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NOTICE OF PROPOSED EMERGENCY ACTION

FEE RATES FOR FACILITY FEE, GENERATION & HANDLING FEE, AND ENVIRONMENTAL FEE FOR FISCAL YEAR 2023-24

NOTICE IS HEREBY GIVEN that the Board of Environmental Safety (Board) proposes to adopt the emergency regulations described below to establish fee rates for fiscal year 2023-24 (FY 2023-24) for the Facility Fee, Generation & Handling Fee, and Environmental Fee of the Department of Toxic Substances Control (DTSC or the "Department"). Sections affected: 22 CCR sections 66269.3, 66269.4, and 66269.5.

COMMENT PERIOD

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the Board provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action. After submission of the proposed emergency action to OAL, OAL must allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

The Board intends to submit this proposed emergency action to OAL on September 19, 2023. The submitted action will appear on the list of "Emergency Regulations Under Review" on OAL's website at: https://oal.ca.gov/emergency_regulations/Emergency_Regulations_Under_Review/.

Comments must be submitted in writing directly to OAL:

OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814
Fax Number: (916) 323-6826
staff@oal.ca.gov

A copy of the comment must also be submitted in writing to the Board at:

Board of Environmental Safety
P.O. Box 806
Sacramento, California 95812-0806
Fax Number: (916) 324-1808
info@bes.dtsc.ca.gov

STATUTORY FINDING OF EMERGENCY

Health and Safety Code (HSC) section 25125.4 grants the Board the authority to adopt emergency regulations as may be necessary to allow the Board to carry out its powers. HSC section 25125.4(b), states, in part, that “the adoption of 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, and safety, and general welfare.” This section also states that “an emergency regulation adopted by the board pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law, and shall remain in effect until repealed by the board.”

All changes to the regulations encompassed by this emergency rulemaking are necessary to establish fee rates for the FY 2023-24. These changes were adopted by the Board at a public meeting on September 7, 2023. By law, this emergency action is deemed necessary for the immediate preservation of the public peace, health, safety, and general welfare.

AUTHORITY & REFERENCE

This regulation implements, interprets, or makes specific the following statutes: HSC sections 25125.2, 25205.2.1, 25205.5.01, 25205.6.1, and 25125.4.

INFORMATIVE DIGEST

Policy Statement Overview

The objective of this emergency rulemaking is to set rates for FY 2023-24 for the fees imposed by HSC sections 25205.2, 25205.5 and 25205.6. The rates adopted by this emergency rulemaking have an effective date of July 1, 2023. These fee rates are necessary to ensure stable funding of the Hazardous Waste Control Account, Hazardous Waste Facilities Account, and Toxic Substances Control Account.

Background

State law requires the Board to establish fee rates based upon the costs of the administration and collection of fees and the statewide general administrative costs assessed to the DTSC accounts. Rates established by the Board must allow for a reserve of not more than 10 percent in each account at an amount determined by the Board to be sufficient to ensure that all programs funded by the account will not be adversely affected by any revenue shortfalls or additional baseline expenditure adjustments. The Board established a subcommittee of two board members to recommend fee rates for FY 2023-24. On August 17, 2023, the committee held a public workshop to provide public outreach regarding its proposal to maintain the 2022-23 fee rates for FY 2023-24. This proposal was adopted by the Board on September 7, 2023.

Effect of the Proposed Regulatory Action

DTSC is the lead agency in California for hazardous waste management. DTSC enforces the state's Hazardous Waste Control laws, issues permits to hazardous waste facilities, and mitigates contaminated hazardous waste sites. The Facility Fee, Generation & Handling Fee, and Environmental Fee (collectively “DTSC Fees”) generate revenue for DTSC operations. The California Department of Tax and Fee Administration (CDTFA) (formerly the State Board of Equalization (BOE)) partners with DTSC to administer and collect DTSC Fees.

