

Date of Hearing: April 29, 2025

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Damon Connolly, Chair

AB 1031 (Jeff Gonzalez) – As Amended April 23, 2025

SUBJECT: Hazardous waste control laws: exemption: geothermal resources

SUMMARY: Sets the maximum amount for the hazardous waste generation and handling fee for geothermal waste at \$10 a ton. Specifically, **this bill:**

EXISTING LAW:

- 1) Authorizes through the Hazardous Waste Control Law (HWCL) the department of Toxic Substances Control (DTSC) to regulate the management of hazardous wastes in California. (Health and Safety Code (HSC) § 25100 et. seq.)
- 2) Requires a generator of hazardous waste to pay a generation and handling fee, if they generate an amount equal to or more than five tons in a calendar year, to pay \$49.25 for each ton or fraction of a ton of hazardous waste generated in a calendar year. (HSC § 25205.5)
- 3) Requires the Board of Environmental Safety (Board) to establish, by regulation, a schedule of rates for the generation and handling fee authorized by the HWCL and authorizes the Board to adjust the schedule of rates no more frequently than once per year thereafter and no later than October 1 of any year in which the Board adopts the schedule of rates. Requires rates to allow for a reserve in the Hazardous Waste Control Account (HWCA) each year at an amount determined by the Board to be sufficient to ensure that all programs funded by the HWAC will not be adversely affected by any revenue shortfalls or additional baseline expenditure adjustments, but not to exceed 10 percent of authorized expenditure levels. Provides that the rate established by the Board shall not exceed \$98.50. (HSC § 25205.5.01)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author,

"California is a global leader in clean energy innovation—and we have a remarkable opportunity in regions like Imperial County to power the future while fueling local economic growth. However, excessive fee structures are holding us back from reaching our energy potential.

AB 1031 addresses this challenge head-on by ensuring that permitting and fee frameworks reflect the critical role clean energy plays in our state's future. It helps make geothermal energy—one of our most reliable, renewable baseload resources—more viable, removing unnecessary financial barriers that could stall progress.

This bill is key to unlocking the full potential of Lithium Valley, supporting the development of clean, dependable power while preserving our environmental commitments. It's a smart, targeted approach that clears the way for innovation without compromising oversight.

AB 1031 moves California forward—toward a cleaner energy grid, resilient local economies, and continued global leadership in the energy transition."

California Hazardous Waste Control Law (HWCL): The HWCL is the state's program that implements and enforces federal hazardous waste law in California and directs DTSC to oversee and implement the state's HWCL. Any person who stores, treats, or disposes of hazardous waste must obtain a permit from DTSC. The HWCL covers the entire management of hazardous waste, from the point the hazardous waste is generated, to management, transportation, and ultimately disposal into a state or federal authorized facility.

Recent history of DTSC's fiscal issues: DTSC's funding comes primarily from the HWCA and Toxic Substances Control Account (TSCA). The HWCA is a repository for revenues from cost recovery activities and fees paid by various hazardous waste generators, transporters, and facilities. The HWCA funds DTSC's regulatory work overseeing hazardous waste management activities in the state. The TSCA is a repository for revenues from cost recovery, penalties, interest, and the Environmental Fee. TSCA funds DTSC's work dealing with cleaning up contaminated properties, including federal Superfund sites and state orphan sites, as well as funding the Safer Consumer Products Program (also known as the Green Chemistry Program).

The HWCA and TSCA had been operating with a structural deficit for several years. The Budget Act of 2019-2020 provided the HWCA with \$27.5 million from the General Fund to backfill the shortfall and maintain existing operations. The Governor's budget for 2020-2021 provided a \$12 million backfill from special funds for TSCA and a backfill of approximately \$19 million for the HWCA (also from special funds), as those accounts were projected to be insolvent in the budget year.

