
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2019 - 2020 Regular

Bill No: AB 995
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Version: 8/25/2020
Urgency: No
Consultant: Gabrielle Meindl

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Fiscal: Yes

SUBJECT: Hazardous waste

DIGEST: Creates the Board of Environmental Safety (Board) within the California Environmental Protection Agency (CalEPA) to provide policy direction to and oversight of the Department of Toxic Substances Control (DTSC), restructures the Hazardous Waste Management Account (HWCA), and makes various other changes to the hazardous waste control laws.

ANALYSIS:

Existing law:

- 1) Requires DTSC to enforce the standards within the Hazardous Waste Control Law (HWCL) and the regulations adopted by DTSC pursuant to the HWCL. (Health and Safety Code Section (HSC) § 25180)
- 2) Authorizes DTSC to deny, suspend, or revoke any permit, registration, or certificate applied for, or issued pursuant to the HWCL. (HSC § 25186)
- 3) Authorizes DTSC to issue permits for the use and operation of one or more hazardous waste management units at a facility that meets the standards adopted pursuant to the Hazardous Waste Control Law (HWCL). (HSC § 25200 (a))
- 4) Requires DTSC to impose conditions on each permit specifying the types of hazardous wastes that may be accepted for transfer, storage, treatment, or disposal. (HSC § 25200 (a))
- 5) Imposes various fees, including a disposal fee, generator fee, and facility fee, that are deposited in the HWCA and that, upon appropriation by the Legislature to DTSC, are authorized to be expended for, among other things, the administration and implementation of the HWCLs. (HSC § 25174)

This bill:

- 1) Creates the Board of Environmental Safety (Board) within CalEPA consisting of five members with three members appointed by the Governor, subject to confirmation by the Senate, one member appointed by the Speaker of the Assembly, and one member appointed by the Senate Committee on Rules.
- 2) Requires the Board, using a public process, to do all of the following:
 - a) Review the Department's duties and responsibilities in law, the current status of hazardous waste facility permits, the site mitigation program and remediation activities, and enforcement decisions for hazardous waste facilities and propose statutory, regulatory, and policy changes;
 - b) Hear and decide appeals of hazardous waste facility permit decisions and certain financial assurances decisions;
 - c) Provide opportunities for public hearings on individual permitted or remediation sites, and, if necessary, direct the department to respond to or address public concerns and questions;
 - d) Set priorities for each program for each year at a public hearing, which the director shall carry out; and
 - e) Review how the Department is coordinating with other regulatory agencies, including the State Water Board and CalRecycle.
- 3) Requires the Board, by January 1, 2022 to establish guidelines for site prioritization under the site mitigation program, including orphan sites.
- 4) Authorizes the Board to meet in Executive Session for any purpose authorized pursuant to the Bagley-Keene Open Meeting Act and requires the Board to adopt rules for conduct of its affairs in conformity with existing law.
- 5) Provides that the Chairperson of the Board is appointed by the Governor and shall be full-time and the remaining members of the Board shall be half-time.
- 6) Requires the Board to conduct at least six public hearings per year, with three of those hearings being held in locations outside the county of Sacramento.
- 7) States Legislative intent that the Board improve the function, accountability, transparency, and responsiveness of DTSC and that the Board's role and responsibilities may evolve over time.
- 8) Establishes an office of ombudsperson in the Board to receive complaints and suggestions from the public, to evaluate complaints received, to report findings and make recommendations to DTSC and the Board, and to render assistance to the public.
- 9) Requires the Secretary of CalEPA (Secretary) to convene a Fee Task Force by March 2, 2021 to review the existing fee structure supporting the HWCA and

the funding structure supporting the Toxic Substances Control Account (TSCA). Requires the Secretary to provide recommendations to the Legislature by January 10, 2022, as part of the Governor's Budget, on a fee system for the HWCA and a funding structure for the TSCA, as specified.

