An act to amend Sections 25150.84, 25189.3, 25205.7, 25205.18, 25205.19, and 25247 of the Health and Safety Code, and to amend Sections 43053 and 43152.10 of the Revenue and Taxation Code, relating to hazardous waste.

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25150.84 of the Health and Safety Code is amended to read:

25150.84. (a) The department is authorized to collect an annual fee from all metal shredding facilities that are subject to the requirements of this chapter or to the alternative management standards adopted pursuant to Section 25150.82. The department shall establish and adopt regulations necessary to administer this fee and to establish a fee schedule that is set at a rate sufficient to reimburse the department's costs to implement this chapter as applicable to metal shredder facilities. The fee schedule established by the department may be updated periodically as necessary and shall provide for the assessment of no more than the reasonable and necessary costs of the department to implement this chapter, as applicable to metal shredder facilities.

(b) The Controller shall establish a separate subaccount in the Hazardous Waste Control Account. The fees collected pursuant to this section shall be deposited into the subaccount and be available for expenditure by the department upon appropriation by the Legislature.

(c) A regulation adopted pursuant to this section may be adopted as an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of

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Division 3 of Title 2 of the Government Code, an emergency regulation adopted by the department pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect for a period of two years or until revised by the department, whichever occurs sooner.

(d) (1) A metal shredding facility paying an annual fee in accordance with this section shall be exempt from the following fees as the fees pertain to metal shredding activities and the generation, handling, management, transportation, and disposal of metal shredder waste:

(A) A fee imposed pursuant to ~~subdivision (a) or (d) of~~ Section 25205.7.

(B) A disposal fee imposed pursuant to Section 25174.1.

(C) A facility fee imposed pursuant to Section 25205.2.

(D) A generator fee imposed pursuant to Section 25205.5.

(E) A transportable treatment unit fee imposed pursuant to Section 25205.14.

(2) A metal shredding facility is not exempt from the fees listed in paragraph (1) for any other hazardous waste the metal shredding facility generates and handles.

SEC. 2. Section 25189.3 of the Health and Safety Code is amended to read:

25189.3. (a) For purposes of this section, the term "permit" means a hazardous waste facilities permit, interim status authorization, or standardized permit.

(b) The department shall suspend the permit of any facility for nonpayment of any facility fee assessed pursuant to Section 25205.2 or activity fee assessed pursuant to ~~subdivision (d) of~~ Section 25205.7, if the operator of the facility is subject to the fee, and if the department or State Board of Equalization has certified in writing to all of the following:

(1) The facility's operator is delinquent in the payment of the fee for one or more reporting periods.

(2) The department or State Board of Equalization has notified the facility's operator of the delinquency.

(3) ~~The~~ (A) For a facility operator that elected to pay the flat activity fee rate pursuant subdivision (d) of Section 25205.7, as that section read on January 1, 2016, the operator has exhausted ~~the~~ his or her administrative rights of appeal provided by Chapter 3 (commencing with Section 43151) of Part 22 of Division 2 of the Revenue and Taxation Code, and the State Board of Equalization has determined that the operator is liable for the fee, or that the operator has failed to assert those rights.

(B) For a facility operator that pays the activity fee under a reimbursement agreement with the department pursuant to subdivision (a) of Section 25205.7, the operator has exhausted the dispute resolution procedures adopted by the department pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 25206.2.

(c) (1) The department shall suspend the permit of any facility for nonpayment of a penalty assessed upon the owner or operator for failure to comply with this chapter or the regulations adopted pursuant to this chapter, if the penalty has been imposed by a trial court judge or by an administrative hearing officer, if the person has agreed to pay the penalty pursuant to a written agreement resolving a lawsuit or an administrative order, or if the penalty has become final due to the person's failure to respond to the lawsuit or order.

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(2) The department may suspend a permit pursuant to this subdivision only if the owner or operator is delinquent in the payment of the penalty and the department has notified the owner or operator of the delinquency pursuant to subdivision (d).

(d) Before suspending a permit pursuant to this section, the department shall notify the owner or operator of its intent to do so, and shall allow the owner or operator a minimum of 30 days in which to cure the delinquency.

