

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

Bill Quirk, Chair

AB 732 (Quirk) – As Introduced February 16, 2021

SUBJECT: Department of Toxic Substances Control: Toxic Substances Control Account

SUMMARY: Increases the amount of the Environmental Fee in order to close the structural deficit of the Toxic Substances Account Act (TSCA). This fee increase is intended to provide stable funding for the Safer Consumer Products Program and the Site Mitigation Program under the Department of Toxic Substances Control (DTSC). Specifically, this bill:

- 1) Increases the amount of the Environmental Fee, while maintaining the existing structure of the Fee. The fee is levied on all businesses based upon the number of employees and the increases are as follows:
 - a) Increases the fee for businesses with 50 or more employees but fewer than 75 employees from \$357 per year to \$525 per year;
 - b) Increases the fee for businesses with 75 or more employees but fewer than 100 employees from \$627 per year to \$922 per year;
 - c) Increases the fee for businesses with 100 or more employees but fewer than 250 employees from \$1,244 per year to \$1,831 per year;
 - d) Increases the fee for businesses with 250 or more employees but fewer than 500 employees from \$2,669 per year to \$3,928 per year;
 - e) Increases the fee for businesses with 500 or more employees but fewer than 1,000 employees from \$4,985 per year to \$7,336 per year; and,
 - f) Increases the fee for businesses with 1,000 or more employees from \$16,911 per year to \$24,886 per year.

EXISTING LAW:

- 1) Requires DTSC to adopt regulations to establish a process to identify and prioritize chemicals and chemical ingredients that may be considered chemicals of concern, as specified. (Health & Safety Code (HSC) § 25252)
- 2) Requires DTSC to adopt regulations to establish a process to evaluate chemicals of concern in consumer products and potential alternatives to those chemicals of concern to determine how to best limit exposure or to reduce the level of hazard posed by a chemical of concern, and to establish potential regulatory responses that DTSC may take after the alternatives analysis is completed. Specifies, but does not limit, regulatory responses that DTSC can take, ranging from no action, to a prohibition of the chemical in the product. (HSC § 25253)
- 3) Establishes the Carpenter-Presley-Tanner Hazardous Substance Account Act (HSAA) 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 § 25300 et seq.)

- 4) Requires DTSC to publish and revise, at least annually, a listing of hazardous release sites selected for a response action under the HSAA. (HSC § 25356)

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, "DTSC has been operating under a deficit for a number of years and in the current budget year, the TSCA needs a backfill of \$13 million from the General Fund just to maintain base level funding. The TSCA supports very important programs such as the Safer Consumer Products Program, which looks at chemicals in products, and the Site Mitigation Program, which oversees the cleanup of contaminated sites. The main funding source for TSCA is the Environmental Fee, which can only be raised by a change in statute and hasn't been raised statutorily in over 20 years. AB 732 solves this fiscal deficit by raising the Environmental Fee in an amount to cover the base funding for programs supported by TSCA."

DTSC's three major programs: DTSC is responsible for protecting public health and the environment by overseeing the state's response to releases of hazardous substances and disposal of hazardous waste. DTSC investigates, removes and remediates contamination as part of that mission. DTSC's operations fall under three major program areas:

- Site Mitigation and Restoration Program. This program is responsible for the cleanup and restoration of contaminated sites throughout the state; including legacy landfills (e.g., Stringfellow Acid Pits and the BKK Landfill), the Santa Susana Field Lab, military bases, former industrial properties, orphan sites, federal Superfund sites, and school sites.
- Hazardous Waste Management Program. This program is responsible for regulating the management of hazardous waste. Under the program, DTSC issues permit decisions for proposed new hazardous waste facilities and the approximately 110 existing hazardous waste facilities in California that treat, store, and dispose of hazardous waste. The program's staff conducts inspections and takes enforcement actions to ensure compliance with hazardous waste laws and regulations. This program oversees the hazardous waste generator program. In addition, it provides hazardous waste management-related policy support, regulatory and statutory interpretation, financial assurance, and data management support for internal and external stakeholders. The program also provides emergency response support for hazardous materials-related emergencies throughout California.
- Safer Consumers Products and Workplaces Program. This program is responsible for reducing toxic chemicals in consumer products, creating new business opportunities in the emerging green chemistry industry, and helping consumers and businesses identify what chemicals are in the products they buy. DTSC identifies and prioritizes chemicals of concern in consumer products, evaluates alternatives, and specifies regulatory responses to reduce chemicals of concern in products.

