



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>04/26/10</b>	Bill No:	<b><a href="#">SB 1107</a></b>
Tax:	<b>Interceptor and Trap Grease Fee</b>	Author:	<b>Kehoe</b>
Related Bills:			

***This analysis will only address the bill's provisions that impact the Board.***

## **BILL SUMMARY**

Among its provisions, this bill would require the State Water Resources Control Board (SWRCB) to impose an annual registration fee on the transportation of interceptor and trap grease, as specified, beginning January 1, 2012. The SWRCB *could* contract with the State Board of Equalization (Board) to collect the fee.

## **ANALYSIS**

### **CURRENT LAW**

Under existing law, Food and Agricultural Code Sections 19215 through 19316 require transporters of inedible kitchen grease to be registered by the California Department of Food and Agriculture (CDFA) and possess a valid registration certificate issued by the CDFA. Section 19216 defines inedible kitchen grease as any fat or used cooking greases and oils obtained from any source. Section 19312 requires transporters of inedible kitchen grease to pay an annual registration fee of \$100, which expires each December 31. Section 19315 authorizes the CDFA to charge an additional enforcement fee of \$300 per year per vehicle and not more than \$3,000 per year per registered transporter.

Food and Agricultural Code Sections 19310 through 19316 establish standards for transporters of inedible kitchen grease including a registration and tracking system. Transporters are required to maintain records for two years. The records must include the name and address of each location from which the transporter obtained the inedible kitchen grease, the quantity received, and the date obtained.

In addition, current law authorizes CDFA to suspend or revoke a registration certificate, at any time, based on specified grounds. Registered transporters may appeal the decision by CDFA. CDFA is required to establish procedures for the appeals process, including a noticed hearing.

Water Code Section 13000 contains language that states the intention of the Legislature that the health, safety, and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state, and that the statewide program for water quality can be most effectively administered regionally, within a framework of statewide coordination and policy.

Water Code Section 13001 provides that it is the intent of the Legislature that SWRCB and regional water quality control boards shall be the principal state agencies with primary responsibility for the coordination and control of water quality. And Section 13387 provides that it is unlawful for any person to knowingly or negligently introduce into a sewer system or into a publicly-owned treatment works any pollutant or hazardous substance that the person knew or reasonably should have known could

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cause personal injury or property damage, or which could cause the treatment works to violate waste discharge requirements.

#### PROPOSED LAW

This bill adds Chapter 7.8 (commencing with Section 13590) to Division 7 of the Water Code, to enact the Interceptor and Trap Grease Transportation Act of 2010. Among its provisions, this bill requires any person or entity transporting interceptor and trap grease to register and possess a valid registration certificate issued by the SWRCB on or after January 1, 2012. This bill authorizes the SWRCB to impose an annual registration fee sufficient to cover the costs of implementing and enforcing the program, with all revenues collected from the registration fee deposited into the Interceptor and Trap Grease Fund, which this bill would create in the State Treasury. The registration expires each year on December 31.

The SWRCB would be authorized to solicit and use any and all expertise available in other state agencies, including, but not limited to, the Board. If the SWRCB contracts with the Board to collect the annual fee, the Board may collect the fee pursuant to the Fee Collections Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

In addition, this bill would do the following:

- Define the term “interceptor and trap grease” to mean grease that is principally derived from food preparation, processing, or waste, and that is removed from a grease trap or grease interceptor. Interceptor and trap grease does not include inedible kitchen grease (known as yellow grease) as defined in Section 19216 of the Food and Agricultural Code, which means any fat or used cooking greases and oils obtained from any source, but not interceptor and trap grease (known as brown grease).
- Define the term “interceptor and trap grease hauler” to mean a transporter of interceptor and trap grease.
- Require the SWRCB to establish a registration process for transporters of interceptor and trap grease. Also require that registration applications include the applicant’s name and address, a description of operations, the vehicles used in transportation, a list of driver’s names and license numbers that transport interceptor and trap grease, and other information required by the SWRCB.
- Authorize the SWRCB to suspend, deny, revoke, or refuse to issue a registration certificate, at any time, based on the grounds that the registrant:
  - Deposited interceptor and trap grease at a facility or location not approved by the SWRCB.
  - Reintroduced grease into a sanitary sewer or storm drain without authority.
  - Comingled interceptor and trap grease with other forms of liquid waste not approved.
  - Failed to adequately maintain and submit tracking reports.
  - Failed to fully pump all grease, greasy liquid, water, and solids from the grease interceptor or trap.
  - Took possession of interceptor and trap grease from an unregistered hauler.
  - Violated or aided another person in the violation of any state or federal statute, regulation, or order relating to interceptor and trap grease.

- Require the SWRCB to establish appeal procedures for suspensions, revocations, or denial decisions of the SWRCB, including a noticed hearing.
- Require registered interceptor and trap grease haulers to transport interceptor and trap grease only to a facility that is permitted or authorized by statute or regulation to accept interceptor and trap grease.
- Require that interceptor and trap grease haulers compile a tracking document submitted to the SWRCB on a quarterly basis, which would be available on the SWRCB website for public access.
- Require that interceptor and trap grease haulers have the tracking document in their possession while transporting the grease and available for inspection upon demand by any representative of the SWRCB, any officer of the California Highway Patrol, any peace officer, or any local public officer designated by the SWRCB.
- Authorize the SWRCB to prepare, adopt, and implement any regulations necessary to implement the program.
- Make various legislative declarations and findings.

This bill would become operative on January 1, 2012.