(e) The department may deny a new permit or refuse to renew a permit on the same grounds for which the department is required to suspend a permit under this section, subject to the same requirements and conditions.

(f) (1) The department shall reinstate a permit that is suspended pursuant to this section upon payment of the amount ~~due,~~ due if the permit has not otherwise been revoked or suspended pursuant to any other provision of this chapter or regulation. Until the department reinstates a permit suspended pursuant to this section, if the facility stores, treats, disposes of, or recycles hazardous wastes, the facility shall be in violation of this chapter. If the operator of the facility subsequently pays the amount due, the period of time for which the operator shall have been in violation of this chapter shall be from the date of the activity that is in violation until the day after the owner or operator submits the payment to the department.

(2) Except as otherwise provided in this section, the department is not required to take any other statutory or regulatory procedures governing the suspension of the permit before suspending a permit in compliance with the procedures of this section.

(g) (1) A suspension under this section shall be stayed while an authorized appeal of the fee or penalty is pending before a court or an administrative agency.

(2) For purposes of this subdivision, "an authorized appeal" means any appeal allowed pursuant to an applicable regulation or statute.

(h) The department may suspend a permit under this section based on a failure to pay the required fee or penalty that commenced ~~prior to~~ before January 1, 2002, if the failure to pay has been ongoing for at least 30 days following that date.

(i) Notwithstanding Section 43651 of the Revenue and Taxation Code, the suspension of a permit pursuant to this section, the reason for the suspension, and any documentation supporting the suspension, shall be a matter of public record.

(j) (1) This section does not authorize the department to suspend a permit held by a government agency if the agency does not dispute the payment but nonetheless is unable to process the payment in a timely manner.

(2) This section does not apply to a site owned or operated by a federal agency if the department has entered into an agreement with that federal agency regarding the remediation of that site.

(k) This section does not limit or supersede Section 25186.

SEC. 3. Section 25205.7 of the Health and Safety Code is amended to read:

25205.7. (a) (1) ~~Except as otherwise provided in this section, any~~ A person who applies for, or requests, ~~one~~ any of the following shall enter into a written agreement with the department pursuant to which that person shall reimburse the department, pursuant to Article 9.2 (commencing with Section 25206.1), for the costs incurred by the department in processing the application or responding to the request:

(A) A new hazardous waste facilities permit, including a standardized permit.

(B) A hazardous waste facilities permit for postclosure.

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(C) A renewal of an existing hazardous waste facilities permit, including a standardized permit or postclosure permit.

(D) A class 2 or class 3 modification of an existing hazardous waste facilities permit or grant of interim status, including a standardized permit or grant of interim status or a postclosure permit.

(E) A variance.

(F) A waste classification determination.

(2) ~~Any~~ An agreement required pursuant to paragraph (1) ~~may~~ shall provide for ~~some, or all,~~ at least 25 percent of the reimbursement to be made in advance of the processing of the application or the response to the request. The 25-percent advance payment shall be based upon the department's total estimated costs of processing the application or response to the request.

(3) ~~Any~~ An agreement entered into pursuant to this ~~subdivision may~~ section shall, if applicable, include costs of reviewing and overseeing corrective action as set forth in subdivision (b).

~~(4) This subdivision does not apply to any application or request submitted to the department prior to July 1, 1998. Any person who submitted such an application or request shall pay the applicable fee, if not already paid, for the application or request as required by this chapter as it read prior to January 1, 1998, unless the department and the applicant or requester mutually agree to enter into a reimbursement agreement in lieu of any unpaid portion of the required fee.~~

(b) ~~The department shall recover all~~ An applicant pursuant to paragraph (1) of subdivision (a) and the owner and the operator of the facility shall pay the department's

costs in reviewing and overseeing any corrective action program described in the application for a standardized permit pursuant to subparagraph (C) of paragraph (2) of subdivision (c) of Section 25201.6 or required pursuant to subdivision (b) of Section 25200.10, and in reviewing and overseeing any corrective action work undertaken at the facility pursuant to that corrective action program.

(c) (1) An applicant pursuant to paragraph (1) of subdivision (a) and the owner and the operator of the facility shall, pursuant to Section 21089 of the Public Resources Code, pay all costs incurred by the department for purposes of complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), in conjunction with an application or request for any of the activities identified in subdivision (a), including any activities associated with correction action.

