OFFICE OF ADMINISTRATIVE LAW
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826

DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Ed Benelli
FROM: OAL Front Desk SO
DATE: August 30, 2016
RE: Return of Rulemaking Materials
OAL Matter Number 2015-1214-02
OAL Matter Type Emergency (E)

OAL hereby returns the rulemaking record your agency submitted for review regarding "Annual Fee on Metal Shredding Facilities."

If this is an approved matter, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

(1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
(2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
(3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
(4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption concerning the effective date of the regulation approved in this matter applies, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the agency will include the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's web site after OAL posts the Internet Web site link to the full text of the regulation that is received from the agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Unless an exemption applies, Government Code section 11343 now requires:

1. Section 11343(c)(1): Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.

2. Section 11343(c)(2): Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

NOTE ABOUT EXEMPTIONS. Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; or regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq. regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

ATTORNEY

DUE DATE 12/24/15

8/29/2016 MAIL-BACK

WITHDRAWN

EMERGENCY

MASTER FILE

DTSC

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

2015-1214-02E T22 §69600.1-69600.20

EMERGENCY

ORIGINAL

For use by Secretary of State only

STATE OF CALIFORNIA–OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-		2015-1214-02E

For use by Office of Administrative Law (OAL) only

2015 DEC 14 A 11:38

OFFICE OF ADMINISTRATIVE LAW

WITHDRAWN

NOTICE | REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY	AGENCY FILE NUMBER (If any)
Department of Toxic Substances Control	R-2015-01

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
Annual Fee on Metal Shredding Facilities	Title 22 CCR	Chpt 56, sec 69600.1	November 20, 2015

3. NOTICE TYPE	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
[X] Notice re Proposed Regulatory Action [ ] Other	Ed Benelli	(916) 324-6564	

OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
	[ ] Approved as Submitted [ ] Approved as Modified [ ] Disapproved/ Withdrawn		

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
Annual Fee on Metal Shredding Facilities	none

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	
	ADOPT: Chapter 56, sections 69600.1 through 69600.20
	AMEND: none
TITLE(S): Title 22 CCR	REPEAL: none

3. TYPE OF FILING

- [ ] Regular Rulemaking (Gov. Code §11346)
- [ ] Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- [X] Emergency (Gov. Code, §11346.1(b))
- [ ] Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- [ ] Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- [ ] Emergency Readopt (Gov. Code, §11346.1(h))
- [ ] File & Print
- [X] Other (Specify) Deemed emergency purs. to statute
- [ ] Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- [ ] Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- [ ] Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
- [X] Effective on filing with Secretary of State
- [ ] §100 Changes Without Regulatory Effect
- [ ] Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- [X] Department of Finance (Form STD. 399) (SAM §6660)
- [ ] Fair Political Practices Commission
- [ ] State Fire Marshal
- [ ] Other (Specify)

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Ed Benelli	(916) 324-6564		edward.benelli@dtsc.ca.gov

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE: 12/4/15

TYPED NAME AND TITLE OF SIGNATORY: Barbara A. Lee, Director

For use by Office of Administrative Law (OAL) only

TEXT OF PROPOSED EMERGENCY REGULATIONS

Department of Toxic Substances Control Reference Number: R-2015-01

Office of Administrative Law Emergency Number: 2015-xxxx-xxx

DIVISION 4.5, TITLE 22, CALIFORNIA CODE OF REGULATIONS

CHAPTER 56. Annual Fee for Metal Shredding Facilities

Add sections 69600.1 through 69600.20 to division 4.5 of title 22 of the California Code of Regulations, to read:

Chapter 56. Annual Fee for Metal Shredding Facilities

§ 69600.1. Scope and Purpose.

(a) This chapter establishes an annual fee upon metal shredding facilities, as defined in section 69600.3(a), of this chapter, for the purpose of recovering the Department's costs to implement sections 25150.82 and 25150.84 of chapter 6.5 of division 20 of the Health and Safety Code.

(b) Nothing in this chapter is a limitation on the authority of any other governmental agency to adopt or enforce additional requirements related to metal shredding facilities or to develop any other regulatory program allowed by law.

Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference: Sections 25150.82(b), 25150.84(a), 25150.84(b), and 25150.82(c), Health and Safety Code.

HISTORY

New section filed xx-xx-2015; operative xx-xx-2015 (Register 2015, No. xx)

§ 69600.2. Applicability.

(a) The annual fee requirements apply to metal shredding facilities that meet both of the requirements set forth in subdivisions (1) and (2) below:

(1) are located within the state of California, and

(2) have received one of the following:

(i) Notification from the Department in accordance with section 66260.200(f) that otherwise hazardous waste may be classified and managed as nonhazardous.

(ii) An order issued by the Department under chapters 6.5 or 6.8 of division 20 of the Health and Safety Code that authorizes a metal shredding facility to continue operations pursuant to specified management and operating conditions,

(iii) A judgment issued by a court with jurisdiction in a matter to which the Department and at least one metal shredding facility are parties that authorizes operations pursuant to specified management and operating conditions,

(iv) A permit issued under chapter 6.5 of division 20 of the Health and Safety Code that authorizes metal shredding operations.

Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference: Sections 25150.82(b), 25150.84(a), 25150.84(b), and 25150.82(c), Health and Safety Code.

HISTORY

New section filed xx-xx-2015; operative xx-xx-2015 (Register 2015, No. xx)

§ 69600.3 Definitions.

(a) "Metal Shredding Facility" has the same meaning as defined subsection (b) of section 25150.82 of chapter 6.5 of division 20 of the California Health and Safety Code.

(b) "Annual projected costs" means the Department's reasonable and necessary projected costs during each calendar year to implement sections 25150.82 and 25150.84 of chapter 6.5 of division 20 of the California Health and Safety Code.

Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference: Sections 25150.82(b), 25150.84(a), 25150.84(b), and 25150.82(c), Health and Safety Code.

HISTORY

New section filed xx-xx-2015; operative xx-xx-2015 (Register 2015, No. xx)

§ 69600.4. Assessment of the Annual Flat Fee.

(a) The Department shall assess an annual flat fee for each calendar year that is sufficient to recover the Department's annual projected costs.

(b) The annual flat fee shall be levied equally on each metal shredding facility by dividing the Department's annual projected costs by the total number of metal shredding facilities operating in any portion of the calendar year to which the fee applies. Any surplus or deficit from the preceding calendar year will be subtracted from or added to the Department's annual projected costs for the following calendar year.

(c) The annual flat fee shall be assessed only once each calendar year on each metal shredding facility. A transfer of ownership or operation of assets of a metal shredding facility during a calendar year shall not cause an additional annual flat fee to be assessed if the fee for the same calendar year has been paid by the previous owner or operator.

(d) The Department shall review annually, and revise if necessary, the fee assessed pursuant to this section. The Department shall publish the annual flat fee, including any proposed revision to the annual flat fee, in the California Regulatory Notice Register and accept comments on the proposed fee for fifteen (15) calendar days thereafter. Following the 15-day comment period, the Department shall consider the comments and prepare a response that identifies the comments, the Department's findings, and the Department's final fee decision. The Department will make responses available upon request and will publish the final fee in the California Regulatory Notice Register.

Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference: Sections 25150.82(b), 25150.84(a), 25150.84(b), and 25150.82(c), Health and Safety Code.

HISTORY

New section filed xx-xx-2015; operative xx-xx-2015 (Register 2015, No. xx)

§ 69600.5. Administration of the Annual Flat Fee for Calendar Year 2015

(a) The Department shall invoice each metal shredding facility for the annual flat fee no later than December 31, 2015.

(b) The annual flat fee is due and payable to the Department sixty calendar (60) days after the facility is invoiced, or by such later date as directed by the Department.

(c) Subsections (c) through (h) of section 69600.6 shall apply to this section.

Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference: Section 25150.84(a), Health and Safety Code.

HISTORY

New section filed xx-xx-2015; operative xx-xx-2015 (Register 2015, No. xx)

§ 69600.6. Administration of the Annual Flat Fee for Calendar Years 2016 and 2017

(a) The Department shall invoice each metal shredding facility for the annual flat fee by July 1 of the calendar year to which the fee applies.

(b) The annual flat fee is due and payable to the Department by September 1 of the calendar year to which the fee applies, or on such later date as directed by the Department.

(c) A penalty of ten percent (10%) shall be assessed on any payment that is not received as postmarked by September 1 of each calendar year, or on such later date as notified by the Department.

(d) Beginning on the first day of the calendar month following the due date, simple interest shall accrue monthly on any unpaid fee or portion thereof at the "modified adjusted rate per month, or fraction thereof" as established by the State Board of Equalization pursuant to section 6591.5 of the Revenue and Taxation Code, and shall continue to accrue until the fee is paid in full.

(e) The penalty or interest assessed pursuant to this section may be waived if the Department determines that the failure to make a timely payment was due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. Mere disagreement with the fee assessment shall not be deemed reasonable cause. A person seeking to be relieved of penalty or interest shall submit a written statement to the Department, signed under penalty of perjury, setting forth the facts upon which he or she bases the claim for relief.

(f) If the Department provides a refund because of an erroneous billing, the refund shall be subject to simple interest at the "modified adjusted rate per month, or fraction thereof" as established by the State Board of Equalization pursuant to section 6591.5 of the Revenue and Taxation Code. Except, no refund shall be given and no interest shall accrue where the erroneous billing was due to incorrect information provided by the person seeking the refund.

(g) No refund shall be granted for any fees erroneously collected unless the person who seeks the refund submits written notification of the error to the Department within one year of the date the person is notified of the fee assessment.

(h) A person may dispute the assessment of the annual flat fee by submitting a petition to the Department director. The person must submit the petition in writing within one year of the date the person is notified of the fee assessment. The petition must state the specific

grounds upon which it is founded. If requested, the Department shall hold a conference with the party and provide all reasonable information and an explanation of the charges assessed. If the matter cannot be resolved informally, the director shall designate a hearing officer to decide the petition. The hearing officer shall be in neither a subordinate nor a supervisory or managerial position to any staff involved in making the initial determination of the fee assessment. A hearing shall be conducted in person, by telephone, or by video conference at which all relevant evidence will be admissible. The hearing officer shall prepare a written final decision to approve or deny the petition.

Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference: Section 25150.84(a), Health and Safety Code.

HISTORY

New section filed xx-xx-2015; operative xx-xx-2015 (Register 2015, No. xx)

§ 69600.7. [Reserved]

§ 69600.8. [Reserved]

§ 69600.9. [Reserved]

§ 69600.10. [Reserved]

§ 69600.11. [Reserved]

§ 69600.12. [Reserved]

§ 69600.13. [Reserved]

§ 69600.14. [Reserved]

§ 69600.15. [Reserved]

§ 69600.16. [Reserved]

§ 69600.17. [Reserved]

§ 69600.18. [Reserved]

§ 69600.14. [Reserved]

§ 69600.19. [Reserved]

§ 69600.20. [Reserved]

State of California – California Environmental Protection Agency

Department of Toxic Substances Control

Rulemaking Approval Tracking Sheet

R-2015-01

Type (circle as appropriate): Regular **Emergency** Cert of Compliance

45-Day Notice 15-Day Notice Final Approval

Subject: Emergency Regulations: Annual Fee for Metal Shredding Facilities

Contact: Jackie Buttle Phone Number: (916) 255-3730

Policy Branch Chief

Name: Valetti Lang Signature: Date: 11/5/15

Program Division Chief

Name: Rick Brausch Signature: Date: 11/5/15

Program Deputy Director

Name: Elise Rothschild Signature: Elise Rothschild Date: 11-5-15

OLC

☐ Bypass* (readoption only)

Name: Christopher Cho Signature: Date: 11/5/15

Chief Counsel

Name: Reed Sato Signature: Reed Sato Date: 11/5/15

Public Participation

☐ Bypass*

Name: Jim Marxen Signature: Date: 11-5-15

Budget Office

☐ Bypass*

Name: Sara Benson Signature: Date: 11/5/15

CEQA (OPEA)

Name: Kathie Schievelbein Signature: Date: 11-6-15

Director

Name: Barbara Lee Signature: Date: 11/4/15

Please call Jackie Buttle after you have reviewed/signed off on the regulation so she can send it to the next reviewer.

Rev. 2/15/2012)

DIRECTOR'S BRIEFING
Annual Fee on Metal Shredding Facilities
November 5, 2015

Annual Fee on Metal Shredding Facilities Emergency Regulations

Background: Senate Bill (SB) 1249 (Hill, Chapter 756, Statutes of 2014) authorizes DTSC to develop Alternative Management Standards for the metal shredding industry. DTSC is conducting an evaluation of the industry and its waste management practices to determine if alternative management standards can be developed that will ensure their activities do not harm public health or the environment. SB 1249 authorizes DTSC to establish an annual fee on metal shredding facilities to reimburse its costs to conduct the evaluation. SB 1249 authorizes DTSC to adopt the annual fee regulations as emergency regulations.

What is Being Proposed: The annual fee regulations establish who the fee applies to, how the fee is to be determined, and what the administrative procedures for payments and disputes are. The regulations establish that the fee applies to metal shredders who: 1) hold an historic "f letter", 2) are operating under a Consent Order, 3) have a judgement issued by a court that allows continued operations, or 4) are operating under a permit. This allows all currently-authorized metal shredders to be immediately subject to the regulations, while still allowing for any additional facilities which are not currently authorized to be brought under regulation once they are identified. The Office of Criminal Investigations is currently completing a State-wide verification effort to identify additional metal shredders.

The annual fee will be determined by dividing DTSC's annual costs to conduct the evaluation by the number of authorized metal shredding facilities. For 2015, DTSC's costs are estimated to be $290,000, and six shredders are currently authorized by the historic "f letters." Thus, each facility will pay $48,333. The annual fee regulations establish standard administrative procedures for fee payment and dispute resolution. DTSC will publish its Annual Projected Costs and the number of fee-payers each year, so that industry has ample opportunity to comment on the proposed fees.

