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TITLE 22

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

DISASTER VICTIMS HAZARDOUS WASTE FEE EXEMPTION

Department Reference Number: R-2011-05

Office of Administrative Law Notice File Number: Z-2012-0328-01

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to adopt Section 66269.2 into the California Code of Regulations, Title 22, Division 4.5, Chapter 19.

PUBLIC HEARING

A written comment period has been established commencing on April 13, 2012, and closing on May 29, 2012. DTSC has not scheduled a public hearing on the proposed regulation. However, pursuant to Government Code section 11346.8, any interested person or his or her duly authorized representative may request a hearing, no later than May 14, 2012. Please submit written comments on this proposal to the contact person listed at the end of this notice no later than 5:00 p.m. on May 29, 2012. Comments submitted after this time will not be considered.

Notice to Hearing Impaired - Accessibility. If you have special accommodation or language needs, please contact Reasonable Accommodation Coordinator, Adrian Recio, at (916) 324-3095 or by e-mail at arecio@dtsc.ca.gov as soon as you receive this document. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

AUTHORITY AND REFERENCE

This regulation is being proposed under the following authorities:

Health and Safety Code section 25150. This section grants DTSC authority to adopt standards dealing with the management of hazardous waste.

Health and Safety Code section 25205.5.1. This section grants DTSC authority to adopt regulations exempting victims of disasters from the hazardous waste disposal fee imposed pursuant to Section 25174.1 and the generator fee imposed pursuant to Section 25205.5.

Health and Safety Code section 58012. (Added by Gov. Reorg. Plan No. 1, §146, eff. July 17, 1991.) This section grants DTSC authority to adopt regulations to execute its duties.

This regulation implements, interprets, or makes specific the following:

Health and Safety Code section 25205.5.1 that authorizes DTSC to adopt regulations exempting victims of disasters from the hazardous waste disposal fee imposed pursuant to Section 25174.1 and the generator fee imposed pursuant to Section 25205.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Policy Statement Overview

The objective of the proposed regulation is to exempt victims of disasters as authorized in Health & Safety Code Section 25205.5.1 from paying state hazardous waste generator and disposal fees 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 proposed regulation would exempt 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 and must be disposed of within 365 days from the initial disaster proclamation date.

Health & Safety Code Section 25205.5.1 authorizes DTSC to adopt regulations exempting victims of disaster from hazardous waste disposal and generator fees. 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. Government agencies and their contractors are exempt from paying hazardous waste disposal fees and generator fees generated as a result of disasters per Health and Safety Code section 25174.7(a)(1). 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 victims of disasters as authorized in Health & Safety Code Section 25205.5.1 from paying state hazardous waste generator and disposal fees for wastes generated by a disaster.

Existing Laws and Regulations

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 the Legislature expressed its intent in A.B. 645, to provide some fee relief to private parties by adding Health and Safety Code section 25205.5.1.

Relation to Existing Federal Law

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

Relation to Existing State Regulations

The proposed regulation is not inconsistent or incompatible with any existing state regulations. An automated search of Title 18, 22 and 26 using the following keywords “disaster”, “disaster victim”, “emergency proclamation”, and “fee exemption” was conducted via Westlaw and yielded no conflicting state regulations. In addition, DTSC consulted with The State Board of Equalization (BOE) which administers six hazardous waste fee programs to ensure that this rulemaking is in accordance with BOE’s regulations.

CONSIDERATION OF ALTERNATIVES

DTSC must determine 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.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DTSC has made a determination that adoption of this regulation 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 STATE OR LOCAL AGENCIES, OR SCHOOL DISTRICTS SUBJECT TO REIMBURSEMENT

DTSC has determined that the proposed regulation will not impose costs or savings, on any state agency, or any cost to any local agency or school district that is required to be reimbursed under Section 17500 of the Government Code, or other nondiscretionary

cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

DETERMINATION OF ADVERSE STATEWIDE ECONOMIC IMPACT

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. This proposed regulation exempts victims of disasters, including affected businesses, from paying hazardous waste disposal and generator fees under certain qualifying circumstances. To the extent this proposal has an economic impact, that impact is a favorable one.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DTSC is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF REGULATORY ECONOMIC IMPACT ANALYSIS

Per the economic impact assessment required by Government Code section 11346.3, DTSC has made a determination that no businesses or jobs will be created, expanded or eliminated in California as a result of the proposed regulation. The rulemaking does not benefit the health and welfare of California residents, worker safety, and the state's environment. It does, however, 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. The rulemaking would therefore help to promote fairness and minimize the negative economic impact on businesses that a disaster might otherwise cause.

EFFECT ON HOUSING COSTS

DTSC has made an initial determination that the proposed regulation will have no significant effect on housing costs.

EFFECT ON SMALL BUSINESSES (1 CCR 4)

DTSC has determined that the proposed rulemaking will not have an effect on small businesses. Rather, the proposed regulation would exempt affected small businesses and other victims of disaster from paying hazardous waste disposal and generator fees under certain qualifying circumstances. To the extent this proposal has an economic impact, that impact is a favorable one.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking to be exempt under the California Environmental

Quality Act (Public Resources Code section 21000, et seq.). This rulemaking meets the statutory exemption available under subdivision (b)(8) of Public Resources Code section 21080. A draft Notice of Exemption is available for review with the rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

PEER REVIEW

Under the provisions of Health and Safety Code section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard or other requirement subject to scientific peer review.

CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulations or CEQA documents may be directed to *Kryisia Von Burg* of DTSC at (916) 324-2810 or, if unavailable, Jon Cordova of DTSC at (916) 324-7193. However, such oral inquiries are not part of the rulemaking record.

A public comment period for this proposed regulation has been established commencing on April 13, 2012, and closing on **May 29, 2012** for statements, arguments, or contentions regarding the rulemaking and/or supporting documents that must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC before it adopts this regulation.

AVAILABILITY OF TEXT OF REGULATION AND STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons, the text of the proposed regulation, all information upon which its proposal is based, and the express terms of the proposed regulation are posted to DTSC's Internet site at <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm> or may be obtained from ***Kryisia Von Burg*** of DTSC's Regulations Section as specified below.

After the close of the comment period, DTSC may adopt the proposed regulation. If substantial changes are made, the modified full text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulation, attend the hearing, or provide written comments on this specific regulation will be sent a copy of the modified text if substantive changes are made.

Once the regulation has been adopted, DTSC prepares a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments and includes other materials, as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from ***Kryisia Von Burg*** at the address listed below. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulation.

To be included in this regulation package's mailing list and to receive updates of this rulemaking, please visit <http://www.dtsc.ca.gov/ContactDTSC/ELists.cfm> and subscribe to the applicable EList. or e-mail: regs@dtsc.ca.gov.

Please direct all written comments, procedural inquiries, and requests for documents by mail, e-mail, or fax to:

Krycia Von Burg, Regulations Coordinator
Regulations Section
Department of Toxic Substances Control

Mailing Address: P.O. Box 806
Sacramento, CA 95812-0806

E-mail Address: regs@dtsc.ca.gov

Fax Number: (916) 324-1808

Ms. Von Burg's phone number is (916) 324-2810. If Ms. Von Burg is unavailable, please call Mr. Cordova at (916) 324-7193.