August 14, 2014

The Honorable Kevin De León
California State Senate
State Capitol, Room 5108
Sacramento, California 95814

Dear Senator De León:

I regret to inform you that the Department of Toxic Substances Control (DTSC) must oppose your Senate Bill (SB) 812 unless it is amended. SB 812, as amended June 24, 2014, would make a number of changes to DTSC’s hazardous waste facility permitting process and other departmental practices. The bill would also establish, within DTSC, new administrative oversight, including creating a Bureau of Internal Affairs to oversee all functions of DTSC and investigate allegations of misconduct, as well as a new Citizens Oversight Committee. Many of the provisions of this bill are unnecessary because these issues are already being addressed administratively.

DTSC agrees that permit decisions must be made in a fair and timely fashion. However, the bill’s requirements calling for the adoption of permitting regulations are redundant of DTSC’s ongoing efforts to improve its permit process. With the passage of the 2014-15 state budget, DTSC gained additional staff to reduce the backlog of permits renewals, ensure closure costs are updated, and adequate financial assurance are in place as well as staff to implement DTSC’s Permitting Enhancement Work Plan. SB 812 would delay implementing the necessary improvements, as well as the administration of DTSC’s permitting program. DTSC is also concerned that establishing a statutory deadline by which permits would automatically terminate could interfere with a permit applicant’s due process rights, and is arguably unconstitutional.

The bill’s provision regarding financial assurance regulations is also unnecessary because hazardous waste facilities are already required to provide financial assurance through a number of financial mechanisms, which can include trust funds, bonds, and corporate guarantees. Financial assurance is required to pay for future costs associated with the closure of the facility and to clean up any residual contamination left at the site. Operating facilities must also secure an insurance policy that would pay for the remediation of any unauthorized releases from the facility. However, this bill’s text goes far beyond any existing financial assurance requirement and uses language
unbounded by a reasonable interpretation of risk. Therefore, it is not clear what the bill’s new financial assurance provisions apply to, how the new requirements would relate to existing financial assurance requirements, or how these new requirements could be met by existing or future facilities.

Additionally, the timeframe for adopting these regulations is unrealistic and would result in the redirection of staff from work on updating and issuing permits and improving the permit process. In March 2014, DTSC released its two-year Permitting Enhancement Work Plan (Work Plan) which identifies specific goals and deliverables for reform, and puts forward the department’s concept for a more effective, protective, and equitable permitting system.

With respect to information posted on DTSC’s website, existing law requires DTSC to post a large amount of specific information, including the annual quantities and types of hazardous waste generated, transported, treated, stored, and disposed of both on and off-site; a description of enforcement actions taken by DTSC; and a description of the reasons for not issuing any final permits. DTSC works with communities to identify the language spoken in a community and translates documents for communities in any language that community requests.

SB 812 would significantly expand the list of required information. For example, the bill would require a searchable list and map of each permit issued over the life of the program, a searchable list and map of enforcement actions taken by other agencies, including a link to such actions, and a searchable list and map of any other actions taken by DTSC relating to hazardous waste. DTSC does not control, nor does it possess, information from other agencies, and it would be impractical to require DTSC to post such information. Moreover, the expansive catchall requirement to post a searchable list and map of any other actions taken by DTSC relating to hazardous waste could capture virtually every activity undertaken by DTSC.

In addition to the issues described above, SB 812 would require all documents published to its website, including searchable databases with maps, to be translated and posted in Spanish. While many communities may be predominantly Spanish-speaking, there are many other languages spoken throughout the state. Not all of the work that DTSC does affects Spanish speaking communities, so Spanish translations will not help every community and would be unnecessarily expensive.

This bill would require DTSC to contract with a third party to conduct testing to verify that a violation involving an illegal release has been abated, and that a site where such a release occurred is remediated. DTSC already works with highly trained and professionally certified contractors to accomplish these activities. Therefore, SB 812’s requirements are not necessary. DTSC also works to ensure the quality of analytical data used for regulatory purposes meets the strong requirements of California’s
hazardous waste programs. The bill's requirements to contract with an independent third party would slow down work as additional time is needed to find and hire qualified contractors and coordinate duplicative work among multiple contractors, all of which would also increase cleanup costs while slowing down the completion of site cleanups.

