



Yana Garcia
Secretary for

Environmental Protection

BOARD OF
**Environmental
Safety**

P.O. Box 806 • 1001 "I" Street, Sacramento, California 95812-0806



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August 9, 2024

From: BES Fees Subcommittee Members – Chair Jeanne Rizzo, Board Member Sushma Bhatia, Executive Officer Swati Sharma, BES staff: Greg Forest, Ferdous Pourmirza, Linda Ocampo and Sheena Brooks

Re: FEE RATE SETTING

Summary: This memo is intended to provide background information regarding the process undertaken by the Board of Environmental Safety (BES) to adopt a fee rates schedule for Fiscal Year (FY) 2024-25 for the Department of Toxic Substances Control (DTSC) Fees in accordance with SB 158.

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Section 1: SB 158 mandates for Board

SB 158 (2021) established the following responsibilities for the Board:

1. Set fee rates annually for DTSC. Fees types include the Generation & Handling Fee, the Facility Fee, and the Environmental Fee.
2. Conduct an analysis of the fee structure to consider adjustments that ensure: 1) reasonable distribution of fees among the businesses that contribute to the need for management of hazardous waste within the state, 2) elimination of gaps in resourcing for BES and DTSC to meet their mandate and achieve measurable performance.

To meet this mandate, the Board sets rates annually by October 1 and uses its emergency rulemaking authority to adopt the fee rates schedule.



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Section 2: BES/DTSC Partnership and Engagement Process

- BES established a Fees subcommittee which is comprised of Board Chair Jeanne Rizzo, Board Member Sushma Bhatia, Executive Officer Swati Sharma, Board Attorney Greg Forest, Environmental Program Manager Ferdous Pourmirza and Board Senior Staff Engineer Linda Ocampo.
- Since the beginning of 2023, the BES fees subcommittee has met weekly with DTSC's Division of Financial Planning to understand:
 - o DTSCs current fee structure and revenue collections
 - o Whether current fee rates will generate enough revenue for DTSC in FY 24/25??
 - o If revenue generated is enough for DTSC to implement its programs

Section 3: Stakeholder Engagement

Providing transparency to fee payers on the fee rate setting process as well as any fee adjustments as early as possible has been important for the Board. The Board began holding one on one meetings with stakeholders, as early as January of 2024. In addition, the Board engaged and/or presented on fees at the following public Board meetings and workshops in 2024:

- March Board Meeting
- April Board Meeting
- April Fees Workshop
- May Fees Workshop
- July Board Meeting
- August Fees Workshop
- August Board Meeting

Section 4: Updates on FY 23-24 Revenues

- Fee setting depends on the revenues collected and how they compare with the Department's appropriated budget, for each of the three fee types.
- The Generation and Handling Fee (G&H Fee) is assessed on activities related to the generation and handling of hazardous waste in the prior calendar year at the rate of \$49.25 per ton.
- Beginning in FY 2022-23, revenue from the G&H Fee resulted in a yearly shortfall.
- Through our assessment with DTSC Finance team, the subcommittee gathered that there are several reasons contributing to the yearly shortfall.



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- DTSC has been performing a data review into the following potential causes for the shortfall:
 - o The underlying assumptions and methodology used to calculate projections for the G&H Fee did not adequately account for the actual tonnage of waste generated that is subject to fee payment.
 - o There are some non-paying and under-paying generators. This may be due to:
 - Lack of generator awareness of the fees due/expected
 - Penalties are not high enough to prevent non-compliance Highly decentralized generation activity and lack of oversight by regulatory agencies
 - o Much revenue is lost due to exemptions, some of which are resulting from incorrectly applied self-exemptions as well as legislatively approved exemptions, including government exemptions.
 - o Enforcement is insufficient to ensure full recovery of the fees due to DTSC.

In June of 2024, Trailer Bill Language (TBL) was passed, which added new statutory provisions to support increased collection of the G&H Fee. The TBL provides mechanisms to address the issues of exemptions and enforcement. However, we expect that these mechanisms will reduce the scale of the shortfall over the next several years, but not eliminate it.