SB 158 (Chapter 73, Statutes of 2021) significantly restructuring the DTSC Fees. SB 158 established rates of DTSC Fees for FY 2022-23 and authorized the Board to annually set fee rates beginning in FY 2023-24.

Facility Fee (HSC section 25205.2)

SB 158 established the Hazardous Waste Facilities Account within the Hazardous Waste Control Account (HSC section 25174.01). Effective July 1, 2022, the Facility Fee collected for FY 2022-23 is deposited into the new account, and upon appropriation by the Legislature, is used only for hazardous waste regulatory activities associated with authorized (permitted) facilities. SB 158 also revised the timing of Facility Fee payments to correspond to the fiscal year for which the fees were assessed. The base rate of \$94,910 for FY 2022-23 was set in HSC section 25205.2 and was set at a level to generate revenues necessary to fund DTSC's level of service expected in FY 2022-23 and to begin to establish a prudent reserve.

SB 158 required the Board to set the annual fiscal year base rate to correspond to the amount of the annual appropriation for FY 2023-24, up to a specified cap for FY 2023-24, per HSC section 25205.2.1. Beginning with FY 2024-25, the Board shall adjust the base rate for changes to the Consumer Price Index (CPI) as determined by the Department of Industrial Relations.

This rulemaking will establish the following rates for the **Facility Fee** for FY 2023-24:

| Facility Type | Fee |
|---|------------|
| Disposal Facility | \$ 949,100 |
| Large Onsite/Offsite Treatment Facility | \$ 284,730 |
| Small Treatment Facility | \$ 189,820 |
| Mini Treatment Facility | \$ 47,455 |
| Large Storage Facility | \$ 189,820 |
| Small Storage Facility | \$ 94,910 |
| Mini Storage Facility | \$ 23,728 |
| Standard Permit Facility Series A | \$ 55,280 |
| Standard Permit Facility Series B | \$ 25,910 |
| Standard Permit Facility Series C | \$ 21,760 |
| Standard Permit Facility Series C (Small Quantity) | \$ 10,880 |
| Postclosure Permit Facility - Within 5 Years - Small | \$ 26,980 |
| Postclosure Permit Facility - Within 5 Years - Medium | \$ 53,960 |
| Postclosure Permit Facility - Within 5 Years - Large | \$ 80,940 |
| Postclosure Permit Facility - Beyond 5 Years - Small | \$ 14,375 |
| Postclosure Permit Facility - Beyond 5 Years - Medium | \$ 28,750 |
| Postclosure Permit Facility - Beyond 5 Years - Large | \$ 48,550 |
| TTU - Permit By Rule | \$ 4,600 |
| TTU - Conditional Authorization | \$ 4,600 |
| TTU - Conditional Exemption | \$ 180 |

Generation & Handling Fee

Historically, DTSC administered four fees related to disposal activity known as the Disposal Fee, Generator Fee, Environmental Protection Agency Identification Number Verification (EPA ID) Fee and Manifest Fee. Effective July 1, 2022, SB 158 eliminated those four fees and replaced them with a new Generation & Handling Fee at HSC section 25205.5. SB 158

required the Board to set a rate for the Generation & Handling Fee for FY 2023-24 by no later than October 1, 2023. The rate established by the Board is based upon the costs of the administration and collection of the fee and the statewide general administrative costs assessed to the Hazardous Waste Control Account for that purpose. The total amount of Generation & Handling Fee revenue collected each fiscal year must conform with the amounts appropriated by the Legislature for that fiscal year from the Hazardous Waste Control Account for expenditure as authorized pursuant to HSC section 25174. The rate established by the Board must also allow for a reserve in the Hazardous Waste Control Account in an amount determined by the Board which is sufficient to ensure that all programs funded by the Hazardous Waste Control Account will not be adversely affected by any revenue shortfalls or additional baseline expenditure adjustments, but not to exceed 10 percent of authorized expenditure levels.