Probable Support/Opposition: DTSC has been in regular contact with representatives from the six largest metal shredding facilities, their legal counsel, and the California Chapter of the Institute of Scrap Recycling Industries (ISRI), to brief them on DTSC's evaluation and on the proposed fee regulations. The metal shredding industry, through ISRI, supported the SB 1249 legislation and its provision for DTSC to recover fees. Neither ISRI nor any of their individual members have expressed opposition to DTSC's evaluation or to the proposed fee regulations.

Outreach Efforts: Through periodic discussions with ISRI and other industry stakeholders since the passage of SB 1249, DTSC has received significant input on the proposed rulemaking, and has taken those concerns into consideration in the preparation of these regulations. This emergency rulemaking will follow the statutory requirements for public participation, including the required opportunity for public comment. DTSC will provide the finding of emergency and the proposed text to every

person who has filed a request at least five working days prior to submission of the emergency rulemaking to OAL. After submission of the emergency rulemaking to OAL, interested persons will have five calendar days to submit comments to DTSC and OAL. DTSC will respond to comments from the public and other stakeholders, if warranted, before OAL approves the emergency action and files the regulation with the Secretary of State.

Potential for Litigation: Because the metal shredding industry, through ISRI, supported the SB 1249 legislation and its provision for DTSC to recover fees, and because neither ISRI nor any of their individual members have expressed opposition to DTSC's evaluation or to the proposed fee regulations, no increased litigation is anticipated.

Timetable/ Schedule for Adoption:

a) Public Notice of Projected Annual Fees to be published in the California Regulatory Notice Register this Friday (11/6/2015)
b) Mail-out Regulatory Notice this Friday (11/6/2015)
c) Regulation Notice posted to DTSC Web page this Friday (11/6/2015)
d) Press Release posted to DTSC Web page this Friday (11/6/2015)
e) Regulation Package submitted to OAL after 5 working days (11/13/2015)
f) Public comments accepted for 8 days (11/24/2015)
g) Regulation becomes effective 10 days after submission to OAL, if approved by OAL (11/30/2015)
h) Invoices for 2015 sent to fee-payers no later than December 31, 2015.
i) Fees for 2015 must be paid to DTSC within sixty (60) days

Key Stakeholders:

Margaret Rosegay, Pillsbury Winthrop Shaw Pittman LLP, Representing ISRI
Robert Hoffman, Paul Hastings, LLC, Representing SA Recycling
Sims Metal Management, Oakland, CA ("F letter" holder)
Schnitzer Steel, Redwood City, CA ("F letter" holder)
SA Recycling, Terminal Island, Anaheim, and Bakersfield ("F letter" holders)
Ecology Auto Parts, Colton, CA ("F letter" holder)

Contacts:

Program: Ed Benelli, Hazardous Waste Management Program - (916) 324-6564
Regulations Coordinator: Jackie Buttle, OPEA (916) 255-3730
Budget Office: Sara Benson, Chief - (916) 324-2993
Public Participation: Tim Reese, Information Officer II - (916) 323-3395
Office of Legal Counsel: Christopher Cho, Attorney - (916) 322-4060

Cal/EPA Summary
DTSC: Annual Fee on Metal Shredding Facilities Emergency Regulations

Title: Annual Fee on Metal Shredding Facilities (R-2015-01)

Sections Added: Title 22 of the California Code of Regulations (22 CCR), sections 69600.1 through 69600.20

Reason the Regulation is Needed:
This emergency rulemaking is needed to ensure that the Department of Toxic Substances Control (DTSC) has sufficient funding and resources to thoroughly evaluate metal shredding facilities and their wastes, as required by Senate Bill (SB) 1249 (Hill, Chapter 756, Statutes of 2014). Health and Safety Code section 25150.84 grants DTSC authority to adopt emergency regulations to collect an annual fee from metal shredding facilities at a rate sufficient to reimburse DTSC's costs.

Alternatives Considered:
DTSC has identified three alternatives, and has chosen to adopt the proposed emergency regulation to establish an annual fee on metal shredding facilities. The other alternatives were to: 1) Redirect existing resources to implement the requirements of SB 1249, which would prevent DTSC from performing other high priority work that is necessary to meet its critical mandates and specifically funded commitments, and 2) Maintain the status quo or do nothing, which would that require that DTSC ignore a statutory responsibility, and allow the risks and hazards posed by the metal shredding industry and its waste management practices to continue unabated.

California Environmental Quality Act (CEQA):
The proposed regulation is a project that falls under CEQA purview. However, DTSC has determined that adoption of this regulation will have no significant adverse impacts on the environment. In collaboration with DTSC's Office of Planning and Environmental Analysis (OPEA), DTSC has prepared a CEQA notice of exemption for this regulation.

Authority and Reference:
These additions to 22 CCR sections 69600.1 through 69600.20 are being adopted under the authority of Health and Safety Code sections 25150.82 and 25150.84.

Related Federal, State, or Local Requirements:
The proposed regulation does not duplicate or conflict with existing federal, state or local laws or requirements. DTSC has determined that there will be no fiscal effect of the proposed regulations on local government, and that this regulation does not affect federal funding of state programs.

California Environmental Protection Agency (Cal/EPA) Coordination Issues: None anticipated.

Probable Support/Opposition: DTSC has been a regular contact with representatives of metal shredding facilities, their legal counsel, and the California Chapter of the Institute of Scrap Recycling Industries (ISRI), to brief them on DTSC's evaluation and on the proposed fee regulations. The metal shredding industry, through ISRI, supported the SB 1249 legislation and its provision for DTSC to recover fees. Neither ISRI nor any of their individual members have expressed opposition to DTSC's evaluation or to the proposed fee regulations.

Peer Review Requirements: DTSC has determined that no external scientific peer review is required for this rulemaking.

Outreach Efforts: Through periodic discussions with ISRI and other industry stakeholders since the passage of SB 1249, DTSC has received significant input on the proposed rulemaking, and has taken those concerns into consideration in the preparation of these regualtions. This emergency rulemaking will follow the normal requirements for public participation specified by the Office of Administrative Law (OAL), including the required opportunity for public comment found in the Government Code sections 11346.1(a)(2) and 11349.6(b). DTSC will provide the finding of emergency and the proposed text to every person who has filed a request at least five working days prior to submission of the emergency rulemaking to OAL. After submission of the emergency rulemaking to OAL, interested persons will have five calendar days to submit comments to DTSC and OAL. DTSC will respond to comments from the public and other stakeholders, if warranted, before OAL approves the emergency action and files the regulation with the Secretary of State.

Additionally, the proposed regulations also include a provision for public notification and comment, through publication in the California Regulatory Notice Register (Register), of DTSC's proposed annual fee schedule. Metal shredding facilities subject to the regulation and other interested stakeholders will have fifteen days to comment on the proposed fees, and DTSC will consider the comments, and then publish the final fee decision in the Register. DTSC will ensure public awareness, access, and participation in the process by posting all documents in this rulemaking package on DTSC's web page at: http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm.

Fiscal and Economic Impact: This action will have economic impacts because it imposes a new fee on a small number of private businesses. DTSC will annually estimate its costs based on its anticipated workload, necessary contract costs, and related overhead expenditures. For the 2015 calendar year, the annual costs are projected to be $290,000. DTSC plans to divide the projected annual costs equally among the known and authorized shredding facilities currently operating in the state, resulting in equal flat fees for each. There are currently six known and authorized metal shredding facilities operating in the state. Based on this, the annual fee for each facility

is projected to be $48,333.33 for calendar year 2015. DTSC plans to publish its projected annual costs in the Register early in each calendar year.

