

## TITLE 22

### EMERGENCY REGULATIONS ANNUAL FEE ON METAL SHREDDING FACILITIES

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

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#### 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 enactment 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 enactment 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 reimburse the costs incurred by DTSC to implement Chapter 6.5 of Division 20 of the Health and Safety Code as applicable to metal shredders.

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Additionally, this emergency regulation clarifies which metal shredding facilities are subject to the annual fee, how the annual fee is to be determined, how the annual 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 applies to metal shredding facilities that are located within the state of California. In addition, the annual fee applies to metal shredding facilities that have a lawful means of operation: A notification issued by the Department in accordance with section 66260.200(f) of title 22 of the California Code of Regulations that otherwise hazardous waste may be classified and managed as nonhazardous; An order issued or entered into by the Department under chapter 6.5 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; 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, A permit issued by the Department 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 Department assess an annual fee on each metal shredding facility. The regulation establishes that the annual fee will be determined by dividing the Department's annual costs by the number of metal shredding facilities lawfully operating in any portion of the calendar year to which the fee applies.

The Department has projected its annual costs to implement sections 25150.82 and 25150.84 of chapter 6.5 of division 20 of the California Health and Safety Code in the Budget Change Proposal (BCP) to Implement SB 1249. The Department's projected annual costs in the BCP are shown in fiscal years. The BCP includes costs incurred to conduct the following activities: Development and administration of the Annual Fee; Environmental Analysis and Evaluation; Assessment of Off-site Migration; Stakeholder Workshops and other outreach activities; Regulation Development and Adoption; and Laboratory Support.

In the BCP to Implement SB 1249, the Department estimated the number of positions necessary to conduct the activities, and the personal services costs for those positions.

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The Department estimated its operating expenses and equipment costs, such as costs for travel, training, and other general expenses. The BCP also included costs for consulting and professional services, such as costs for external contracts and for laboratory services. Those costs were totaled to yield the projected annual costs for each fiscal year, as shown in Table 1.

**Table 1 Projected Annual Costs by Fiscal Year**

<b>Fiscal Year</b>	<b>Number of Positions</b>	<b>Personal Services Costs</b>	<b>Operating Expenses and Equipment Costs</b>	<b>Consulting and Professional Services Costs</b>	<b>Projected Annual Costs by Fiscal Year</b>
<b>2015/16</b>	<b>2.5</b>	<b>\$277,000</b>	<b>\$40,000</b>	<b>\$210,000</b>	<b>\$527,000</b>
<b>2016/17</b>	<b>2.0</b>	<b>\$236,000</b>	<b>\$25,000</b>	<b>\$50,000</b>	<b>\$311,000</b>
<b>2017/18</b>	<b>2.5</b>	<b>\$240,000</b>	<b>\$32,000</b>	<b>\$50,000</b>	<b>\$322,000</b>

The Department then used its projected annual costs in fiscal years, based on the BCP to Implement SB 1249, to determine its projected annual costs for calendar years. The Department's projected annual costs for calendar years 2015, 2016, and 2017 are prorated from the portion of each fiscal year that applies to the corresponding calendar year, as shown in Table 2.

**Table 2 Projection of Annual Costs from Fiscal Year to Calendar Year**

Fiscal Year	Projected Annual Costs by Fiscal Year	Fiscal Year Pro-Rated to Calendar Year	Projected Annual Costs by Calendar Year	Calendar Year	Projected Annual Costs
2015/16	\$527,000	Jul-Dec 2015	\$263,500	2015	\$263,500
		Jan-Jun 2016	\$263,500	2016	\$419,000
2016/17	\$311,000	Jul-Dec 2016	\$155,500		
		Jan-Jun 2017	\$155,500		
2017/18	\$322,000	Jul-Dec 2017	\$161,000		

Using these projected annual costs, this emergency regulation establishes that the projected annual fees for calendar years 2015, 2016, and 2017 are set forth in the following fee schedule, as shown in Table 3.

**Table 3 Fee Schedule for Each Calendar Year**

Calendar Year	Projected Annual Costs	Number of Metal Shredding Facilities	Projected Annual Fee
2015	\$263,500	6	\$43,900
2016	\$419,000	6	\$69,800
2017	\$316,500	6	\$52,700

The emergency regulation establishes that if the annual fee differs from the Department's projection for any calendar year, the Department shall provide an explanation of the difference in the invoice to each metal shredding facility.

### Administration of the Annual Fee

For the calendar year 2015, the Department will invoice each metal shredding facility for the annual fee no later than July 1, 2016. For calendar years 2016 and 2017, the Department will invoice each metal shredding facility by February 1 of the following year. In each case, the annual fee is due and payable to the Department sixty (60) calendar days after the facility is invoiced. Additionally, the emergency regulation establishes procedures to assess late fees, to resolve disputes over payment, and to provide refunds, if necessary.

### Administration Late Fees

A late fee of ten percent (10%) shall be assessed on any payment that is not received as postmarked by due date, or on such later date as notified by the Department. Beginning on the first day of the calendar month following the due date, simple interest shall accrue monthly on any unpaid fee or portion thereof at the “modified adjusted rate per month, or fraction thereof” as established by the State Board of Equalization pursuant to section 6591.5 of the Revenue and Taxation Code, and shall continue to accrue until the fee is paid in full.

The late fee or interest assessed pursuant to this section may be waived if the Department determines that the failure to make a timely payment was due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. Mere disagreement with the fee assessment shall not be deemed reasonable cause. A person seeking to be relieved of late fee or interest shall submit a written statement to the Department, signed under penalty of perjury, setting forth the facts upon which he or she bases the claim for relief.

If the Department provides a refund because of an erroneous billing, the refund shall be subject to simple interest at the “modified adjusted rate per month, or fraction thereof” as established by the State Board of Equalization pursuant to section 6591.5 of the Revenue and Taxation Code. Except, no refund shall be given and no interest shall accrue where the erroneous billing was due to incorrect information provided by the person seeking the refund.

### Dispute Resolution

No refund shall be granted for any fees erroneously collected unless the person who seeks the refund submits written notification of the error to the Department within one year of the date the person is notified of the fee assessment.

A person may dispute the assessment of the annual fee by submitting a petition to the Department director. The person must submit the petition in writing within one year of the date the person is notified of the fee assessment. The petition must state the specific grounds upon which it is founded. If requested, the Department shall hold a conference with the party and provide all reasonable information and an explanation of the charges assessed. If the matter cannot be resolved informally, the director shall designate a hearing officer to decide the petition. The hearing officer shall be in neither a subordinate nor a supervisory or managerial position to any staff involved in making the initial determination of the fee assessment. A hearing shall be conducted in person, by telephone, or by video conference at which all relevant evidence will be admissible. The hearing officer shall prepare a written final decision to approve or deny the petition.

### **STUDIES RELIED ON**

DTSC's projected annual costs to implement sections 25150.82 and 25150.84 of chapter 6.5 of division 20 of the California Health and Safety Code are based on estimates found in the Budget Change Proposal (BCP) to Implement SB 1249. The BCP to Implement SB 1249 is available on the Department's Web page at: <http://www.dtsc.ca.gov/InformationResources/upload/BCP-4-Implementation-of-SB-1249.pdf>. DTSC has found that no other 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.