

# **Economic and Fiscal Impact Analysis Attachment to STD 399**

## **Generation and Handling Fee Requirements**

### **Department of Toxic Substances Control Reference Number: R-2024-11E**

This document details the background of the fiscal impacts of the Department of Toxic Substances Control's (DTSC) proposed regulation. This document includes only those sections of the STD 399 for which an explanation could not fit in the space provided. As such, the section headings and titles are intentionally written to match the corresponding sections of the form and may not be in consecutive order.

### **Summary**

DTSC is responsible for protecting public health and the environment by overseeing the state's response to releases of hazardous substances and management of hazardous waste. The California Department of Tax and Fee Administration (CDTFA) is responsible for the administration and collection of the Generation and Handling (G&H) Fee, which was established by Senate Bill (SB) 158 (Senate Committee on Budget and Fiscal Review, Chapter 73, Statutes of 2021). CDTFA's administration of the G&H Fee is overseen by DTSC through an annual interagency agreement. DTSC is also responsible for waste evaluations and determinations, including the technical application of exemptions from application of the G&H Fee. DTSC does not currently have regulations to implement the G&H Fee. SB 156 (Senate Committee on Budget and Fiscal Review, Chapter 72, Statutes of 2024) authorized DTSC to adopt fee administration regulations through the emergency rulemaking process.

These proposed regulations clarify the application of G&H Fee exemptions, create a process to review exemptions claimed, codify hazardous waste reporting and recordkeeping requirements, and implement a penalty assessment framework for non-compliance with reporting requirements. The quality of tonnage data reported by generators, including the exemptions they are claiming, are critical pieces of information that DTSC needs to develop the revenue projections that the Board of Environmental Safety (BES) uses to set the G&H Fee rate each year. Additionally, clarifying reporting requirements and establishing penalties for failure to report will compel generators to timely and accurately provide this information to DTSC.

DTSC anticipates significant increases in G&H Fee revenues as a result of implementing SB 156, although those effects will not be actualized until at least 2025 and are therefore difficult to predict. The fiscal impacts explained in this analysis will focus only on the effects of the proposed regulations, not the overall effect of SB 156 implementation. DTSC estimates this regulation could result in up to \$5 million in additional penalty revenues and would require up to \$4 million in additional resources to implement. No other fees that DTSC collects were determined to be impacted by this proposed emergency rulemaking. The following sections describe DTSC's assumptions and methodology to arrive at those estimates.

These regulations are not anticipated to change the amount of waste that is subject to the G&H Fee; however, they are intended to improve the accuracy of the forecasts and improve compliance so that projections align with revenue collected.

### ***Background and Effect of the Proposed Regulation***

#### ***Reporting Requirements***

DTSC is unable to sufficiently oversee the G&H Fee due to incomplete data on hazardous waste that is generated and subject to the fee. Data regarding hazardous waste that is not required to be tracked on a manifest (“unmanifested waste”) and waste that is exempt from the G&H Fee are not currently collected by DTSC, but that data are critical to setting appropriate fee rates. DTSC’s inability to gather complete data has led to inaccurate rate setting and revenue forecasting, the inability to track generator compliance, and ineffective oversight of fee administration, which all contribute to the current revenue shortfall. Moreover, all handlers are required to report in the electronic Verification Questionnaire (eVQ), even if they are not required to pay the G&H Fee. This includes household hazardous waste collection facilities, hazardous waste managed by consolidated transporters, and generators of less than five tons of hazardous waste. For instance, consolidated transporters do not pay the G&H Fee but are required to report into eVQ; DTSC uses this information to forecast how much waste is subject to the G&H Fee for the BES rate setting process. This proposal implements more robust and specific reporting requirements to fill these data gaps, so DTSC is able to reconcile hazardous waste data against the fees collected. Penalties would be assessed on all handlers who fail to comply with hazardous waste reporting requirements irrespective of their fee obligation, because the data is necessary for DTSC to evaluate and identify how much waste is subject to the G&H Fee. The penalty structure is expected to incentivize accurate reporting and, in turn, improve the data necessary to appropriately set the G&H Fee rate.

#### ***Exemption Criteria Clarification***

Since the G&H Fee was established, generators have been inappropriately claiming fee exemptions on thousands of tons of hazardous waste annually. SB 156 clarified many of the existing G&H Fee exemptions in statute, but some remain open to interpretation. Currently, there are no regulations to administer the G&H Fee. This proposed rulemaking addresses several of the G&H Fee exemptions that have historically been inconsistently applied, such as the governmental response exemption, household hazardous waste operation exemption, load checking program exemption, natural disaster victim waste exemption, the “pass through” waste deduction, and what the point of generation is for the application of the banned, unregistered, or outdated agricultural waste exemption.

