

CALIFORNIA HEALTH AND SAFETY CODE  
DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS  
CHAPTER 6.5. HAZARDOUS WASTE CONTROL  
ARTICLE 11. HAZARDOUS WASTE DISPOSAL LAND USE

25220. (a) For purposes of this article, unless the context clearly requires a different meaning:

(1) "Determination" means a decision by the department as to whether land should be designated as hazardous waste property or border zone property and which is reached after an analysis and an evaluation of the information obtained by the department.

(2) "Designation" means imposition of the requirements specified in Section 25230 after a determination, a public hearing, and a decision by the director has occurred pursuant to Section 25229.

(b) Whenever there is reasonable cause for the department to believe that any land may be a hazardous waste property or border zone property, the department may, by certified mail, request any person who owns, leases, or occupies the land, or any other person who has information relating to the land, to provide any or all of the following information:

(1) A description of the present use of the land.

(2) The types and volumes of hazardous waste or extremely hazardous waste contained therein or thereon.

(3) The date or dates the hazardous waste or extremely hazardous waste was deposited into or onto the land.

(4) A map or maps of the property which they own and which contains or overlies hazardous waste or extremely hazardous waste, drawn to a scale of not more than 200 feet to the inch, which shows the area or areas where the hazardous waste or extremely hazardous waste is contained or was deposited. The provision of a map pursuant to this subdivision shall not be required if the respondent to the request asserts in writing that the respondent has no knowledge or insufficient knowledge of the existence or location of the wastes to comply with this subdivision.

(5) Any other information which relates to the disposal of hazardous waste on or within 2,000 feet of the property or the potential for the migration of those wastes.

(c) Any person who is requested to provide information pursuant to subdivision (b) shall submit the information to the department within 90 calendar days of receipt of the request.

(d) The department shall notify the planning and building department of each city, county, or regional council of governments of any recorded land use restriction imposed pursuant to Section 25202.5, 25222.1, 25229, 25230, 25355.5, or 25398.7 within the jurisdiction of the local agency. Upon receiving this notification, the planning and building department shall do both of the following:

(1) File all recorded land use restrictions in the property files of the city, county, or regional council of government.

(2) Require that any person requesting a land use which differs from those filed land use restrictions on the property apply to the department for a variance or a removal of the land use restrictions pursuant to Section 25233 or 25234.

(e) A planning and building department of a city, county, or regional council of governments may assess a property owner a reasonable fee to cover the costs of taking the actions required by subdivision (d). For purposes of this subdivision, "property owner"

does not include a person who holds evidence of ownership solely to protect a security interest in the property, unless the person participates, or has a legal right to participate, in the management of the property.

(f) The department shall maintain a list of all recorded land use restrictions, including deed restrictions, recorded pursuant to Sections 25200, 25200.10, 25202.5, 25222.1, 25229, 25230, 25355.5, and 25398.7. The list shall, at a minimum, provide the street address, or, if a street address is not available, an equivalent description of location for a rural location or the latitude and longitude, of each property. The department shall update the list as new deed restrictions are recorded. The department shall make the list available to the public, upon request, and shall make the list available on the department's Internet website. The list shall also be incorporated into the list of sites compiled pursuant to Section 65962.5 of the Government Code.

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25230. (a) Upon a decision that the subject land shall be designated as hazardous waste property or border zone property pursuant to Section 25229, the director shall notify the owner of the property and the legislative body of the city or county in whose jurisdiction the land is located and any other persons who were permitted to intervene in the proceeding, and shall issue orders to every owner of the land requiring all of the following:

(1) The notarized execution and recordation of a written instrument which imposes an easement, covenant, restriction, or servitude, or combination thereof, as appropriate, upon the present and future uses of all or part of the land which has been designated a hazardous waste property or a border zone property as provided by Section 25232, and which provides that removal of the easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, shall be in accordance with Section 25234. The easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, shall be executed by all the owners of the land and by the director, shall particularly describe the real property affected by the instrument, and, if applicable, the location of the easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, on the real property. The easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, shall be recorded with the recorder of the county in which the land is located within 10 days after the instrument, as executed by the director, is received by the owner and shall be indexed by the county recorder in the grantor index in the name of the record title owner of the real property and in the grantee index in the name of the department. The easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, shall state that the land described in the instrument is subject to a hazardous waste easement, covenant, restriction, or servitude, or any combination thereof, as appropriate. Notwithstanding any other provision of law, an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, executed pursuant to this section 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, or lessees of the owners, heirs, successors, and assignees, unless it is removed pursuant to Section 25234. The easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, shall be enforceable by the department pursuant to Article 8 (commencing with Section 25180).

