

AMENDED IN ASSEMBLY JUNE 22, 2010

AMENDED IN SENATE APRIL 20, 2009

**SENATE BILL**

**No. 231**

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**Introduced by Senator Lowenthal**

February 23, 2009

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An act to amend ~~Sections 25205.5 and 25205.9~~ *Section 25205.5* of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 231, as amended, Lowenthal. Hazardous waste: generator fees.

~~(1) Existing~~

*Existing* law requires a generator of hazardous waste to pay the State Board of Equalization a generator fee for each generator site for each calendar year, unless the generator has paid a facility fee or received a specified credit for each specific site for that calendar year. The generator fee is determined pursuant to a base fee rate multiplied in a specified manner determined by the amount of waste generated during the prior calendar year. Existing law sets the base fee rate at \$2,748 for the 1997 calendar year and requires the board to adjust the base fee rate annually to reflect changes in the cost of living. The generator fee is required to be deposited in the Hazardous Waste Control Account. A violation of hazardous waste control laws is a crime.

This bill instead would ~~require each generator of 5 tons or more to pay a fee in an unspecified amount per ton of hazardous waste generated during the prior calendar year, subject to the specified exceptions~~ *specify that the base fee rate is \$3,949 for the 2010 calendar year. The bill would authorize the Department of Toxic Substances Control to adjust the base fee rate annually to reflect increases or decreases in the cost of implementing programs supported by the account, rather than require*

*the board to adjust the base fee rate to reflect changes in the cost of living. The bill would prohibit an increase from exceeding more than 5% from one calendar year to another and would prohibit an increase in any calendar year in which there is an account reserve balance greater than  $\frac{1}{3}$  of the annual revenue generated by the generator fee or in which there is an outstanding loan from the account to the General Fund.*

~~(2) The bill would make related conforming changes.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 25205.5 of the Health and Safety Code  
2 is amended to read:  
3 25205.5. (a) In addition to the fee imposed pursuant to Section  
4 25174.1, a generator of hazardous waste, in the ~~amount~~ *amounts*  
5 specified in subdivision ~~(b)~~ *(c)*, shall pay the board a generator fee  
6 for each generator site for each calendar year, or portion thereof,  
7 unless the generator has paid a facility fee or received a credit, as  
8 specified in Section 25205.2, for each specific site, for the calendar  
9 year for which the generator fee is due.  
10 ~~(b) Each generator of five tons or more shall pay \_\_\_\_\_ dollars~~  
11 ~~(\$\_\_\_\_\_) per ton of hazardous waste generated during the prior~~  
12 ~~calendar year.~~  
13 *(b) The base fee rate for the fee imposed pursuant to subdivision*  
14 *(a) is three thousand nine hundred forty-nine dollars (\$3,949).*  
15 *(c) (1) A generator who generates an amount equal to, or more*  
16 *than, five tons, but less than 25 tons, of hazardous waste during*  
17 *the prior calendar year shall pay 5 percent of the base rate.*  
18 *(2) A generator who generates an amount equal to, or more*  
19 *than, 25 tons, but less than 50 tons, of hazardous waste during the*  
20 *prior calendar year shall pay 40 percent of the base rate.*  
21 *(3) A generator who generates an amount equal to, or more*  
22 *than, 50 tons, but less than 250 tons, of hazardous waste during*  
23 *the prior calendar year shall pay the base rate.*  
24 *(4) A generator who generates an amount equal to, or more*  
25 *than 250, tons, but less than 500 tons, of hazardous waste during*  
26 *the prior calendar year shall pay five times the base rate.*

1 (5) A generator who generates an amount equal to, or more  
2 than, 500 tons, but less than 1,000 tons, of hazardous waste during  
3 the prior calendar year shall pay 10 times the base rate.

4 (6) A generator who generates an amount equal to, or more  
5 than, 1,000 tons, but less than 2,000 tons, of hazardous waste  
6 during the prior calendar year shall pay 15 times the base rate.

7 (7) A generator who generates an amount equal to, or more  
8 than, 2,000 tons of hazardous waste during the prior calendar  
9 year shall pay 20 times the base rate.