#### ***Establishing Exemption Review Process***

Currently, DTSC receives approximately 10 exemption review requests annually through the fee appeals process and must review each request on a case-by-case basis. The low rate of claimed exemptions referred from CDTFA to DTSC and lack of a standardized process results in DTSC having limited oversight of the accuracy of exemptions claimed by generators. This regulatory proposal clarifies how the

Department will notify a generator that their claim of a G&H Fee exemption is under review and specify the deadlines to provide information for evaluation so that DTSC can verify that generators are appropriately claiming exemptions.

### *Assessing Penalties on Failure to Comply with Reporting Requirements*

Under the fee structure established by SB 158, the G&H Fee rate is designed to generate revenue to meet DTSC's operational needs and relies on all generators timely reporting accurate hazardous waste tonnage information and paying their appropriate fees. DTSC currently does not have any enforcement or penalty regulations directly applicable to compliance with reporting systems requirements. This information is relied on for purposes of forecasting revenues and in support of the BES rate setting process. To address the data quality issues, including late and inaccurate reporting, these proposed regulations establish a penalty structure for failure to comply with reporting requirements, and implement penalties for willfully or knowingly making false statements or withholding material facts in any submission to any reporting system or as part of the exemption review process.

## **II. FISCAL IMPACT STATEMENT**

### **Methodology**

DTSC's annual electronic reporting system for all identification number holders, eVQ, served as DTSC's primary data source for this analysis due to its high compliance rate. With this data, DTSC estimated the number of handlers, by tonnage generated, and how many handlers may fail to report on time, inaccurately report, willfully or knowingly report false information, or may not report at all.

### **Data Limitations**

Many factors constrain the methodologies of this fiscal impact analysis. For example, hazardous waste generation significantly fluctuates from year-to-year and often correlates with economic expansions and recessions, impacting the number of entities subject to DTSC reporting requirements on an annual basis.

The data submitted in the 2024 eVQ reporting period was used for this analysis; however, it was still open for reporting at the time of the data extraction, so the information used is incomplete. The eVQ system is self-reported and handlers are notified on a rolling basis, meaning they have 30 days to complete their submission after receiving a notification from DTSC. The typical completion rate for eVQ is approximately 90% of handlers reporting into the system annually; however, eVQ has not historically had a precise due date for completion and DTSC has accepted late submissions without penalty. Additionally, DTSC anticipates a slightly lower compliance rate in 2024 due to recent enhanced reporting requirements.

## **A6. FISCAL EFFECT ON LOCAL GOVERNMENT**

DTSC has determined that the adoption of this emergency rulemaking will not have a significant impact on costs for individual local governmental agencies. These regulations will not impose a new program or higher level of service on local governmental agencies or school districts. Of the approximately 100,000 Identification

Number holders that may be impacted by these emergency regulations, DTSC estimates that approximately 7% of Identification Numbers represent local government entities that annually generate hazardous waste in California.

#### *Reporting Requirements*

Most local governmental agencies are already required to report to DTSC the hazardous waste generated at their sites, except for household hazardous waste collection facilities which have not historically reported into eVQ despite maintaining the information required by these proposed regulations. The increased annual reporting requirements will increase the time to complete the eVQ, ranging from a few minutes or up to several hours depending on the complexity of a Identification Number holder's operations. DTSC anticipates local governments will be minimally impacted because they should be able to readily provide the information in the reporting system.

#### *Exemption Criteria and Review*

The exemption review process may result in additional fee costs to local government agencies that otherwise would have inaccurately claimed a G&H Fee exemption. However, these are existing fees required by state law, and local governments are required to accurately pay these fees. Assuming the government agency is in compliance and appropriately claiming exemptions, the recordkeeping requirements to substantiate claimed exemptions would have minimal fiscal impacts to governmental agencies because many of these records are already maintained and the additional records are expected to be maintained with minimal burden, including in an electronic format.