Enforcement Mechanism: A dispute resolution process is included in the emergency regulation. Any fee payer disputing DTSC's fee may submit a petition to DTSC's director. DTSC will hold a conference and provide all reasonable information and an explanation of the charges assessed, and designate a hearing officer to decide the petition, if needed. Additional actions to ensure compliance may be undertaken by DTSC's Office of Criminal Investigations and Office of Legal Affairs.

Potential for Litigation: Because the metal shredding industry, through ISRI, supported the SB 1249 legislation and its provision for DTSC to recover fees, and because neither ISRI nor any of their individual members have expressed opposition to DTSC's evaluation or to the proposed fee regulations, no increased litigation is anticipated.

Time Frame and Workload: DTSC anticipates submitting the emergency rulemaking package to OAL in November 2015. Following the public notice and comment period, since there are only 6 identified feepayers, the workload is expected to be minimal.

Contacts:

Program: Ed Benelli, Hazardous Waste Management Program - (916) 324-6564
Budget Office: Sara Benson, Chief - (916) 324-2993
OPEA: Kathie Schievelbein, Chief - (916) 322-6756
CEQA: John Meerscheidt, Senior Environmental Planner - (916) 255-3552
Public Participation: Patrice Bowen, Chief - (916) 322-3800
Office of Legal Counsel: Christopher Cho, Attorney - (916) 322-4060

Department of Toxic Substances Control

Matthew Rodriquez
Secretary for
Environmental Protection

Barbara A. Lee, Director
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806

Edmund G. Brown Jr.
Governor

NOTIFICATION OF PROPOSED EMERGENCY REGULATORY ACTION

Adoption of Annual Fee on Metal Shredding Facilities

Department Reference Number: R-2015-01

The Department of Toxic Substances Control (DTSC) is proposing to adopt emergency regulations to establish an annual fee on metal shredding facilities subject to the requirements of Senate Bill 1249 (Hill, Chapter 756, Statutes of 2014). A "metal shredding facility" is defined by Health and Safety Code (HSC) section 25150.82(b) as an operation that uses a shredding technique to process end-of-life vehicles, appliances, and other forms of scrap metal to facilitate the separation and sorting of ferrous metals, nonferrous metals, and other recyclable materials from non-recyclable materials that are components of the end-of-life vehicles, appliances, and other forms of scrap metal. A metal shredding facility does not include a feeder yard, a metal crusher, or a metal baler, if that facility does not otherwise conduct metal shredding operations.

DTSC is authorized by HSC section 25150.84(a) to collect an annual fee from all metal shredding facilities that are subject to the requirements of the chapter. DTSC is authorized to establish a fee at a rate sufficient to provide for the reasonable and necessary costs of DTSC to implement the chapter, as applicable to metal shredding facilities. DTSC is authorized to update the fee periodically as necessary. DTSC is authorized by HSC section 25150.84(c) to adopt regulations to establish an annual fee as an emergency regulation.

DTSC proposes to add regulations to establish an annual fee in California Code of Regulations, Title 22, Division 4.5, Chapter 56, commencing with section 69600.1. The annual fee will apply equally to each metal shredding facility, and will be calculated by dividing DTSC's annual projected costs by the total number of metal shredding facilities operating in any portion of the calendar year to which the fee applies. The annual projected cost is defined in the emergency regulation as the costs, as determined by DTSC, to implement the necessary activities required in Chapter 6.5, Division 20 of

California Health and Safety Code related to metal shredding facilities. The number of metal shredding facilities operating in the state will be based on information reasonably available to DTSC.

This emergency regulation requires DTSC publish the annual fee in the California Regulatory Notice Register and accept comments for 15 days. During the notice period, DTSC will consider all comments and prepare a response that identifies the comments, DTSC's findings, and the final fee decision. All of DTSC's responses will be made available upon request.

DTSC intends to publish an annual fee schedule each calendar year to reflect DTSC's newly project annual costs and the current number of metal shredding facilities. DTSC will calculate its actual costs in the beginning of the subsequent calendar year and any surplus or deficit determined based on the previous calendar year's annual projected costs will be added to or subtracted from the next annual projected cost. The discrepancies will be noted in published in the California Regulatory Notice Register with the new annual flat fee.

Government Code section 11346.1(a)(2) requires that every person who has filed a request for notice of DTSC's proposed regulations receive this notification of proposed emergency regulatory action (establishment of an annual fee schedule on metal shredding facilities) at least five (5) working days before the proposed emergency action is filed with the Office of Administrative Law (OAL). Upon filing and posting on OAL's Internet Web site, interested persons will have five (5) calendar days to submit comments on the proposed emergency regulations pursuant to Government Code section 11349.6. OAL will have ten (10) calendar days from the date of DTSC's filing to review and make a decision on the proposed emergency rule. If approved, the emergency regulations will become effective upon filling with the Secretary of State.

Attached to this notice are the proposed regulatory text and the Finding of Emergency. These documents will be posted on DTSC's website at the following address: http://www.dtsc.ca.gov/HazardousWaste/MetalShredderPortal.cfm.

If you have any questions regarding this proposed emergency action, please contact the Regulations Coordinator, Benjamin Molin, at (916) 322-4882 or Benjamin.Molin@dtsc.ca.gov.

TITLE 22

EMERGENCY REGULATIONS
ANNUAL FEE FOR METAL SHREDDING FACILITIES

Department Reference Number: R-2015-01
Office of Administrative Law Emergency Number: 2015-XXXX-XXX

FINDING OF EMERGENCY

Health and Safety Code section 25150.84 grants authority to the Department of Toxic Substances Control (DTSC) to adopt regulations to impose a fee to be paid by metal shredding facilities as an emergency, and that the regulations are to be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, and general welfare.

STATEMENT OF FACTS SUPPORTING FINDING OF EMERGENCY

The circumstances necessitating this regulation are deemed to be an emergency pursuant to statute. Specifically, Health and Safety Code section 25150.84(c) states that a regulation adopted pursuant to this subdivision, "is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety, and general welfare...and shall remain in effect for a period of two years or until revised by DTSC, whichever occurs sooner."

AUTHORITY AND REFERENCE

In accordance with Government Code section 11346.5(a)(2) this notice of proposed adoption of a regulation includes the following references to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific. These regulations are being proposed under the following authorities:

Health and Safety Code section 25150.82(b). This subsection defines a "metal shredding facility."

Health and Safety Code section 25150.82(c). This subsection grants DTSC authority to adopt alternative management standards for metal shredding facilities.

Health and Safety Code sections 25150.82(c)(1). This subsection requires DTSC to prepare an analysis of the activities to which the alternative management standards will apply.

Health and Safety Code sections 25150.82(d)(1)-(3). These subsections require DTSC to evaluate the regulatory oversight and hazardous waste management activities of metal shredding facilities.

Health and Safety Code section 25150.84(a). This subsection grants DTSC authority to adopt regulations to collect an annual fee from metal shredding facilities at a rate sufficient to reimburse the department's costs.