(2) Paragraph (1) does not apply to projects that are exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

~~(c)~~

(d) Any reimbursements received pursuant to this section shall be placed in the Hazardous Waste Control Account for appropriation in accordance with Section 25174.

~~(d) (1) In lieu of entering into a reimbursement agreement with the department pursuant to subdivision (a), any person who applies for a new permit, a permit for postclosure, a renewal of an existing permit, or a class 2 or class 3 permit modification may instead elect to pay a fee as follows:~~

~~(A) A person submitting a hazardous waste facilities permit application for a land disposal facility shall pay one hundred four thousand one hundred eighty-seven dollars ($104,187) for a small facility, two hundred twenty-two thousand one hundred eighty-three dollars ($222,183) for a medium facility, and three hundred eighty-one thousand six hundred two dollars ($381,602) for a large facility.~~

~~(B) A person submitting a hazardous waste facilities permit application for any incinerator shall pay sixty-two thousand seven hundred sixty-two dollars ($62,762) for a small facility, one hundred thirty-three thousand sixty dollars ($133,060) for a medium facility, and two hundred twenty-eight thousand four hundred fifty-eight dollars ($228,458) for a large facility.~~

~~(C) Except as provided in subparagraph (D), a person submitting a hazardous waste facility permit application for a storage facility, a treatment facility, or a storage and treatment facility shall pay twenty-one thousand three hundred forty dollars ($21,340) for a small facility, thirty-eight thousand nine hundred thirteen dollars ($38,913) for a medium facility, and seventy-five thousand three hundred seventeen dollars ($75,317) for a large facility.~~

~~(D) A person submitting an application for a standardized permit for a storage facility, a treatment facility, or a storage and treatment facility, as specified in Section 25201.6, shall pay thirty-two thousand fifty-two dollars ($32,052) for a Series A standardized permit, twenty thousand eleven dollars ($20,011) for a Series B standardized permit, and five thousand three hundred thirty-two dollars ($5,332) for a Series C standardized permit. The board shall assess the fees specified in this~~

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~~subparagraph, in accordance with paragraph (2), based upon the classifications specified in subdivision (a) of Section 25201.6.~~

~~(E) (i) A person submitting a hazardous waste facilities permit application for a transportable treatment unit shall pay sixteen thousand three hundred twenty dollars ($16,320) for a small unit, thirty-seven thousand six hundred fifty-seven dollars ($37,657) for a medium unit, and seventy-five thousand three hundred seventeen dollars ($75,317) for a large unit.~~

~~(ii) Notwithstanding clause (i), the fee for any application for a new permit, permit modification, or permit renewal for a transportable treatment unit, that was pending before the department as of January 1, 1996, shall be determined according to the type of permit authorizing operation of that unit, as provided by subdivision (d) of Section 25200.2 or the regulations adopted pursuant to subdivision (a) of Section 25200.2. Any standardized permit issued to the operator of a transportable treatment unit after January 1, 1996, that succeeds a full hazardous waste facilities permit issued by the department prior to January 1, 1996, in accordance with subdivision (d) of Section 25200.2 or the regulations adopted pursuant to subdivision (a) of Section 25200.2, shall not be considered to be a new hazardous waste facilities permit.~~

~~(F) A person submitting a hazardous waste facilities permit application for a postclosure permit shall pay a fee of ten thousand forty dollars ($10,040) for a small facility, twenty-two thousand five hundred ninety-six dollars ($22,596) for a medium facility, and thirty-seven thousand six hundred fifty-seven dollars ($37,657) for a large facility.~~

~~(G) A person submitting an application for one or more class 2 permit modifications, including a class 2 modification to a standardized permit, shall pay a fee equal to 20 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 40 percent for each application, except that each person who applies for one or more class 2 permit modifications for a land disposal facility or an incinerator shall pay a fee equal to 15 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 30 percent for each application.~~

~~(H) A person submitting an application for one or more class 3 permit modifications, including a class 3 modification to a standardized permit, shall pay a fee equal to 40 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 80 percent for each application, except that a person who applies for one or more class 3 permit modifications for a land disposal facility or an incinerator shall pay a fee equal to 30 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 60 percent for each application.~~

