

**Text of Proposed Amendments to
California Code of Regulations**

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration – Business Taxes

Chapter 8. Hazardous Substances Tax

Section 3000. Generator of Hazardous Waste

Regulation 3000. Generator of Hazardous Waste Fee Operative Prior to January 1, 2022.

(a) Scope.

(1) The provisions contained herein shall apply to the collection of the generator fee imposed pursuant to ~~former~~ Health and Safety Code section 25205.5 prior to its repeal operative January 1, 2022. California Code of Regulations, title 18, section 3001 applies to the collection of the generation and handling fee imposed pursuant to Health and Safety Code section 25205.5, as added by section 55 of Senate Bill No. 158 (Stats. 2021, ch. 73), on and after January 1, 2022.

(2) Regulations concerning the manifesting of hazardous waste, enforcement of hazardous waste management requirements and standards, and other regulatory activities conducted by the Department of Toxic Substances Control (DTSC) are contained in ~~title~~ 22 of the California Code of Regulations. Nothing in this section shall grant any benefit or exemption to a generator, subject a generator to any duty or liability, or infer that any person is or is not a generator, except for the purpose of determining whether a person is subject to, or exempted from, the generator fee.

(b) Definitions.

(1) “Generator” means any person, by site, whose act or process produces hazardous waste or causes hazardous waste to become subject to regulatory control by a government agency authorized to regulate hazardous waste. If more than one person is liable for the same generator fee for the same load of hazardous waste, that liability shall be joint and several. A generator includes, but is not limited to:

(A) a person identified on a hazardous waste manifest as the generator and whose Environmental Protection Agency-~~(EPA)~~ identification number is listed on that manifest, if that identifying information was provided by that person or by an agent or employee of that person;

(B) except as provided in subdivision (b)(1)(G) below, a person who cleans up a release of hazardous waste caused by another, including a property owner who cleans up contamination caused by a tenant or lessee and an owner or lessee who cleans up property contaminated by a previous owner or lessee;

(C) a person who contracts with an environmental cleanup to clean up property;

(D) a person who places hazardous waste into repositories at the same site where the waste was generated, including but not limited to, a site or portion of a site that has been designated as a corrective action management unit (CAMU) by the ~~DTSC~~ Department of Toxic Substances Control; however, a person will not be considered the generator of hazardous waste if the person removes hazardous waste (for example, contaminated soil or groundwater) from a site, treats it at the same site until it is non-hazardous, and returns it to the same location from which it was removed at the site;

(E) a person who excavates contaminated soil that is hazardous waste during cleanup activities, regardless of whether the soil became contaminated over a period of time or when the property was under the control of another person;

(F) any person who is expressly identified as a generator pursuant to the Health and Safety Code or ~~Title~~ 22 of the California Code of Regulations.

(G) Notwithstanding subdivisions (b)(1)(A) through (b)(1)(F) above, “generator” does not include an entity such as an environmental ~~clean-up~~ cleanup company or an emergency response contractor, when that entity, pursuant to contract, cleans up a release of hazardous waste for another person, unless the entity is identified on a hazardous waste manifest as the generator as described in subdivision (b)(1)(A) above.

(2) “Site or onsite” means the location at which hazardous waste is generated. Contiguous properties, divided by public or private right-of-way, may be considered one site, provided entry to and exit from the properties are gained by traveling across, as opposed to going along, the right-of-way.

(c) Reporting Period During which Hazardous Waste is Generated.

If the hazardous waste remains permanently at the site where it was generated, the generation of the waste shall be reported on the generator fee return for the calendar year during which the waste was produced or first brought subject to regulation. If the hazardous waste is removed from the site where it was generated, the generation of the waste shall be reported on the generator fee return for the calendar year during which the waste was removed from the site.

(d) Commingled Waste.

Where hazardous waste is commingled with non-hazardous waste and manifested on a hazardous waste manifest, the entire mixture constitutes hazardous waste.

(e) Exemptions from the Generator Fee.

The following persons and waste are exempt from the generator fee:

(1) Facilities. A hazardous waste facility that pays the facility fee pursuant to Health and Safety Code ~~§~~section 25205.2 for the site for which the facility fee is paid. However, fees paid pursuant to Health and Safety Code ~~§~~section 25205.14 for permit-by-rule, conditional

authorization or conditional exemption are not facility fees, and therefore sites paying such fees are also liable for the generator fee.

(2) Government Cleanups. Hazardous wastes which result when a government agency, or its contractor, removes or remedies a release of hazardous waste in the state caused by another person, or natural disaster. A government agency that produces hazardous waste as a result of its normal operations, including but not limited to accidental releases that occur in the course of normal operations, or as part of a cleanup of a release of hazardous waste it caused, is subject to the fee. However, the government agency is not subject to the fee if the release of hazardous waste is caused by the public during public use of services provided by the government agency as part of its governmental activities, such as the providing of sewer service or roads used by the public.