Health and Safety Code section 25150.84(c). This subsection grants DTSC authority to adopt the fee regulations as an emergency regulation.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Current State Law

The fee authorized by this emergency regulation will be new upon its enactment and will not replace any other fee system. This regulation will therefore not conflict with, or modify, any other state law.

Current Federal Law

The fee authorized by this emergency regulation will be new upon its enactment and will not replace any other fee system. In addition, according to Health and Safety Code section 25150.84(f), the Department is prohibited from adopting standards that are less stringent than federal hazardous waste law. This regulation will therefore not conflict with, or modify, any federal law.

Objective

The overall objective of this emergency rulemaking is to ensure that the Department is reimbursed for its costs to evaluate metal shredding facilities and their wastes in order to ensure adequate protection of human health and the environment.

Proposed Regulations:

Introduction

This emergency regulation enables DTSC to collect an annual fee from metal shredding facilities at a rate sufficient to cover the costs incurred by DTSC to implement Chapter 6.5 of Division 20 of the Health and Safety Code as applicable to metal shredders.

Additionally, this emergency regulation clarifies which metal shredding facilities are subject to the annual flat fee, how the annual flat fee is to be calculated and communicated, how the annual flat fee is to be collected, and establishes the procedures necessary to administer this fee.

Definitions and Applicability

A metal shredding facility is defined according to the definition given in subsection (b) of section 25150.82 of chapter 6.5 of division 20 of Health and Safety Code, and reads, in part, "...any operation that uses a shredding technique to process end-of-life vehicles, appliances, and other forms of scrap metal..."

The emergency regulation includes provisions that limit the applicability of the annual fee. The annual fee applies to metal shredding facilities that are located within the state of California, and have received one of the following: (1) Notification from the Department in accordance with section 66260.200(f) that otherwise hazardous waste may be classified and managed as nonhazardous, (2) An order issued by the Department under chapters 6.5 or 6.8 of division 20 of the Health and Safety Code that authorizes a metal shredding facility to continue operations pursuant to specified management and operating conditions, (3) A judgment issued by a court with jurisdiction in a matter to which the Department and at least one metal shredding facility are parties that authorizes operations pursuant to specified management and operating conditions, or (4) A permit issued under chapter 6.5 of division 20 of the Health and Safety Code that authorizes metal shredding operations.

Assessment of the Annual Fee

This emergency regulation requires the annual flat fee to apply equally to each metal shredding facility, and to be calculated by dividing DTSC's annual projected costs by the total number of metal shredding facilities operating in any portion of the calendar year to which the fee applies. The annual projected cost is defined in the emergency regulation as the costs incurred by DTSC, as determined by DTSC, to implement sections 25150.82 and 25150.84 of chapter 6.5 of division 20 of the California Health and Safety Code.

This emergency regulation requires DTSC publish the annual fee in the California Regulatory Notice Register and accept comments on the annual fee for 15 days. During the notice period, DTSC will consider all comments and prepare a response that identifies the comments, DTSC's findings, and the final fee decision. All of DTSC's responses will be made available upon request.

DTSC intends to publish an annual fee schedule each calendar year to reflect DTSC's project annual costs and the current number of metal shredding facilities. DTSC will determine its actual costs in the beginning of the subsequent calendar year and any difference between the previous calendar year's actual costs and annual projected costs will be added to or subtracted from the next annual projected costs. Any surpluses or deficits will be noted and published in the California Regulatory Notice Register as part of the new annual fee.

Administration of the Annual Flat Fee

The Department will invoice each metal shredding facility for the annual fee no later than December 31, 2015. For calendar years 2016 and 2017, the emergency regulation requires DTSC to invoice each metal shredding facility by July 1 of that calendar year, and the annual fee is due and payable to DTSC by September 1 of that calendar year. Additionally, the emergency regulation establishes requirements to assess late fees, to provide refunds, and resolve disputes over payment.

STUDIES RELIED ON

DTSC has found that no external documents or studies are necessary for this rulemaking.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking project to be exempt under CEQA. A draft of the Notice of Exemption (NOE) is available for review with the rulemaking file and the NOE will be filed with the State Clearinghouse when the regulations are adopted.

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts

In accordance with Government Code section 11346.5(a)(5), DTSC has made a preliminary determination that adoption of these regulations will create no new mandates on local agencies or school districts.

Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement

In accordance with Government Code section 11346.5(a)(5), DTSC has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4,

commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

Cost or Savings to Any State Agency

In accordance with Government Code section 11346.5(a)(6), DTSC has made a preliminary determination that the proposed regulations will result in a savings to the Department based on the reimbursement of state costs for staffing and other expenditures necessary to implement chapter 6.5, division 20, Health and Safety Code as applicable to metal shredding facilities. Without this reimbursement, DTSC would incur substantial costs associated with the required activities.

Cost or Savings in Federal Funding to the State

In accordance with Government Code section 11346.5(a)(6) this notice of proposed adoption of a regulation includes an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

DTSC has made a preliminary determination that the proposed regulations will have no impact on Federal revenue or costs.

TEXT OF PROPOSED EMERGENCY REGULATIONS

Department of Toxic Substances Control Reference Number: R-2015-01

Office of Administrative Law Emergency Number: 2015-xxxx-xxx

DIVISION 4.5, TITLE 22, CALIFORNIA CODE OF REGULATIONS

CHAPTER 56. Annual Fee for Metal Shredding Facilities

Add sections 69600.1 through 69600.20 to division 4.5 of title 22 of the California Code of Regulations, to read:

Chapter 56. Annual Fee for Metal Shredding Facilities

§ 69600.1. Scope and Purpose.

(a) This chapter establishes an annual fee upon metal shredding facilities, as defined in section 69600.3(a), of this chapter, for the purpose of recovering the Department's costs to implement sections 25150.82 and 25150.84 of chapter 6.5 of division 20 of the Health and Safety Code.

(b) Nothing in this chapter is a limitation on the authority of any other governmental agency to adopt or enforce additional requirements related to metal shredding facilities or to develop any other regulatory program allowed by law.

Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference: Sections 25150.82(b), 25150.84(a), 25150.84(b), and 25150.82(c), Health and Safety Code.

HISTORY

New section filed xx-xx-2015; operative xx-xx-2015 (Register 2015, No. xx)

§ 69600.2. Applicability.

(a) The annual fee requirements apply to metal shredding facilities that meet both of the requirements set forth in subdivisions (1) and (2) below:

(1) are located within the state of California, and

(2) have received one of the following:

(i) Notification from the Department in accordance with section 66260.200(f) that otherwise hazardous waste may be classified and managed as nonhazardous.

(ii) An order issued by the Department under chapters 6.5 or 6.8 of division 20 of the Health and Safety Code that authorizes a metal shredding facility to continue operations pursuant to specified management and operating conditions,

(iii) A judgment issued by a court with jurisdiction in a matter to which the Department and at least one metal shredding facility are parties that authorizes operations pursuant to specified management and operating conditions,

(iv) A permit issued under chapter 6.5 of division 20 of the Health and Safety Code that authorizes metal shredding operations.

Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference: Sections 25150.82(b), 25150.84(a), 25150.84(b), and 25150.82(c), Health and Safety Code.

