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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 8.7. Procedures for the Approval of New Facilities [25199 - 25199.14] (*Article 8.7 added by Stats. 1986, Ch. 1504, Sec. 8.*)

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.

(*Added by Stats. 1986, Ch. 1504, Sec. 8.*)

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 that will require a hazardous waste facilities permit issued pursuant to Section 25200, 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 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.

(Amended by Stats. 1988, Ch. 1389, Sec. 4. Effective September 27, 1988.)

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.

(Added by Stats. 1986, Ch. 1504, Sec. 8.)

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.

(Added by Stats. 1986, Ch. 1504, Sec. 8.)

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:

- (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.

(Added by Stats. 1986, Ch. 1504, Sec. 8.)

25199.6. (a) Section 65943 of the Government Code does not apply to the department's review of applications for a hazardous waste facilities permit. The department shall review for completeness each application for a hazardous waste facilities permit and notify the applicant in writing whether the application is complete within 30 days from the date of receipt. If the application is incomplete, the department shall require the applicant to provide the information necessary to make the application complete. An application is not deemed to be complete until the department notifies the applicant that the application is complete. After an application is determined to be complete, the department may request additional information only when necessary to clarify, modify, or supplement previously submitted material.

(b) Notwithstanding Section 65952 of the Government Code, any public agency that is a responsible agency for a hazardous waste facility project that is a land disposal facility shall approve or disapprove 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 project.
- (2) Within one year from the date on which the completed application for the project has been received, and accepted as complete, by that responsible agency.

(c) Notwithstanding Section 65952 of the Government Code and Section 25199.2, any public agency that is a responsible agency for a hazardous waste facility project that is not a land disposal facility shall approve or disapprove the project within one of the following periods of time, whichever is longer:

- (1) Within 180 days from the date on which the lead agency approved or disapproved the project.
- (2) Within 180 days from the date on which the completed application for the project has been received, and accepted as complete, by that responsible agency.

(d) 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 subdivisions (b) and (c) 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 1085 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.

(Amended by Stats. 2000, Ch. 343, Sec. 10. Effective January 1, 2001.)

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 Department of Toxic Substances Control and with the applicable city or county. The notice of intent shall specify the location to which the notice of intent is applicable and shall contain a complete description of the nature, function, and scope of the project. The Department of Toxic Substances Control 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 roll. A notice of intent filed with a local agency shall be accompanied by a fee which shall be set by the local agency in an amount equal to the local agency's cost of processing the notice of intent and carrying out the notification requirements of this subdivision. A notice of intent is not transferable to a location other than the location specified in the notice and shall remain in effect for one year from the date it is filed with a local agency or until it is withdrawn by the proponent, whichever is earlier.

(b) A notice of intent is not effective and 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 Department of Toxic Substances Control pursuant to subdivision (a), the department 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) The legislative body of the affected local agency shall appoint a seven member local assessment committee to advise it in considering an application for a land use decision for a specified hazardous waste facility project. The members of the local assessment committee may be appointed at any time after the notice of intent is filed with the local agency but shall be appointed not later than 30 days after the application for the land use decision is accepted as complete by the local agency. The local agency shall charge the project proponent a fee to cover the local agency's costs of establishing and convening the local assessment committee. The fee shall accompany the application for a land use decision.

(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, as its primary function, advise the appointing legislative body of the affected local agency of the terms and conditions under which the proposed hazardous waste facility project may be acceptable to the community. To carry out this function, the local assessment committee shall do all of the following:

(A) Enter into a dialogue with the proponent for the proposed hazardous waste facility project to reach an understanding with the proponent on both of the following:

(i) The measures that should be taken by the proponent in connection with the operation of the proposed hazardous waste facility project to protect the public health, safety, and welfare, and the environment of the city or county.

(ii) The special benefits and remuneration the facility proponent will provide the city or county as compensation for the local costs associated with the operation of the facility.

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

(C) Receive and expend any 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 Department of Toxic Substances Control 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 Department of Toxic Substances Control 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) (1) If the local assessment committee finds that it requires assistance and independent advice to adequately review a proposed hazardous waste facility project, it may request technical assistance grants from the local agency to enable the committee to hire a consultant. The committee may use technical assistance grant funds made available to it to hire a consultant to do either, or both, of the following:

(A) Assist the committee in reviewing and evaluating the application for the project, the environmental documents prepared for the project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and any other documents, materials, and information that are required by a public agency in connection with the application for a land use decision or a permit.

