

Date of Hearing: July 1, 2025

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Damon Connolly, Chair

SB 328 (Grayson) – As Amended June 25, 2025

SENATE VOTE: 38-0

SUBJECT: Hazardous waste generation and handling fees: Department of Toxic Substances Control oversight responses: housing development projects

SUMMARY: Caps the amount of the hazardous waste generation and handling fee paid by generators of hazardous waste if the hazardous waste is being removed from a project that is an infill housing project with at least 66% residential housing or a master development project. Additionally, creates a process for an entity that is cleaning up a contaminated site that will be developed into a housing project to request information from DTSC about the nature of the status of that cleanup. Specifically, **this bill:**

- 1) Requires the Department of Toxic Substances Control (DTSC), upon receipt of a request submitted to DTSC for a housing development project seeking oversight of investigation, characterization, and remediation activities (cleanup), to provide the requestor specified information, including, but not limited to, any additional information that may be required to begin to review the request.
- 2) Requires DTSC, for a housing development project with 25 or fewer units, to respond to the requestor of information on a cleanup site pursuant to the above, within 60 business days of receipt of the request.
- 3) Requires DTSC, for a housing development project with 26 units or more, to respond to the requestor of information on a cleanup site pursuant to the above, within 120 business days of receipt of the request.
- 4) Requires a person or entity requesting information about a cleanup project under this bill to provide any information they may have about the history of the site being cleaned up, including any information about past ownership of the property, to DTSC.
- 5) Clarifies that DTSC, when implementing this bill, shall use its authority under the Hazardous Substance Account Act (HSAA, Division 45, commencing with section 78000 of the Health and Safety Code (HSC) or the California Land Reuse and Revitalization Act of 2004) (Chapter 6.82, commencing with section 25395.60 of Division 20 of the HSC).
- 6) Defines "Sixty-six percent residential housing" as a multifamily housing development project in an infill setting that is surrounded on at least three sides by urbanized uses and of which at least two-thirds of the proposed square footage is dedicated to residential use.
- 7) Defines "master development project" as a project that complies with all of the following criteria: the project is governed by a development agreement entered into pursuant to existing law; the project explicitly contemplates development in multiple phases; the project requires construction of new infrastructure; and, the project includes residential dwelling units.

- 8) Sets a cap for the generation and handling fee imposed upon a generator of hazardous waste that is infill housing that is at least 66% residential housing to be in a total amount that does not exceed \$100,000 for waste generated each fiscal year for each project site.
- 9) Sets a cap for the generation and handling fee imposed upon a generator of hazardous waste that is a master development project to be in a total amount that does not exceed \$250,000 for waste generated each fiscal year for each project site, without regard to the phase.
- 10) Provides that the reduced generation and handling fees in this bill only apply to generators that are not the "responsible party," as defined in the HSAA.
- 11) Requires a genitor of hazardous waste seeking to apply the caps to the generation and handling fee authorized in this bill to submit an application and certify its eligibility to DTSC and include any information necessary to demonstrate its eligibility, including a copy of the approved entitlement from the applicable local government.
- 12) Provides that the cap for the generation and handling fee only applies to generation and handling fees imposed on or after January 1, 2026.

EXISTING LAW:

- 1) Authorizes, through the Hazardous Waste Control Law (HWCL), DTSC to regulate the management of hazardous wastes in California. (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 1st 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 HWCA will not be adversely affected by any revenue shortfalls or additional baseline expenditure adjustments, but not to exceed 10% of authorized expenditure levels. Provides that the rate established by the Board shall not exceed \$98.50. (HSC § 25205.5.01)
- 4) Creates, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), a Federal "Superfund" to clean up uncontrolled or abandoned hazardous waste sites, as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. Provides the United States Environmental Protection Agency (US EPA) with the authority to seek out those parties responsible for any release and assure their cooperation in the cleanup. (42 United States Code (USC) § 9601, et seq.)
- 5) Establishes, pursuant to the HSAA, a program to provide for response authority for releases of hazardous substances, including spills and hazardous waste disposal sites that pose a threat to public health or the environment. (HSC § 78000, et seq.)

- 6) Requires DTSC to establish performance milestones to ensure that the cleanups of contaminated sites are performed at that appropriate pace and make available on its website easily accessible information about the cleanups, including a link to more detailed information on the cleanup on its EnviroStor database. (HSC § 78895)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "California is in the midst of a massive housing affordability crisis. Rising costs and high fees have made it difficult to build housing that is affordable. In recent years, certain developers have experienced sharp cost increases, due to how the hazardous waste generator fee was restructured by SB 158 in 2021. Instead of a tiered system, SB 158 replaced this model with a fixed \$46.20 per ton fee. This caused many projects to experience cost overruns, including some projects that were already completed.

To help reduce the cost of development, SB 328 would place a cap on the Hazardous Waste Generator Fee. This cap would apply to certain housing and infill projects that did not create the contamination. The cap for most projects would be set at \$100,000 and \$250,000 for master developed projects. This bill will help reduce costs and help projects better 'pencil out', at a time when costs are rapidly increasing. Builders should not be penalized for opening up land for productive use, especially when they are cleaning up pollution instead of creating it."

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.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA): CERCLA, or Superfund, provides a Federal "Superfund" to clean up uncontrolled or abandoned hazardous waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. Through CERCLA, the US EPA was given authority to seek out those parties responsible for any release and assure their cooperation in the cleanup. The US EPA cleans up orphan sites when potentially responsible parties cannot be identified or located, or when they fail to act.