#### *Penalties for Non-Compliance with Reporting Requirements*

These penalties are intended to compel compliance with the hazardous waste reporting requirements and would only be assessed on non-compliant entities. Based on the 7% proportion of generators that are local government, DTSC estimates that they could be assessed \$300,000 for delinquency in reporting and \$15,000 for inaccurate reporting. However, DTSC assumes that penalties assessed will decrease over time as local government generators become compliant with reporting requirements. DTSC assumes most local government entities will comply with these regulations; compliant local government entities would face no additional costs. DTSC assumes local government entities would not intentionally report false or inaccurate information.

### **B4. FISCAL EFFECT ON STATE GOVERNMENT**

DTSC evaluated the following areas where there may be impacts to state government:

- Impacts to state governmental agencies other than DTSC that generate hazardous waste
- Impacts to CDTFA to administer and collect the G&H Fee
- DTSC's workload costs to implement the proposed regulation, including the implementation of an exemption review and penalty assessment process
- Revenues to DTSC for reporting penalties

#### **Impacts to State Governmental Agencies that Generate Hazardous Waste**

DTSC estimates that approximately 3% of Identification Numbers that may be impacted by these emergency regulations are state governmental entities that generate hazardous waste.

### *Reporting Requirements*

The increased reporting requirements in eVQ will increase all handlers' time to complete eVQ on an annual basis, including for state government entities. DTSC estimates the additional time to complete eVQ will range from several minutes to a few hours for each reporting entity; therefore, DTSC does not anticipate this regulation will translate to a significant increase in costs.

### *Exemption Criteria and Review*

Clarifying the exemptions and their application is intended to simplify the reporting process and is not expected to increase government costs because the resulting fees are already required to be paid by applicable government entities. The exemption review process may result in additional fee costs to a state government entity if it is selected for review and otherwise would have incorrectly claimed a fee exemption. However, these are existing fees required by state law, and state government entities are required to accurately pay these fees. DTSC does not anticipate the review process to have significant fiscal impacts to government entities. The records maintenance requirements from these emergency regulations are expected to have a minimal impact on government entities as many of these records are already required to be maintained, and any additional records are expected to be maintained with minimal burden.

### *Penalties for Non-Compliance with Reporting Requirements*

Due to state government entities comprising 3% of all generators, DTSC estimates that state agencies could be assessed \$125,000 for delinquency in reporting and \$6,000 for inaccurate reporting. However, DTSC assumes that penalties assessed will decrease over time as handlers become compliant with reporting requirements. The estimated fiscal impacts assumes that an equal portion of state government entities would be noncompliant; however, DTSC assumes most government entities will comply with these regulations. If the government entity is compliant, then there would be no additional costs.

### **Impacts to CDTFA to Administer and Collect the G&H Fee**

CDTFA is responsible for administering and collecting the G&H Fee. DTSC contracts with CDTFA to carry out these responsibilities, including conducting audits and responding to appeals from feepayers. DTSC does not anticipate additional costs to CDTFA as a result of these regulations. DTSC also does not expect the contract between CDTFA and DTSC to be impacted because the number of audits and appeals conducted by CDTFA is unlikely to change based on this regulation. DTSC will coordinate with CDTFA on the outcomes of DTSC's exemption review process and anticipates this will improve CDTFA's audit selection and review process.

### **Impacts to DTSC to Implement the Proposed Regulations**

DTSC estimates additional resources will be required to implement these regulations beginning in fiscal year 2025-26 and ongoing for the following activities: validation of

eVQ data, selection of exemptions for review, evaluation of supplemental information provided for claimed exemptions, communication of exemption findings with generators and CDTFA, assessment and tracking of penalties, collection of penalty payments, and management of settlement requests for assessed penalties. DTSC currently does not have enforcement or penalty regulations directly applicable to compliance with reporting systems requirements, including to validate the data reported to the Department that is essential for accurate fee rate setting. DTSC estimates that it will cost up to \$4 million to fund increased IT development costs to support the new G&H processes and up to 15 additional staff to implement these regulations. Due to existing workload demands, the additional workload cannot be absorbed by any existing units.

### **Penalty Revenue Assumptions**

DTSC estimates that penalties might result in approximately \$4 million to \$5 million in the first years of implementation, which is expected to decrease over time as compliance with reporting improves. As described below, penalty revenue estimates are based on several assumptions and the how the proposed penalty matrix is implemented.

There are approximately 100,000 unique Identification Numbers required to report into eVQ on an annual basis. Based on current eVQ data, DTSC assumes that approximately 30% (30,000) unique Identification Numbers could be delinquent in reporting. However, as reporting compliance increases, DTSC assumes the number of delinquent reporters to decrease from 30% to 15%. Additionally, the revenue estimate for each violation type does not include adjustment factors (as discussed below), resulting in revenue estimates that are likely higher than will actually be assessed.