(3) Household Hazardous Waste. Hazardous waste generated or disposed of by a public agency, or by any person under an agreement with a public agency, operating a household hazardous waste facility in the state pursuant to ~~D~~ivision 20, ~~C~~hapter 6.5, ~~A~~rticle 10.8 of the Health and Safety Code (commencing with ~~S~~ection 25218), including hazardous waste received from conditionally exempt small quantity commercial generators, authorized pursuant to Health and Safety Code ~~S~~ection 25218.3.

(4) Local Vector Control. Hazardous waste generated or disposed of by local vector control agencies which have entered into a cooperative agreement pursuant to Health and Safety Code ~~S~~ection 116180, or by county agricultural commissioners, if the hazardous wastes result from their control or regulatory activities and if they comply with the requirements of ~~D~~ivision 20, ~~C~~hapter 6.5 of the Health and Safety Code and regulations adopted pursuant to that code.

(5) Load Checking Program. Hazardous waste disposed of, or submitted for disposal or treatment, by any person, which is discovered and separated from solid waste as part of a load checking program.

(6) Recycled Used Motor Oil. Used oil which is removed from a motor vehicle and which is subsequently recycled by a recycler permitted pursuant to ~~A~~rticle 13 (commencing with ~~S~~ection 25250) of ~~C~~hapter 6.5, ~~D~~ivision 20 of the Health and Safety Code. "Motor vehicle" includes locomotives, vessels and self-propelled, off-road equipment, whether or not the equipment moves or is permitted to move on public highways.

(7) Hazardous Waste Recycled and Used Onsite. Hazardous waste which is recycled, used onsite, and not transferred offsite.

(8) Aqueous Waste. Aqueous waste treated in a treatment unit operating, or which subsequently operates, pursuant to a permit by rule, conditional authorization or conditional exemption. However, hazardous waste generated by the treatment process is subject to the generator fee.

(9) Underground Storage Tank. Hazardous waste generated during the removal of an underground storage tank if the generator of the waste acquired land for the sole purpose of

owner-occupied single-family residential use, without actual or constructive notice or knowledge that there was a tank containing hazardous waste on or under the property.

(10) Waste Imported from Outside California. On and after January 1, 1996, no generator fee is due concerning any hazardous waste imported into this state from other states, territories, or possessions of the United States for purposes of treatment, recycling or disposal, and no generator fee is due concerning non-RCRA hazardous waste imported into this state from any source for purposes of treatment, recycling or disposal.

(11) Banks and Financial Institutions. A bank or financial institution that pays an “in lieu” tax, pursuant to ~~A~~article XIII, ~~S~~ection 27 of the California Constitution (codified as Revenue and Taxation Code ~~S~~ection 23182) is not subject to the generator fee for hazardous waste which is generated during an activity performed by, or in a business conducted by, the bank or a department or division of the bank, regardless of whether the activity or business is directly related to banking.

(12) Insurance Companies. An insurance company that pays an “in lieu” tax, pursuant to ~~A~~article XIII, ~~S~~ection 28 of the California Constitution (codified as Revenue and Taxation Code ~~S~~ection 12204) is not subject to the generator fee for hazardous waste which is generated during an activity performed by, or in a business conducted by, the insurance company or a department or division of the insurance company, regardless of whether the activity or business is directly related to providing insurance.

(13) Exempt Waste. A waste is not subject to the generator fee if it is exempt from regulation or classification as a hazardous waste under ~~C~~chapter 6.5 of ~~D~~division 20 of the Health and Safety Code (commencing with ~~S~~ection 25100) or the regulations promulgated thereunder. A waste is exempt from regulation or classification as a hazardous waste for purposes of this paragraph if the waste is exempt from all provisions of ~~C~~chapter 6.5 of ~~D~~division 20 of the Health and Safety Code and the regulations promulgated thereunder, except those provisions which are necessary in order for DTSC to make or rescind the determination that the waste is exempt from regulation or classification as a hazardous waste, or to compensate DTSC for making or rescinding such a determination.

Note: Authority cited: Section 43501, Revenue and Taxation Code. Reference: Sections 25174.7, 25205.1(e), 25205.5, 25205.22 and 25250.24, Health and Safety Code; and Sections 43152.7 and 43152.15, Revenue and Taxation Code.

Text of Proposed Amendments to California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration – Business Taxes

Chapter 8. Hazardous Substances Tax

Section 3021. Relief From Liability

Regulation 3021. Relief From Liability.

A person may be relieved from the liability for the payment of the taxes or fees required to be collected pursuant to the Hazardous Substances Tax Law, Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, including any penalties and interest added to the taxes or fees, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Department~~board~~ to be due to reasonable reliance on written advice given by the Department~~board~~ as described in California Code of Regulations, Title 18, Section 4902.