(2) The execution and delivery of a written instrument to accompany all purchase, lease, or rental agreements relating to the land which has been designated a hazardous waste property or a border zone property. The instrument shall be prepared by the owner or lessor of the land and shall contain the following statement:

"The land described herein contains hazardous waste or is within 2,000 feet of land that contains hazardous waste. This condition renders the land and the owner, lessee, or other possessor of the land subject to the requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 (commencing with Section 25100)

of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

(b) In any case where the department has made reasonable efforts to obtain execution of the easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, and the owner or owners have failed or refused to execute it, the department may apply to the court for an order imposing the easement, covenant, restriction, or servitude, or any combination thereof, as appropriate. The issued order shall be recorded in the same manner as an executed instrument, as specified in paragraph (1) of subdivision (a).

(c) Any hazardous waste easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, executed pursuant to this section shall be exclusively for the purpose of protecting the public health and safety and shall convey no interest in real or other property to the state. Notwithstanding any other provision of law, any easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, held by the department shall not be sold or otherwise transferred to another person.

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25232. (a) Except as provided in subdivision (c) of this section, after the director has provided notice in compliance with Section 25222 and a hearing or decision regarding specific land is pending, or after a hearing has been conducted and a decision has been made pursuant to Section 25229 that land is a hazardous waste property, then none of the following shall occur on the land without a specific variance approved in writing by the department for the land use and land in question:

(1) Any new use of the land, other than the use, modification, or expansion of an existing industrial or manufacturing facility or complex on land which is owned by, or held for the beneficial use of, such facility or complex as of January 1, 1981, and which is a hazardous waste property as defined in Section 25117.3.

(2) Subdivision of such land, as that term is used in Division 2 (commencing with Section 66410) of Title 7 of the Government Code, except that this paragraph shall not prevent the division of a parcel of land so as to divide that portion of the parcel which is designated a hazardous waste property from other portions of such parcel not so designated.

(b) Except as provided in subdivision (c) of this section, after the director has provided notice in compliance with Section 25222 and a hearing or decision regarding specific land is pending, or after a hearing has been conducted and a decision has been made pursuant to Section 25229 that land is a border zone property, then none of the following shall occur on the land without a specific variance approved in writing by the department for the land use and land in question:

(1) Construction or placement of a building or structure on the land which is intended for use as any of the following, or the new use of an existing structure for the purpose of serving as any of the following:

(A) A residence, including any mobilehome or factory built housing constructed or installed for use as permanently occupied human habitation, except that the addition of rooms or living space to an existing single-family dwelling or other minor repairs or improvements to residential property which do not change the use of the property or increase the population density does not constitute construction or placement of a building or structure for the purposes of this paragraph.

(B) A hospital for humans.

(C) A school for persons under 21 years of age.

(D) A day care center for children.

(E) Any permanently occupied human habitation other than those used for industrial purposes.

(2) Subdivision of such land, as that term is used in Division 2 (commencing with Section 66410) of Title 7 of the Government Code, except that this paragraph shall not prevent the division of a parcel of land so as to divide that portion of the parcel which is designated a border zone property from other portions of such parcel not so designated.

(c) This section shall not apply to a portion of a parcel of land which is determined by the director to meet all of the following

requirements:

(1) The parcel has been previously classified as a class II-1 disposal site as defined in Section 2510 or 2511 of Title 23 of the California Administrative Code.

(2) The portion of the parcel is physically isolated from the remainder of the classified parcel by the construction of a freeway, as defined in Section 332 of the Vehicle Code, which divides the classified parcel.

(3) The portion of the parcel has not been used as a hazardous waste disposal site.

(4) The portion of the parcel does not contain or overlie hazardous waste.