Governor Newsom's response to DTSC's fiscal situation: As part of the 2020-2021 budget, the Newsom Administration proposed a reform package intended to resolve DTSC's governance and fiscal problems. The Administration proposed to remedy DTSC's fiscal instability by providing DTSC the ongoing authority to set and revise fees. The Administration included trailer bill language with its proposal to raise fees in the HWCA and TSCA; this language was proposed as a 2/3 vote measure. To address transparency and governance issues, the Administration proposed, also with trailer bill language, to create the Board. Assembly Bill (AB) 1 (C. Garcia, 2021) similarly would have enacted the Board as well as would have raised the HWCA fees, nearly identical to the Administration's HWCA proposal, except AB 1 did not include the 2/3 vote increase for TSCA.

Governor Newsom proposed a new DTSC reform package as part of 2021-2022 budget: The Governor's DTSC Reform package contained three major components: establishing a Board of Environmental Safety; fee reform; and, programmatic reform.

The Governor also proposed a major overhaul of DTSC's fee structure. The proposal was designed to produce sufficient revenue to eliminate the need to provide General Fund revenues to close DTSC's baseline funding gap; pay the costs associated with the Board, support staff, and Ombudsperson; provide for an additionally \$59 million in revenue to support anticipated near-term staffing needs, likely beginning in 2022; and, begin to establish a prudent reserve. Additionally, the proposal eliminated three fees under the HWCA (disposal fee, manifest user fee, and EPA ID fee); restructured the generator fee into a generation and handling fee;

established a per ton rate for the generation and handling fee; raised and set a new base rate for the facility fee; and, eliminated all of the exemptions except the exemption for small quantity generators (those that generate less than five tons per year). This fee reform proposal also included changes to the Environmental Fee. The proposal permanently eliminated the fee for businesses with less than 100 employees, froze the fee for businesses with 100-499 employees (the proposal included a provision allowing the Board raise the fee in the future); and, more than tripled the fee for businesses with 500 or more employees.

Final DTSC reform (Senate Bill (SB) 158): In 2021, as a result of months of negotiation, the Administration and Legislature agreed to a compromise on DTSC Reform by enacting SB 158 (Senate Budget Committee, Chapter 73, Statutes of 2021). SB 158 included the creation of the 5-member Board that sets policy and prioritizes transparency and accountability for DTSC. Each member of the Board must meet at least one qualification from a specified list and the Board is required to meet at least 6 times a year.

SB 158 also enacted fee reform by eliminating and modifying some fees. This included repealing the Generator Fee and instead establishing the new Generation and Handling Fee. The bill also created a new (hazardous waste) facility fee and modified and raised the Environmental Fee. All fees were set at a rate that would eliminate DTSC's operating deficit, provide revenue for anticipated needs in the near-term, fund the Board and the development of a hazardous waste management plan, and provide DTSC with a prudent reserve.

Additionally, SB 158 included a number of programmatic reforms such as the development of a hazardous waste management plan to be completed by March 1, 2025 and updated every 3 years; strengthened financial assurance requirements for both hazardous waste facilities and contaminated cleanup sites; and, changes to the permitting requirements for hazardous waste facilities to improve the efficiency and transparency of the processing of the permits. Lastly, SB 158 included \$500 million for the cleanup of contaminated sites, including priority for sites in communities overburdened by pollution.

Polluter pays principle: The current statutory fees on generators of hazardous waste, as required by SB 158, follow the polluter pays principle: the more hazardous waste someone generates the more hazardous waste fees they pay.

Board of Environmental Safety (Board): SB 158 created the Board to improve DTSC's transparency, accountability, and fiscal stability. The Board is comprised of 4 part-time members and one full-time member. Three of the Board members are appointed by the Governor, including the full-time Board Chair, and subject to confirmation by the Senate. The Senate and Assembly each appoint one additional member.

The Board's duties and authorities include: developing a multi-year schedule to develop long-term goals for DTSC's programs; reviewing and approving the Director's priorities and adopting performance metrics; adjusting fee rates based upon changes made in the annual Budget Act; hearing and deciding hazardous waste facility permit appeals; providing opportunities for public hearings on permitted and remediation sites; conducting an analysis of DTSC's fee structure; conducting an analysis of DTSC's programs and their relationship with related programs in other agencies; and, forming advisory subcommittees on any topic, including fees and environmental justice. SB 158 also established an Office of the Ombudsperson within the Board and requires the DTSC Director and the Board Chair to appear annually before Legislative policy committees.