The fees and taxes collected pursuant to the Hazardous Substances Tax Law include the Hazardous Substance Taxes (Disposal Fee, Environmental Fee, Facility Fee, Generation and Handling Fee, Generator Fee and Activity Fee), Childhood Lead Poisoning Prevention Fee and Occupational Lead Poisoning Prevention Fee.

NOTE: Authority cited: Sections 15570.22 and 15570.24, Government Code; Section 43501, Revenue and Taxation Code. Reference: Section 43159, Revenue and Taxation Code.

Text of Proposed California Code of Regulations

Title 18. Public Revenues

**Division 2. California Department of Tax and Fee
Administration – Business Taxes**

Chapter 8. Hazardous Substances Tax

**Section 3001. Generation and Handling of Hazardous Waste Fee Operative on and
after January 1, 2022**

(A new regulation to be added to the California Code of Regulations.)

Regulation 3001. Generation and Handling of Hazardous Waste Fee Operative on and after January 1, 2022.

(a) Scope.

The provisions contained in this regulation shall apply to the collection of the generation and handling fee imposed pursuant to Health and Safety Code section 25205.5, as added by section 55 of Senate Bill No. 158 (Stats. 2021, ch. 73), on and after January 1, 2022. California Code of Regulations, title 18, section (Regulation) 3000 applies to the collection of the generator fee imposed pursuant to former Health and Safety Code section 25205.5 prior to its repeal operative January 1, 2022.

(b) Definitions.

(1) “Department” means the California Department of Tax and Fee Administration.

(2) The terms “disposal,” “facility,” “generator,” “hazardous waste,” “site,” and “treatment” shall have the same meaning as set forth in Health and Safety Code section 25205.1 and any regulations adopted by the Department of Toxic Substances Control (DTSC) or any successor implementing, interpreting, or making specific the definition of any of these terms in Health and Safety Code section 25205.1.

(c) Generation and Handling Fee.

(1) Unless an exemption or exclusion applies pursuant to division 20 of the Health and Safety Code or any regulations adopted by the DTSC or any successor implementing, interpreting, or making specific division 20 of the Health and Safety Code, a generator of hazardous waste shall pay to the Department a generation and handling fee for each generator site that generates five tons or more of hazardous waste in a calendar year, or portion of a calendar year. The fee rates established pursuant to Health and Safety Code section 25205.5.01 apply to each ton of hazardous waste generated at a generator site in a calendar year or portion of a calendar year, including the first five tons, or fraction of a ton rounded up to the next nearest ton.

(2) For purposes of calculating the amount of the generation and handling fee, a generator of hazardous waste that is issued a hazardous waste facilities permit from the DTSC or any successor and that pays the annual facility fee, as specified in Health and Safety Code section 25205.2, may deduct, from the amount of hazardous waste generated per calendar year, the amount of hazardous waste that is stored, bulked, and transferred solely through the location of the permitted hazardous waste facility and that is in route to another facility that is authorized to do any of the following:

- (A) Manage the hazardous waste for reclamation and recovery, including fuel blending before energy recovery at another site.
- (B) Manage the hazardous waste through destruction methods or treatment before disposal at another site.
- (C) Manage the hazardous waste by any form of treatment.
- (D) Dispose of the hazardous waste.

(d) Payments and Returns.

The generation and handling fee imposed on hazardous waste generated in a calendar year or portion of a calendar year is due and payable in two equal installments.

(1) For hazardous waste generated in the 2023 calendar year and subsequent calendar years, the first installment payment is due on or before November 30 of the calendar year following the calendar year in which the hazardous waste was generated. The second installment payment is due on or before the last day of February of the calendar year following the calendar year in which the first payment was due.

(2) Every generator subject to the generation and handling fee shall electronically file a return on or before the due date of the second installment payment through the Department's online services portal via its website at www.cdtfa.ca.gov for the hazardous waste generated in the calendar year for which the second installment payment is due.

Example. A generator required to pay the generation and handling fee for hazardous waste generated in calendar year 2024 shall pay the first half of the generation and handling fee on or before November 30, 2025, and shall pay the second half of the generation and handling fee on or before February 28, 2026. The generator must also electronically file a return on or before February 28, 2026, through the Department's online services portal via its website at www.cdtfa.ca.gov for the hazardous waste generated in calendar year 2024.

(e) Penalties.

Any generator who fails to timely pay the generation and handling fee, or any required portion thereof, or fails to timely file a return, will be subject to penalties and interest pursuant to Revenue and Taxation Code section 43155.01.

Note: Authority: Section 43501, Revenue and Taxation Code. Reference: Sections 25205.1 and 25205.5, Health and Safety Code; and Sections 43053, 43155.01 and 43152.7, Revenue and Taxation Code.