10 (d) The base rate established pursuant to subdivision (b) is the  
11 base rate for the 2010 calendar year and the department may  
12 adjust the base rate annually to reflect increases or decreases in  
13 the cost of implementing programs supported by the Hazardous  
14 Waste Control Account. There shall not be an increase of more  
15 than 5 percent from one calendar year to another. There shall not  
16 be an increase in the base rate in any calendar year in which there  
17 is an account reserve balance greater than one-third of the annual  
18 revenue generated pursuant to this section or in which there is an  
19 outstanding loan from the account to the General Fund.

20 (e)

21 (e) The establishment of the annual operating fee pursuant to  
22 this section is exempt from Chapter 3.5 (commencing with Section  
23 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

24 (f)

25 (f) The following materials are not hazardous wastes for  
26 purposes of this section:

27 (1) Hazardous materials that are recycled, and used onsite, and  
28 are not transferred offsite.

29 (2) Aqueous waste treated in a treatment unit operating, or that  
30 subsequently operates, pursuant to a permit-by-rule, or pursuant  
31 to Section 25200.3 or 25201.5. However, hazardous waste  
32 generated by a treatment unit treating waste pursuant to a  
33 permit-by-rule, by a unit that subsequently obtains a permit-by-rule,  
34 or other authorization pursuant to Section 25200.3 or 25201.5 is  
35 hazardous waste for purposes of this section.

36 (g)

37 (g) The fee imposed pursuant to this section shall be paid in  
38 accordance with Part 22 (commencing with Section 43001) of  
39 Division 2 of the Revenue and Taxation Code.

40 (h)

1 (h) (1) A generator who pays a hazardous waste generator  
2 inspection fee to a certified unified program agency, that is imposed  
3 as part of a single fee system and fee accountability program that  
4 are both in compliance with the requirements of Section 25404.5,  
5 shall be eligible for a refund of all, or part of, the generator fee  
6 paid pursuant to subdivision (a) if both of the following conditions  
7 apply:

8 (A) The generator received a credit pursuant to Section 43152.7  
9 or 43152.11 of the Revenue and Taxation Code for fees paid for  
10 hazardous waste generated in 1996.

11 (B) The department certifies, pursuant to subdivision (b) of  
12 Section 25205.9, that funds are available to pay all or part of the  
13 refund.

14 (2) A generator who is eligible for a refund pursuant to  
15 paragraph (1) shall submit an application for that refund to the  
16 board by September 30 following the fiscal year during which the  
17 generator paid the generator fee pursuant to subdivision (a). An  
18 application for a refund postmarked after September 30 is void,  
19 shall not be processed by the board, and shall be returned to the  
20 applicant.

21 ~~(g)~~

22 (i) (1) A generator who transfers hazardous materials to an  
23 offsite facility for recycling at that offsite facility or another offsite  
24 facility shall be eligible for a refund of all, or part of, the generator  
25 fee paid pursuant to subdivision (a) if all of the following  
26 conditions apply:

27 (A) The offsite facility to which the hazardous materials are  
28 manifested pays a facility fee pursuant to Section 25205.2.

29 (B) The amount of hazardous materials transferred to the offsite  
30 facility and recycled there, when deducted from the total tonnage  
31 of hazardous waste generated at the generator's site, results in the  
32 generator becoming eligible for a generator fee that is lower than  
33 the fee paid pursuant to subdivision (a).

34 (C) The hazardous materials transferred to the offsite facility  
35 are not burned in a boiler, industrial furnace, or an incinerator, as  
36 those terms are defined in Section 260.10 of Title 40 of the Code  
37 of Federal Regulations, used in a manner constituting disposal, or  
38 used to produce products that are applied to land.

1 (D) The department certifies, pursuant to subdivision (b) of  
2 Section 25205.9, that funds are available to pay all or part of the  
3 refund.

4 (2) A generator who is eligible for a refund pursuant to  
5 paragraph (1) shall submit an application for that refund to the  
6 board by September 30 following the fiscal year during which the  
7 generator paid the generator fee pursuant to subdivision (a). An  
8 application for a refund postmarked after September 30 is void,  
9 shall not be processed by the board, and shall be returned to the  
10 applicant.

11 (h)

12 (j) (1) The amendment of this section made by Chapter 1125  
13 of the Statutes of 1991 does not constitute a change in, but is  
14 declaratory of, existing law.

15 (2) The amendment of subdivision (a) of this section made by  
16 Chapter 259 of the Statutes of 1996 does not constitute a change  
17 in, but is declaratory of, existing law.

