



Department of Toxic Substances Control



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TITLE 22

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

PROPOSED REGULATIONS

RECYCLABLE HAZARDOUS WASTE REGULATIONS

DEPARTMENT REFERENCE NUMBER: R-99-15

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to amend California Code of Regulations, title 22, sections 66266.1 and 66266.2. Statutes 1999, chapter 745, section 25175 (SB 606), states that DTSC shall "prepare and adopt, by regulation, a list, on or before January 1, 2002, and when appropriate thereafter, shall revise, by regulation, that list of specified hazardous wastes that DTSC finds are economically and technologically feasible to recycle..." DTSC is also authorized to impose a disposal fee of five (5) times the applicable rate on generators who dispose of their recyclable hazardous waste, rather than recycling it, after they have received specified notification from DTSC. The proposed regulations will implement this statute. The current list and other requirements for generators of hazardous waste that appears on the list are in the California Code of Regulations, title 22, sections 66266.1 and 66266.2, which were enacted in 1979. Therefore, to comply with the statutory mandate, those sections must be amended.

PUBLIC HEARING AND WRITTEN COMMENT PERIOD

DTSC will hold a public hearing on the proposed regulations on **June 17, 2002** at 10:00 a.m. in the Sierra Hearing Room, 2nd floor, 1001 "I" Street, Sacramento, California, at which time any person may present statements or arguments orally or in writing, relevant to this proposal. Please submit written comments to the contact person listed at the end of this notice. Written comments submitted no later than 5:00 p.m. on **June 17, 2002**, will be considered.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register prior to the hearing. Pre-hearing registration will be conducted at

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For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at www.dtsc.ca.gov.*

the location of the hearing from 9:30 a.m. to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded an opportunity after the registered persons have been heard.

AUTHORITY AND REFERENCE

These regulations are 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 58012. This section grants DTSC authority to adopt regulations.

These regulations implement, interpret, or make specific the following:

Health and Safety Code section 25175. This section allows DTSC to impose a disposal fee five (5) times the otherwise applicable amount on certain generators who dispose of waste that appears on the list after DTSC has made certain findings and provided notice to those generators. This section also requires DTSC to revise the List of Recyclable Hazardous Waste Types.

There are no federal regulations analogous to the proposed regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In 1979, Health and Safety Code section 25175 was enacted to foster the recycling of hazardous wastes. The Department of Health Services (DHS), DTSC's predecessor, developed in regulations a list of recyclable hazardous waste types. Each hazardous waste type was required, by statute, to be "categorized" according to degree of difficulty and the kind of difficulty encountered in recycling that waste. This list was enacted in the California Code of Regulations, title 22, sections 66266.1 and 66266.2 in 1979 and has not been revised since then.

In 1982, the statute was amended to require generators that dispose of a recyclable hazardous waste to recycle the waste if DTSC finds the recycling of their waste to be economically and technologically feasible at the site of production, or if DTSC provides the generator with the name of a ready, willing, and able purchaser of the recyclable

hazardous waste. Pursuant to this 1982 statute, generators who dispose of their recyclable hazardous waste rather than recycle it are subject to a two (2) fold increase in the disposal fee.

In 1997, the Bureau of State Audits published a report entitled "Department of Toxic Substances Control: The Generator Fee Structure Is Unfair, Recycling Efforts Need Improvement, and State and Local Agencies Need to Improve Their Administration of the Unified Program." The Bureau recommended that DTSC meet its statutory responsibilities to implement Health and Safety Code section 25175. The legislature subsequently enacted SB 606 in 1999 to enforce this recommendation. DTSC must prepare a list of recyclable wastes that is clear and enforceable in order to implement the statute. The proposed regulations will also assist the regulated community in its efforts to recycle the hazardous wastes it generates. In some cases, hazardous wastes that were on the original list will not be on the revised list. Some other hazardous wastes have been added to the list. The regulations also impose a fee that is five (5) times higher than the applicable disposal fee on generators that dispose of their recyclable hazardous waste after DTSC makes certain findings and provides notice to those generators.

Health and Safety Code section 25175, subdivision(a)(1) directs DTSC to "prepare and adopt a list on or before January 1, 2002, and when appropriate thereafter, to revise that list of specified hazardous wastes that DTSC finds are technologically and economically feasible to recycle..." Additionally, Health and Safety Code section 25175, subdivision(a)(2) allows DTSC to request a written statement from a generator justifying why it disposed rather than recycled waste that appears on the list. If after DTSC reviews this statement, and finds that waste is technologically and economically feasible to recycle, DTSC will notify the generator. If the generator disposes of the wastestream thirty (30) or more days after the generator receives DTSC's notice the generator will be subject to a fee that is five (5) times greater than the otherwise applicable fee.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking project to be exempt from CEQA. A draft of the 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 for the protection of public health or the environment.

BUSINESS REPORT

The rulemaking will not require that businesses write a new report, as defined by Government Code, section 11346.3(c).

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts: DTSC has determined that adoption of these regulations imposes no new mandates to local agencies and/or school districts. The proposed regulations affect the generators of hazardous waste. Local governments contain agencies or divisions such as Public Works, Transportation, Building Maintenance, that are considered generators, and theoretically, may be impacted. However, based on DTSC manifest information, DTSC has determined a majority of the wastes on the proposed List of Recyclable Hazardous Wastes are already being recycled, therefore, the impact is expected to be minimal to nonexistent.

Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement: DTSC has determined that the proposed regulations will provide no net costs or savings subject to reimbursement pursuant to part 7 (commencing with section 17500) of division 4 of the Government Code or other nondiscretionary costs or savings to local agencies.