- 10) Requires DTSC to submit a workload analysis to the Secretary prior to the formation of the Fee Task Force. Authorizes the Secretary to enter into an agreement with an outside entity to conduct the Fee Task Force. Directs the Fee Task Force to consider the funding needs to bring back the Pollution Prevention Program either in its entirety or in part.
- 11) Requires the Board to annually submit to the Secretary and the Legislature a review of the Department's performance measured against the Board's objectives.
- 12) Repeals outdated statute regarding a statewide hazardous waste management plan (enacted in the 1980's) and updates the statutory requirements for the state to develop a Hazardous Waste Management Plan to include an identification of areas of the state that are disproportionately impacted by hazardous waste treatment and disposal activities. Requires the plan to contain a description of steps to reduce the generation of hazardous wastes.
- 13) Requires this statewide hazardous waste management plan to involve a public process and with meetings throughout the state and be completed by January 1, 2024 and updated every three years thereafter.
- 14) Adds a one-time funding increase, for the 2021 reporting period only, (an additional \$1,500 to the Facility Fee base rate and \$0.75 to the Generation and Handling Fee for wastes generated in 2021) for DTSC to complete the work necessary to develop the Hazardous Waste Management Plan.
- 15) Requires that the owner or operator of a hazardous waste facility submit to DTSC a written cost estimate associated with necessary corrective actions after DTSC has identified a release of hazardous waste. Establishes a process by which DTSC can seek changes to the estimate and requires the owner or operator to fund the estimate, via a financial assurance mechanism, within 90 days. Applies this same process for responsible parties for cleanup sites. Requires the Board to review all financial assurances at least every five years.
- 16) Phases in a requirement that all permit renewal applications must be submitted at least two years before expiration. If the renewal application is submitted in time, the permit is deemed extended until the Board takes final action on the application. Also phases in a requirement that the Board issue a final permit

decision within one year of the expiration of the permit. Applies these requirements to standardized permits also. Requires the Board to post on its internet website a timeline of the estimate dates of milestones in the application review process within 90 days of receiving a completed application. Establishes a process by which the Board may review any final permit decision that has not been made by the deadlines, requiring the department to issue a public report that includes the reasons why the final permit decision has been delayed along with a proposed schedule for issuing the final permit decision.

- 17) Modifies the HWCA by:
 - a) Removing references to the fees that are being repealed (Disposal Fee, Manifest Fee and EPA ID Verification Fee) from the list of fees and revenues deposited into HWCA and adding a new Generation and Handling Fee, which would be based on a price-per-ton model and effective in January 1, 2021.
 - b) Limiting the fee revenues to be deposited into HWCA to only the Generation and Handling Fee.
 - c) Limiting activities to be funded by HWCA to only those hazardous waste regulatory activities that are not associated with authorized facilities.
 - d) Adds Board activities to the list of activities to be funded by HWCA.
 - e) Eliminating numerous fee exemptions, including the used oil exemption, to ensure Proposition 26 compliance.
 - f) Eliminating tiers and establishing a new per ton of hazardous waste generated rate (\$35.50), which represents an increase of approximately 40 percent over the current effective base rate.
 - g) Exempting hazardous wastes that are transferred only (manifested to a permitted facility, unloaded, then reloaded and re-manifested) to avoid double counting same waste.
 - h) Eliminating generator refund provisions.
 - i) Making numerous conforming changes to Revenue and Taxation Code.
- 18) Establishes the Hazardous Waste Facilities Account (HWFA) on January 1, 2021 to be administered by the Director of DTSC. Fee revenues to be deposited into HWFA include Facility Fee and Permitting Fee for Service. Limits activities to be funded by HWFA to only those hazardous waste regulatory activities that are associated with authorized facilities. Includes Board activities as activities to be funded by HWFA. Authorizes expenditures from the fund, upon appropriation by the Legislature and resets the base facility fee to \$71,250, which is approximately double the current Facility Fee

rate.