### ***Adjustments***

The proposed regulations enable DTSC to adjust penalties based on the circumstances of the violation. DTSC may apply a downward adjustment of up to 100% of the penalties if the violation was completely beyond the control of the violator. A downward adjustment of 0% to 50% may be applied if a violation occurred despite good faith efforts to comply with reporting requirements. DTSC anticipates adjustments will decrease overall penalty revenue compared to initial assessments and may mitigate potential settlement requests. The magnitude of these impacts to penalty revenues and implementation costs are indeterminate.

### ***Delinquency in Reporting***

An initial violation will be assessed on a handler that is either delinquent or fails to report the required information into a hazardous waste reporting system for each Identification Number issued to the handler per reporting period. Penalties continue to escalate based on the number of days delinquent beyond the reporting deadline (Table 1). In addition to adjusting penalties based on violator's reporting circumstances, DTSC anticipates the penalties assessed will decrease over time as more handlers come into compliance with the reporting requirements in order to avoid paying penalties.

To develop the tonnage tiers, DTSC analyzed historical eVQ data to evaluate the number of Identification Numbers issued each year relative to the amount of hazardous waste generated by each Identification Number over three calendar years. The number

of handlers that are expected to fail to timely report was determined based on an analysis of the length of time handlers took to report into the system in the current reporting year.

Of the approximately 100,000 unique Identification Numbers required to report into eVQ, approximately 30% (30,000) unique Identification Numbers could be delinquent in reporting. Table 1 below shows the estimated number of unique Identification Numbers based on tonnage and days late. Table 1 shows that the total estimated penalties assessed could be approximately \$4.2 million based on the historic delinquency rate. The estimates in Table 1 are based on the current reporting cycle, but DTSC anticipates the number of delinquent reporters to decrease from 30% to 15% as handlers timely comply with the reporting requirements. Additionally, the estimates for each violation type does not include adjustment factors (as discussed previously), resulting in estimated penalties that are likely higher than will actually be assessed. Over time, penalty revenues are estimated to be approximately \$2 million annually.

Table 1. Delinquency in Reporting Penalty Matrix

<b>Tonnage Tier</b>	<b>1-15 days late</b>	<b>EPA ID counts</b>	<b>16-30 days late</b>	<b>EPA ID counts</b>	<b>31-45 days late</b>	<b>EPA ID counts</b>	<b>46-60 days late</b>	<b>EPA ID counts</b>	<b>61+ days late</b>	<b>EPA ID counts</b>
less than 5 tons	\$25	9,500	\$50	9,000	\$75	1,500	\$125	2,000	\$250	7,000
5 tons but less than 10 tons	\$100	200	\$200	350	\$350	60	\$550	70	\$1,100	200
10 tons but less than 25 tons	\$200	200	\$300	300	\$450	15	\$650	60	\$1,300	150
25 tons but less than 500 tons	\$300	300	\$400	150	\$550	35	\$750	70	\$1,500	200
500 tons but less than 1,000 tons	\$400	20	\$500	10	\$650	5	\$850	5	\$1,700	10
1,000 or more tons	\$500	30	\$600	20	\$750	10	\$950	10	\$1,900	15
Total Estimated Penalties										\$4,172,000

### ***Inaccurate Reporting***

These proposed regulations specify that a discrepancy of 15% or more between DTSC's reporting systems and the CDTFA fee return may subject the handler to inaccurate reporting penalties. Due to the clarification of statutes and regulations governing reporting requirements and the application of G&H Fee exemptions, DTSC

anticipates that data quality will improve over time and that the assessment of this penalty will be sporadic. It is unknown how many instances of inaccurate reporting may be identified. If DTSC were to assess penalties on 100 unique Identification Numbers for inaccurately reporting each year, this could result in less than \$200,000 in penalty revenue each year. This penalty amount is anticipated to decrease over time as handlers become compliant with reporting requirements.

***Intentionally Reporting False or Inaccurate Information***

The proposed regulations would enable DTSC to assess an initial penalty of \$70,000 on any handler that has willfully or knowingly reported false or inaccurate information in any of the reporting systems. However, DTSC does not anticipate any penalty revenues for these violations will be generated because DTSC assumes all handlers, including governmental entities, would not intentionally report false or inaccurate information.