DTSC's new fiscal shortfall: In January 2024, as part of the Governor's proposed budget, DTSC indicated that there was a negative \$21 million balance in the HWCA. Below is a summary excerpted from the Legislative Analyst's (LAO's) Report on Insolvency Risks for Environmental and Transportation Special Funds:

"HWCA Revenues Primarily Come From Two Major Regulatory Fees. Funding for HWCA primarily comes from the generation and handling fee (established in SB 158) and facility fees. The generation and handling fee is charged on a per-ton basis to all entities that generate five or more tons of hazardous waste in a calendar year, while facility fees are annual charges levied on permitted facilities that treat, store, or dispose of hazardous waste. Senate Bill 158 set rates for both fees for 2022-23, but authorized BES to adjust rates each year starting in 2023-24.

Lower-Than-Projected Generation and Handling Fee Revenues Reestablished HWCA Deficit in 2022-23. During the enactment of SB 158, the new generation and handling fee was set at \$49.25 per ton and was projected to generate approximately \$81 million in total revenues in 2022-23. However, in the middle of 2022-23, DTSC indicated that these revenues were coming in significantly below what had been anticipated and would only generate about \$40 million that year. The lower-than-projected revenues reestablished the structural deficit within HWCA in 2022-23 and set the fund on a path to insolvency in 2023-24. The department's preliminary analysis of the issue indicated the shortfalls were attributable to a combination of three primary factors: (1) a reduction in the amount of hazardous waste generated; (2) a higher utilization of government fee exemptions, such as related to a government entity removing or remediating hazardous waste caused by another entity; and (3) nonpayment or low payment of fee amounts owed.

2023-24 Budget Package Authorized Special Fund Loans for HWCA. To address the revenue shortfall, the 2023-24 budget provided \$55 million in special fund loans—\$15 million from TSCA and \$40 million from the Beverage Container Recycling Fund—to support HWCA. (Budget bill language currently requires DTSC to repay both loans by June 30, 2026.) The loans were intended to allow HWCA to cover its planned expenditures in both 2022-23 and 2023-24. The loans also avoided the need for BES to increase the generation and handling fee in 2023-24. This approach was adopted to provide DTSC with additional time to conduct a more in-depth analysis of the revenue shortfalls and to identify a potential solution. The department was authorized to use a small portion of the loans to support this analysis and to improve fee administration and data collection.

HWCA Projected to Be Insolvent in the Budget Year. HWCA has experienced a longstanding structural deficit between its ongoing revenues and expenditures. The state has responded by providing a series of one-time General Fund backfills to keep the fund solvent, which is primarily how the fund balance has remained positive. The reform package was intended to address the structural deficit and generate additional ongoing revenues for HWCA to support both existing services and programmatic expansions. However, the lower-than-projected generation and handling fee revenues have prevented this from being accomplished. Under the administration's estimates, HWCA is projected to become insolvent in the budget year, absent any corrective action. We[the LAO] note that DTSC is in the process of gathering revenue data from generation and handling fees that are currently being collected, which could change this projection—potentially for the better or for the

worse. Accordingly, uncertainty still exists around the exact magnitude of shortfall that the state will need to address both in the budget year and on an ongoing basis. For instance, higher-than-expected revenues and/or lower-than-expected spending levels in the current year could shrink the anticipated deficit and reduce the magnitude of solutions needed in the budget year."

Recent issues with hazardous waste fees has led to an increase in the generation and handling fee: As noted above, DTSC faced reduced revenue from its generation and handling fee. As a result, in the fall of 2024, the Board increased the generation and handling fee from \$49 a ton to \$60 a ton, this is effective for 2025.

This bill, by limiting the fee will result in a reduction in fee revenue to DTSC, adding pressure for the Board to raise the generation and handling fee – impacting all other generators of hazardous waste.