History of the Environmental Fee: The current Environmental Fee structure is the product of a statutorily mandated Fee Reform Task Force created by SB 1222, Calderon (Chapter 638, Statutes of 1995). The Environmental Fee is imposed on an organization, which includes a corporation, limited liability company, limited partnership, limited liability partnership, general partnership, and sole proprietorship. The Environmental Fee is assessed annually and is tiered based upon the number of employees within an organization. Those organizations with less than 50 employees are not subject to the Environmental Fee. The Environmental Fee is adjusted (up or down) annually based upon changes to the Consumer Price Index and DTSC publishes the current fee amount on its website each calendar year. Some fee suggestions from the Task Force were enacted in SB 660, Sher (Chapter 870, Statutes of 1997); however, SB 660 did not authorize DTSC to set or adjust fees to address changing funding needs or varying levels of activity.

Toxic Substances Control Account (TSCA): TSCA is authorized to fund a number of programs; however, the vast majority of funding from TSCA goes to support DTSC's site mitigation program and the Safer Consumer Products Program. TSCA receives approximately 80 percent of its revenue from the Environmental Fee. The remaining 20 percent of TSCA revenues comes from cost recovery revenues, penalties, and interest. The growth of operational costs that exceed Environmental Fee revenue resulted in a structural imbalance in TSCA. According to the Governor's proposed budget for 2021-2022 the current deficit, the amount to maintain current services levels, in TSCA is \$13 million.

Criticism of DTSC: In addition to its fiscal deficiencies, DTSC has been criticized for lack of transparency and ineffective implementation of its statutory mandates. Specific incidents across California have exposed and continue to expose glaring failings in DTSC's implementation of its core programs, as well as its support programs. Such incidences include the mishandling of the hazardous waste facility permitting and enforcement of Exide and the Quemetco battery recycling facilities; delayed site remediation; failed public participation and transparency activities; and, personnel issues. These situations have all led to decreased stakeholder confidence and public trust in DTSC's ability to meet its mandate to protect public health and the environment.

Recent Legislative reform efforts of DTSC: At the end of the legislative session in 2019, Assemblymembers Cristina Garcia, Bloom, and others introduced AB 995, which sought to reform DTSC as well as assess the appropriate fee structure needed to enable a functioning department. To accomplish these goals, AB 995 would have established a Board of Environmental Safety at DTSC and would have created a fee taskforce to evaluate DTSC's funding needs and recommend fees to support its programs. The newly created Board would have been the policy setting body for DTSC, would have decided permit appeals, and would have been the public interface for DTSC. One of the first tasks anticipated for this Board was for it to approve a statewide Hazardous Waste Management Plan. AB 995 would have also restructured and increase fees for DTSC's hazardous waste management program and those fees are deposited into the Hazardous Waste Control Account (HWCA).

AB 995 was passed by the Legislature in August 2020 but was vetoed by the Governor. The veto message cites the lack of fiscal reform in the bill as the reason for the veto. It should be noted that AB 995 did contain fiscal reform for HWCA; however, the bill did not include fiscal reform for TSCA. This year Assemblymember Cristina Garcia has reintroduced the ideas in the bill as AB 1 and she continues discussions with the Administration.

Governor Newsom proposes new DTSC reform package as part of 2021-2022 budget: The Governor's DTSC Reform package contains three major components: Establishing a Board of Environmental Safety (Board); Fee Reform; and, Programmatic Reform. This proposal is a combination of budget change proposals and budget trailer bill language.

The Governor is proposing to create a five-member Board with the members of the Board appointed by the Governor. The Board would provide policy direction to and oversight of DTSC. The Chairperson of the Board would be full-time and the remaining Board members would be half-time. The Board would: set fees and fee rates; decide permit appeals for hazardous waste facilities; provide opportunities for public comment on DTSC's permit and remediation decisions; review and approve the DTSC Director's annual priorities and performance metrics; provide long-term goals for DTSC's programs; and, provide an annual performance review of the DTSC Director. Along with the Board, this proposal establishes an Ombudsperson to receive and evaluate complaints and suggestions regarding any action, program, or policy of DTSC.