18 ~~SEC. 2. Section 25205.9 of the Health and Safety Code is~~  
19 ~~amended to read:~~

20 ~~25205.9. (a) On or before June 30 of each year, the department~~  
21 ~~shall determine if there are surplus funds in the Hazardous Waste~~  
22 ~~Control Account and shall, upon appropriation by the Legislature,~~  
23 ~~allocate these surplus funds to pay refunds in the following order~~  
24 ~~of priority:~~

25 ~~(1) To pay refunds to generators pursuant to subdivision (c).~~

26 ~~(2) To pay refunds to generators pursuant to subdivision (d).~~  
27 ~~However, the department shall not pay refunds pursuant to~~  
28 ~~subdivision (d) until all applications for refunds pursuant to~~  
29 ~~subdivision (c) have first been paid.~~

30 ~~(b) The department shall certify the amount of the surplus in~~  
31 ~~the Hazardous Waste Control Account to the board and shall direct~~  
32 ~~the board to pay refunds to generators pursuant to subdivisions (c)~~  
33 ~~and (d) to the extent funds permit. If funds are not sufficient to~~  
34 ~~pay all the refunds for which the board receives applications~~  
35 ~~pursuant to subdivision (f) of Section 25205.5, the department~~  
36 ~~shall direct the board to pay refunds pursuant to subdivision (c)~~  
37 ~~on a pro rata basis. If funds are sufficient to pay all refunds for~~  
38 ~~which applications are received pursuant to subdivision (f) of~~  
39 ~~Section 25205.5 but not sufficient to pay all refunds for which~~  
40 ~~applications were received by the board pursuant to subdivision~~

1 ~~(g) of Section 25205.5, the department shall direct the board to~~  
2 ~~pay refunds pursuant to subdivision (d) on a pro rata basis.~~

3 ~~(e) (1) If the department certifies that there are sufficient funds~~  
4 ~~to do so, the board shall issue refunds, in the manner directed by~~  
5 ~~the department pursuant to subdivision (b), to hazardous waste~~  
6 ~~generators who are eligible for refunds pursuant to paragraph (1)~~  
7 ~~of subdivision (f) of Section 25205.5.~~

8 ~~(2) The refund made to a generator pursuant to this subdivision~~  
9 ~~shall not exceed the fee paid by the generator pursuant to Section~~  
10 ~~25205.5, or exceed the hazardous waste generator inspection fee~~  
11 ~~paid to the certified unified program agency for the previous~~  
12 ~~calendar year, whichever is less.~~

13 ~~(3) The board may issue refunds pursuant to this section only~~  
14 ~~if the department certifies, pursuant to subdivision (b), that funds~~  
15 ~~for these refunds are available.~~

16 ~~(d) (1) If the department certifies that there are sufficient funds~~  
17 ~~to do so, the board shall issue refunds, in the manner directed by~~  
18 ~~the department pursuant to subdivision (b), to hazardous waste~~  
19 ~~generators who are eligible for refunds pursuant to paragraph (1)~~  
20 ~~of subdivision (g) of Section 25205.5.~~

21 ~~(2) The refund made to a generator pursuant to this subdivision~~  
22 ~~shall be equal to the difference between the amount of the generator~~  
23 ~~fee paid by the generator pursuant to Section 25205.5 and the~~  
24 ~~amount the generator would have paid if the amount of hazardous~~  
25 ~~materials transferred to an offsite facility for recycling had been~~  
26 ~~deducted from the total tonnage of hazardous waste generated at~~  
27 ~~the generator's site. However, if a generator receives a refund~~  
28 ~~pursuant to subdivision (e), the generator shall not receive a refund~~  
29 ~~pursuant to this subdivision that exceeds the difference between~~  
30 ~~the amount of the generator fee paid pursuant to Section 25205.5~~  
31 ~~and the amount of the refund received pursuant to subdivision (e).~~

32 ~~(3) The board may issue refunds pursuant to this subdivision~~  
33 ~~only if the department certifies, pursuant to subdivision (b), that~~  
34 ~~funds for these refunds are available.~~

35 ~~(e) For purposes of this section, "surplus" means the amount in~~  
36 ~~the Hazardous Waste Control Account on June 30 of each year~~  
37 ~~that is in excess of the reserve required by subdivision (k) of~~  
38 ~~Section 25174.~~

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