SB 812 would also establish two new layers of administrative oversight over DTSC. Current law already provides for oversight, including Legislative oversight hearings, Government Code provisions regarding allegations of employee misconduct, conflicts of interest enforced by the Fair Political Practices Committee, and the authority of the State Auditor to investigate state departments.

Additionally, SB 812 as amended June 24, 2014 would have a fiscal impact of approximately $12.6 million, which would put DTSC's Hazardous Waste Control Account into a structural deficit.

DTSC is currently working to enhance our public participation outreach efforts, particularly in environmental justice communities. We are committed to developing a new engagement strategy to involve stakeholders earlier in the decision-making process as well as implementing an enhanced review procedure for facilities in communities facing multiple pollution burdens. I am hopeful that working together we could bring about meaningful and significant changes that expand communities' access to information and our decision-making process.

If you have any questions about DTSC's position, please feel free to contact me at (916) 322-0504, or Mr. Josh Tooker, Legislative Director, at (916) 324-7663 (or email at joshua.tooker@dtsc.ca.gov). The suggested amendments are attached.

Sincerely,

Miriam Barcellona Ingenito
Acting Director

Attachment

cc: See next page.
cc:  Mr. Gareth Elliott  
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Governor's Office, State Capitol  
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Ms. Martha Guzman-Aceves  
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Mr. Matthew Rodriquez, Secretary  
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The Honorable Mike Gatto, Chair  
Assembly Appropriations Committee  
State Capitol, Room 2114  
Sacramento, California 95814  

The Honorable Frank Bigelow  
Vice Chair, Assembly Appropriations Committee  
State Capitol, Room 6027  
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The Honorable Raul Bocanegra  
Assembly Appropriations Committee  
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The Honorable Steven Bradford  
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The Honorable Ian Calderon  
Assembly Appropriations Committee  
State Capitol, Room 5150  
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The Honorable Nora Campos  
Assembly Appropriations Committee  
State Capitol, Room 3160  
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The Honorable Tim Donnelly  
Assembly Appropriations Committee  
State Capitol, Room 2002  
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The Honorable Susan Talamantes Eggman  
Assembly Appropriations Committee  
State Capitol, Room 2003  
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The Honorable Jimmy Gomez  
Assembly Appropriations Committee  
State Capitol, Room 2176  
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The Honorable Chris Holden  
Assembly Appropriations Committee  
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The Honorable Brian Jones  
Assembly Appropriations Committee  
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The Honorable Eric Linder
Assembly Appropriations Committee
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Honorable Richard Pan
Assembly Appropriations Committee
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The Honorable Bill Quirk
Assembly Appropriations Committee
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The Honorable Sebastian Ridley-Thomas
Assembly Appropriations Committee
State Capitol, Room 3149
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The Honorable Donald Wagner
Assembly Appropriations Committee
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The Honorable Shirley Weber
Assembly Appropriations Committee
State Capitol, Room 3126
Sacramento, California 95814
AMENDMENTS FOR SB 812 (De León)

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

SECTION 1.
(a) The Legislature finds and declares all of the following:
(1) The mission of the Department of Toxic Substances Control, as noted in its mission statement, is “to protect California’s people and environment from harmful effects of toxic substances through the restoration of contaminated resources, enforcement, regulation and pollution prevention.”
(2) In an effort to protect the public health and minimize environmental impacts, the state requires that each hazardous waste management facility that treats, stores, handles, or disposes of hazardous waste obtain a permit or other authorization from the department.
(3) Currently, the department regulates 117 facilities across the state that store, treat, or dispose of hazardous waste. Of these facilities, nearly a quarter are operating on permits whose original expiration dates have passed.
(4) One facility operated by Exide Technologies in Vernon, California has been allowed to operate on an interim permit for over 30 years, regardless of its repeated violations of environmental and public health standards.
(5) Unfortunately, many communities continue to suffer with toxic emissions and releases with limited protection from our current hazardous waste management regulatory system.
(6) The longstanding problems at the Exide Technologies facility are only the most recent examples of the system’s failures.
(b) It is the intent of the Legislature to strengthen our hazardous waste management regulatory system to better protect vulnerable communities and residents from toxic pollution by improving addressing loopholes in the permitting system.