#### **BACKGROUND**

Current law regulates the transport of inedible kitchen grease, which includes both “yellow grease” and “brown grease.” The regulation of inedible kitchen grease is administered by the CDFA. “Yellow grease” is a by-product of cooking oil and has value as a source of biodiesel and other products (animal feed additives, cosmetics, plastics, resins, textiles, and more). Yellow grease is primarily removed from food service establishments and is stored in recycle bins usually located at the back (outside) of the establishment. Brown grease is the by-product of food scraps, oil, grease and other kitchen waste that is collected by grease interceptors (outside underground tank) and grease traps (inside, under-the-sink unit, inside floor trap or outdoor floor trap). There is no recycle value for brown grease.

To provide a consistent, statewide regulatory approach to address sanitary sewer overflows, the SWRCB adopted Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (known as the Sanitary Sewer Order) on May 2, 2006. The Sanitary Sewer Order requires public agencies that own or operate a sanitary sewer system to develop and implement a sewer system management plan and to report all sanitary sewer overflows (SSOs) to the SWRCB. A SSO is any overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a sanitary sewer system. SSOs often contain high levels of suspended solids, toxic pollutants, nutrients, oil and grease, including interceptor and trap grease.

#### **COMMENTS**

1. **Sponsor and purpose.** The bill is sponsored by the San Diego Coastkeeper. According to the author, “Inadequate oversight of grease trap waste haulers threatens our bays, beaches, and water ways. California communities are continuously threatened by sewer system overflows caused by grease.” According to the author, every year hundreds of grease waste haulers collect millions of gallons of grease trap waste from restaurants and other sources. However, current law does not require haulers to indicate where they finally dispose of the waste.

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2. **The Fee Collections Procedures Law.** If the SWRCB were to contract with the Board to collect the annual fee, the bill authorizes the Board to collect the fee pursuant to the Fee Collection Procedures Law. The Fee Law contains “generic” administrative provisions for the administration and collection of fee programs to be administered by the Board. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, as well as providing the Board the authority to adopt regulations relating to its administration and enforcement.
3. **Petitions for redeterminations and refunds.** It is suggested that, for purposes of the annual registration fee, the SWRCB handle the petitions for redetermination and approve the claims for refund based upon the grounds that the SWRCB improperly or erroneously calculated the amount of the fee or identified the wrong feepayer. It would be difficult for Board staff to resolve feepayer protests and claims based on actions of another state agency, and doing so could result in a significant number of additional appeals conferences and Board hearings. Accordingly, it is suggested that the last sentence of Section 13590.3 be deleted and the following language be added:

13590.3.1. (a) If the board contracts with the State Board of Equalization to collect the registration fee imposed in Section 13590.5, the State Board of Equalization may collect that fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

(b) Notwithstanding the appeal provisions in the Fee Collection Procedures Law, a determination by the state board that a person or entity is required to pay a fee, or a determination by the state board as to the amount of that fee, is subject to review as provided in this chapter and is not subject to review as a petition for redetermination submitted to the State Board of Equalization.

(c) Notwithstanding the refund provisions in the Fee Collection Procedures Law, the State Board of Equalization shall not accept any claim for refund that is based on the assertion that a determination by the state board improperly or erroneously calculated the amount of a fee, or incorrectly determined that the person or entity is subject to the fee, unless that determination has been set aside by the state board or a court reviewing the determination of the state board.

It is also suggested that the bill authorize the payment of refunds on overpayments of the fee. Board staff will work with the author’s office in drafting appropriate amendments.

4. **Other technical concerns.** In order to avoid any ambiguity with administration of the proposed Act, the author may wish to amend the bill to address the following concerns:
  - The bill should specify that the SWRCB shall provide to the Board the names and addresses of the feepayers and the amount of the fee to be assessed to each feepayer.

- It is suggested that the bill be amended to specifically provide that the money in the Interceptor and Trap Grease Fund is available for expenditure by the SWRCB in the implementation and administration of this chapter.
- Section 13590.8, subdivision (b) defines “registrant” to include any business entity, trustee, officer, director, partner, person, or other entity holding more than 5 percent equity, ownership, or debt liability in the registered entity engaged in the transportation of interceptor and trap grease. It is suggested for clarification purposes that the bill use a single term to designate the person or entity subject to the fee.

### **COST ESTIMATE**

This bill does not increase administrative costs to the Board because it only authorizes the SWRCB to contract with the Board to collect the annual registration fee. The SWRCB would be required to contract with the Board to perform collection functions related to the fee, and reimburse the Board for its preparation costs to administer the fee as well as the ongoing costs for the Board’s services in actually administering the registration fee.

The Board would incur non-absorbable costs to develop a new fee program and collect the fee from nearly 350 transporters of interceptor and trap grease. These costs would include developing computer programs, developing forms and publications, creating fee payer registration based on billing information provided by SWRCB, mailing and processing billings, training staff, and answering fee-related inquiries. A cost estimate of this workload is pending.

### **REVENUE ESTIMATE**

This bill does not specify the amount of the annual registration fee. However, the bill is written to require the SWRCB to impose a registration fee at an amount sufficient to cover the costs of implementing and enforcing the bill’s provisions on an estimated 350 transporters subject to the proposed fee. The SWRCB estimates that its ongoing costs to administer and enforce the new program would be approximately \$2.13 million once the program becomes fully operational beginning in fiscal year 2012-13. Therefore, this bill would result in an estimated annual fee of approximately \$6,000 per year (\$2.13 million / 350 registrants).

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