~~(I) A person who submits an application for renewal of any existing permit shall pay an amount equal to the fee that would have been assessed had the person requested the same changes in a modification application, but not less than one-half the fee required for a new permit.~~

~~(J) A person who submits a single application for a facility that falls within more than one fee category shall pay only the higher fee.~~

~~(2) The fees required by paragraph (1) shall be assessed by the board upon application to the department. For a facility operating pursuant to a grant of interim status, the submittal of the application shall be the submittal of the Part B application in accordance with regulations adopted by the department. The fee shall be nonrefundable, even if the application is withdrawn or denied. The department shall provide the board with any information that is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account.~~

~~(3) The amounts stated in this subdivision are the base rates for the 1997 calendar year. Thereafter, the fees shall be adjusted annually by the board to reflect increases or decreases in the cost of living, during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations, or a successor agency.~~

~~(4) Except as provided in paragraph (5), for purposes of this section, and notwithstanding Section 25205.1, any facility or unit is "small" if it manages 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the state's current fiscal year, "medium" if it manages more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the state's current fiscal year, and "large" if it manages 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year.~~

~~(5) For purposes of subparagraph (F) of paragraph (1) of this subdivision and paragraph (8) of subdivision (c) of Section 25205.4, any facility or unit is "small" if~~

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~~0.5 tons (1,000 pounds) or less of hazardous waste remain after closure, "medium" if more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste remain after closure, and "large" if 1,000 or more tons of hazardous waste remain after closure.~~

~~(6) The amounts stated in this subdivision are in addition to any amounts required to reimburse the department for the corrective action review and oversight costs required to be recovered pursuant to subdivision (b).~~

(e) Subdivision (a) does not apply to any variance granted pursuant to Article 4 (commencing with Section 66263.40) of Chapter 13 of Division 4.5 of Title 22 of the California Code of Regulations.

~~(f) Subdivisions (a) and (d) do not apply to a permit modification resulting from a revision of a facility's or operator's closure plan if the facility is exempted from fees pursuant to subdivision (e) of Section 25205.3, or if the operator is subject to paragraph (2) or (3) of subdivision (d) of Section 25205.2.~~

~~(g) (1) Except as provided in paragraphs (3) and (4), subdivisions (a) and (d) do not apply to any permit or variance to operate a research, development, and demonstration facility, if the duration of the permit or variance is not longer than one year, unless the permit or variance is renewed pursuant to the regulations adopted by the department.~~

~~(2) For purposes of this section, a "research, development, and demonstration facility" is a facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which regulations prescribing permit standards have not been adopted.~~

~~(3) The exemption provided by this subdivision does not apply to a facility which operates as a medium or large multiuser offsite commercial hazardous waste facility and which does not otherwise possess a hazardous waste facilities permit pursuant to Section 25200.~~

~~(4) The fee exemption authorized pursuant to paragraph (1) shall be effective for a total duration of not more than two years.~~

~~(h) Subdivisions~~

(f) Subdivision (a) ~~and (d) do~~ does not apply to any of the following:

(1) Any variance issued to a public agency to transport wastes for purposes of operating a household hazardous waste collection facility, or to transport waste from a household hazardous waste collection facility, which receives household hazardous waste or hazardous waste from conditionally exempted small quantity generators pursuant to Article 10.8 (commencing with Section 25218).

(2) A permanent household hazardous waste collection facility.

(3) Any variance issued to a public agency to conduct a collection program for agricultural wastes.

~~(i) Notwithstanding subdivisions (a) and (b), the department shall not assess any fees or seek any reimbursement for the department's costs in reviewing and overseeing any preliminary site assessment in conjunction with a hazardous waste facilities permit application.~~

~~(j) The changes made in this section by Chapter 870 of the Statutes of 1997 do not require amendment of, or otherwise affect, any agreement entered into prior to July 1, 1998, pursuant to which any person has agreed to reimburse the department for the~~

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~~costs incurred by the department in processing applications, responding to requests, or otherwise providing other services pursuant to this chapter.~~

(g) Fees imposed pursuant to this section shall be administered and collected by the department.