HISTORY

New section filed xx-xx-2015; operative xx-xx-2015 (Register 2015, No. xx)

§ 69600.3 Definitions.

(a) "Metal Shredding Facility" has the same meaning as defined subsection (b) of section 25150.82 of chapter 6.5 of division 20 of the California Health and Safety Code.

(b) "Annual projected costs" means the Department's reasonable and necessary projected costs during each calendar year to implement sections 25150.82 and 25150.84 of chapter 6.5 of division 20 of the California Health and Safety Code.

Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference: Sections 25150.82(b), 25150.84(a), 25150.84(b), and 25150.82(c), Health and Safety Code.

HISTORY

New section filed xx-xx-2015; operative xx-xx-2015 (Register 2015, No. xx)

§ 69600.4. Assessment of the Annual Flat Fee.

(a) The Department shall assess an annual flat fee for each calendar year that is sufficient to recover the Department's annual projected costs.

(b) The annual flat fee shall be levied equally on each metal shredding facility by dividing the Department's annual projected costs by the total number of metal shredding facilities operating in any portion of the calendar year to which the fee applies. Any surplus or deficit from the preceding calendar year will be subtracted from or added to the Department's annual projected costs for the following calendar year.

(c) The annual flat fee shall be assessed only once each calendar year on each metal shredding facility. A transfer of ownership or operation of assets of a metal shredding facility during a calendar year shall not cause an additional annual flat fee to be assessed if the fee for the same calendar year has been paid by the previous owner or operator.

(d) The Department shall review annually, and revise if necessary, the fee assessed pursuant to this section. The Department shall publish the annual flat fee, including any proposed revision to the annual flat fee, in the California Regulatory Notice Register and accept comments on the proposed fee for fifteen (15) calendar days thereafter. Following the 15-day comment period, the Department shall consider the comments and prepare a response that identifies the comments, the Department's findings, and the Department's final fee decision. The Department will make responses available upon request and will publish the final fee in the California Regulatory Notice Register.

Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference: Sections 25150.82(b), 25150.84(a), 25150.84(b), and 25150.82(c), Health and Safety Code.

HISTORY

New section filed xx-xx-2015; operative xx-xx-2015 (Register 2015, No. xx)

§ 69600.5. Administration of the Annual Flat Fee for Calendar Year 2015

(a) The Department shall invoice each metal shredding facility for the annual flat fee no later than December 31, 2015.

(b) The annual flat fee is due and payable to the Department sixty calendar (60) days after the facility is invoiced, or by such later date as directed by the Department.

(c) Subsections (c) through (h) of section 69600.6 shall apply to this section.

Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference: Section 25150.84(a), Health and Safety Code.

HISTORY

New section filed xx-xx-2015; operative xx-xx-2015 (Register 2015, No. xx)

§ 69600.6. Administration of the Annual Flat Fee for Calendar Years 2016 and 2017

(a) The Department shall invoice each metal shredding facility for the annual flat fee by July 1 of the calendar year to which the fee applies.

(b) The annual flat fee is due and payable to the Department by September 1 of the calendar year to which the fee applies, or on such later date as directed by the Department.

(c) A penalty of ten percent (10%) shall be assessed on any payment that is not received as postmarked by September 1 of each calendar year, or on such later date as notified by the Department.

(d) Beginning on the first day of the calendar month following the due date, simple interest shall accrue monthly on any unpaid fee or portion thereof at the "modified adjusted rate per month, or fraction thereof" as established by the State Board of Equalization pursuant to section 6591.5 of the Revenue and Taxation Code, and shall continue to accrue until the fee is paid in full.

(e) The penalty or interest assessed pursuant to this section may be waived if the Department determines that the failure to make a timely payment was due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. Mere disagreement with the fee assessment shall not be deemed reasonable cause. A person seeking to be relieved of penalty or interest shall submit a written statement to the Department, signed under penalty of perjury, setting forth the facts upon which he or she bases the claim for relief.

(f) If the Department provides a refund because of an erroneous billing, the refund shall be subject to simple interest at the "modified adjusted rate per month, or fraction thereof" as established by the State Board of Equalization pursuant to section 6591.5 of the Revenue and Taxation Code. Except, no refund shall be given and no interest shall accrue where the erroneous billing was due to incorrect information provided by the person seeking the refund.

(g) No refund shall be granted for any fees erroneously collected unless the person who seeks the refund submits written notification of the error to the Department within one year of the date the person is notified of the fee assessment.

(h) A person may dispute the assessment of the annual flat fee by submitting a petition to the Department director. The person must submit the petition in writing within one year of the date the person is notified of the fee assessment. The petition must state the specific

grounds upon which it is founded. If requested, the Department shall hold a conference with the party and provide all reasonable information and an explanation of the charges assessed. If the matter cannot be resolved informally, the director shall designate a hearing officer to decide the petition. The hearing officer shall be in neither a subordinate nor a supervisory or managerial position to any staff involved in making the initial determination of the fee assessment. A hearing shall be conducted in person, by telephone, or by video conference at which all relevant evidence will be admissible. The hearing officer shall prepare a written final decision to approve or deny the petition.

Note: Authority cited: Sections 25150.82 and 25150.84, Health and Safety Code. Reference: Section 25150.84(a), Health and Safety Code.

HISTORY

New section filed xx-xx-2015; operative xx-xx-2015 (Register 2015, No. xx)

§ 69600.7. [Reserved]

§ 69600.8. [Reserved]

§ 69600.9. [Reserved]

§ 69600.10. [Reserved]

§ 69600.11. [Reserved]

§ 69600.12. [Reserved]

§ 69600.13. [Reserved]

§ 69600.14. [Reserved]

§ 69600.15. [Reserved]

§ 69600.16. [Reserved]

§ 69600.17. [Reserved]

§ 69600.18. [Reserved]

§ 69600.14. [Reserved]

§ 69600.19. [Reserved]

§ 69600.20. [Reserved]

CALIFORNIA ENVIRONMENTAL QUALITY ACT
NOTICE OF EXEMPTION

To: Office of Planning and Research
State Clearinghouse
P.O. Box 3044, 1400 Tenth Street, Room 212
Sacramento, CA 95812-3044

From: Department of Toxic Substances Control
Hazardous Waste Management Program
P.O. Box 806,1001 I Street, 11th Floor
Sacramento, CA 95812-0806

Project Title: Annual Fee on Metal Shredding Facilities

Project Location: Statewide

County: All

Project Description:
This project is a rulemaking to adopt emergency regulations that will allow Department of Toxic Substances Control (DTSC) to collect a fee from all metal shredding facilities. The emergency regulations will allow DTSC to recover the costs it incurs to evaluate the metal shredding industry as required by Health and Safety Code section 25150.82.

This rulemaking will allow DTSC to assess a fee equally among metal shredding facilities that are subject to Health and Safety Code section 25150.82. DTSC has so far identified six authorized metal shredding facilities to which the fee regulations will apply and that will be part of the evaluation. Other facilities, currently unknown to DTSC, may be subject to the fee if they are identified during the evaluation.

