand is likely to further increase in the foreseeable future. This problem is general in nature, and does and will continue to exist in urban, suburban, and rural areas.

(*Added by Stats. 1981, Ch. 244.*)

**25146.5.** The Legislature further finds and declares that:

- (a) It is a matter of urgent public necessity and statewide concern that the number of existing hazardous waste facilities be retained to the extent feasible.
- (b) The availability of land suitable and capable of being developed as hazardous waste disposal sites is decreasing.
- (c) Any decrease in the number of existing hazardous waste facilities increases the distance that it is necessary to transport hazardous waste in order to properly dispose of it.
- (d) An increase in the distance which it is necessary to travel in order to properly dispose of hazardous waste encourages illegal disposal.

(*Added by Stats. 1981, Ch. 244.*)

**25147.** Except as expressly provided in Section 25149, it is not the intent of this article to preempt local land use regulation of existing hazardous waste facilities.

(*Added by Stats. 1981, Ch. 244.*)

**25147.5.** The definitions contained in this article shall govern the construction of only this article.

(*Added by Stats. 1981, Ch. 244.*)

**25148.** (a) Except as otherwise provided in subdivision (b), "existing hazardous waste facility" means a Class I disposal site, as defined in Section 2510 of Title 23 of the California Administrative Code on the effective date of this article, and which, in addition, is either:

- (1) A facility operating as of May 1, 1981, pursuant to a valid hazardous waste facility permit issued by the department pursuant to Section 25200.
- (2) A facility operating as of May 1, 1981, pursuant to a grant of interim status by the department pursuant to Section 25200.5.

(b) An "existing hazardous waste facility" does not include a facility which treats, disposes, stores, or recycles on the production site only hazardous wastes produced by the owner or lessee of such a facility.

(*Added by Stats. 1981, Ch. 244.*)

**25148.5.** "Solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, but shall not include hazardous waste as defined in Section 25117.

*(Added by Stats. 1981, Ch. 244.)*

**25149.** (a) Notwithstanding any other provision of law, except as provided in Section 25149.5 or 25181 of this code or Section 731 of the Code of Civil Procedure, no city or county, whether chartered or general law, or district may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit relating to an existing hazardous waste facility so as to prohibit or unreasonably regulate the disposal, treatment, or recovery of resources from hazardous waste or a mix of hazardous and solid wastes at that facility, unless, after public notice and hearing, the director determines that the operation of the facility may present an imminent and substantial endangerment to health and the environment. However, nothing in this section authorizes an operator of that facility to violate any term or condition of a local land use permit or any other provision of law not in conflict with this section.

(b) The director shall, pursuant to subdivision (c), conduct the hearing specified in subdivision (a) to determine whether the operation of an existing hazardous waste facility may present an imminent and substantial endangerment to health and the environment whenever any of the following occurs:

- (1) A state or federal public agency requires any person to evacuate a residence or requires the evacuation of a school, place of employment, commercial establishment, or other facility to which the public has access, because of the release of a hazardous substance from the facility.
- (2) For more than five days in any month, the air emissions from the facility result in the violation of an emission standard for a hazardous air pollutant established pursuant to Section 7412 of Title 42 of the United States Code or the threshold exposure level for a toxic air contaminant, as defined in Section 39655.
- (3) A state or federal public agency requires that the use of a source of drinking water be discontinued because of the contamination of the source by a release of hazardous waste, hazardous substances, or leachate from the facility.
- (4) A state agency, or the board of supervisors of the county in which the facility is located, upon recommendation of its local health officer, makes a finding that the public health has been affected by a release of hazardous wastes from the facility. The finding shall be based on statistically significant data developed in a health effects study conducted according to a study design, and using a methodology, that are developed after considering the suggestions on study design and methodology made by interested parties and that are approved by the Epidemiological Studies Section in the Epidemiology and Toxicology Branch of the State Department of Health Services before beginning the study.
- (5) The owner or operator of the facility is in violation of an order issued pursuant to Section 25187 that requires one or both of the following:
  - (A) The correction of a violation or condition that has resulted, or threatens to result, in an unauthorized release of hazardous waste or a constituent of hazardous waste from the facility into either the onsite or offsite environment.
  - (B) The cleanup of a release of hazardous waste or a constituent of hazardous waste, the abatement of the effects of the release, and any other necessary remedial action.
- (6) The facility is in violation of an order issued pursuant to Article 1 (commencing with Section 13300) of, or Article 2 (commencing with Section 13320) of, Chapter 5 of Division 7 of the Water Code or in violation of a temporary restraining order, preliminary injunction, or permanent injunction issued pursuant to Article 4 (commencing with Section 13340) of Chapter 5 of Division 7 of the Water Code.

