



TITLE 27

EMERGENCY REGULATIONS

UNIFIED PROGRAM SINGLE FEE SYSTEM FOR STATE AGENCIES

DTSC Reference Number: R-2005-18
Office of Administrative Law Emergency Number:

FINDING OF EMERGENCY

Health and Safety Code section 25404.6, subdivision (c), grants the Secretary of the California Environmental Protection Agency (Cal/EPA) authority to adopt regulations necessary for the orderly administration and implementation of the unified program, as established by Health and Safety Code, division 20, chapter 6.11, section 25404 et seq. Section 25404.6, subdivision (c), provides further that the “secretary shall adopt these regulations as emergency regulations” and “the adoption of the 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, safety, and general welfare.”

AUTHORITY AND REFERENCE

Authority

Health and Safety Code section 25404, subdivision (b). This section requires the Secretary of Cal/EPA to adopt implementing regulations for the unified hazardous waste and hazardous materials management regulatory program.

Health and Safety Code section 25404.6, subdivision (c). This section grants the Secretary of Cal/EPA the authority to adopt emergency regulations to implement Health and Safety Code, division 20, chapter 6.11, sections 25404 et seq.

Reference

The proposed regulatory action implements, interprets, and makes specific Health and Safety Code section 25404.3, subdivision (f) (2) (A). This section requires that, if no local agency has been certified to act as the unified program agency, the Secretary of Cal/EPA will implement the program within the area where no agency has been certified, and will determine which state or local agency shall be designated as the certified unified program agency (CUPA).

The proposed regulatory action implements, interprets, and makes specific Health and Safety Code section 25404.5. This section requires each CUPA to

institute a single fee system, and requires the Secretary of Cal/EPA to establish the amount to be paid when the CUPA is a state agency.

Health and Safety Code section 25404.6, subdivision (c). This section grants the Secretary of Cal/EPA the authority to adopt emergency regulations to implement Health and Safety Code, division 20, chapter 6.11, sections 25404 et seq.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Law

Under current state law, local agencies may form a CUPA to consolidate certain environmental protection functions within a single governing body. (Health & Saf. Code § 25404 et seq.) This allows persons who are subject to various forms of regulation to work directly with only one regulatory agency and to pay only one fee for the support of the covered environmental activities. Activities within the jurisdiction of the CUPA include approval of certain types of authorization to handle hazardous waste. (Health & Saf. Code § 25404, subd. (c) (1).) Current state law also requires that the CUPA shall regulate, inspect or review spill prevention control and countermeasure plans, underground storage tanks, hazardous material release response plans and inventories, accidental release prevention program plans, and requirements adopted by the State Fire Marshal concerning hazardous material management plans and inventories. (Health & Saf. Code § 25404, subd. (c)(2) – (6).)

If no local agency has been certified to act as the CUPA within a county or an area of a county, the Secretary of Cal/EPA shall determine which state or local agency shall be designated as the CUPA. (Health & Saf. Code § 25404.3, subd. (f) (2) (A).) The governing body of the local CUPA shall establish the amount to be paid under the single fee system at a level sufficient to pay the necessary and reasonable costs incurred by the CUPA. (Health & Saf. Code § 25404.5, subd. (a) (2) (A).) If the Secretary of Cal/EPA has designated a state agency to act as the CUPA, the Secretary will determine the amount to be paid under the single fee system. (Health & Saf. Code § 25404.5, subd. (a)(2)(B).)

At this time there is no statute or regulation that sets forth a process for setting the amount to be paid under the single fee system when a state agency is a CUPA.

Policy Statement Overview

The proposed regulation is necessary to implement the legislative mandate contained in Health and Safety Code, division 20, chapter 6.11 (section 25404 et seq.). Under this chapter, certain environmental protection measures are unified within the jurisdiction of a single agency. This ensures that the human health and the environment will be safeguarded in a manner that is easier for regulated businesses, because they will need to work only with one regulatory agency

rather than with several. At this time, Imperial County and Trinity County have chosen not to establish local CUPAs within their jurisdictions. This means that, pursuant to Health and Safety Code section 25404.3, subdivision (f) (2) (A) the Secretary of Cal/EPA is required to select an agency to act as the CUPA within those two counties. The Secretary has selected the California Department of Toxic Substances Control (DTSC) to act as the CUPA within Imperial and Trinity Counties.