SEC. 2.
Section 25178 of the Health and Safety Code is amended to read:

25178.
On or before January 1 of each odd-numbered year, the department shall post on its Internet Web site translate into Spanish, at a minimum, all of the following:
(a) The status of the regulatory and program developments required pursuant to legislative mandates.
(b) The status of the hazardous waste facilities permit program that shall include all of the following information:
(1) Complete copies of the final hazardous waste facilities permit applications received.
(2) A searchable list and map of final hazardous waste facilities permits issued to date.
(3) A searchable list and map of final hazardous waste facilities permits yet to be issued.
(4) A complete description of the reasons why the final hazardous waste facilities permits yet to be issued have not been issued, including the department’s evaluation and findings of each of the criteria listed in Section 25200.21 and its regulations as well as any other criteria used by the department to evaluate the permit application.
(5) A complete description of the findings supporting each final hazardous waste facility permit granted by the department, including the department’s evaluation and findings of each of the criteria listed in Section
25200.21 and its regulations as well as any other criteria used by the department to evaluate the permit application.
(c) The status of the hazardous waste facilities siting program.
(d) The status of the hazardous waste abandoned sites program.
(e) A searchable list and map of enforcement actions taken by the department pursuant to this chapter and any other actions relating to hazardous waste management. The list and map shall specify whether the violations have been corrected and include links to inspection reports, final orders, and enforcement actions taken by other agencies.
(f) Data and summaries for each permitted site regarding annual quantities and types of hazardous waste generated, transported, treated, stored, and disposed.
(g) **Summary** Statewide data and summaries on annual quantities and types of hazardous waste generated, transported, treated, stored, and disposed.
(h) **Summary** Data and summaries regarding onsite and offsite disposition of hazardous waste.
(i) Research activity initiated by the department.
(j) Regulatory action by other agencies relating to hazardous waste management.
(k) A revised listing of recyclable materials showing any additions or deletions to the list prepared pursuant to Section 25175 that have occurred since the last report.
(l) Any other data considered pertinent by the department to hazardous waste management.
(m) The information specified in subdivision (c) of Section 25161, paragraph (4) of subdivision (a) of Section 25197.1, subdivision (c) of Section 25354, and Sections 25334.7, and 25356.5.
(n) A status report on the cleanup of the McCall Hazardous Waste Disposal Site in Orange County.

**SEC. 3.**
Section 25196.7 is added to the Health and Safety Code, to read:

**25196.7;**
As part of an enforcement action alleging a release of hazardous waste in violation of this chapter taken by the department, the department shall contract with an independent third party to conduct any required testing to verify that the alleged violation of this chapter has been abated and the site has been remediated.