Section 5: Recommendations and Actions

There are three areas where the Board plans to continue stakeholder engagement:

1. Holistically assessing and addressing the factors contributing to the G&H Fee shortfall and building a phased approach to sustainable G&H Fee revenue for DTSC through correction of the ongoing deficit in the Hazardous Waste Control Account.
2. Providing transparency to fee payers on any fee adjustments as early as possible; the current process does not allow for a greater notice period for fee payers.
3. Build a stronger partnership with California Department of Tax and Fee Administration (CDTFA) to drive clarity (including rigorous performance metrics reporting on a regular basis) and improve collection rates.



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The Board Subcommittee has considered the following three scenarios for each of the three fees:

Generation and Handling Fees Scenarios

| | Scenario #1 | Scenario #2 | Scenario #3 |
|--------------------------------------|--------------------|---------------------|--------------------|
| | 5% Reserve | 7.5% Reserve | 10% Reserve |
| Calendar Year Waste Generated | 2023 | 2023 | 2023 |
| Estimated Tonnage Subject to Fee | 1,359,518 | 1,359,518 | 1,359,518 |
| Fiscal Year | 2024-2025 | 2024-2025 | 2024-2025 |
| Estimated Collection Rate % | 82% | 82% | 82% |
| Additional Revenues | 7,946,500 | 10,469,750 | 12,993,000 |
| Total Revenues | 66,946,500 | 69,469,750 | 71,993,000 |
| Required Fee Rate | \$60.05 | \$62.32 | \$64.58 |
| Rate Difference | \$10.80 | \$13.07 | \$15.33 |
| Fund Balance | 5,046,500 | 7,569,750 | 10,093,000 |
| Reserve | 5% | 7.5% | 10% |

Environmental Fees Scenarios

| | | | Scenario #1 | | Scenario #2 | | Scenario #3 | |
|----------------------------|---------------------------------|-----------------------------|--------------------|-------------------------|---------------------|-------------------------|--------------------|-------------------------|
| | | | 5% Reserve | | 7.5% Reserve | | 10% Reserve | |
| Number of Employees | 2023-24 Actual Fee Rates | Number of Businesses | New Rate | Amount Increased | New Rate | Amount Increased | New Rate | Amount Increased |
| 50 - 99 | \$ - | 35,500 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| 100 - 249 | \$ 1,261 | 18,000 | \$ 1,283 | \$ 22 | \$ 1,316 | \$ 55 | \$ 1,350 | \$ 89 |
| 250 - 499 | \$ 2,706 | 4,400 | \$ 2,754 | \$ 48 | \$ 2,825 | \$ 119 | \$ 2,896 | \$ 190 |
| 500 - 999 | \$ 16,000 | 1,650 | \$ 16,283 | \$ 283 | \$ 16,703 | \$ 703 | \$ 17,124 | \$ 1,124 |
| 1,000 or more | \$ 54,100 | 1,100 | \$ 55,056 | \$ 956 | \$ 56,478 | \$ 2,378 | \$ 57,900 | \$ 3,800 |



