

FINAL STATEMENT OF REASONS
Determining the Initial Penalty for Each Violation
APRIL 2019

Department of Toxic Substances Control Reference Number: R-2018-01
OAL Reference Number: Z-2019-0129-06

UPDATE OF INITIAL STATEMENT OF REASONS

As authorized by Government Code section 11346.9, subsection (d), the Department of Toxic Substances Control (DTSC) incorporates by reference the Initial Statement of Reasons prepared for this rulemaking.

This regulation was noticed one time for public review and comment.

45-day Public Review and Comment Period:

The public notice and comment period for this rulemaking proposal began on February 8, 2019 and ended on March 25, 2019. The public hearings on the proposed regulations were held on March 29, 2019.

The regulatory text, first proposed in February of 2019, has not been changed.

FISCAL IMPACT ESTIMATES

**COST OR SAVINGS TO STATE, LOCAL AGENCIES, OR SCHOOL DISTRICTS
SUBJECT TO REIMBURSEMENT**

Health and Safety Code section 25187, subdivision (j)(1) and (2) provide that all administrative penalties collected from an action brought by DTSC shall be placed in separate DTSC subaccounts for expenditure by DTSC upon appropriation by the Legislature. As previously indicated in the Economic Impact Statement and based on assumptions from prior years, DTSC anticipates the increased penalty amount may result in a 2.8 factor increase in the amount of total penalties DTSC collects. The projected annual increase in settled administrative actions is calculated as approximately \$1,643,518.08 and \$336,085.14 annually for the State and unified program agencies (local governments), respectively.

However, due to the increased penalty amount, DTSC anticipates that there may be an increase in litigation costs for businesses contesting the increased penalty which would offset an increase in collected penalties. An increase in litigation may result in additional costs to DTSC defending any increased litigation due to the increased penalty.

Health and Safety Code section 25187, subdivision (k) provides that all administrative penalties collected from an action brought by a unified program agency, or its participating agencies such as a local health officer or local public officer, shall be deposited into a special account that shall be expended to fund enforcement activities of the unified program agency. As previously indicated in the Economic Impact Statement

and based on assumptions from prior years, DTSC anticipates the increased penalty amount may result in a 2.8 factor increase in the total penalties a unified program agency collects. The projected annual increase in penalties based on the regulation amendment is \$336,085.14.

However, due to the increased penalty amount, DTSC anticipates that there may be an increase in litigation costs for businesses contesting the increased penalty which would offset an increase in collected penalties. An increase in litigation may result in additional costs to local agencies to defend any increased litigation due to the increased penalty.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DTSC determined that the proposed changes to this regulation would 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.

NON-DISCRETIONARY COSTS OR SAVINGS TO LOCAL AGENCIES

DTSC has determined that the proposed regulations would not impose any non-discretionary costs or savings to local agencies.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

DTSC has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed. No alternative would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally as effective in implementing the statutory policy. DTSC made this determination because the proposed regulation removes any uncertainty between private persons, the regulated community, and regulatory agencies that administer the HWCL due to the prior inconsistency between statute and regulations. DTSC believes the proposed regulation is reasonable in providing a consistent and transparent approach to the assessment of administrative penalties. Finally, failing to adopt the proposed regulation would be inconsistent with DTSC's obligation, as an authorized state, to adopt regulations to maintain authorization that conforms to RCRA.

INCORPORATION BY REFERENCE

There are no documents or forms incorporated by reference.

SUMMARY AND RESPONSE TO COMMENTS

DTSC received no comments from the public.

REFERENCE

This regulation implements, interprets, or makes specific the following statutes:

- Health and Safety Code sections 25187, 25188, 25189, and 25189.2.

AUTHORITY

This regulation is being adopted under the following authorities:

- Health and Safety Code sections 25150 and 58012.

EFFECT ON SMALL BUSINESSES

Government Code section 11346.3 defines a small business as any business that employs fewer than 100 employees. According to the 2016 labor market information by the California Employment Development Department (the most current full year of data available), 98.3 percent of all businesses in California employ less than 100 employees. DTSC does not have information that indicates whether these data apply to businesses impacted by the proposed regulation. Therefore, DTSC estimates that 98.3 percent of the businesses impacted by the proposed regulation are small businesses.