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INITIAL STATEMENT OF REASONS
DISASTER VICTIMS HAZARDOUS WASTE FEE EXEMPTION
Department of Toxic Substances Control Reference Number: R-2011-05
Office of Administrative Law Notice File Number: Z-2012-0328-01

DETAILED STATEMENT OF THE SPECIFIC PURPOSE AND RATIONALE

Health and Safety Code section 25174.7(a)(1) exempts a government agency, or its contractors, from hazardous waste disposal fees and generator fees for removal or remediation of hazardous waste as a result of a release caused by another person. The fee exemption has not been extended to private firms engaged in cleanup activities as a result of a release caused by another person. However, in 1996 (A.B. 645) the Legislature expressed an intent to provide some form of fee relief to private parties by adding Health and Safety Code section 25205.5.1. The Bill authorizes the Department of Toxic Substances Control (DTSC) to adopt regulations to exempt victims of disaster from hazardous waste disposal and generator fees imposed pursuant to sections 25174.1 and 25205.5.

Accordingly, DTSC proposes to adopt regulatory section 66269.2 Disaster Victims Hazardous Waste Fee Exemption, to exempt private party disaster victims from having to pay state hazardous waste generator and disposal fees. To qualify for an exemption, the hazardous waste must have been generated as a result of a disaster in a geographical area identified in a state of emergency proclamation by the Governor due to fire, flood, storm, earthquake, riot, or civil unrest. The hazardous waste must also be disposed of within 365 days from the initial disaster proclamation date.

ECONOMIC IMPACT ANALYSIS (per Gov. Code sec. 11346.3(b))

This rulemaking will exempt all victims of disaster, including affected businesses, not just government agencies and its contractors, from paying hazardous waste disposal and generator fees under certain qualifying circumstances. The rulemaking would therefore help to promote fairness and minimize the negative economic impact on businesses that a disaster might otherwise cause. To the extent this proposal has an economic impact, that impact is a favorable one.

Creation or Elimination of Jobs within California

This rulemaking would exempt all victims of disaster from paying hazardous waste disposal and generator fees under certain qualifying circumstances. In adopting Section 66269.2 into the California Code of Regulations, Title 22, Division 4.5, Chapter 19, DTSC has made the assessment that no jobs in California will be created or eliminated.

Creation of New Businesses or Elimination of Existing Businesses within California

This rulemaking would exempt all victims of disaster from paying hazardous waste disposal and generator fees under certain qualifying circumstances and does not result in the creation or elimination of businesses in California.

Expansion of Current California Businesses

This rulemaking would exempt all victims of disaster from paying hazardous waste disposal and generator fees under certain qualifying circumstances and does not result in the expansion or elimination of existing businesses in California.

Anticipated Benefits

The proposed regulation would allow all victims of disaster, including affected businesses, not just government agencies and its contractors, to be exempt from paying hazardous waste disposal and generator fees under certain qualifying circumstances. Without adoption of an implementing regulation, victims of major disasters are required to pay state generator and disposal fees for removal of hazardous wastes generated as a result of disasters. These fees are costs added to the other unavoidable losses suffered by the victims as a result of the disaster. The proposed regulatory action will not benefit the health and welfare of California residents, worker safety, and the state's environment. The proposed regulatory action will, as described above, benefit all victims of disaster by exempting them from paying hazardous waste disposal and generator fees under certain qualifying circumstances. Since the legislature has expressed its intent to extend a fee exemption to disaster victims, DTSC deems it equitable and necessary to promulgate this regulation to exempt effected businesses from paying disposal and generator fees as described in Health & Safety Code section 25205.5.1.

REPORTS RELIED ON

DTSC has relied upon the Economic and Fiscal Impact Statement (STD. 399) in proposing the regulatory action.

REASONABLE ALTERNATIVES CONSIDERED

DTSC determined that no reasonable alternative considered or otherwise identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The creation of the regulation assists victims of disaster by providing authority to make the exemption available to them. This regulation essentially adopts statutory language from Health and Safety Code Section 25205.5.1 to new regulation Section 66269.2 of the California Code of Regulations, title 22, division 4.5, chapter 19.

EVIDENCE SUPPORTING A DETERMINATION THAT THE PROPOSAL WILL HAVE NO ADVERSE ECONOMIC IMPACT ON BUSINESS

DTSC has made a determination that the proposed regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states. Since the regulation exempts victims of disasters, in certain qualifying circumstances, from paying hazardous waste disposal and generator fees, it will instead reduce the negative economic impact on businesses that a disaster might otherwise cause.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

As the federal government does not impose hazardous waste disposal and generator fees, this regulation is not based on, identical to, or to conflict with any federal regulations.