**SEC. 4.**
Article 8.8 (commencing with Section 25199.20) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

**Article 8.8. Bureau of Internal Affairs**

**25199.20;**
(a) The Legislature finds and declares that there exists a need for a Bureau of Internal Affairs with appropriately-trained personnel, who will perform their duties with honesty and credibility and without conflicts of interest to oversee the department.
(b) For the purposes of this article, “bureau” means the Bureau of Internal Affairs established pursuant to subdivision (c).
(c) There is hereby established an independent Bureau of Internal Affairs within the department to do all of the following:
(1) Determine when allegations of misconduct within the department warrant an internal affairs investigation.
(2) Conduct complete, objective, and independent investigations of alleged departmental misconduct.
(3) Complete all investigations in a timely and thorough manner.
(4) Report any and all findings to the department and to the DTSC Citizen Oversight Committee established pursuant to Section 25199.21.
(d) To meet the objectives of this section, all of the following shall occur:
(1) Before training any peace officer, who is selected to conduct internal affairs investigations, the California Environmental Protection Agency shall conduct a complete and thorough background check of the peace officer. The background check shall be in addition to the background screening required when the person was hired as a peace officer. Each peace officer shall satisfactorily pass the background check required by this paragraph before his or her appointment to conduct internal investigations pursuant to this section. A person who has been subject to a sustained, serious disciplinary action, including, but not limited to, termination, suspension, or demotion, shall not pass the background check.
(2) All internal affairs allegations or complaints, whether investigated or not, shall be logged and numbered sequentially on an annual basis. The log shall specify, but not be limited to, the following information:
(A) The sequential number of the allegation or complaint;
(B) The date of receipt of the allegation or complaint;
(C) The location of the facility to which the allegation or complaint pertains;
(D) The disposition of all actions taken, including any final actions taken;
(E) The log established pursuant to paragraph (2) shall be made available to the DTSC Citizen Oversight Committee and posted on the department’s Internet Web site;
(4) The department shall not direct or influence, or attempt to direct or influence, the investigation or the operations of the bureau.
(e) Consistent with the purposes of this section, the investigators within the bureau shall conduct investigations and inquiries in a manner that provides a complete and thorough presentation of the facts regarding the allegation or complaint. All extenuating and mitigating facts shall be explored and reported. All reports prepared by the investigator shall provide a complete recitation of the facts.
(f) An uncorroborated or anonymous allegation shall not be the sole basis for disciplinary action by the department, but may be a basis for an investigation.
(g) All reports shall be submitted in a standard format, beginning with a statement of the allegation or complaint, provide all relevant facts, and include the investigator’s signature certifying that the investigator has complied with applicable provisions.
(h) In addition to its duties specified in subdivision (e), the bureau shall also do all of the following:
(1) Upon request by the Governor, the Senate Committee on Rules, or the Speaker of the Assembly, the bureau shall review the policies, practices, and procedures of the department. The bureau may recommend that the Governor, the Senate Committee on Rules, or the Speaker of the Assembly request a review of a specific departmental policy, practice, or procedure that raises a significant issue relevant to the effectiveness of the department. When exigent circumstances of unsafe or life-threatening conditions arise, the bureau may, by whatever means is most expeditious, notify the Governor, the Senate Committee on Rules, or the Speaker of the Assembly.
(2) Upon completion of a review, the bureau shall prepare a complete written report that shall be made public. A copy of the report shall be posted on the department’s Internet Web site;
(3) The bureau shall, during the course of the review, identify areas of full and partial compliance or noncompliance with departmental policies and procedures; specify deficiencies in the completion of documentation of processes; and recommend corrective actions, including, but not limited to, additional training, additional policies, or changes in policies, as well as any other findings or recommendations that the bureau deems appropriate.
(4) (A) The bureau shall issue regular reports, no less than annually, to the Governor, the Legislature, and to the DTSC Citizen Oversight Committee established pursuant to Section 25199.21 summarizing its recommendations concerning its investigations into allegations of departmental misconduct.
(B) The report submitted to the Legislature pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.
(C) (1) The report required pursuant to this paragraph shall include, but not be limited to, all of the following:
(I) Data on the number, type, and disposition of complaints made against the department.
(II) A synopsis of each matter reviewed by the bureau.

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(III) A summary of the bureau’s recommendations regarding the disposition in the case and the level of discipline imposed, and the degree to which the department agrees with the bureau’s recommendations regarding the disposition and level of discipline;

(IV) The extent to which any discipline was modified after imposition.

(i)

(ii) The report shall be posted on the department’s Internet Web site and otherwise made available to the public upon their release to the Governor, the Legislature, and DTSC Citizen Oversight Committee.

(ii)

(iii) The Secretary for Environmental Protection shall appoint the director of the bureau who shall oversee and administer the bureau.

25199.21.

