
SENATE COMMITTEE ON BUDGET AND FISCAL REVIEW

Senator Nancy Skinner, Chair

2021 - 2022 Regular

Bill No:	AB 158	Hearing Date:	June 28, 2021
Author:	Committee on Budget		
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Urgency:	No	Fiscal:	Yes
Consultant:	Joanne Roy		

Subject: Hazardous waste

Summary: This bill establishes the Board of Environmental Safety (Board) within the Department of Toxic Substances Control (DTSC), restructures and increases charges that support the Hazardous Waste Management Account (HWCA), restructures and increases the tax that supports the Toxic Substances Control Account (TSCA), and provides funding to support brownfield cleanups and investigations across the state and Exide residential cleanup.

Existing Law:

- 1) Establishes DTSC to protect California against threats to public health and degradation to the environment and to restore properties degraded by past environmental contamination, and requires DTSC to regulate management of hazardous wastes, clean up existing contamination, and prevent pollution by working with businesses to reduce their hazardous waste and use of toxic materials. (H&S § 25360.1, et seq.)
- 2) Imposes various fees, including a disposal fee, generator fee, and facility fee, that are deposited in the HWCA and imposes charges on organizations that use, generate, store, or conduct activities in this state related to hazardous materials that are deposited in TSCA that, upon appropriation by the Legislature to DTSC, are authorized to be expended for, among other things, the administration and implementation of the Hazardous Waste Control Laws (HWCLs) and site remediation and response costs, as specified (HSC § 25174 and § 25173.6).

Proposed Law: This bill:

- 1) Establishes a five-member Board within DTSC, composed of a full-time chairperson and four part-time paid members. Three members of the Board are appointed by the Governor with Senate confirmation and two members appointed by the Legislature, as specified.
- 2) Specifies the Board's responsibilities, including:
 - a. Annually aligning charges for HWCA and TSCA based on legislative changes to appropriation levels;

- b. Hearing and deciding appeals of hazardous waste facility permit decisions made by DTSC;
 - c. Providing opportunities for public hearings on DTSC's permit and remediation decisions;
 - d. Reviewing and approving the Director's annual priorities and adopting performance metrics;
 - e. Developing long-term goals for DTSC's programs;
 - f. Conducting an analysis of DTSC's fee structure; and,
 - g. Conducting an analysis of DTSC's programs and their relationship with related programs in other agencies and, to the extent necessary, develop recommendations to improve coordination between programs and reduce or eliminate duplication/overlap.
- 3) Authorizes the Board to form advisory subcommittees to work on topics within the board's jurisdiction, including, but not limited to environmental justice and fee structure and make recommendations to the full board for consideration and action.
 - 4) Requires the Director of DTSC to appear before the Board as requested and requires the Board to prepare an annual performance review of DTSC and the Director.
 - 5) Requires the director of DTSC and the Board chair to annually appear before the appropriate policy committees in the Assembly and Senate to provide an update on the department's performance and progress in implementing reform measures.
 - 6) Establishes an Office of the Ombudsperson within the Board to receive complaints and suggestions from the public and regulated community, make recommendations to the Board, and provide assistance to the public when appropriate.
 - 7) Makes a number of programmatic reforms, including:
 - a. Updating a state hazardous waste management plan (Plan) by March 1, 2025 and every three-years thereafter. Specifies the Plan include: waste reduction goals and reduce the risk of exposure to communities threatened by releases of hazardous waste; updates to DTSC's Pollution Prevention Program; and recommendations regarding the criteria used to identify wastes as hazardous waste in the state.
 - b. Strengthening financial assurances requirements for entities who handle hazardous waste. Requires DTSC to review cost estimates and mechanisms every 5 years; specifies hazardous waste facilities establish and maintain financial assurance for corrective action; and restricts DTSC from requiring financial assurance for corrective action that the State Water Board is overseeing.

- c. Establishing accountability requirements for DTSC’s permit renewals, including accelerating time lines for the department to complete hazardous waste facility permit renewals. Requires DTSC to post estimated decision dates and milestones, establishes deadlines for DTSC to make permit decisions, and establishes accountability if DTSC misses permit deadlines.

8) Makes four significant changes to the existing HWCA fee structure:

- a. Replaces the existing generator, disposal, EPA identification verification, and manifest user fees with a new generation and handling fee. The new generation and handling fee would be based on a price-per-ton model—instead of the current tiered model—and set at \$49.25 per ton (currently between \$10 and \$100 per ton);
- b. Increases the existing facility fees. Sets the base rate at \$94,910 (currently \$35,943), a rate that reflects DTSC’s level of service expected in FY 2022-23 and begins to establish a prudent reserve.
- c. Eliminates various exemptions for which entities are subject to paying the charges, including exemptions for entities that handle used oil.
- d. Revises the timing of payments to coincide with the fiscal year in which the Legislature appropriates the department’s funding (rather than by calendar year, which is how current payments are structured).