Carpenter-Presley-Tanner Hazardous Substances Account Act (HSAA): State law provides DTSC with general administrative responsibility for overseeing the state's responses to spills or releases of hazardous substances, and for hazardous waste disposal sites that pose a threat to public health or the environment. The HSAA provides DTSC with the authority to investigate, remove, and remediate contamination at sites.

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. AB 1 would have also 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 an additional \$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 to 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 six 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 four 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 [the Board] 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 [the Board] 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 change is effective for 2025.

This bill, by setting a cap for the generation and handling 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.

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 housing projects that meet certain criteria. Below are four additional bills dealing with the generation and handling fee:

- 1) AB 1031 (Jeff Gonzalez). Would have set the maximum amount for the hazardous waste generation and handling fee for geothermal waste at \$10 a ton. This bill was held on the suspense file in the Assembly Appropriations 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: SB 328 caps the amount of the generation and handling fee paid by generators of hazardous waste if the project is an infill housing project with at least 66% residential housing or a master development project. Additionally, the bill sets up a process for an entity that is cleaning up a contaminated site that will be developing into a housing project to request information from DTSC about the nature of the status of the cleanup. While DTSC is currently required to post detailed information on cleanups on its internet website, additionally providing this information to developers of certain housing projects could also be helpful. This bill will result in lower fees to developers of specified housing projects, however it will also likely result in increased fees for various business, schools, and state and local governments.

Arguments in support: According to the Housing Action Coalition, SPUR, and the Bay Area Council:

"In 2021, the Legislature passed SB 158, a budget trailer bill that restructured the DTSC to improve the Department's performance and fix structural deficits in its budget. The bill made changes to the fee that housing developers pay when they remediate contaminated soil from a development site, moving from a tiered model with fixed caps to a price-per-ton fee with no upper limit. These changes to the Generation and Handling Fee (formerly Hazardous

Waste Generator Fee) have significantly increased the cost of remediating contaminated soil for housing projects as they prepare a site for development.

There have been numerous examples where the updated Fee has significantly increased the cost of housing projects. For instance, fees for a housing project in San Francisco increased from \$100,000 to \$800,000, and other student housing and non-profit projects faced similar cost increases.

These changes have had a disproportionate impact on infill housing developments, which are more likely to develop on "contaminated" urban sites. Common types of urban contamination include former dry cleaners or gas stations, or areas impacted by natural disasters. The highly variable Generation and Handling Fee can drive these projects to infeasibility by dramatically and unpredictably increasing costs in the middle of a project.

SB 328 would help reduce the cost of development by establishing a cap on the Generation and Handling.

Housing developers should not be penalized for opening up land for productive use, especially when they are cleaning up pollution instead of creating it. SB 328 would provide a fair and balanced approach to funding DTSC's remediation efforts while still allowing critically needed housing and open space projects to move forward."

Arguments in opposition: According to the California Council for Environmental and Economic Balance (CCEEB),

"CCEEB is a coalition of business, labor, and public leaders that works together to advance strategies to achieve a sound economy and a healthy environment.

As the Legislature knows, the Department of Toxics Substances Control (DTSC) has faced longstanding fiscal challenges which led to the passage and enactment of SB 158 (Senate Budget Committee, 2021) that enacted several reforms, including fee reform, and was the result of years of negotiation between state leaders, environmental groups, and the business community. Although 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 of Environmental Safety (BES) established under SB 158, the development of a hazardous waste management plan, and provide DTSC with a prudent reserve, funding collected has fluctuated and, at times, been far below anticipated revenues. That led to the BES increasing the generation and handling fee from its original rate of \$49.25/ton or fraction of one ton of hazardous waste generated in a calendar year to over \$60/ton of hazardous waste generated in a calendar year.

The fee increase for FY 24-25 was significant resulting in hazardous waste generators across many sectors paying millions in generation and handling fees in an effort to close DTSC's budget gap in its Hazardous Waste Control Account (HWCA).

While CCEEB understands the author's intent to lower the costs for development projects, we are concerned SB 328 will result in a decrease in fee revenue to address DTSC's needs,

cost structure, and ongoing fiscal challenges. In turn, DTSC and the BES will have to fill the gap associated with that loss in revenue by shifting the costs and raising fees even further on other generators who would be subsidizing the hazardous waste generated by developers.

CCEEB and its members object to this cost shift that will result in compliant generators across many sectors – pharmaceutical, manufacturing, waste and recycling service providers, transportation, utilities, and more – having to bear added fiscal burden to subsidize decreased costs for development projects. This will only serve to further increase costs associated with manufacturing of products, waste and recycling services, energy projects, and more."

Related legislation:

Do you need to list the first four items 2x or can you say referenced above?

- 1) AB 1031 (Jeff Gonzalez). Would have set the maximum amount for the hazardous waste generation and handling fee for geothermal waste at \$10 a ton. This bill was held on the suspense file in the Assembly Appropriations 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.
- 5) SB 158 (Senate Budget Committee, Chapter 73, Statutes of 2021). Establishes the five-member Board; revises, recasts and increases hazardous waste fees; 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

Abundant Housing LA
 Bay Area Council
 California Apartment Association
 California Housing Consortium
 California Housing Partnership
 Circulate San Diego
 City of Vernon
 Housing Action Coalition
 Housing California
 Inner City Law Center
 Institute for Responsive Government Action

San Francisco Bay Area Planning and Urban Research Association
The Two Hundred

Opposition

California Council for Environmental & Economic Balance

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