(h) (1) The changes made in this section by the act which added this subdivision apply to applications and requests submitted to the department on and after April 1, 2016.

(2) If, on and after April 1, 2016, an applicant has submitted an application and paid a fee pursuant to subdivision (d), as that subdivision read on April 1, 2016, but before the act that added this subdivision took effect, the department shall determine the difference between the amount paid by the applicant and the amount due pursuant to subdivision (a), and that applicant shall be liable for that amount.

(3) Acknowledging a limited period of retroactive application of the elimination of the flat fee option pursuant to this subdivision, the Legislature finds and declares all of the following:

(A) The department expends a substantial amount of time and resources in processing permit applications and modifications.

(B) The former flat fee option paid by applicants was most often insufficient to cover actual costs to the department in reviewing and processing the applications and modifications.

(C) The applicant, being the primary beneficiary of the permit process, in fairness should pay the actual costs of the department in reviewing permit applications and modifications.

(D) The amendment to this section during the 2015–16 Legislative Session eliminating the flat fee option and requiring applicants to enter into a written reimbursement agreement with the department is intended to apply to applications and modification requests filed on or after April 1, 2016, in order to remedy this financial inequity and to avoid an influx of the submission of applications to the department before amendment to this section goes into effect.

SEC. 4. Section 25205.18 of the Health and Safety Code is amended to read:

25205.18. (a) If a facility has a permit or an interim status document which sets forth the facility's allowable capacity for treatment or storage, the facility's size for purposes of the annual facility fee pursuant to Section 25205.2 shall be based upon that capacity, except as provided in subdivision (d).

(b) If a facility's allowable capacity changes or is initially established as a result of a permit modification, or a submission of a certification pursuant to subdivision (d), the fee that is due for the reporting period in which the change occurs shall be the ~~lower fee until December 31, 1994. After that date, the fee that is due for the reporting period in which a change occurs shall be the~~ higher fee.

(c) ~~(1)~~ The department may require the facility to submit an application to modify its permit to provide for an allowable capacity.

~~(2) Subdivisions (a) and (d) of Section 25205.7 do not apply to an application for modification required by the department pursuant to this subdivision.~~

(d) A facility may reduce its allowable capacity below the amounts specified in subdivision (a) or (c) by submitting a certification signed by the owner or operator in which the owner or operator pledges that the facility will not handle hazardous waste

at a capacity above the amount specified in the certification. In that case, the facility's size for purposes of the annual facility fee pursuant to Section 25205.2 shall be based upon the capacity specified in the certification, until the certification is withdrawn. Exceeding the capacity limits specified in a certification that has not been withdrawn shall be a violation of the hazardous waste control law and may subject a facility or its operator to a penalty and corrective action as provided in this ~~chapter, including, but not limited to, an augmentation pursuant to Section 25191.1.~~ chapter.

(e) This section shall have no bearing on the imposition of the annual postclosure facility fee.

SEC. 5. Section 25205.19 of the Health and Safety Code is amended to read:

25205.19. (a) If a facility has a permit or an interim status document which sets forth the facility's type, pursuant to Section 25205.1, as either treatment, storage, or disposal, the facility's type for purposes of the annual facility fee pursuant to Section 25205.2 shall be rebuttably presumed to be what is set forth in that permit or document.

(b) If the facility's type changes as a result of a permit or interim status modification, any change in the annual facility fee shall be effective the reporting period following the one in which the modification becomes effective.

(c) ~~(1)~~ If the facility's permit or interim status document does not set forth its type, the department may require the facility to submit an application to modify the permit or interim status document to provide for a facility type.

~~(2) Subdivisions (a) and (d) of Section 25205.7 do not apply to an application for modification pursuant to this subdivision.~~

(d) A permit or interim status document may set forth more than one facility type or size. In accordance with subdivision ~~(e)~~ (d) of Section 25205.4, the facility shall be subject only to the highest applicable fee.

SEC. 6. Section 25247 of the Health and Safety Code is amended to read:

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.