This rulemaking will establish the following rate for the **Generation & Handling Fee** rate for FY 2023-24: \$49.25 per ton or fraction of a ton of hazardous waste generated in calendar year 2022.

Environmental Fee

SB 158 made changes to the Environmental Fee by revising the timing for the period of assessment of the Environmental Fee from an annual calendar year fee to an annual fiscal year fee. SB 158 also changed the timing that DTSC provides data to CDTFA from November 1 to October 1, and added a fee exemption for small businesses with than 100 employees. The rate of the Environmental Fee for FY 2022-23 was set in HSC section 25205.6 at a level to generate revenues necessary to fund DTSC’s level of service expected in FY 2022-23 and to begin establishing a prudent reserve.

The Board sets the annual fiscal year Environmental Fee to correspond to the amount of the annual appropriation for FY 2023-24, up to a specified cap for FY 2023-24, per HSC section 25205.6.1. Beginning with FY 2024-25, the Board may adjust the Environmental Fee for changes to the CPI as determined by the Department of Industrial Relations.

This rulemaking will establish the following rates for the **Environmental Fee** for FY 2023-24:

| Business Size | Fee |
|-----------------------------------|-----------------|
| Less than 100 employees | \$0 |
| 100 but less than 250 employees | \$1,261 |
| 250 but less than 500 employees | \$2,706 |
| 500 but less than 1,000 employees | \$16,000 |
| 1,000 or more employees | \$54,100 |

Related State Laws and Regulations

Existing state law lists the activities and entities subject to payment of the fees, and establishes standards for collection of the fees. Facilities that store, treat and dispose of hazardous waste pay the Facility Fee, which generates revenue for the Hazardous Waste Facility Account, which funds activities of DTSC’s regulatory activities associated with permitted facilities including permitting, inspection, and enforcement related activities. Generators of hazardous waste pay the Generation & Handling Fee, which funds the activities of DTSC’s hazardous waste regulatory and oversight activities that are not related to permitted facilities through the Hazardous Waste Control Account. Nearly all businesses in California with 100 or more employees pay the Environmental Fee, which generates revenue for the for response and clean-up activities related to the release of hazardous substances through the Toxic Substances

Control Account. State law includes standards for collection of these fees, including certain exemptions. Existing state regulations specify additional fee standards (California Code of Regulations, title 22, division 4.5, chapter 19, sections 66269.1 and 66269.2.).

FISCAL IMPACT TO STATE AGENCIES

The proposed rule is anticipated to provide fiscal stability for the Department for the current fiscal year. As required by state law, the Board is required to establish the fee rates to provide adequate revenue to sustain DTSC expenditures based on the appropriations provided to the Department in the state Budget Act, while maintaining adequate reserves.

OTHER FINDINGS

Mandate on Local Agencies or School Districts: None

Document(s) Relied Upon: None

Reimbursable Cost to Any Local Agency or School District: None

Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None

Cost or Savings in Federal Funding to the State: None

REGULATORY TEXT

Note: Proposed changes are illustrated with additions in underlining to show where the new text is being added. Proposed text for deletion (repeal) is shown in strikethrough.

Add Title 22, division 4.5, chapter 19, section 66269.3 to read:

66269.3. Facility Fee Rates for the 2023-24 Fiscal Year.

The fee rates for the 2023-24 fiscal year for the fees imposed by Section 25205.2 of the Health and Safety Code are as follows.

- (a) The base fee for the fee imposed by Section 25205.2 of the Health and Safety Code is ninety-four thousand nine hundred ten dollars (\$94,910). Except as provided in subsection (b), in computing the facility fees, all of the following shall apply:
 - (a) The fee to be paid by a ministorage facility shall equal 25 percent of the base facility rate.
 - (b) The fee to be paid by a small storage facility shall equal the base facility rate.
 - (c) The fee to be paid by a large storage facility shall equal twice the base facility rate.
 - (d) The fee to be paid by a mini treatment facility shall equal 50 percent of the base facility rate.
 - (e) The fee to be paid by a small treatment facility shall equal twice the base facility rate.
 - (f) The fee to be paid by a large onsite treatment facility shall equal three times the base facility rate.
 - (g) The fee to be paid by a large offsite treatment facility shall be three times the base facility rate.
 - (h) The fee to be paid by a disposal facility shall equal 10 times the base facility rate.