(B) Advise the local assessment committee in its meetings and discussions with the facility proponent to seek agreement on the terms and conditions under which the project will be acceptable to the community.

(2) The local agency shall require the proponent of the proposed hazardous waste facility project to pay a fee equal to the amount of any technical assistance grant provided the local assessment committee under paragraph (1). The funds received as a result of the imposition of the fee shall be used to make technical assistance grants exclusively for the purposes described in paragraph (1).

(3) The local agency shall deposit any fee imposed pursuant to paragraph (2) in an account created in the city or county treasury, maintain records of all expenditures from the account, and return any unused funds and accrued interest to the project proponent upon completion of the review of the proposed hazardous waste facility project.

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

(Amended by Stats. 2016, Ch. 78, Sec. 7. (AB 2605) Effective January 1, 2017.)

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 subdivisions (a), (b), and (c) of Section 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.

(Amended by Stats. 1989, Ch. 1354, Sec. 2. Effective October 2, 1989.)

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 shall convene an appeal board pursuant to Section 25199.10 to hear the appeal pursuant to this subdivision 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) (1) 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 21080 of the Public Resources Code, the proponent may file an appeal of the disapproval with the Governor or the Governor's designee.

(2) Within 30 days after an appeal is filed pursuant to this subdivision, the Governor or the Governor's designee shall 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 subdivisions (a), (b), and (c) 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.

(3) After the proponent has applied for and obtained the permits specified in paragraph (2), the proponent for the specified hazardous waste facility project may request the Governor or the Governor's designee to reconvene the appeal board to hear the appeal. The Governor or the Governor's designee shall reconvene the appeal board pursuant to Section 25199.10 to hear the appeal of a disapproval pursuant to this subdivision if it has been demonstrated to the Governor or the Governor's designee that 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. The Governor or the Governor's designee shall convene an appeal board pursuant to this subdivision if 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 convene an appeal board pursuant to this subdivision if 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.

(Amended by Stats. 1989, Ch. 1354, Sec. 3. Effective October 2, 1989.)

25199.10. (a) If an appeal is filed pursuant to subdivision (b), (d), or (e) of Section 25199.9, or paragraph (3) of subdivision (c) of Section 25199.9, the Governor or the Governor's designee shall determine within five working days whether 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, and which were obtainable when the appeal was filed. 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 board should be convened, the Governor or the Governor's designee shall 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 whether to convene an appeal board.

(b) If the Governor or the Governor's designee determines, pursuant to subdivision (a), 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, or if an appeal is filed pursuant to paragraph (1) of subdivision (c) of Section 25199.9, the Governor or the Governor's designee shall convene an appeal board within 30 days after making that determination or receiving that appeal, 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 Director of Toxic Substances Control.

(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. If the appointee appointed pursuant to this paragraph does not continue in office as a member of a board of supervisors for the duration of the appeal for which the appointment was made, the appointment shall terminate and a new appointment shall be made.

(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. If the appointee appointed pursuant to this paragraph does not continue in office as a member of a city council for the duration of the appeal for which the appointment was made, the appointment shall terminate and a new appointment shall be made.

(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 Director of Toxic Substances Control, 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 to serve the appeal board.

(Amended by Stats. 2000, Ch. 343, Sec. 11. Effective January 1, 2001.)

25199.11. (a) An appeal board convened by the Governor or the Governor's designee to hear an appeal 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 an appeal board should be convened pursuant to subdivision (b) of Section 25199.9, or paragraph (3) of subdivision (c) of Section 25199.9, the appeal board shall be convened. Within 15 days after the appeal board has been convened, a public hearing shall be 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 are 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 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.

(Amended by Stats. 1990, Ch. 557, Sec. 2.)

25199.13. (a) An appeal board convened by the Governor or the Governor's designee to hear an appeal 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 an appeal board should be convened pursuant to 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 convened 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 convened 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 board is convened 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 board is convened 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.

(Amended by Stats. 1989, Ch. 1354, Sec. 6. Effective October 2, 1989.)

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.

(Added by Stats. 1986, Ch. 1504, Sec. 8.)