

**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
1001 I St. Sacramento, CA 95814

Project Title:

Amending Section 66272.62, Determining the Initial Penalty for Each Violation.

Project Location:

Statewide.

County:

This rulemaking affects all counties in California.

Project Description:

Existing law and regulations permit DTSC or an authorized agency, known as a certified unified program agency, to implement and enforce the Hazardous Waste Control Law. (HWCL; Health & Saf. Code, §25100 et seq.) These laws and regulations allow DTSC and the certified unified program agencies to perform inspections of hazardous waste facilities and hazardous waste generators. Inspections may result in administrative or civil penalties for certain violations of any permit, rule, regulation, standard, or requirement issued or adopted pursuant to the laws regulating hazardous waste and hazardous substances. The proposed amendment to a regulation would eliminate an inconsistency between the existing regulation and recently amended statute and would make the existing regulation consistent with federal law and federal regulations.

Background:

On October 5, 2017, Governor Edmund G. Brown, Jr. signed Assembly Bill (AB) 245. Effective January 1, 2018, AB 245 amended Health and Safety Code sections 25188, 25189, and 25189.2. The amendments made by AB 245 increase the maximum administrative and civil penalty for hazardous waste violations in California from \$25,000 to \$70,000 per violation per day of violation.

Project Activities:

In determining the initial penalty for each violation, DTSC considers the potential harm and the extent of deviation from hazardous waste management requirements. (Cal. Code Regs., tit.22, § 66272.62.) Further, DTSC is required to use a matrix to select an initial penalty amount from the range provided in the matrix that corresponds to the appropriate extent of deviation and potential harm. (Id. at subd. (d).) Consistent with statutory authorities prior to the enactment of AB 245, the matrix provides that where a violation's extent of deviation and potential for harm is "major" the appropriate initial penalty is \$25,000. The enactment of AB 245 increased the maximum amount of penalty in statute from \$25,000 to \$70,000, a 280 percent increase to administrative and civil penalties. The penalty matrix in the regulation (Cal. Code Regs., tit. 22, § 66272.62) is now inconsistent with the statutory changes made by AB 245. To make the regulation consistent with statute, DTSC proposes to increase all the penalty amounts in the penalty matrix by 280 percent to match the increase in the amended statute.

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:
 No Possibility that the activity in question may result in a significant environmental effect.

Reasons Why Project is Exempt:
 The proposed regulation would not result in a change in land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. The proposed regulation is covered by the general rule that the California Environmental Quality Act applies only to projects which have the potential for causing a significant effect on the environment. DTSC finds with certainty that there is no possibility that the proposed regulation would have a significant effect on the environment.

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 Division Chief Signature	<u>12/5/2018</u> Date
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<u>Keith Kihara</u> Division Chief Name	<u>Enforcement and Emergency Response Chief</u> Division Chief Title	<u>(916) 322-8521</u> Phone #
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