



Alan Lloyd Ph.D.
Agency Secretary

California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control
Integrated Waste Management Board • Office of Environmental Health Hazard Assessment
State Water Resources Control Board • Regional Water Quality Control Boards



Arnold Schwarzenegger
Governor

TITLE 27

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

UNIFIED PROGRAM SINGLE FEE SYSTEM for STATE AGENCIES

Department Reference Number: R-2005-18

NOTICE IS HEREBY GIVEN that the California Environmental Protection Agency (Cal/EPA) proposes to amend California Code of Regulations, title 27, division 1, subdivision 4, chapter 1, part II, article 5, sections 15241 and 15242. The proposed regulations make permanent the current emergency regulations. The proposed regulations are 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 a local Certified Unified Program Agency (CUPA) 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 selected the Department of Toxic Substances Control (DTSC) to act as the CUPA within Imperial and Trinity Counties. In the absence of the proposed regulations, there is no funding mechanism that would allow DTSC to carry out its environmental protection duties as the designated agency under Chapter 6.11.

PUBLIC HEARING AND WRITTEN COMMENT PERIOD

A written comment period has been established beginning January 20, 2006, and closing on March 6, 2006. Cal/EPA will hold a public hearing on the proposed regulations at 9 A.M. on March 6, 2006, in the Cal/EPA headquarters building, 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 on the rulemaking submitted no later than 5 P.M. on March 6, 2006, will be considered.

Representatives of Cal/EPA will preside at the hearing. Persons who wish to speak are requested to register before the hearing. Pre-hearing registration will be conducted at the location of the hearing from 8:30 A.M. to 9 A.M. Registered persons will be heard in

the order of their registration. Any other person wishing to speak at the hearing will be given an opportunity to do so after the registered persons have been heard.

Due to enhanced security precautions at the Cal/EPA headquarters building, all visitors are required to sign in prior to attending any meeting. Sign-in and badge issuance occur in the Visitor and Environmental Services Center located just inside and to the left of the building's public entrance. Depending on their destination and the building security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification cards. Depending on the size and number of meetings scheduled on any given day, the security check-in could take from three to 15 minutes. Please allow adequate time to sign in before being directed to the public hearing.

If you have special accommodation or language needs, please contact Mr. Mark Abrams, Regulations Coordinator, Environmental Analysis and Regulations Section, at (916) 322-2833 or by e-mail at regs@dtsc.ca.gov by February 27, 2006. TTY/TDD users may dial 711 for the California Relay Service. Speech-to-Speech services are available by calling (800) 735-0373 or via TTY at (800) 735-0193.

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.

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 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.

There are no federal regulations analogous to the proposed regulations.

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 underground storage tanks, hazardous material release response plans and inventories (business plans), accidental release prevention programs, 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).)

These proposed regulations were adopted as emergency regulations September 26, 2005, and will expire January 24, 2006. The emergency regulations are being readopted to ensure that regulations remain in effect while the final rulemaking is being processed. In the absence of these proposed regulations, a process will not be in place for setting the amount to be paid under the single fee system when a state agency is a CUPA.

Policy Statement Overview

The proposed regulations are 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 regulations, 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 primary accounts, the Toxic Substances Control Account (Health & Saf. Code § 25173.6) and the Hazardous Waste Control Account (Health & Saf. 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. In addition, these regulations are needed to address the following issues:

- 1) 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.
- 2) 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.
- 3) 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 are necessary to make permanent the emergency regulations that are being readopted prior to their expiration on January 24, 2006. 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. In January 2005, DTSC was designated the CUPA in Trinity and Imperial Counties. The amount of the fee each business must pay is based on DTSC's necessary and reasonable cost of regulating each specific activity conducted by that business. The regulations establish a program element fee that is calculated by multiplying a base rate by an 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, exempt a business from the fee for its first reporting period if the fee had already been paid, 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.

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.

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.

BUSINESS REPORT

Cal/EPA has determined that this rulemaking will not require businesses to write a new report, as defined by Government Code section 11346.3(c).

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.

Broad Objectives: The proposed regulations will have no net impact on state revenue costs. The proposed regulations establish a formula for setting the fee to be paid by businesses in any county or portion of a county for which the designated state agency acts as the CUPA. The CUPA program is self-funding; any revenue received will offset the cost incurred.

Specific Objectives: DTSC has been designated to act as the CUPA within Imperial and Trinity Counties. DTSC may incur minor one-time costs to implement the program but ongoing cost will be offset with fee revenues. The Budget Act of 2005 includes a budget augmentation for DTSC to implement this program.

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

Cost Impacts on Representative Private Persons or Businesses: Cal/EPA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant Statewide Adverse Economic Impact on Businesses: Cal/EPA has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

Assessment Statement:

(A) Creation or elimination of jobs within California – Cal/EPA 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 – Cal/EPA 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 – Cal/EPA has made a preliminary determination that no businesses in California will be expanded as a result of the proposed regulations.

Effect on Small Businesses: Cal/EPA has determined that provisions of this rulemaking will have no effect on small businesses. The proposed regulations establish a fee setting process. They create no significant impacts and do not impose any prescriptive standards or reporting requirements.

CONSIDERATION OF ALTERNATIVES

Cal/EPA has determined that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of Cal/EPA would be more effective in carrying out the purpose for which the action is proposed, or would be as

effective as and less burdensome to affected private persons than the proposed action. Cal/EPA invites interested persons to present arguments, with respect to the various options, at the scheduled 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 Cal/EPA's and DTSC's Web sites at <http://www.calepa.ca.gov/LawsRegs/default.htm> and <http://www.dtsc.ca.gov/LawsRegsPolicies/index.cfm>. Hard copies may be obtained from Mr. Abrams of DTSC's Environmental Analysis and Regulations Section as specified below. The information upon which Cal/EPA relied is also available at the address listed below.

POST-HEARING CHANGES

After the close of the comment period, Cal/EPA may adopt the proposed regulations. If substantial changes are made, the modified text will be made available for comment for at least 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 regulations have been adopted, Cal/EPA prepares a Final Statement of Reasons, which updates the Initial Statement of Reasons, summarizes how Cal/EPA 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 Mr. Abrams at the address listed below. A copy of the Final Statement of Reasons will also be posted on Cal/EPA's and DTSC's Web sites listed above, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulations or CEQA documents may be directed to Ms. Mary Wilson of DTSC at (916) 323-7367 or, if unavailable, Ms. Sonia Low of DTSC at (916) 323-9757. Please note however, such oral inquiries do not become part of the rulemaking record.

Statements, arguments or contentions regarding the rulemaking or supporting documents must be submitted in writing or may be presented orally or in writing at the public hearing for them to be considered by Cal/EPA before it adopts, amends or

repeals these regulations. To be included in this regulation package's mailing list, and to receive updates of this rulemaking, please visit <http://www.calepa.ca.gov/Listservs/dtsc/> and subscribe to the applicable Listserv. You may also leave a message on the DTSC mailing list phone line at (916) 324-9933 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:

Mr. Mark Abrams, Regulations Coordinator
Environmental Analysis and Regulations Section
Department of Toxic Substances Control

Mailing address: P.O. Box 806
Sacramento, California 95812-0806

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

Fax number: (916) 323-3215

Mr. Abram's phone number is (916) 322-2833. If he is not available, please call Ms. Nicole Sotak of DTSC at (916) 327-4508 or Mr. Jim McRitchie of DTSC at (916) 327-8642.