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25233. (a) Any aggrieved person may apply to the department for a written variance from a land use restriction, including the requirements set forth in subdivision (a) or (b) of Section 25232. Any application shall contain sufficient evidence for the department to issue a notice for a hearing. The notice shall contain both of the following:

(1) A statement of all of the following that apply:

(A) Land use restrictions have been imposed on the land.

(B) A hearing is pending on the land.

(C) The land has been designated a hazardous waste property or border zone property.

(2) A statement of who is applying for a variance, the proposed variance, and a statement of the reasons in support of the granting of a variance.

(b) The procedures for the conducting of the hearing specified in subdivision (a) are those set forth in this article. No person shall make a subsequent application pursuant to this section within 18 months of a final decision on an application by the department. A person applying for a variance pursuant to this section shall pay the department for all costs incurred by the department relating to the application.

(c) The applicant shall have the burden of proving at the hearing that the variance will not cause or allow any of the following effects associated with hazardous waste or extremely hazardous waste:

(1) The creation or increase of significant present or future hazards to public health.

(2) Any significant diminution of the ability to mitigate any significant potential or actual hazard to public health.

(3) Any long-term increase in the number of humans or animals exposed to significant hazards which affect the health, well-being, or safety of the public.

(d) If, upon the preponderance of the testimony taken, the director is of the opinion that the variance should be granted, the director shall issue and cause to be served his or her decision and findings of fact on the owner of the land, the legislative body of the city or county in whose jurisdiction the land is located, and upon any other persons who were permitted to intervene in the proceedings. The findings of fact shall include the exact nature of the proposed variance and the reasons in support of the granting of the variance.

(e) If the director is of the opinion that the variance should not be granted, the director shall issue and cause to be served his or her findings of fact in support of the denial on the parties mentioned in subdivision (c).

(f) The department shall record within 10 days any final decision made by the director pursuant to this section as provided in Section 25235.

(g) A decision of the director made after a hearing held pursuant to this section shall be reviewable pursuant to Section 1094.5 of the Code of Civil Procedure and shall be upheld if the court finds that it is supported by substantial evidence.

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25234. (a) Any aggrieved person may apply to the department to remove a land use restriction, including a designation that the land is a hazardous waste property or a border zone property on the grounds that the waste no longer creates a significant existing or potential hazard to present or future public health or safety. No person shall make a subsequent application pursuant to this section within 12 months of a final decision on an application by the department. A person applying to the department pursuant to this section shall pay the department all costs incurred by the department relating to the application. Any application shall contain sufficient evidence for the department to make a finding upon any or all of the following grounds:

(1) The hazardous waste which caused the land to be restricted or designated has since been removed or altered in a manner which precludes any significant existing or potential hazard to present or future public health.

(2) New scientific evidence is available since the restriction or designation of the land or the making of any previous application pursuant to this section, concerning either of the following:

(A) The nature of the hazardous waste which caused the land to be designated.

(B) The geology or other physical environmental characteristics of the designated land.

(b) Any aggrieved person may appeal a determination of the department made pursuant to subdivision (a) by submitting a request for a hearing to the director. The request shall be mailed by certified mail not later than 30 days after the date of the mailing of the department's decision on the application.

(c) Upon receipt of a timely appeal, the director shall give notice of a hearing pursuant to the procedures set forth in this article.

(d) The department shall record within 10 days any new and final determination made by the department pursuant to this section as provided in Section 25235.

(e) A determination made by the department, after a hearing held pursuant to this section, shall be reviewable pursuant to Section 1094.5 of the Code of Civil Procedure and shall be upheld if the court finds that it is supported by substantial evidence.

(f) Whenever there is a final determination pursuant to this section removing a land use restriction, including the designation of a hazardous waste property or a border zone property, the easement, covenant, restriction, or servitude imposed on the land created by Section 25222.1, 25230, or 25355.5 shall automatically terminate. The department shall record or cause to be recorded within 10 days a termination of the easement, covenant, restriction, or servitude which shall particularly describe the real property subject to the easement, covenant, restriction, or servitude and which shall be indexed by the recorder in the grantee index in the name of the record title owner of the real property subject to the easement, covenant, restriction, or servitude, and in the grantor index in the name of the department.