This rulemaking will also include a payment formula to calculate fees, payment due dates and late fees, and appeal procedures. DTSC will administer and collect all fees associated with this rulemaking. The fee amount will be determined based on DTSC's annual projected expenditures divided by the number of known metal shredding facilities that meet the requirements described in the regulation, and each facility will be invoiced annually.

Background
On January 1, 2015, Senate Bill (SB) 1249 (Hill, Chapter 756, Statutes of 2014) became law, which requires DTSC to thoroughly evaluate metal shredding facilities and the metal shredder waste they generate to ensure these activities do not harm public health or the environment. Based on the findings from the evaluation, DTSC will determine if management requirements can be developed specifically for metal shredding activities and waste as an alternative to full hazardous waste management requirements while still protecting human health and the environment.

SB 1249 authorizes DTSC to adopt regulations to assess fees and provides DTSC authorization to adopt its regulations as emergency regulations.

Project Activities: To implement SB 1249, DTSC is working to adopt emergency regulations to establish an annual fee on metal shredding facilities.

Name of Public Agency Approving Project: Department of Toxic Substances Control

Name of Person or Agency Carrying Out Project: Department of Toxic Substances Control

Exemption Status: (*check one*)

☐ Ministerial [PRC, Sec. 21080(b)(1); CCR, Sec. 15268]
☐ Declared Emergency [PRC, Sec. 21080(b)(3); CCR, Sec.15269(a)]
☐ Emergency Project [PRC, Sec. 21080(b)(4); CCR, Sec.15269(b)(c)]
☐ Categorical Exemption: [State type and section number]
☐ Statutory Exemptions: [State code section number]
☒ General Rule [CCR, Sec. 15061(b)(3)]

Exemption Title: With Certainty, No Possibility of a Significant Environmental Effect

Reasons Why Project is Exempt:

This project will not result in a change in any of the physical conditions within the areas affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. Therefore, in

accordance with section 15061(b)(3) of Title 14 of the California Code of Regulations, DTSC has determined with certainty that there is not a possibility that the activities in question will result in a significant effect.

Evidence to support the above reasons is documented in the project file record, available at:

Department of Toxic Substances Control
Hazardous Waste Management Program
1001 "I" Street
Sacramento, CA 95814

Edward Benelli	Hazardous Substances Engineer	(916) 324-6564
Project Manager Name	Project Manager Title	Phone #
		12/7/15
Branch Chief Signature		Date
Rick Brausch	CEA Division Chief	916 327-1186
Branch Chief Name	Branch Chief Title	Phone #

TO BE COMPLETED BY OPR ONLY

Date Received For Filing and Posting at OPR:

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT (REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME	CONTACT PERSON	EMAIL ADDRESS	TELEPHONE NUMBER
Toxic Substances Control	Ed Benelli	edward.benelli@dtsc.ca.gov	916-324-6564

DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400	NOTICE FILE NUMBER
Emergency Regulations to Establish an Annual Fee for Metal Shredding Facilities	Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- ☐ a. Impacts business and/or employees
- ☐ b. Impacts small businesses
- ☐ c. Impacts jobs or occupations
- ☐ d. Impacts California competitiveness
- ☐ e. Imposes reporting requirements
- ☐ f. Imposes prescriptive instead of performance
- ☐ g. Impacts individuals
- ☐ h. None of the above (Explain below): _____

If any box in Items 1 a through g is checked, complete this Economic Impact Statement.
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.

2. The _____ (Agency/Department) estimates that the economic impact of this regulation (which includes the fiscal impact) is:

- ☐ Below $10 million
- ☐ Between $10 and $25 million
- ☐ Between $25 and $50 million
- ☐ Over $50 million *[If the economic impact is over $50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? ☐ YES ☐ NO

If YES, explain briefly: _____

ECONOMIC IMPACT STATEMENT (CONTINUED)

B. ESTIMATED COSTS *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? $ _____

   a. Initial costs for a small business: $ _____ Annual ongoing costs: $ _____ Years: _____

   b. Initial costs for a typical business: $ _____ Annual ongoing costs: $ _____ Years: _____

   c. Initial costs for an individual: $ _____ Annual ongoing costs: $ _____ Years: _____

   d. Describe other economic costs that may occur: _____

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* $ _____

4. Will this regulation directly impact housing costs? ☐ YES ☐ NO

   If YES, enter the annual dollar cost per housing unit: $ _____

   Number of units: _____

5. Are there comparable Federal regulations? ☐ YES ☐ NO

   Explain the need for State regulation given the existence or absence of Federal regulations: _____

   Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: $ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____

2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

   Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? $ _____

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: $ _____ Cost: $ _____

Alternative 1: Benefit: $ _____ Cost: $ _____

Alternative 2: Benefit: $ _____ Cost: $ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ YES ☐ NO

Explain: _____

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises **exceed $10 million**? ☐ YES ☐ NO

If YES, complete E2. and E3
If NO, skip to E4

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost $ _____ Cost-effectiveness ratio: $ _____

Alternative 1: Total Cost $ _____ Cost-effectiveness ratio: $ _____

Alternative 2: Total Cost $ _____ Cost-effectiveness ratio: $ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding $50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through12 months after the major regulation is estimated to be fully implemented?

☐ YES ☐ NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)
STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

☐ 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate) (Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

$ _____

☐ a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

☐ b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

☐ 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate) (Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

☐ a. Implements the Federal mandate contained in _____

☐ b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

☐ d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

☐ e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

☐ f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

☐ g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

☐ 3. Annual Savings. (approximate)

$ _____

☐ 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

☒ 5. No fiscal impact exists. This regulation does not affect any local entity or program.

☐ 6. Other. Explain _____

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT (REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)

B. FISCAL EFFECT ON STATE GOVERNMENT *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

☒ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

$ 18,000

It is anticipated that State agencies will:

☒ a. Absorb these additional costs within their existing budgets and resources.

☐ b. Increase the currently authorized budget level for the _____ Fiscal Year

☐ 2. Savings in the current State Fiscal Year. (Approximate)

$ _____

☐ 3. No fiscal impact exists. This regulation does not affect any State agency or program.

☒ 4. Other. Explain see attachment

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

$ _____

☐ 2. Savings in the current State Fiscal Year. (Approximate)

$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

☐ 4. Other. Explain _____

FISCAL OFFICER SIGNATURE	DATE
Tara Larson	11/9/15

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY	DATE
S. Brown	12/3/15

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER	DATE

Attachment

Economic and Fiscal Impact Analysis for Emergency Regulations to Establish an Annual Fee on Metal Shredding Facilities

Department of Toxic Substances Control Reference Number R-2015-01

B. FISCAL EFFECT ON STATE GOVERNMENT
Question 4. Explanation:

The only state agency anticipated to incur costs as a result of these regulations is DTSC, which will be the agency implementing the regulations. DTSC must expend resources to prepare its projected annual costs, post a notice in the California Regulatory Notice Register, identify and tally its actual annual costs, prepare and send invoices, and respond to any inquiries or disputes from metal shredding facilities that will be required to pay the fee being administered through these regulations. Although DTSC will incur these costs (estimated to be approximately $18,000 per year), DTSC is authorized by statute to recover these costs, and plans to include these costs in both the projected annual costs as well as the actual annual costs that are invoiced each year.