The Governor is also proposing a major overhaul of DTSC's fee structure. The proposal is designed to produce sufficient revenue to eliminate the need to provide General Fund revenues to fund 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 eliminates three fees under the HWCA (disposal fee, manifest user fee, and EPA ID fee); restructures the generator fee into a generation and handling fee; establishes a per ton rate for the generation and handling fee; raises and sets a new base rate for the facility fee; and, eliminates all of the exemptions except the exemption for small quantity generators (those that generate less than 5 tons a year). This fee reform proposal also includes changes to the Environmental Fee. The proposal permanently eliminates the fee for businesses with less than 100 employees, freezes the fee for businesses with 100-499 employees (this fee can change if the Board raises the fee in the future); and, more than triples the fee for businesses with 500 or more employees.

The Governor's proposal includes programmatic changes. The proposal establishes a hazardous waste management plan (Plan) to be presented to the Board for its approval. The goal of the Plan is to guide DTSC's hazardous waste policies and regulatory program in the future. Within the Plan would be recommendations to establish hazardous waste reduction goals; update DTSC's pollution prevention program; and, reduce the risk of exposure to communities threatened by releases of hazardous waste. Additionally the Governor's proposal includes changes to strengthen financial assurance requirements for permitted hazardous waste facilities and establishes accountability requirements for DTSC's permitting of renewal applications for hazardous waste facilities.

How does AB 732 compare to the Governor's Budget Proposal: AB 732 simply raises the Environmental Fee using the existing fee structure. The Governor's budget proposal, however, makes changes to the Environmental Fee as well as authorizes a Board of Environmental Safety to raise the Environmental Fee up to an amount double that which is currently proposed in the Governor's budget. The Governor proposes to eliminate the fee for businesses with less than 100 employees, freeze the fee (until the new Board authorizes an increase) for businesses with 100-499 employees and more than triples the fee for businesses with 500 or more employees. This is

an interesting approach as it places the current and future burden of funding TSCA on larger businesses, while AB 732 maintains the existing fee structure which spreads out the fee to a broader base of businesses, those with 50 employees or more.

Looking at AB 1 and AB 732, one could conclude that together these bills contain the same policy and fiscal concepts as contained within the Governor's budget proposal. AB 732 provides funding for two of DTSC's three core programs: Site Mitigation and Safer Consumer Products. These programs deal with California's toxic legacy of contamination as well as look to a future where products are engineered without toxic chemicals in the first place. To the average person funding these important programs would be a "no brainer"; however, the reality the Legislature and Administration face is more complicated by the fact that the funding source for these programs, the Environmental Fee, is a 2/3 vote tax. The alternatives to not raising this tax are to raise another tax, greatly reduce or completely stop work on cleaning up contaminated properties, or look at majority vote mechanisms for programs such as the Safer Consumer Products Program. If these programs are to remain, they need to be funded in some manner.

Arguments in Support: None on file.

Arguments in Opposition: According to the California Association for Health Services at Home (CAHSAH), representing home health, hospice and home care agencies since 1966, "[CAHSAH] has adopted an oppose unless amended position on AB 732 which nearly doubles the annual fee for organizations that use, generate, store, or conduct activities in the state related to hazardous materials. This bill would create a financial burden for many home health and hospice agencies that must transport limited amounts of sharps and other hazardous wound care bandages from the home to a licensed hazardous waste disposal company. Therefore, we are asking that the bill be amended by creating an exemption from this annual fee for home health agencies licensed under Health and Safety Code 1725 and hospice entities licensed under Health and Safety Codes 1745 and 1250 (n)."

Related Legislation:

- 1) AB 1350 (Patterson). Exempts, for three years, businesses with less than 100 employees from the Environmental Fee. This bill is pending action in the Assembly Environmental Safety and Toxic Materials Committee.
- 2) AB 995 (C. Garcia, 2020). Would have created the Board of Environmental Safety (Board) within the California Environmental Protection Agency (Cal/EPA) to provide policy direction to and oversight of the Department of Toxic Substances Control (DTSC). Raises and recasts existing fees within the Hazardous Waste Control Account (HWCA) to fill a projected deficit of approximately eighteen million dollars. This bill was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

California Association for Health Services At Home (oppose unless amended)

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