

TITLE 22

EMERGENCY REGULATIONS ANNUAL FEE FOR METAL SHREDDING FACILITIES

Department Reference Number: R-2015-01
Office of Administrative Law Emergency Number: 2015-XXXX-XXX

FINDING OF EMERGENCY

Health and Safety Code section 25150.84 grants authority to the Department of Toxic Substances Control (DTSC) to adopt regulations to impose a fee to be paid by metal shredding facilities as an emergency, and that the regulations are to be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, and general welfare.

STATEMENT OF FACTS SUPPORTING FINDING OF EMERGENCY

The circumstances necessitating this regulation are deemed to be an emergency pursuant to statute. Specifically, Health and Safety Code section 25150.84(c) states that a regulation adopted pursuant to this subdivision, “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...and shall remain in effect for a period of two years or until revised by DTSC, whichever occurs sooner.”

AUTHORITY AND REFERENCE

In accordance with Government Code section 11346.5(a)(2) this notice of proposed adoption of a regulation includes the following references to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific. These regulations are being proposed under the following authorities:

Health and Safety Code section 25150.82(b). This subsection defines a “metal shredding facility.”

Health and Safety Code section 25150.82(c). This subsection grants DTSC authority to adopt alternative management standards for metal shredding facilities.

Health and Safety Code sections 25150.82(c)(1). This subsection requires DTSC to prepare an analysis of the activities to which the alternative management standards will apply.

Health and Safety Code sections 25150.82(d)(1)-(3). These subsections require DTSC to evaluate the regulatory oversight and hazardous waste management activities of metal shredding facilities.

Health and Safety Code section 25150.84(a). This subsection grants DTSC authority to adopt regulations to collect an annual fee from metal shredding facilities at a rate sufficient to reimburse the department's costs.

Health and Safety Code section 25150.84(c). This subsection grants DTSC authority to adopt the fee regulations as an emergency regulation.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Current State Law

The fee authorized by this emergency regulation will be new upon its adoption and will not replace any other fee system. This regulation will therefore not conflict with, or modify, any other state law.

Current Federal Law

The fee authorized by this emergency regulation will be new upon its adoption and will not replace any other fee system. In addition, according to Health and Safety Code section 25150.84(f), the Department is prohibited from adopting standards that are less stringent than federal hazardous waste law. This regulation will therefore not conflict with, or modify, any federal law.

Objective

The overall objective of this emergency rulemaking is to ensure that the Department is reimbursed for its costs to evaluate metal shredding facilities and their wastes in order to ensure adequate protection of human health and the environment.

Proposed Regulations:

Introduction

This emergency regulation enables DTSC to collect an annual fee from metal shredding facilities at a rate sufficient to cover the costs incurred by DTSC to implement Chapter 6.5 of Division 20 of the Health and Safety Code as applicable to metal shredders.

Additionally, this emergency regulation clarifies which metal shredding facilities are subject to the annual flat fee, how the annual flat fee is to be calculated and communicated, how the annual flat fee is to be collected, and establishes the procedures necessary to administer this fee.

Definitions and Applicability

A metal shredding facility is defined according to the definition given in subsection (b) of section 25150.82 of chapter 6.5 of division 20 of Health and Safety Code, and reads, in part, "...any operation that uses a shredding technique to process end-of-life vehicles, appliances, and other forms of scrap metal..."

The emergency regulation includes provisions that limit the applicability of the annual fee. The annual fee applies to metal shredding facilities that are located within the state of California, and have received one of the following: (1) Notification from the Department in accordance with section 66260.200(f) that otherwise hazardous waste may be classified and managed as nonhazardous, (2) An order issued by the Department under chapters 6.5 or 6.8 of division 20 of the Health and Safety Code that authorizes a metal shredding facility to continue operations pursuant to specified management and operating conditions, (3) A judgment issued by a court with jurisdiction in a matter to which the Department and at least one metal shredding facility are parties that authorizes operations pursuant to specified management and operating conditions, or (4) A permit issued under chapter 6.5 of division 20 of the Health and Safety Code that authorizes metal shredding operations.

Assessment of the Annual Fee

This emergency regulation requires the annual flat fee to apply equally to each metal shredding facility, and to be calculated by dividing DTSC's annual projected costs by the total number of metal shredding facilities operating in any portion of the calendar year to which the fee applies. The annual projected cost is defined in the emergency regulation as the costs incurred by DTSC, as determined by DTSC, to implement sections 25150.82 and 25150.84 of chapter 6.5 of division 20 of the California Health and Safety Code.

This emergency regulation requires DTSC publish the annual fee in the California Regulatory Notice Register and accept comments on the annual fee for 15 days. During the notice period, DTSC will consider all comments and prepare a response that identifies the comments, DTSC's findings, and the final fee decision. All of DTSC's responses will be made available upon request.

DTSC intends to publish an annual fee schedule each calendar year to reflect DTSC's project annual costs and the current number of metal shredding facilities. DTSC will determine its actual costs in the beginning of the subsequent calendar year and any difference between the previous calendar year's actual costs and annual projected costs will be added to or subtracted from the next annual projected costs. Any surpluses or deficits will be noted and published in the California Regulatory Notice Register as part of the new annual fee.

Administration of the Annual Flat Fee

The Department will invoice each metal shredding facility for the annual fee no later than December 31, 2015. For calendar years 2016 and 2017, the emergency regulation requires DTSC to invoice each metal shredding facility by July 1 of that calendar year, and the annual fee is due and payable to DTSC by September 1 of that calendar year. Additionally, the emergency regulation establishes requirements to assess late fees, to provide refunds, and resolve disputes over payment.

STUDIES RELIED ON

DTSC has found that no external documents or studies are necessary for this rulemaking.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking project to be exempt under CEQA. A draft of the Notice of Exemption (NOE) is available for review with the rulemaking file and the NOE will be filed with the State Clearinghouse when the regulations are adopted.

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts

In accordance with Government Code section 11346.5(a)(5), DTSC has made a preliminary determination that adoption of these regulations will create no new mandates on local agencies or school districts.

Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement

In accordance with Government Code section 11346.5(a)(5), DTSC has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4,

commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

Cost or Savings to Any State Agency

In accordance with Government Code section 11346.5(a)(6), DTSC has made a preliminary determination that the proposed regulations will result in a savings to the Department based on the reimbursement of state costs for staffing and other expenditures necessary to implement chapter 6.5, division 20, Health and Safety Code as applicable to metal shredding facilities. Without this reimbursement, DTSC would incur substantial costs associated with the required activities.

Cost or Savings in Federal Funding to the State

In accordance with Government Code section 11346.5(a)(6) this notice of proposed adoption of a regulation includes an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

DTSC has made a preliminary determination that the proposed regulations will have no impact on Federal revenue or costs.