9) Makes two significant changes to the environmental fee to take effect in 2022 and revises the timing of payments to coincide with the fiscal year in which the Legislature appropriates the department’s funding:

- a. Exempts businesses with fewer than 100 employees from paying the tax (extending the existing exemption to businesses with 50 to 99 employees); and,
- b. Increases tax rates for businesses with more than 500 employees.

The 2022-23 rates would be as follows:

Business Size	Current Rate	Proposed Rate
Businesses with 50 – 74 Employees	\$362	\$0
Businesses with 75 – 99 Employees	\$636	\$0
Businesses with 100 – 249 Employees	\$1,261	\$1,261
Businesses with 250 – 499 Employees	\$2,706	\$2,706
Businesses with 500 – 999 Employees	\$5,054	\$16,000
Businesses with 1,000 or more Employees	\$17,144	\$54,100

- 10) Appropriates \$500 million (one-time General Fund), over three years, to address brownfields (i.e., properties underutilized due to the presence of a hazardous substance, pollutant, or contaminant), to be allocated in the following ways:
 - a. Investigations and Brownfield Cleanups. DTSC would use these funds to investigate and clean up various projects where no financially viable responsible party can be found.
 - b. Brownfield Grant Program. Establishes a new competitive grant program to provide funding to local governments, tribes, nonprofit organizations, and private entities primarily to investigate as well as clean up brownfield sites.
 - c. Workforce Development. Establishes a new workforce development program. The funding would go to various organizations (such as technical schools and community-based organizations) to train individuals to perform environmental remediation work, such as site sampling technicians.
 - d. Impacted Community Grant Program. Establishes a new program to provide grants to communities impacted by contaminated sites to provide technical assistance. Grant funds could be used to pay for independent confirmation sampling and independent technical experts.
 - e. Environmental Justice Council. Authorizes funds be used to assist in the development of a forum that represents communities across the state impacted by DTSC's programs, to provide environmental justice advice, consultation, and recommendations to the director of DTSC and the Board.
- 11) Appropriates \$322.4 million (General Fund), over three years, as a loan for DTSC for activities, including job training activities, related to the cleanup and investigation of properties contaminated with lead in the communities surrounding the former Exide Technologies facility in the City of Vernon. Requires funds recovered from potentially responsible parties for the former Exide Technologies facility to be used to repay those loans and would authorize forgiveness of the remaining loan balance under certain circumstances.
- 12) Makes conforming changes throughout Health and Safety Code and Revenue and Taxation Code.
- 13) Requires 2/3 vote of the Legislature.

Background:

- 1) *California Hazardous Waste Control Law (HWCL)*. 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. 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.

- 2) *DTSC's Hazardous Waste Management Permitting Program*. DTSC is responsible for administering the hazardous waste facility permitting program established under HWCL and the federal Resource Conservation and Recovery Act (RCRA). The core activities of the permitting program include: review of RCRA and non-RCRA hazardous waste permit applications to ensure safe design and operation; issuance and denial of operating permits; issuance of post-closure permits; approval and denial of permit modifications; issuance and denial of emergency permits; review and approval of closure plans; oversight of approved closure plans; and, providing public involvement on issues related to permitted facilities.
- 3) *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 Environmental Protection Agency (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.
- 4) *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. Additionally, DTSC ensures that the state meets the federal requirements that California pay 10 percent of cleanup costs for federal Superfund sites and 100 percent of the operation and maintenance costs after cleanup is complete. The HSAA provides DTSC with the authority, procedures, and standards to investigate, remove, and remediate contamination at sites; to issue and enforce a removal or remedial action order to any responsible party; and, to impose administrative or civil penalties for noncompliance with an order. Federal and state laws also authorize DTSC to recover costs and expenses it incurs in carrying out these activities.
- 5) *Recent Criticism of DTSC*. Over the past decade or so, DTSC has received complaints from the public about its permitting program and held meetings with the public, the regulated community, and stakeholders to identify and understand concerns about its permitting program. Community groups that live near hazardous waste facilities are concerned that DTSC is not properly enforcing state and federal law and allowing facilities to operate with an expired permit or have numerous violations of state law and regulation. Additionally, the regulated community is concerned about the length of time it takes DTSC to process a permit, with processing a permit extending years beyond the expiration date of their permit, as well as the costs associated with processing a permit.
- 6) *Legislative Oversight*. Over the last five years, the Legislature has conducted numerous hearings on DTSC's internal controls, its business practices, and its basic statutory obligations. In those hearings, the budget and policy committees have

evaluated the following four main areas: (1) reviewing and monitoring the department's strategic plan and reorganization; (2) auditing cost recovery at the department; (3) providing staffing to improve permit backlogs and business operations; and, (4) improving enforcement at the department.