- 19) Makes findings that it is the intent of the Legislature that the fee structure and amounts in this bill will be amended in the future based on the Secretary's recommendations based on the work of the Fee Task Force.

Background

- 1) *DTSC's hazardous waste management permitting program.* DTSC is responsible for administering the hazardous waste facility permitting program established under the HWCL and the federal Resource Conservation and Recovery Act (RCRA). The core activities of the permitting program include: review of RCRA and non-RCRA hazardous waste permit applications to ensure safe design and operation; issuance and denial of operating permits; issuance of post-closure permits; approval and denial of permit modifications; issuance and denial of emergency permits; review and approval of closure plans; oversight of approved closure plans; and, providing public involvement on issues related to permitted facilities.
- 2) *Recent criticism of DTSC.* Over the past decade or so, DTSC has received complaints from the public about its permitting program and held meetings with the public, the regulated community, and stakeholders to identify and understand concerns about its permitting program. Community groups that live near hazardous waste facilities are concerned that DTSC is not properly enforcing state and federal law and allowing facilities to operate with an expired permit or have numerous violations of state law and regulation. Additionally, the regulated community is concerned about the length of time it takes DTSC to process a permit, with processing a permit extending years beyond the expiration date of their permit, as well as the costs associated with processing a permit.
- 3) *Legislative Oversight.* Over the last five years, the Legislature has conducted numerous hearings on DTSC's internal controls, its business practices, and its basic statutory obligations. In those hearings, the budget and policy committees have evaluated the following four main areas: (1) reviewing and monitoring the department's strategic plan and reorganization; (2) auditing cost recovery at the department; (3) providing staffing to improve permit backlogs and business operations; and, (4) improving enforcement at the department.

Numerous statutory changes have been made to clarify and strengthen DTSC's statutes to help DTSC better achieve its mandates, and budget augmentations have been made to give DTSC resources to reduce backlogs and address outstanding programmatic failings. However, many of the underlying concerns about transparency, accountability, and long-term stability of DTSC programs remain.

- 4) *Funding sources for DTSC.* DTSC's funding comes primarily from the Hazardous Waste Control Account (HWCA) and the Toxic Substances Control Account (TSCA). The most recent Governor's Budget shows a budget of over \$350 million in the current year, with the largest expenditures from the TSCA (\$124.6 million, which includes \$68.3 million for the Exide Project), General Fund (\$85 million), HWCA (\$49.7 million), and federal funds (\$35 million).

TSCA is a repository for revenues from cost recovery, penalties, interest, and the Environmental Fee. HWCA revenues are derived from fees paid by various hazardous waste generators, transporters, and facilities. They were last amended in statute in 1998 or earlier. The fees include:

- a. Generator (45 percent of total), Disposal (10 percent), and Facility fees (9 percent). The Generator, Disposal, and some Facility Fees are subject to an annual CPI and are collected by the California Department of Tax and Fee Administration.
- b. EPA ID Verification (9 percent) and Manifest fees (4 percent): these fees are the same rate as when they were established, are not adjusted for inflation and are collected by DTSC.

HWCA also receives a small Transportable Treatment Unit fee (CPI adjusted) and the Permitting Fee-for-Service. HWCA receives revenue from cost recovery activities.

Both HWCA and TSCA have been operating with a structural deficit five out of the last six years. Expenditures out of HWCA and TSCA have exceeded revenues for many years. HWCA became insolvent in fiscal year 2018-19 with a \$4.8 million shortfall and a projected -\$24.8 million in 2019-20 absent remedial action. The Budget Act of 2019 provided HWCA with \$27.5 million in General Fund to backfill the shortfall and maintain existing operations. The Budget Act of 2020 included \$28.2 million in loans to cover the shortfall in both HWCA and TSCA.

A number of factors contribute to the operating structural deficit in both accounts. They include increasing legislative mandates, an outdated fee structure that no longer corresponds to the proportion of waste generated or

disposed, increasing costs relating to the state obligated cost share for National Priority List sites, and a backlog of unresolved response costs worth approximately \$194 million at over 1,600 cleanup sites over a 25-year period.