- (b) The fee to be paid by a facility with a postclosure permit during the first five years of the postclosure period shall be:
- (1) Twenty-six thousand nine hundred eighty dollars (\$26,980) annually for a small facility.
 - (2) Fifty-three thousand nine hundred sixty dollars (\$53,960) annually for a medium facility.
 - (3) Eighty thousand nine hundred dollars (\$80,940) annually for a large facility.
- (c) The fee to be paid by a facility with a postclosure permit after the first five years of the postclosure care period shall be:
- (1) Fourteen thousand three hundred seventy-five dollars (\$14,375) annually for a small facility.
 - (2) Twenty-eight thousand seven hundred fifty dollars (\$28,750) annually for a medium facility.
 - (3) Forty-eight thousand five hundred fifty dollars (\$48,550) annually for a large facility.
- (d) Notwithstanding subsection (a), the fee for a facility that has been issued a standardized permit shall be as follows:
- (1) The fee to be paid for a facility that has been issued a Series A standardized permit shall be fifty-five thousand two hundred eighty dollars (\$55,280).
 - (2) The fee to be paid for a facility that has been issued a Series B standardized permit shall be twenty-five thousand nine hundred ten dollars (\$25,910).
 - (3) Except as specified in paragraph (4), the fee to be paid for a facility that has been issued a Series C standardized permit shall be twenty-one thousand seven hundred sixty dollars (\$21,760).
 - (4) The fee for a facility that has been issued a Series C standardized permit is ten thousand eight hundred eighty dollars (\$10,880) if the facility meets all of the following conditions:
 - A. The facility treats not more than 1,500 gallons of liquid hazardous waste and not more than 3,000 pounds of solid hazardous waste in any calendar month.
 - B. The total facility storage capacity does not exceed 15,000 gallons of liquid hazardous waste and 30,000 pounds of solid hazardous waste.
 - C. If the facility both treats and stores hazardous waste, the facility does not exceed the volume limitations specified in subparagraphs (A) and (B) for each individual activity.

Authority: Health and Safety Code sections 25125.2, 25125.4, and 25205.2.1.

Add Title 22, division 4.5, chapter 19, section 66269.4 to read:

66269.4. Generation & Handling Fee Rate for Fiscal Year 2023-24.

The annual fee amount for the 2023-24 fiscal year for the fee imposed by Section 25205.5 of the Health and Safety Code shall be set at forty-nine dollars and twenty-five cents (\$49.25) for each ton or fraction of a ton of hazardous waste generated in calendar year 2022.

Authority: Health and Safety Code sections 25125.2, 25125.4, and 25205.5.01.

Add Title 22, division 4.5, chapter 19, section 66269.5 to read:

66269.5. Environmental Fee Rates for Fiscal Year 2023-24.

The annual fee amounts for the 2023-24 fiscal year for the fee imposed by Section 25205.6 of the Health and Safety Code are set at the following amounts:

- (a) One thousand two hundred sixty-one dollars (\$1,261) for those organizations with 100 or more employees, but fewer than 250 employees.
- (b) Two thousand seven hundred six dollars (\$2,706) for those organizations with 250 or more employees, but fewer than 500 employees.
- (c) Sixteen thousand dollars (\$16,000) for those organizations with 500 or more employees, but fewer than 1,000 employees.
- (d) Fifty-four thousand one hundred dollars (\$54,100) for those organizations with 1,000 or more employees.

Authority: Health and Safety Code sections 25125.2, 25125.4, and 25205.6.1.