In the absence of the proposed regulation, there is no funding mechanism that would allow DTSC to carry out its environmental protection duties as the designated agency under Chapter 6.11. DTSC's existing accounts and funding sources are not potential funding mechanisms for CUPA activities, for at least four reasons:

- (1) DTSC's primary accounts, the Toxic Substances Control Account (Health & Saf. Code § 25173.6) and the Hazardous Waste Control Account (Health and Safety Code § 25174) are already designated for specific purposes. DTSC's primary accounts do not contain authority for expenditures on the functions of a CUPA, with the exception of authorizing hazardous waste facilities.
- (2) It would be unfair to require regulated businesses in other jurisdictions to pay a single fee for the support of their local CUPAs, if no corresponding fee is due from businesses in jurisdictions where a state agency acts as the CUPA.
- (3) If businesses in state agency-managed CUPAs are not subject to a single fee, businesses in other jurisdictions are likely to demand that their governing bodies dissolve their local CUPAs, so that the state agency can assume control. This would thwart the Legislature's plan for local control over certain environmental functions.
- (4) Most important, there is no alternative under the law but for the Secretary of Cal/EPA to establish a single fee for Imperial and Trinity Counties. The Secretary is mandated by Health and Safety Code section 25404.5, subdivision (a) (2) (A) and (B) to institute a single fee at a level sufficient to pay the necessary and reasonable costs of DTSC acting in its capacity as a CUPA.

Proposed Regulations

The proposed regulations establish a formula for setting the fee to be paid by any county or portion of a county for which DTSC acts as the CUPA. (Currently this includes Trinity and Imperial Counties.) The amount of the fee each business must pay is based on DTSC's approximate cost of regulating each specific activity conducted by that business. To achieve this, the regulations establish a

program element fee that is calculated by multiplying a base rate by an imputed hourly fee for each program element to which a business is subject. The base rate for each county is based on DTSC workload standards within that county, so that activities that require greater regulatory attention have a higher base rate in comparison to activities that require less regulatory attention. The base rate and the resulting fee may be recalculated as needed, but not more than once per fiscal year, so that adjustments can be made if workload standards change. In recognition that there are some indirect costs of maintaining the program that are not reflected in the workload standards, each business must also pay a flat fee that funds the remainder of DTSC's costs. The program element fee and the flat fee are combined to calculate each business's total fee.

The regulations also establish standards for measuring DTSC's costs, pro-rate the fee when the activity is regulated only part of the year, allow the Secretary or the designated agency to suspend the business's authorization to conduct the regulated activity for non-payment of the fee, establish procedures for revising the fee annually, authorize the Secretary or the designated agency to cost recover for non-recurring activities, establish interest on late payments and refunds, and set forth a due process mechanism for disputing the fee assessment.

The regulations include definitions to clarify terms as needed, and references other regulations or statute for those terms not otherwise defined. The definitions also clarify which activities will be included in and excluded from the scope of the program elements. The definitions exclude some activities that might technically fall within the CUPA's jurisdiction for the purposes of fee collection. The activities that are excluded, such as generating a waste that does not require a manifest, are those activities for which the anticipated level of regulation is uncertain and possibly minimal, and fee collection would not be cost-effective. The definitions could be amended at a later date to assess fees on the excluded program elements if they receive a predictable and significant level of regulation.

STATEMENT OF FACTS SUPPORTING FINDING OF EMERGENCY

Cal/EPA finds this rulemaking is an emergency as a matter of law pursuant to Health and Safety Code section 25404.6, subdivision (c), which states "adoption of the 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, safety, and general welfare."

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

Cal/EPA has found this rulemaking project to be exempt under CEQA. A draft of the Notice of Exemption (NOE) is available with the rulemaking file and the NOE will be filed with the State Clearinghouse, Office of Planning and Research, when the regulations are adopted.

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts: Cal/EPA has made a preliminary determination that adoption of these regulations will create no new local mandates.

Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement: Cal/EPA 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 Government Code part 7, division 4, section 17500 et seq., or other non-discretionary costs to local agencies. Local agencies may experience savings, in an unknown amount, to the extent they will not perform the governmental activities that will be done instead by DTSC when funding for those activities is in place. Local agencies, as with all other businesses and persons, are already subject to a requirement that they pay a CUPA fee pursuant to Health and Safety Code section 25404.5, insofar as they engage in any of the activities regulated by the CUPA. Cal/EPA expects to bill the fee to local agencies after the methodology for setting the fee is established by the proposed regulations. Local agencies will be exempt if the activity is exempt from fees pursuant to Health and Safety Code sections 25174.7 or 25205.3.

Cost or Savings to Any State Agency: Cal/EPA has made a preliminary determination that the proposed regulations will have no net impact on state revenue or costs. The fee is designed to make the CUPA program entirely self-funding in jurisdictions where the designated agency acts as the CUPA. Therefore, increased revenue will exactly equal increased cost.

Cost or Savings in Federal Funding to the State: Cal/EPA has made a preliminary determination that the proposed regulations will have no impact on federal revenue or costs.