CalEPA ACTION REQUEST (CARS)

CARS Assignment ID:	7936

Contact Name	Kim Smith		**Phone**	916-322-2198
Author Name	Jackie Buttle		**BDO**	DTSC
Subject	Emergency Regs: Annual Fee for Metal Shredding Facilities			
Date Sent to CalEPA	11/9/2015			
Deadline for Approval	**11/23/2015**	**Firm Deadline?**	Yes ☐ No ☐	*If needed, explain concerns about the deadline in the accompanying memorandum.*
Summary:				

To be completed by CalEPA

Order	Reviewer	Date Received	Date Approved	Initials
1	Grant Cope	11-9-15		
2	Alice Busching Reynolds			
3	Eric Jarvis			
4	Gordon Burns			
5	Matt Rodriquez			

CalEPA #:	20151109-0001	**Governor's Office #:**	

Reviewer Comments (*initial and date each note*):

staple this cover sheet to a red folder if the deadline is under 14 days; otherwise, staple it to a blue folder.

CONFIRMATION STATEMENT
PURSUANT TO HEALTH AND SAFETY CODE SECTION 25150(f)

I hereby certify that the Department of Toxic Substances Control complied with the provisions of Health and Safety Code section 25150(f) regarding sending the notification of specified interested agencies prior to the adopted change to the regulation.

12/14/15

Jackie Buttle
Regulations Coordinator

Date

CONFIRMATION STATEMENT OF MAILING
OF FIVE-DAY EMERGENCY NOTICE
(Title 1, CCR section 50(a)(5)(A))

The Department of Toxic Substances Control has complied with the provisions of Government Code section 11346.1(a)(2) by sending the notice of the proposed emergency action to every person who has filed a request for notice of regulatory action at least five working days before submitting the emergency regulation to the Office of Administrative Law.

12/14/15

Jackie Buttle Date
Regulations Coordinator

State of California
Office of Administrative Law

In re:
Department of Toxic Substances Control

Regulatory Action:

Title 22, California Code of Regulations

Adopt sections: **69600.1, 69600.2, 69600.3, 69600.4, 69600.5, 69600.6, 69600.7, 69600.8, 69600.9, 69600.10, 69600.11, 69600.12, 69600.13, 69600.14, 69600.15, 69600.16, 69600.17, 69600.18, 69600.19, 69600.20**

Amend sections:
Repeal sections:

NOTICE OF WITHDRAWAL

Government Code Section 11349.3(c)

OAL Matter Number: 2015-1214-02

OAL Matter Type: Emergency (E)

This notice confirms that your proposed regulatory action regarding Annual Fee on Metal Shredding Facilities was withdrawn from OAL review pursuant to Government Code section 11349.3(c). We will retain the rulemaking record you submitted in the event that you resubmit this regulatory action.

Please contact me at (916) 323-6805 or Peggy.gibson@oal.ca.gov, or the OAL Reference Attorney at (916) 323-6815, if you have any questions about the resubmittal process. You may request the return of your rulemaking record by contacting the OAL Front Desk at (916) 323-6225.

Date: December 23, 2015

Peggy J. Gibson
Peggy J. Gibson
Senior Attorney

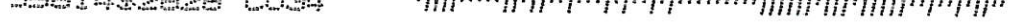
For: DEBRA M. CORNEZ
Director

Original: Barbara A. Lee
Copy: Ed Benelli

OFFICE OF ADMINISTRATIVE LAW
300 CAPITOL MALL, SUITE 1250
SACRAMENTO, CALIFORNIA 95814

Ed Benelli
Department of Toxic Substances
Control
1001 I Street
Sacramento 95812-0806

DEC 2 3 2015



State of California
Office of Administrative Law

In re:
Department of Toxic Substances Control

Regulatory Action:

Title 22, California Code of Regulations

Adopt sections: **69600.1, 69600.2, 69600.3, 69600.4, 69600.5, 69600.6, 69600.7, 69600.8, 69600.9, 69600.10, 69600.11, 69600.12, 69600.13, 69600.14, 69600.15, 69600.16, 69600.17, 69600.18, 69600.19, 69600.20**

Amend sections:
Repeal sections:

NOTICE OF WITHDRAWAL

Government Code Section 11349.3(c)

OAL Matter Number: 2015-1214-02

OAL Matter Type: Emergency (E)

This notice confirms that your proposed regulatory action regarding Annual Fee on Metal Shredding Facilities was withdrawn from OAL review pursuant to Government Code section 11349.3(c). We will retain the rulemaking record you submitted in the event that you resubmit this regulatory action.

Please contact me at (916) 323-6805 or Peggy.gibson@oal.ca.gov, or the OAL Reference Attorney at (916) 323-6815, if you have any questions about the resubmittal process. You may request the return of your rulemaking record by contacting the OAL Front Desk at (916) 323-6225.

Date: December 23, 2015

Peggy J. Gibson
Peggy J. Gibson
Senior Attorney

For: DEBRA M. CORNEZ
Director

Original: Barbara A. Lee
Copy: Ed Benelli

LEGAL OFFICE
DEPT OF TOXIC SUBSTANCES CONTROL
JAN 07 2016
RECEIVED

DIRECTOR'S OFFICE
DEPT OF TOXIC SUBSTANCES CONTROL
DEC 29 2015
RECEIVED

OFFICE OF ADMINISTRATIVE LAW
300 CAPITOL MALL, SUITE 1250
SACRAMENTO, CALIFORNIA 95814

HASLER
017H15524251
$0.48 5
12/23/2015
Mailed From 95814
US POSTAGE

Barbara A. Lee, Director
Department of Toxic Substances
Control
1001 I Street
Sacramento 95812-0806

95814 $2828 C034

Department of Toxic Substances
Hazardous Waste Management Program

Attn: Mr. Edward Benelli

The proposed annual flat fee on metal shredding facilities is long overdue - a quarter century late to be more precise.

It is truly unfortunate that the metal shredder operators cannot be invoiced to recoup expenditures going back to the late 1980s. The taxpayer has had to subsidize the required monitoring of this lucrative private industry for far too long.

Additionally, CalRecycle should impose waste fees for the hundreds of thousands of tons of treated auto shredder residue disguised as a recyclable waste and benignly classified as "alternative daily cover."

Alice M. Sterling
436 Sunbonnet Street
Simi Valley, CA 93065

Benelli, Edward@DTSC

From: Alice Sterling <alicesterling@earthlink.net>
Sent: Thursday, November 19, 2015 2:58 PM
To: Benelli, Edward@DTSC
Subject: Projected Annual Fee on Metal Shredding Facilities

Department of Toxic Substances
Hazardous Waste Management Program

Attn: Mr. Edward Benelli

The proposed annual flat fee on metal shredding facilities is long overdue - a quarter century late to be more precise.

It is truly unfortunate that the metal shredder operators cannot be invoiced to recoup expenditures going back to the late 1980s. The taxpayer has had to subsidize the required monitoring of this lucrative private industry for far too long.

Additionally, CalRecycle should impose waste fees for the hundreds of thousands of tons of treated auto shredder residue disguised as a recyclable waste and benignly classified as "alternative daily cover."

Alice M. Sterling
436 Sunbonnet Street
Simi Valley, CA 93065