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Facility Fees Scenarios

| | | | Scenario #1 5% Reserve | | Scenario #2 7.5% Reserve | | Scenario #3 10% Reserve | |
|---------------------------------------|---|----------------------|---------------------------|--------------|-----------------------------|--------------|----------------------------|--------------|
| Permit Tier | Permit Type | Number of Facilities | New Rate | Fee Increase | New Rate | Fee Increase | New Rate | Fee Increase |
| Full Permit | Base Rate | 50 | \$110,138 | \$15,228 | \$113,338 | \$18,428 | \$116,538 | \$21,628 |
| | Disposal Facility | 3 | \$1,101,383 | \$152,283 | \$1,133,382 | \$184,282 | \$1,165,381 | \$216,281 |
| | Large Onsite/Offsite Treatment Facility | 19 | \$330,415 | \$45,685 | \$340,015 | \$55,285 | \$349,614 | \$64,884 |
| | Small Treatment Facility | 9 | \$220,277 | \$30,457 | \$226,676 | \$36,856 | \$233,076 | \$43,256 |
| | Mini Treatment Facility | 1 | \$55,069 | \$7,614 | \$56,669 | \$9,214 | \$58,269 | \$10,814 |
| | Large Storage Facility | 3 | \$220,277 | \$30,457 | \$226,676 | \$36,856 | \$233,076 | \$43,256 |
| | Small Storage Facility | 14 | \$110,138 | \$15,228 | \$113,338 | \$18,428 | \$116,538 | \$21,628 |
| | Mini Storage Facility | 1 | \$27,535 | \$3,807 | \$28,335 | \$4,607 | \$29,135 | \$5,407 |
| | | | Scenario #1 5% Reserve | | Scenario #2 7.5% Reserve | | Scenario #3 10% Reserve | |
| Permit Tier | Permit Type | Number of Facilities | New Rate | Fee Increase | New Rate | Fee Increase | New Rate | Fee Increase |
| Standardized Permit | Std Permit Facility Series A | 4 | \$64,150 | \$8,870 | \$66,013 | \$10,733 | \$67,877 | \$12,597 |
| | Std Permit Facility Series B | 8 | \$30,067 | \$4,157 | \$30,941 | \$5,031 | \$31,814 | \$5,904 |
| | Std Permit Facility Series C | 9 | \$25,251 | \$3,491 | \$25,985 | \$4,225 | \$26,719 | \$4,959 |
| | Std Permit Facility Series C (Sm Qty) | 3 | \$12,626 | \$1,746 | \$12,993 | \$2,113 | \$13,359 | \$2,479 |
| Post Closure (<5 yrs) | Within 5yrs - Small Facility | 0 | \$31,309 | \$4,329 | \$32,219 | \$5,239 | \$33,128 | \$6,148 |
| | Medium Facility | 0 | \$62,618 | \$8,658 | \$64,437 | \$10,477 | \$66,256 | \$12,296 |
| | Large Facility | 0 | \$93,927 | \$12,987 | \$96,656 | \$15,716 | \$99,385 | \$18,445 |
| Post Closure (>5 yrs) | Small Facility | 1 | \$16,681 | \$2,306 | \$17,166 | \$2,791 | \$17,651 | \$3,276 |
| | Medium Facility | 7 | \$33,363 | \$4,613 | \$34,332 | \$5,582 | \$35,302 | \$6,552 |
| | Large Facility | 25 | \$56,340 | \$7,790 | \$57,977 | \$9,427 | \$59,614 | \$11,064 |
| Fixed & Transportable Treatment Units | Conditional Authorization | 39 | \$5,338 | \$738 | \$5,493 | \$893 | \$5,648 | \$1,048 |
| | Conditional Exemption | 0 | \$209 | \$29 | \$215 | \$35 | \$221 | \$41 |



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Section 6: Decision Principles, within the purview of the Boards Authority:

The following are decision principles that the subcommittee has approached with its assessment of fee rates:

1. Undertake informed analysis of DTSC's budget-including costs to administer and collect fees.
2. Ensure that technical fee adjustments are made to keep up with inflationary increases in costs (salaries and cost of living) for all three fees.
3. Gain a complete understanding of all appropriations set by the Legislature (appropriated funds are intended to enable DTSC to deliver on its mandate).
4. Maintain prudent reserves not to exceed 10% of expenditure levels.
5. Prioritize repayment of outstanding debt (e.g. \$40M loan received last year).

Section 7: Next Steps Timeline:

1. BES to hold a Fees Workshop on August 15th and engage in stakeholder outreach.
2. The Board will vote and adopt fee rates for FY 2024-25 at the Board Meeting on August 29, 2024.
3. The Board will complete an emergency rulemaking to set FY 2024-25 fee rates by October 1, 2024.