

DEERING'S CALIFORNIA CODES ANNOTATED  
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\*\*\* THIS DOCUMENT REFLECTS ALL URGENCY LEGISLATION ENACTED \*\*\*  
\*\*\* THROUGH 2005 CH. 168, APPROVED 9/02/05 \*\*\*  
\*\*\* INCLUDING GOVERNOR'S REORGANIZATION PLANS 1 & 2 \*\*\*

HEALTH AND SAFETY CODE  
DIVISION 20. Miscellaneous Health and Safety Provisions  
CHAPTER 6.5. Hazardous Waste Control  
ARTICLE 9. Permitting of Facilities

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

Cal Health & Saf Code § **25202.5** (2005)

§ **25202.5**. Imposition of easement, covenant, restriction, or servitude

(a) With respect to any hazardous waste facility permitted pursuant to Section 25200 or granted interim status pursuant to Section 25200.5, the department may do either of the following:

(1) Enter into an agreement with the owner of the hazardous waste facility that requires the execution and recording of a written instrument which imposes an easement, covenant, restriction, or servitude upon the present and future uses of all or part of the land on which the hazardous waste facility subject to the permit or grant of interim status is located and on all or part of any adjacent land held by, or for the beneficial use of, the owners of the land on which the hazardous waste facility subject to the permit or grant of interim status is located.

(2) Impose a requirement upon the owner of the hazardous waste facility, by permit modification, permit condition, or otherwise, that requires the execution and recording of a written instrument which imposes an easement, covenant, restriction, or servitude upon the present and future uses of all or part of the land on which the hazardous waste facility subject to the permit or grant of interim status is located and on all or part of any adjacent land held by, or for the beneficial use of, the owners of the land on which the hazardous waste facility subject to the permit or grant of interim status is located.

(b) The easement, covenant, restriction, or servitude imposed pursuant to subdivision (a) shall be no more restrictive than needed, as determined by the department, to protect the present or future public health and safety and shall not place any restriction on any land that limits the use, modification, or expansion of an existing industrial or manufacturing facility or complex. The instrument shall be executed by all of the owners of the land and by the director, shall particularly describe the real property affected by the instrument, and shall be recorded by the owner in the office of the county recorder in each county in which all, or a portion of, the land is located within 10 days of the date of execution. The easement, covenant, restriction, or servitude shall state that the land described in the instrument has been, or will be, the site of a hazardous waste facility or is adjacent to the site of such a facility, and may impose those use restrictions as the department deems necessary to protect the present or future public health. The restrictions may include restrictions upon activities on, over, or under the land, including, but not limited to, a prohibition against building, filling, grading, excavating, or mining without the written permission of the director.

A certified copy of the recorded easement, covenant, restriction, or servitude shall be sent to the department upon recordation. Notwithstanding any other provision of law, except as provided in Section 25202.6, an easement, covenant, restriction, or servitude executed pursuant to this section and recorded so as to provide constructive notice shall run with the land from the date of recordation and shall be binding upon all of the owners of the land, their

heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. The easement, covenant, restriction, or servitude shall be enforceable by the department pursuant to Article 8 (commencing with Section 25180).

(c) Except as provided in subdivisions (d) and (e), any land on which is located a hazardous waste disposal facility permitted pursuant to this chapter shall be surrounded by a minimum buffer zone of 2,000 feet between the facility and the outer boundary of the buffer zone. The department may impose an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, on the buffer zone pursuant to subdivision (a). If the department determines that a buffer zone of more than 2,000 feet is necessary to protect the present and future public health and safety, the department may increase the buffer zone by restricting the disposal of hazardous waste at that facility to land surrounded by a larger buffer zone.

(d) Subdivision (c) does not apply to any hazardous waste property, as defined in paragraph (1) of subdivision (a) of Section 25117.3, which was actually and lawfully used for the disposal of hazardous waste on August 6, 1980.

(e) If the owner of a hazardous waste disposal facility proves to the satisfaction of the department that a buffer zone of less than 2,000 feet is sufficient to protect the present and future public health and safety, the department may allow the disposal of hazardous waste onto land surrounded by a buffer zone of less than 2,000 feet.

#### **HISTORY:**

Added Stats 1980 ch 655 § 1. Amended Stats 1984 ch 1736 § 4, effective September 30, 1984; Stats 1989 ch 906 § 2.

#### **NOTES:**

Amendments:

1984 Amendment:

In addition to making technical changes, **(1)** designated the former section to be subd (a); and **(2)** changed all references to covenant, or restrictive covenant to refer to easement, covenant, restriction, or servitude; and **(4)** added subds (b)-(d).

1989 Amendment:

**(1)** Substituted subd (a) for the first sentence of former subd (a) which read: "In addition to any other condition of a hazardous waste facilities permit imposed by the department pursuant to this chapter, the department may impose a requirement for the execution and recording of a written instrument which imposes an easement, covenant, restriction, or servitude upon the present and future uses of all or part of the land on which the hazardous waste facility subject to the permit is located and on all or part of any adjacent land held by, or for the beneficial use of, the owners of the land on which the hazardous waste facility subject to the permit is located."; **(2)** added subdivision designation (b); **(3)** amended the first paragraph of subd (b) by **(a)** adding "imposed pursuant to subdivision (a)" in the first sentence; and **(b)** substituting "office of the county recorder in each county in which all, or a portion of," for "county in which" in the second sentence; **(4)** added "and recorded so as to provide constructive notice" in the second sentence of the second paragraph of subd (b); **(5)** redesignated former subds (b)-(d) to be subds (c)-(e); **(6)** substituted "subdivisions (d) and (e)" for "subdivisions (c) and (d)" in the first sentence of subd (c); and **(7)** substituted "Subdivision (c)" for "Subdivision (b)" in subd (d).Note:

Stats 1989 ch 906 provides:

SEC. 16. The amendments made to Sections **25202.5** and 25355.5 of the Health and Safety Code by Sections 2 and 9, respectively, of this act do not constitute a change in, but are declaratory of, the existing law.Related Statutes & Rules:

"Buffer zone": H & S C § 25110.3.

"Department": H & S C § 25111.

"Hazardous waste": H & S C § 25117.

"Hazardous waste facility": H & S C § 25117.1.

"Border zone property": H & S C § 25117.4.

Removal of conditions and restrictions: H & S C § 25202.6.

Judicial review: H & S C § 25202.7.

Contents of recordation: H & S C § 25235.

Reassessment of restricted land: H & S C § 25240; Rev & Tax C § 402.3.Collateral

References:

Law Review Articles:

Firestone and the Effect of Hazardous Substance Contamination on Property Tax Values. 9  
Cal Real Prop J No.3 p 18.

Review of Selected 1980 Legislation. 12 Pacific LJ 464.