Numerous statutory changes have been made to clarify and strengthen DTSC's statutes to help DTSC better achieve its mandates, and budget augmentations have been made to give DTSC resources to reduce backlogs and address outstanding programmatic failings. However, many of the underlying concerns about transparency, accountability, and long-term stability of DTSC programs remain.

- 7) *Funding Sources for DTSC.* DTSC's funding comes primarily from HWCA and TSCA. TSCA is a repository for revenues from cost recovery, penalties, interest, and the Environmental Fee. HWCA revenues are derived from fees paid by various hazardous waste generators, transporters, and facilities. They were last amended in statute in 1998 or earlier.
- 8) *Both HWCA and TSCA Have Been Operating With a Structural Deficit.* Expenditures out of HWCA and TSCA have exceeded revenues for many years. HWCA became insolvent in fiscal year 2018-19 and TSCA became insolvent in fiscal year 2019-20. A number of factors contribute to the operating structural deficit in both accounts. They include increasing legislative mandates, an outdated fee structure that no longer corresponds to the proportion of waste generated or disposed, increasing costs relating to the state obligated cost share for National Priority List sites, and a backlog of unresolved response costs worth approximately \$194 million at over 1,600 cleanup sites over a 25-year period.

The Budget Act of 2019 provided HWCA with \$27.5 million in General Fund to backfill the shortfall and maintain existing operations. The Budget Act of 2020 included \$12 million in General Fund for TSCA to backfill the shortfall and maintain existing operations. In the Governor's proposed budget for 2021-22, \$22.5 million in General Fund is proposed to backfill HWCA and \$13 million in General Fund is proposed to backfill TSCA.

- 9) *Workload Analysis Indicates Resource Gaps.* In January 2021, DTSC released a workload analysis that provided information on current staffing, funding, and workload, as well as a discussion of identified resource gaps for high-priority programs and activities. As noted in the report, DTSC's responsibilities have grown significantly since 1991, but the department's staffing levels have remained relatively stagnant. The report states that over time, DTSC's ability to carry out its mission has been compromised by the combination of unfunded additional statutory and regulatory authorities, fiscal constraints, and a static fee structure — Most of the fees that support DTSC's programs were last updated in statute in 1998, yet 92 statutory authorities and mandates have been adopted since that time. Because the existing fee structure was not developed to cover DTSC's current responsibilities and program costs, the department has struggled to deliver services aligned with its statutory duties.
- 10) *Likely Tens of Thousands of Brownfields Across the State.* Common examples of brownfield sites are former dry cleaners, gas stations, and chemical storage facilities. According to a report from DTSC, there are roughly 15,000 known contaminated sites

across California. However, these numbers likely underestimate the number of brownfields in the state given the difficulty in estimating the number of properties that are underutilized as a result of suspected contamination. Some research estimates that this number could be between 150,000 to 200,000 sites. Studies have shown that brownfield sites are disproportionately located in neighborhoods that have lower average incomes and more people of color.

- 11) *Exide*. Exide, a former lead-acid battery recycling company in Vernon, had been operating under an interim hazardous waste facility permit prior to 2013. The areas immediately surrounding the Exide facility were found to be contaminated with dangerously high levels of lead, extending up to 1.7 miles from the facility. In May 2015, the facility was closed. To date, the state has provided over \$251 million General Fund for residential cleanup and other costs associated with Exide.

The Administration has stated that it remains committed to pursuing cost recovery from responsible parties for Exide. The Budget includes one-time funding of \$14 million General Fund, and \$2.5 million ongoing funding from the Lead-Acid Battery Cleanup Fund, for these and future cost recovery efforts. The trailer bill includes \$322.4 million in one-time General Fund for DTSC to meet the state's existing commitment to clean up lead contamination from the remaining 342 properties within 1.7 miles of the former Exide Technologies facility and 2,740 additional properties identified with over 200 parts per million of lead contamination around the facility.

Related/Prior Legislation

SB 42 (Wieckowski) establishes a Board of Environmental Safety within DTSC. This bill is pending in the Assembly.

AB 1 (Garcia) creates the Board of Environmental Safety within the CalEPA to provide policy direction to and oversight of DTSC and raises and recasts existing fees within the Hazardous Waste Control Account (HWCA). This bill is pending before the Senate Environmental Quality Committee.

AB 995 (Garcia, 2020) would have created the Board of Environmental Safety within the CalEPA to provide policy direction to and oversight of DTSC and would have raised and recast existing fees within HWCA. This bill was vetoed by the Governor.

Fiscal Effect: This bill appropriates \$500 million (one-time General Fund), over three years to address brownfields and appropriates \$322.4 million (General Fund), over three years, as a loan for DTSC activities related to the Exide hazardous waste cleanup.

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