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Senate Bill 839 (Budget and Fiscal Review)
Date: 06/14/16
Program: Hazardous Waste Application Fee
Sponsor: Author
Health and Safety Code Section 25205.7, and
Revenue and Taxation Code Sections 43053 and 43152.10.
Effective: Immediately upon enactment

This analysis is limited to the provisions which impact the Board of Equalization (BOE).

Summary: Eliminates the flat-rate hazardous waste application fee option[1] for persons that apply with the Department of Toxic Substances Control (DTSC) for a new permit, a postclosure permit, a permit renewal, a class 2 or class 3 permit modification, a variance, or a waste classification determination.

Purpose: To provide full cost recovery to DTSC for hazardous waste facility permit decisions.

Fiscal Impact Summary: Flat-rate application fees over the last three fiscal years (FY) averaged $333,333.

Existing Law: The BOE administers six hazardous waste fee programs in cooperation with the DTSC, pursuant to the requirements of the California Hazardous Substances Tax Law. Five of the fees are: (1) the environmental fee on certain types of organizations based on their use, storage, generation, or activities connected to hazardous materials,[2] (2) the facility fee imposed on the storage, treatment, or disposal of hazardous waste,[3] (3) the generator fee based on the generation of hazardous waste at a specific site,[4] (4) the transportable treatment unit (TTU) fee imposed on a per treatment unit, not per facility,[5] and (5) the disposal fee assessed on hazardous waste disposed of by depositing on, or into, land.[6]

The sixth fee (activity fee) is essentially an application processing fee imposed on any person that applies for, or requests, a new hazardous waste facilities permit, a hazardous waste facilities permit for postclosure, a renewal of an existing hazardous waste facilities permit, including a standardized permit or postclosure permit, a class 2 or class 3 permit modification of an existing hazardous waste facilities permit, a variance, or a waste classification determination. The applicant pays the fee either by entering into a reimbursement agreement with DTSC, or paying a one-time, flat-rate fee to the BOE.[7]

The fees are billed by BOE upon notification from DTSC. The fee is non-refundable, even if the application is withdrawn or the permit or the modification is denied. The fee is tiered based on the permitted level of the facility and the type of permit activity. The fees are as follows:

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[1] The fee rate varies according to the activity requested, and called the "activity fee."
[2] Health and Safety Code (HSC) Section 25205.6.
[3] HSC Sections 25205.2, 25205.3, and 25205.4.
[4] HSC Sections 25205.5, 25205.22, and 25174.7.
[5] HSC Section 25205.14.
[6] HSC Sections 25174.1, 25174.2, 25174.6, and 25174.7.
[7] HSC Section 25205.7.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

Permit Application	Type of Applicant/Activity	Applicant Size/Type	1997 Base Rates	2016 Rates
Hazardous Waste Facilities Permit Application	Land Disposal Facility	Small Facility Medium Facility Large Facility	$104,187 $222,183 $381,602	$166,596 $355,272 $610,183
	Incinerator	Small Facility Medium Facility Large Facility	$62,762 $133,060 $228,458	$100,357 $212,762 $365,310
	Storage Facility, Treatment Facility, or Storage and Treatment Facility	Small Facility Medium Facility Large Facility	$21,340 $38,913 $75,317	$34,123 $62,225 $120,431
	Transportable Treatment Unit	Small Unit Medium Unit Large Unit	$16,320 $37,657 $75,317	$26,095 $60,214 $120,431
	Postclosure Permit	Small Facility Medium Facility Large Facility	$10,040 $22,596 $37,657	$16,055 $36,131 $62,214
Standardized Permit Application	Storage Facility Treatment Facility Storage and Treatment Facility	Series A Series B Series C	$32,052 $20,011 $5,332	$51,254 $31,999 $8,526
Permit Modification Application		Class2 Class 3	Variable percentage of the fee for a new permit for that facility.	
Renewal of Existing Permit			An amount equal to a comparable permit modification application, but not less than one-half a new permit fee.	