(a) There is hereby established in the department, the DTSC Citizen Oversight Committee composed of 13 members representing California residents affected by hazardous waste. The committee members shall not include representatives from the department or an entity regulated by the department pursuant to this chapter.

(b) Members of the committees shall be appointed as follows:

(1) Five members appointed by the Governor;
(2) Four members appointed by the Senate Committee on Rules;
(3) Four members appointed by the Speaker of the Assembly;
(4) Members of the committee shall serve at the pleasure of their appointing authority;
(d) The committee shall do all of the following:

(1) Receive allegations of departmental misconduct from members of the public;
(2) Refer allegation of misconduct to the Criminal Investigation Division of the California Environmental Protection Agency or the bureau, as appropriate;
(3) Make recommendations for changes in policies, procedures, and standards of the department to increase public participation in, and the transparency of, the department’s decisionmaking process;
(4) Serve as a resource and liaison for communities and residents in communication with the department;
(5) Review and make public any reports received from the bureau;
(e) The department shall not direct or influence, or attempt to direct or influence, the operation of the committee;
(f) The department shall provide the committee with appropriate per diem compensation consistent with Section 19822.5 of the Government Code.

25199.23.

Any information exempted from public disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or any other law shall not be disclosed to the public in a report or other document required by this article to be made public.

SEC. 5.

Section 25200 of the Health and Safety Code is amended to read:

25200.

(a) The department shall issue hazardous waste facilities permits to use and operate one or more hazardous waste management units at a facility that in the judgment of the department meet the building standards published in the State Building Standards Code relating to hazardous waste facilities and the other standards and requirements adopted pursuant to this chapter. The department shall impose conditions on each hazardous waste facilities permit specifying the types of hazardous wastes that may be accepted for transfer, storage, treatment, or disposal. The department may impose any other conditions on a hazardous waste facilities permit that are consistent with the intent of this chapter.
(b) The department may impose, as a condition of a hazardous waste facilities permit, a requirement that the owner or operator of a hazardous waste facility that receives hazardous waste from more than one producer comply with any order of the director that prohibits the facility operator from refusing to accept a hazardous waste based on geographical origin that is authorized to be accepted and may be accepted by the facility without extraordinary hazard.

(c) (1) (A) A hazardous waste facilities permit issued by the department shall be for a fixed term, which shall not exceed 10 years for any land disposal facility, storage facility, incinerator, or other treatment facility. (B) The owner or operator of a facility intending to extend the term of the facility’s permit shall submit complete Part A and Part B applications for a permit renewal at least two years prior to the expiration date of the permit. Any other relevant information shall be submitted as and when requested by the department.

(C) To the extent not inconsistent with the federal act, for an owner or operator in compliance with subparagraph (B), the permit is deemed extended until the renewal application is approved or denied and the owner or operator has exhausted all applicable rights of appeal. Appeal have been exhausted.

(D) (i) The department shall approve or deny the application issue a final permit decision for permit renewal for a facility within 36 months following the expiration of the permit’s fixed term. An application for permit renewal is deemed denied if the department fails to act issue a final permit decision within 36 months following the expiration of the permit’s fixed term.

(ii) Notwithstanding clause (i), for a facility with a permit that expired on or before January 1, 2015, and for which an application for permit renewal had been submitted before January 1, 2015, the department shall approve or deny issue a final permit decision for the application on or before January 1, 2018. An application for permit renewal is deemed denied if the department fails to act issue a final permit decision on or before January 1, 2018.

(iii) This subparagraph does not apply to applications for post-closure permits.

(E) This section does not limit or restrict the department’s authority to impose any additional or different conditions on an extended permit that are necessary to protect human health and the environment.

(F) In adopting new conditions for an extended permit, the department shall follow the applicable permit modification procedures specified in this chapter and the regulations adopted pursuant to this chapter.

(G) When prioritizing pending renewal applications for processing and in determining the need for any new conditions on an extended permit, the department shall consider any input received from the public.

