

Proposed Regulations: Environmental Fee R-2006-03

Adopt chapter 19 of division 4.5, title 22, California Code of Regulations:

Chapter 19. Fees

Adopt section 69269.1 of the California Code of Regulations, title 22, division 4.5, chapter 19 to read as follows:

§69269.1. Environmental Fee

The department finds that every business in California with fifty or more employees uses, generates, stores, or conducts activities in this state related to hazardous materials, as defined in section 25501 of the Health and Safety Code and in this section.

(a) Definitions: When used in Health and Safety Code section 25205.6, or in this chapter, the following terms have the meanings given below.

(1) “Employee” means any person who is an employee within the meaning of chapter 3 (commencing with section 601) of part 1 of division 1 of the Unemployment Insurance Code. A person is the employee of the employing unit that lawfully reports him or her as an employee to the Employment Development Department, except as expressly provided otherwise by this section or in Health and Safety Code section 25205.6. If two or more business enterprises are united by common ownership or management, or if one enterprise is a subsidiary of another, a person shall be deemed to be the employee only of the enterprise for which he or she most directly provides services.

(2) “Environmental fee” means the charge imposed pursuant to Health and Safety Code section 25205.6.

(3) “Hazardous material” means any material, whether a product, a substance, or a waste, that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. A material has been shown to pose a significant hazard if the material is included on any list identified in subsection (b). A hazardous material includes, but is not limited to, a product or piece of equipment that contains a component or ingredient that is a hazardous material, or requires the use of a fuel that is a hazardous material.

(4) To “use hazardous materials” and to “conduct activities related to hazardous materials” mean any use or handling, in any amount or to any degree, of one or

more substances or wastes that are included on any list identified in subsection (b), if that use or handling is related in any way to the operation or maintenance of the organization.

(b) The following references identify materials that pose a significant present or potential hazard to human health or safety, or to the environment, if released into the workplace or the environment:

- (1) Appendix B of chapter 1 of title 10 of the Code of Federal Regulations.
- (2) Subdivision (b) of section 6382 of the Labor Code.
- (3) Chapter 11 (commencing with §66261.1) of title 22 of the Code of California Regulations.
- (4) Parts 172 and 173 of title 49 of the Code of Federal Regulations.
- (5) Part 261 of title 40 of the Code of Federal Regulations.
- (6) Sections 66261.9, 66261.30 through 66261.33, and 66261.100 through 66261.126 of title 22 of the Code of California Regulations
- (7) Sections 1317(a) and 1321(b)(2)(A) of title 33 of the United States Code.
- (8) Section 102 of title 42 of the United States Code.
- (9) Section 6921 of title 42 of the United States Code, unless otherwise provided by Act of Congress.

In addition, a material is hazardous if the manufacturer or producer is required to prepare a material safety data sheet (MSDS) for the substance or product pursuant to chapter 2.5 (commencing with § 6360) of part 1 of division 5 of the Labor Code, or pursuant to any applicable federal law or regulation.

(c) The department shall compile a list of industry types, either by standard industrial classification (SIC) code or North American Industry Classification System (NAICS) Code, that are subject to the environmental fee. The department shall include a code in the compilation if it determines that it is probable that the industry, in order to function at a level requiring fifty or more employees, would, in the normal course of doing business, generate, store, use, or conduct activities that involve one or more hazardous materials at one or more times during a year. The department shall take into account the normal usage of consumer or business products that are in common distribution and contain hazardous materials, and the list shall include, but not be limited to, any industry type that uses or conducts activities involving such consumer or business products. In addition to any other relevant indicators, the department may also take into account one or more databases maintained by, or based on records maintained by, a government agency, if that database indicates hazardous material usage by industry type. Codes shall normally be listed by two digits, except that the department may break codes down by additional digits if it determines that, for one or more industry sub-categories, the determination should differ from the two-digit code, or if a sub-category has been exempted from the environmental fee by law.

(d) The Department shall submit the list of industry types to the Board of Equalization by November 1 on an annual basis, and in doing so shall ensure that the list continues to meet the requirements of subsection (c). The codes that are on the most recently submitted list shall be deemed to be correct and shall not be superseded until the department submits a revised list to the Board of Equalization. Pursuant to the criteria established by subsection (c), all codes pertain to industry types that generate, store, use, or conduct activities related to hazardous materials, with the exception of the code that applies to Private Households. The code for Residential Care is excluded from the list in accordance with subdivision (h) of section 25205.6 of the Health and Safety Code.

NOTE: Authority cited: Sections 25205.6 and 58012, Health and Safety Code.
Reference: Sections 25205.6 and 25501, Health and Safety Code.