(c) Whenever the director determines that a hearing is required, as specified in subdivision (b), the director shall immediately request the Office of Administrative Hearings to assign an administrative law judge to conduct the hearing, pursuant to this subdivision.

- (1) After an administrative law judge is assigned by the Office of Administrative Hearings, the director shall transmit to the administrative law judge and to the operator of the existing hazardous waste facility, all relevant documents, information, and data that were the basis for the director's determination. The director shall also prepare a notice specifying the time and place of the hearing. The notice shall also include a clear statement of the reasons for conducting the hearing, a description of the facts, data, circumstances, or occurrences that are the cause for conducting the hearing, and the issues to be addressed at the hearing. The hearing shall be held as close to the location of the existing hazardous waste facility as is practicable and shall commence no later

than 30 days following the director's request to the Office of Administrative Hearings to assign an administrative law judge to the case.

(2) The hearing specified in paragraph (1) shall be conducted in accordance with Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and Sections 11511 to 11515, inclusive, of, the Government Code. The administrative law judge's proposed decision shall be transmitted to the director within 30 days after the case is submitted.

(3) The director may adopt the proposed decision of the administrative law judge in its entirety or may decide the case upon the record, as provided in Section 11517 of the Government Code. The director's decision shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision is subject to judicial review in accordance with Section 11523 of the Government Code.

*(Amended by Stats. 2000, Ch. 343, Sec. 7. Effective January 1, 2001.)*

**25149.1.** (a) No city, county, or city and county, whether general law or chartered, which has issued a conditional use permit for a hazardous waste facility shall thereafter adopt an ordinance, rule, or regulation, or issue or amend any permit, which adoption, issuance, or amendment imposes additional restrictions on the types of hazardous waste which previously have been authorized to be accepted for disposal, treatment, or storage under the terms and conditions of any previously issued conditional use permit for that facility.

(b) This section does not apply to a modification or revocation of a use permit which is necessary to enforce the terms and conditions of the use permit, or to abate a nuisance, or to prevent an immediate threat to the public health or safety. Modification or revocation of an existing use permit may only occur after the city, county, or city and county orders the facility operator to abate the nuisance or correct the threat to the public health or safety, the facility operator has been afforded adequate opportunity to abate the nuisance or correct the threat to the public health or safety, and the facility operator has failed to comply with the enforcement or abatement order.

(c) This section does not apply to an existing hazardous waste facility, as defined in Section 25148.

*(Added by Stats. 1982, Ch. 1357, Sec. 1.)*

**25149.5.** (a) A general law city or county may impose and enforce, for revenue purposes, a license tax on the operation of an existing hazardous waste facility; provided that, the license tax imposed shall not exceed 10 percent of the annual gross receipts of the existing hazardous waste disposal facility.

(b) A state agency shall not include the expenditure of revenues received by a city or county pursuant to this section in calculating the level of financial support that a city or county is required to maintain under any other provision of law, including, but not limited to, Section 77204 of the Government Code and Section 16990 of the Welfare and Institutions Code. However, this subdivision does not apply to subdivision (c) of Section 2105 of the Streets and Highways Code.

*(Amended by Stats. 1991, Ch. 1073, Sec. 1.)*

**25149.6.** A city, county, or city and county in which an existing hazardous waste facility is located may at any time recommend to the director any new or additional permit or interim status conditions as the local agency deems necessary to protect against hazards within its boundaries to the public health, domestic livestock, wildlife, or the environment.

*(Added by Stats. 1981, Ch. 244.)*

**25149.7.** No provision of this article, or any ruling by the department or director, shall be construed as a limitation on the right of any person to maintain a civil action to enjoin or abate a nuisance pursuant to Section 731 of the Code of Civil Procedure.

*(Added by Stats. 1981, Ch. 244.)*