Geothermal energy: Geothermal energy is a form of electrical energy generation that utilizes heated steam and brine from geothermal reservoirs deep underground to power turbines and generate electricity. 11 of these facilities lie above the Salton Sea Geothermal Reservoir (SS-GR) located in Imperial County in Southern California. The SS-GR is a geothermal brine reservoir that lies deep underground beneath the Salton Sea. The SS-GR has earned the area the name "Lithium Valley" for its immense lithium reserves and potential to be extracted by geothermal facilities with new technologies. Recent estimates have projected that around 3,400 kilotons of lithium could be extracted from the SS-GR which has the potential to be the largest domestic source of lithium and one of the largest globally. Currently, these facilities are estimated to generate about 79,802 metric tons of solid waste annually with about 30,766 metric tons manifested as hazardous waste. The annual generation of solid and hazardous waste is projected to increase in conjunction with energy production as new facilities are sited.

Recent legislation looking at the generation and handling fee: In the past two years there have been several bills dealing with reducing or capping the generation and handling fee paid by certain industries. This bill caps the generation and handling fee for geothermal waste at \$10 a ton. Below are four additional bills dealing with the generation and handling fee:

- 1) SB 328 (Grayson). Caps the hazardous waste generation and handling fee at \$100,000 for a project that is infill housing that is 66% or more residential housing, a nonprofit project, a park or open space. Caps the hazardous generation and handling fee for master development projects at \$250,000. This bill is pending action in the Senate Revenue and Taxation Committee.
- 2) SB 819 (Padilla). Requires DTSC to conduct a study on geothermal waste generation, handling fees and fee exemptions. This bill is pending action in the Senate Environmental Quality Committee.
- 3) AB 2686 (Grayson, 2024). Would have created a reduced hazardous waste generation and handling fee (at \$5.72 a ton) for specified projects, including those proposing to build affordable housing, if the hazardous waste meets specified conditions, and only for hazardous waste generated in calendar years 2021, 2022, and 2023. This bill was held in the Assembly Revenue and Taxation Committee.

- 4) SB 143 (Senate Budget Committee, Chapter 196, Statutes of 2023). Creates a reduced generation and handling fee of \$5.72 a ton for projects that meet specified criteria including being certified by the Governor as an environmental leadership develop project.

Time to look at DTSC's fees: Given concerns raised from various industries about the costs of the generation and handling fee, is it time to look at DTSC's overall funding structure and discuss other potential fee or revenue options? This bill could serve as a starting point for discussions on how to balance the need for revenue to fund the state hazardous waste regulatory program with the rising costs faced by various industries.

This bill: AB 1031 sets the maximum amount for the hazardous waste generation and handling fee for geothermal waste at \$10 per ton. This is a reduction of approximately \$50er ton and could cost the state approximately \$1.5 million annually.

Arguments in support: According to the Imperial Irrigation District, "AB 1031 removes barriers to investment and growth in California's geothermal sector in regions like Imperial County that are ready to lead in clean energy development and lithium recovery."

Arguments in opposition:

None on file.

Related legislation:

- 1) SB 328 (Grayson). Caps the hazardous waste generation and handling fee at \$100,000 for a project that is infill housing that is 66% or more residential housing, a nonprofit project, a park or open space. Caps the hazardous generation and handling fee for master development projects at \$250,000. This bill is pending action in the Senate Revenue and Taxation Committee.
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- 4) SB 143 (Senate Budget Committee, Chapter 196, Statutes of 2023). Creates a reduced generation and handling fee of \$5.72 a ton for projects that meet specified criteria including being certified by the Governor as an environmental leadership develop project.
- 5) SB 158 (Senate Budget Committee, Chapter 73, Statutes of 2021). Establishes a 5-member Board of Environmental Safety; revises, recasts and increases hazardous waste fees; and makes changes to DTSC financial assurance requirements for hazardous waste facilities and cleanup sites; and makes improvements to the permitting of hazardous waste facilities.

REGISTERED SUPPORT / OPPOSITION:

Support

County of Imperial
Imperial Irrigation District

Opposition

None on file.

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