(2) The department shall review each hazardous waste facilities permit for a land disposal facility five years after the date of issuance or reissuance, and shall modify the permit, as necessary, to assure ensure that the facility continues to comply with the currently applicable requirements of this chapter and the regulations adopted pursuant to this chapter.

(3) This subdivision does not prohibit the department from reviewing, modifying, or revoking a permit at any time during its term.

(d) (1) When reviewing any an application for a permit renewal, the department shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations.

(2) Each permit issued or renewed under this section shall contain the terms and conditions that the department determines necessary to protect human health and the environment.

(e) A permit issued pursuant to the federal act by the Environmental Protection Agency in the state for which no state hazardous waste facilities permit has been issued shall be deemed to be a state permit enforceable by the department until a state permit is issued. In addition to complying with the terms and conditions specified in a federal permit deemed to be a state permit pursuant to this section, an owner or operator who holds that permit shall comply with the requirements of this chapter and the regulations adopted by the department to implement this chapter.

SEC. 6.
Section 25200.1 of the Health and Safety Code is amended to read:
25200.1.
(a) Notwithstanding Section 25200, the department shall not issue a hazardous waste facility permit to a facility which commences operation on or after January 1, 1987, unless the department determines that the facility operator is in compliance with regulations adopted by the department pursuant to this chapter requiring that the operator provide financial assurance that the operator can respond adequately to damage claims arising out of the operation of the facility or the facility is exempt from these financial assurance requirements pursuant to this chapter or the regulations adopted by the department to implement this chapter.

(b) (1) On or before January 1, 2016, the department shall adopt regulations requiring a financial bond or other security with respect to the nature and scope of the activity authorized and with respect to any potential risk or injury to human health or the environment from a person or entity that applies for a hazardous waste facilities permit pursuant to this article.

(2) The department shall determine the manner in which, and the condition under which, any security that is deposited pursuant to regulations adopted pursuant to this subdivision may be forfeited or returned, in whole or in part.

(3) Regulations adopted pursuant to this subdivision do not apply to governmental entities.

SEC. 7.
Section 25200.20 is added to the Health and Safety Code, to read:

25200.20.
Interim status granted for a facility pursuant to Section 25200.5 on or after January 1, 2015, shall terminate five years from the date the interim status is granted or on the date the department takes final action on the application for a hazardous waste facilities permit, whichever is earlier.

SEC. 8.
Section 25200.21 is added to the Health and Safety Code, to read:

25200.21.
On or before January 1, 2016, the department shall adopt regulations establishing additional criteria that the department shall use to determine whether to issue a new permit or a renewal of a permit pursuant to this article. These criteria shall include, but are not limited to, all of the following:

(a) Number and types of past violations that will result in a denial;

(b) The vulnerability of, and existing health risks to, nearby populations. Vulnerability shall be assessed using the CalEnviroscreen tool, local and regional health risk assessments, the region's federal Clean Air Act attainment status, and other indicators of community vulnerability, cumulative impact, and potential risks to health and well-being;

(c) Minimum setback distances from sensitive receptors, such as schools, childcare facilities, residences, hospitals, elder care facilities, and other sensitive locations;

(d) Certification, supported by substantial evidence, by the owner or operator that the facility sought to be permitted uses the least hazardous materials, production formulations, and production processes reasonably available, when appropriate;

(e) Certified by substantial evidence by the owner or operator that it has employed all technically feasible, economically practicable source reduction, as defined in Section 25244.14, when appropriate;

(f) Evidence of financial responsibility, qualifications of ownership, and continuity of ownership and operation;

(g) Provision of financial assurances pursuant to Section 25200.1;

(h) Training of personnel, safety culture and plans, emergency plans, and maintenance of operations;

(i) Consistent compliance with established standards.
SEC. 9.
Section 25200.22 is added to the Health and Safety Code, to read:

25200.22.
The department shall provide a public notice and comment period before the preparation and adoption of a draft permit. The department shall consider and respond to all public comments received before preparing and adopting a draft permit.