- 5) *Existing vs Revised Fees.* The current tiered-rate Generator Fee exempts generators of less than 5 tons of hazardous waste. For those hazardous waste generators that pay the fee, the amount of the fee can be anywhere from \$10 per ton all the way up to \$100 per ton, depending on the number of tons they generate and where in the current fee tier their amount of waste falls. The new Generator and Handling Fee proposed in AB 995 eliminates the exemptions, so all generators of any amount of hazardous waste will pay the same amount per ton (\$35.50). This is more than what those exempted generators currently pay, and is nearly four times the amount those paying the lowest amount currently pay, but only 1/3 what those paying the highest amount currently pay.

AB 995 also proposes a new base rate for the Facility Fee for fully permitted facilities, which is approximately double the current base rate. The amount paid by individual facilities is a function of the base rate (from ¼ the base rate for mini storage facilities, up to 10 times the base rate for disposal facilities).

For post-closure and standardized permits, the bill changes the rates, which have not been adjusted for CPI since their establishment in 1998, to reflect the inflationary increases from that time forward, and then doubles the rate in the same way as the other facility rates. The result is rates effectively four times the rates currently paid by these facilities.

- 6) *Governor proposal.* In January, the Governor proposed, as part of his 2020-21 Budget, trailer bill language that would create a Board of Environmental Safety, generally similar to AB 995, increase fees to support current hazardous waste and cleanup activities, and provide authority to the Board to raise these fees. While Budget actions were taken in June to provide bridge funding to the Department for a year, efforts to move structural and fiscal reform through the Budget this year have ended.

Comments

- 1) *Purpose of Bill.* According to the author, “For years the Legislature has been raising a wide range of issues with the performance of DTSC including extremely long permit process times, poor enforcement, delayed site remediation, and a failure to respond to public concerns. We have made numerous legislative efforts to improve different aspects of DTSC programs,

but previous administrations have either vetoed such efforts or asked the Legislature to hold-off while internal efforts to improve the function of DTSC were underway. Unfortunately, none of these internal efforts have resulted in substantial improvements in DTSC's operations, which is why I introduced AB 995.

“AB 995 creates the Board of Environmental Safety a policy setting and permit appeals body that will consist of five members, make a number of statutory changes to deadlines within the permitting process to ensure timely response by both the permit applicants and DTSC, and would make improvements to the department's financial assurances requirements. Lastly, AB 995 would create a fee task force led by the Secretary of CalEPA charged with making a comprehensive evaluation of DTSC's fee structure to identify a funding structure that would provide sufficient resources for DTSC to carry out its statutory mandates.”

- 2) *Fiscal Reform of HWCA.* As mentioned above, efforts to move structural and fiscal reform through the Budget this year were unsuccessful. Recent amendments to AB 995 incorporate portions of the Governor's budget trailer legislation that make changes to the fees that generate revenue for HWCA. The amendments reset the base Facility Fee and replace the existing Generator, EPA Identification Verification, Manifest, and Disposal Fees with a new Generation and Handling Fee, which would be based on a price-per-ton model. These changes, in combination with the proposed elimination of some fee exemptions, are projected to increase revenues into HWCA at a level that will close the structural imbalance in the HWCA, cover the costs imposed by this bill for the new Board, the development of the Hazardous Waste Management Plan, and provide additional revenues to build a prudent reserve.

It should be noted that the amendments do not address the current deficit within TSCA. Without addressing the shortfalls in *both* HWCA and TSCA, DTSC will continue to lack the resources it needs to carry out its mission and will continue to need funding from the General Fund to stay balanced. The Administration has maintained that any governance reform of DTSC must go hand-in-hand with fiscal reform of both HWCA *and* TSCA, arguing that only such a comprehensive reform will position the department for success.