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(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, ~~pay the same fee specified in subparagraph (F) of paragraph (1) of subdivision (d) of Section 25205.7, or~~ enter into a cost reimbursement agreement pursuant to ~~subdivision (a) of~~ 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

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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) (1) Except as provided in paragraphs (2) and (3), the department may only impose postclosure plan requirements through an enforcement order or an enforceable agreement pursuant to subdivision (d) until January 1, 2009.

(2) This subdivision does not apply to an enforcement order or enforceable agreement issued ~~prior to~~ before January 1, 2009, or an order or agreement for which a public notice is issued on or before January 1, 2009.

(3) This subdivision does not apply to the modification on or after January 1, 2009, of an enforcement order or enforceable agreement that meets the conditions in paragraph (2).

(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.

SEC. 7. Section 43053 of the Revenue and Taxation Code is amended to read:

43053. The fees imposed pursuant to Sections 25205.2, 25205.5, ~~25205.7,~~ and 25205.14 of the Health and Safety Code shall be administered and collected by the board in accordance with this part.

SEC. 8. Section 43152.10 of the Revenue and Taxation Code is amended to read:

43152.10. The fees ~~imposed pursuant to Sections 25205.7, 25205.8, 25205.14, 25221, and 25343 of the Health and Safety Code, which are~~ collected and administered under Sections 43053 and ~~43054,~~ 43054 are due and payable within 30 days after the date of assessment and the feepayer shall deliver a remittance of the amount of the assessed fee to the office of the board within that 30-day ~~period, except as provided in subdivision (e) of Section 25205.14 of the Health and Safety Code.~~ period.

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LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Hazardous waste: facilities permitting.

(1) Existing law requires the Department of Toxic Substances Control to suspend the permit of a hazardous waste facility for nonpayment of a specified facility fee or activity fee if the operator of the facility is subject to the fee and if the State Board of Equalization has certified that certain circumstances exist.

This bill would allow the department, in addition to the State Board of Equalization, to certify the existence of those circumstances, and would include within the circumstances that the department or the State Board of Equalization has notified the facility's operator of the delinquency and that the operator has exhausted certain administrative rights of appeal or dispute resolution procedures, as specified.

(2) Existing law provides a person who applies for, or requests, specified hazardous waste permits, variances, or waste classification determinations with the option of paying a flat fee or entering into a reimbursement agreement to reimburse

the department for costs incurred in processing the application or response to the request. Existing law authorizes a reimbursement agreement to include costs incurred by the department in reviewing and overseeing corrective action but prohibits the department from assessing a fee or seeking reimbursement for reviewing and overseeing preliminary site assessment in conjunction with a hazardous waste facilities permit application.

This bill would eliminate the flat fee option. The bill would additionally require the reimbursement agreement to provide for the reimbursement of the costs incurred by the department in reviewing and overseeing corrective action and would require an applicant and the owner and the operator of the facility to pay these costs and to pay all costs incurred by the department to comply with the California Environmental Quality Act. The bill would repeal the prohibition on the department assessing a fee or seeking reimbursement for reviewing and overseeing a preliminary site assessment in conjunction with a hazardous waste facilities permit application. The bill would require at least 25% of the agreed-upon reimbursement to be made in advance, based on the department's total estimated costs of processing the application or response to the request. The bill would apply these revised fee provisions to applications and requests submitted to the department on or after April 1, 2016.

(3) Under existing law, if a facility's permit or interim status document sets forth the facility's allowable capacity for treatment or storage, the annual facility fee is based upon that capacity, and the department may require the facility to submit an application to modify the permit to provide for an allowable capacity. Under existing law, if a facility's permit or interim status document does not set forth its type, that type is

presumed for purposes of setting fees, and the department is authorized to require the facility to submit an application to modify the permit or interim status document to provide for a facility type. Existing law exempts these applications from the requirement to either pay a flat fee or enter into a reimbursement agreement.

This bill would subject these applications for modification to the above-described reimbursement requirement.

(4) Existing law requires specified fees, including the flat fee and the fee paid under the reimbursement agreement, as applicable, to be administered and collected by the State Board of Equalization in accordance with the Hazardous Substance Tax Law.

This bill would provide that the fees, as revised above, shall instead be administered and collected by the department.

(5) This bill would make conforming changes and delete obsolete provisions pertaining to the state's hazardous waste programs.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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