Cost or Savings to Any State Agency: DTSC has determined that the proposed regulations will have an insignificant impact on State revenue or costs. The State is comprised of various boards, departments, offices, and agencies, each containing divisions or sections that are generators, such as fleet services, and many more. Although these proposed regulations concern all generators of waste on the list, DTSC expects that most of those generators will be minimally effected, if at all, because many of the hazardous wastes on the current list are also on the proposed list. A review of DTSC manifests shows that a majority of the wastes on the current List of Recyclable Hazardous Waste Types are already being recycled. Because the proposed list contains many of the same recyclable hazardous wastes that are on the current list, it is reasonable to assume that wastes on the proposed list will also be recycled.

Additionally, prior to a higher fee being imposed, DTSC will request from the generator a statement justifying why the recyclable hazardous waste was disposed of rather than recycled. If DTSC agrees with the generator, then no increase in the hazardous waste disposal fee will be imposed. If DTSC finds and notifies the generator that the recyclable hazardous waste is economically and/or technologically feasible to recycle, then there shall be a five fold (5) increase in the disposal fee for future disposal of the same recyclable hazardous wastestream. It is expected that DTSC revenues will be minimally impacted because, as mentioned above, the majority of hazardous wastes are currently being recycled.

After the proposed regulations are adopted it is expected that DTSC revenues will be minimally impacted, if at all, because as mentioned above, the majority of hazardous wastes on the list are currently being recycled. It is also expected that after the proposed regulations are adopted, DTSC may incur an additional workload to address the generators that may not be recycling the hazardous waste they generate. This workload will consist of reviewing the manifests, sending letters to the generators and reviewing their statements. This additional workload is minor and absorbable by DTSC staff.

Cost or Savings in Federal Funding to the State: The proposed regulations will have no impact on federal funding of state agencies.

Effect on Housing Costs: DTSC has made an initial determination that there will be no impact on housing costs.

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 when they are in reasonable compliance with the proposed action.

Significant Statewide Adverse Economic Impact on Businesses: DTSC has made an initial determination that these proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states. Although these proposed regulations concern all generators of waste on the list, DTSC expects that most of those generators will be minimally effected, if at all, because many of the hazardous wastes on the current list are also on the proposed list. A review of DTSC manifests shows that a majority of the wastes on the List of Recyclable Hazardous Waste Types are already being recycled. It is reasonable to assume that wastes on the proposed list will also be recycled, supporting the claim that this regulation package will have minimal or no statewide adverse economic impact.

Additionally, prior to a higher fee being imposed, DTSC will request from the generator a statement justifying why the recyclable hazardous waste was disposed of rather than recycled. If DTSC agrees with the generator, then no increase in the hazardous waste disposal fee will be imposed. If DTSC finds and notifies the generator that the recyclable hazardous waste is economically and/or technologically feasible to recycle, then there shall be a five fold (5) increase in the disposal fee for future disposal of the same recyclable hazardous wastestream.

Assessment Statement:

(A) Creation or elimination of jobs within California - DTSC has made a preliminary determination that no jobs will be created or eliminated in California as a result of the proposed regulations.

(B) Creation of new businesses or the elimination of existing businesses within California - DTSC has made a preliminary determination that no businesses will be created or eliminated in California as a result of the proposed regulations.

(C) Expansion of businesses currently doing business in California - DTSC has made a preliminary determination that no businesses in California will be expanded as a result of the proposed regulations.

Effect on Small Businesses: DTSC has determined that provisions of this rulemaking will have an effect on small businesses (generators) if they choose to dispose of their recyclable hazardous waste after they have received notice from DTSC informing them that DTSC finds their hazardous waste to be economically and/or technologically feasible to recycle. These businesses will be subject to increased disposal fees for future disposal of the same recyclable hazardous wastestream.

CONSIDERATION OF ALTERNATIVES

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. DTSC invites interested persons to present arguments, with respect to the various options, at the scheduled public hearing or during the written comment period.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons, and the text of the proposed regulations are posted to DTSC's Internet site at <http://www.dtsc.ca.gov> or may be obtained from Ms. Joan Ferber of DTSC's Environmental Analysis and Regulations and Audits Section as specified below. The information upon which DTSC relied is also available at the address listed below.

POST-HEARING CHANGES

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

Once a 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 material, as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from Ms. Joan Ferber at the address listed below. A copy of the Final Statement of Reasons will be posted on DTSC's Internet site at <http://www.dtsc.ca.gov>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

CONTACT PERSONS

Inquiries regarding the technical aspects of the proposed regulations may be directed to Ms. Renee Spears of DTSC at (916) 324-8192 or, if unavailable, Mr. Charles Corcoran of DTSC at (916) 327-4499. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments or contentions regarding rulemaking and/or supporting documents 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, amends, or repeals these regulations. To be included on this regulation package's mailing list, and to receive updates of this rulemaking, please leave a message on the DTSC mailing list phone line at (916) 324-9933 or e-mail: regs@dtsc.ca.gov.

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

Mailing Address: Ms. Joan Ferber, Regulations Coordinator
Environmental Analysis and Regulations Section
Department of Toxic Substances Control
1001 "I" Street, 22nd Floor
P.O. Box 806
Sacramento, CA 95812-0806

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

Fax Number: (916) 323-3215

Ms. Ferber's phone number is (916) 322-6409. If Ms. Ferber is unavailable, please call Ms. Nicole Sotak at (916) 327-4508 or Mr. James McRitchie at (916) 327-8642.

Dated: _____

James McRitchie, Chief
Office of Environmental Analysis, Regulations
and Audits