Having supported the policy elements of the bill in the previous hearing, the essential question before the Committee, based on the recent amendments, is whether or not it makes sense to establish governance reform at the Department with only a partial fix to the Department's funding shortfall.

Related/Prior Legislation

AB 2094 (Kalra, 2018). Would have required DTSC to, on or before January 1, 2021, adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities; hazardous waste generators; and, transporters. This bill was held in the Senate Appropriations Committee.

AB 2345 (Reyes, 2018). As it was heard before the ESTM Committee, would have made statutory changes to improve the process for the permitting of hazardous waste facilities. This bill was later amended to require the California Energy Commission to require each large electrical corporation to establish a tariff or tariffs that provide for bill credits for electricity generated by eligible renewable generating facilities and exported to the electrical grid. This bill was held in Senate the Rules Committee.

AB 2606 (Fong, 2018). Would have required DTSC to process a hazardous waste facility renewal permit in an expedited manner if DTSC determines certain conditions apply. This bill was held in the Senate Appropriations Committee.

AB 248 (Reyes, 2017). Would have made statutory changes to improve the permitting process for hazardous waste facilities. This bill was vetoed by the Governor.

AB 1179 (Kalra, 2017). Would have required DTSC to, on or before January 1, 2020, adopt regulations establishing inspection frequencies for permitted hazardous waste treatment, storage, and disposal facilities and for hazardous waste generators and transporters. This bill was vetoed by the Governor.

SB 774 (Leyva, 2017). As it was heard before the ESTM Committee, would have created the California Toxic Substances Board within DTSC to provide oversight of California's hazardous waste management and the remediation of contaminated sites. This bill was later amended to require the California State University Trustees to oversee a competitive process to award funds to the Wildland and Wildland Urban Interface Wildfire Research Grant Program and appropriate \$5 million from the General Fund to the Trustees in order to oversee the program. This bill was vetoed by the Governor.

SB 812 (De León, 2014). Would have modified the permitting process and public participation requirements for hazardous waste facilities. Would have established a Bureau of Internal Affairs to oversee DTSC and investigate departmental

misconduct and a DTSC Citizen Oversight Committee to receive and review allegations of misconduct. This bill was vetoed by the Governor.

SOURCE: Author**SUPPORT:**

Breast Cancer Prevention Partners
California Council for Environmental & Economic Balance (CCEEB)
California Environmental Justice Alliance (CEJA) Action
California Environmental Justice Alliance.
California for A Healthy & Green Economy
California League of Conservation Voters
Californians Against Waste
Center on Race, Poverty & the Environment
Clean Harbors Environmental Services, INC. and Safety-Kleen
Clean Water Action
Environmental Working Group
Military Services in California
Natural Resources Defense Council
Physicians for Social Responsibility - Los Angeles
Republic Services INC.
Sierra Club California

OPPOSITION:

None

ARGUMENTS IN SUPPORT: According to the California Council for Environmental & Economic Balance (CCEEB), “Based on the latest proposed amendments, CCEEB is supportive of AB 995 as the first step to meaningfully address issues raised by CCEEB and other stakeholders. While CCEEB supports AB 995 as proposed to be amended, we would note that additional work remains ahead of us to ensure the provisions of AB 995, and more, address the fundamental operational, regulatory and fiscal concerns with the Department.”

“In addition to the structural, programmatic and regulatory reforms AB 995 seeks to make, it would also provide for merely short-term fee increases within the Hazardous Waste Control Account (HWCA) to support the Department’s activities and development of the HWMP and Fee Task Force. Agreeing to these short-term fee increases does not come lightly for CCEEB and its members who are already straddled with increasing costs associated with DTSC oversight and

permitting without corresponding DTSC responsiveness and timeliness of permitting and other regulatory decision making and reforms. Nonetheless, CCEEB members acknowledge the importance of a funded DTSC to make progress on these issues, but are clear in their expectation for meaningful progress to address the concerns raised.”

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