The BOE adjusts the flat-rate activity fees annually to reflect changes in the cost of living. The BOE collects the optional flat-rate application processing fee according to the Hazardous Substances Tax Law.[8]

In general, the Hazardous Substances Tax Law contains administrative provisions related to BOE-administered hazardous waste fees imposed in the HSC. Some of these provisions include definitions, return due dates and processing, collections, audits, appeals, refunds, fund deposits, and taxpayers' rights. RTC Sections 43053 and 43054 direct the BOE to administer specific fees imposed in the HSC, while RTC Section 43152.10 is related to the return due date for specified fees. RTC Section 43053 references HSC Sections 25205.2, 25205.5, 25205.7, and 25205.14. RTC Section 43152.10 references HSC Sections 25205.7, 25205.8, 25205.14, 25221, and 25343.

[8] Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code (RTC).

Proposed Law: This budget trailer bill enacts various public resources provisions and amends HSC Section 25205.7 to delete the optional flat-rate hazardous waste activity fee for persons that apply for a new permit, a postclosure permit, a renewal of an existing permit, a class 2 or class 3 permit modification, a variance, or a waste classification determination. Permit applicants would be required to make a minimum 25% advance reimbursement payment to DTSC.

Applicants and the owner and operator of the facility are also required to pay all costs to DTSC related to California Environmental Quality Act compliance activities.

The fee changes made by this act apply to DTSC applications received on and after April 1, 2016. DTSC will determine any difference in fees for any applications filed between April 1, 2016 and the effective date of this act.

This bill amends RTC Sections 43053, part of the Hazardous Substances Tax Law, to delete reference to the HSC Section 25205.7, which this bill amends and removes BOE from collection duties. RTC Section 43152.10 is also amended to delete references to obsolete fees in HSC Sections 25205.7, 25205.8, 25205.14, 25221, and 25343.

Background: An Independent Review Panel (IRP) recently issued recommendations to the governor, Legislature, and DTSC to address various DTSC administrative issues. Among other things, the IRP specifically recommends DTSC recover full reimbursement in order to improve permitting functions.[9]

In General: By statute, the BOE collects the optional one-time, flat-rate hazardous waste application fee for DTSC. If an applicant chooses to enter into a reimbursement agreement with DTSC, they handle all aspects of that payment option.

Commentary:

1. **BOE staff does not foresee any administrative problems with the elimination of the optional flat-rate fee.** Even though the bill is effective immediately, BOE staff will work with affected feepayers to notify them of changes and answer questions from the public. BOE staff reports that there has been an average of nine, one-time, flat-rate application billings in each of the last three fiscal years, with average revenues of $333,333.
2. **DTSC handles all aspects of the applicant's reimbursement agreement.** As discussed, the BOE has no administrative involvement when the DTSC-applicant requests a reimbursement agreement. This bill does not alter DTSC's responsibility for administering reimbursement agreements.
3. **RTC technical amendments.** The amendments to RTC Sections 43053 and 43152.10 are technical and non-substantive changes. The deletion of reference to HSC Section 25205.7 from RTC Section 43053 is reflective of this bill's deletion of the BOE administered flat-rate fee provisions. The deletion of all HSC references in RTC Section 43152.10 are related to repealed (Section 25205.8), redundant (Section 25205.14 is referenced in RTC Section 43053), or fees no longer administered by, or applicable to, the BOE (Sections 25221 and 25343).

Costs: This bill decreases BOE administrative costs. These cost savings appear to be insignificant (under $10,000), but will be evaluated further as this bill progresses.

[9] http://www.dtsc.ca.gov/GetInvolved/ReviewPanel/upload/SignedFinal.pdf, see p.8.

Revenue Impact: This bill is intended to provide full cost recovery to DTSC for hazardous waste activity permit decisions. The bill deletes the optional flat-rate fee that the BOE collects, therefore, the previous flat-rate applicants will have to enter into a reimbursement agreement with DTSC. The BOE does not have information regarding DTSC costs related to their hazardous waste facility permit decisions, but, as a point of reference, the flat-rate fee revenues from FY 2013-14 to FY 2015-16 are as follows:

Fiscal Year	Flat-rate fees (in millions)
2015-16[10]	$0.2
2014-15	$0.6
2013-14	$0.2

[10]To date, as of 03/30/16.