

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Environmental Resources *SMA*

BOARD AGENDA # *B-8

Urgent

Routine

AGENDA DATE December 8, 2009

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Authorize the Department of Environmental Resources to Collect the Electronic Reporting Surcharge, on Behalf of the State of California, for the Unified Hazardous Waste and Materials Management Regulatory Program, Effective July 1, 2009 until July 1, 2012, as Required by the California Health and Safety Code

STAFF RECOMMENDATIONS:

1. Authorize the Department of Environmental Resources to collect the Electronic Reporting Surcharge of \$25, on behalf of the State of California, for the Unified Hazardous Waste and Materials Management Regulatory Program, effective July 1, 2009 until July 1, 2012, as required in Section 25404 of the California Health and Safety Code.
2. Authorize the County to transmit the twenty-five dollars (\$25) of the collected fee to the California Environmental Protection Agency.

FISCAL IMPACT:

The Department of Environmental Resources currently collects fifty-one thousand dollars (\$51,000) annually on behalf of the State from approximately 2,125 regulated businesses in the Unified Hazardous Waste and Materials Management Regulatory Program in Stanislaus County.

(Fiscal Impact Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2009-803

On motion of Supervisor Chiesa, Seconded by Supervisor Grover
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Authorize the Department of Environmental Resources to Collect the Electronic Reporting Surcharge, on Behalf of the State of California, for Unified Hazardous Waste and Materials Management Regulatory Programs, Effective July 1, 2009 until July 1, 2012, as Required by the California Health and Safety Code
Page 2

FISCAL IMPACT (Continued):

If authority to collect the additional surcharge on behalf of the State of California is approved, the total fee revenue anticipated to be collected in 2010 by the Department would be one hundred four thousand one hundred twenty-five dollars (\$104,125) for this program. This total amount would then be transferred to the California Environmental Protection Agency. In turn, the California Environmental Protection Agency will provide grant funds or services to help the Stanislaus County Department of Environmental Resources to transition to electronic reporting. This support is derived from a formula of a base allocation of thirty thousand dollars (\$30,000) plus a per business allocation of approximately thirty-three dollars (\$33) for a projected total allocation of one hundred thousand one hundred twenty-five dollars (\$100,125) for Stanislaus County. The Department will budget any awarded grant allocation as needed through the quarterly financial reporting process.

DISCUSSION:

In September 2008, Assembly Bill 2286 was signed into law by the Governor and amended Section 25404 of the California Health and Safety Code, requiring that all businesses and agencies report data from Unified Hazardous Waste and Materials Management Regulatory Programs (Unified Programs) electronically into the California Environmental Reporting System (CERS).

The amended Section 25404 of the California Health and Safety Code requires all regulated businesses and all regulated local government agencies to use the California Environmental Reporting System to file required Unified Program information now filed through paper forms with the State of California. This includes facility data regarding hazardous material regulatory activities, chemical inventories, underground and aboveground storage tanks, and hazardous waste generation information. It also includes Certified Unified Program Agency (CUPA) data such as inspections and enforcement actions. All regulated businesses and Unified Program agencies in the State of California must move towards the use of the CERS to report information electronically by January 1, 2013.

In Stanislaus County, 2,125 businesses are subject to the Unified Program provision and currently pay a minimum State surcharge fee of \$24 annually. To fund the costs of implementing the California Environmental Reporting System statewide, Section 25404 of the Health and Safety Code temporarily increased the minimum surcharge by \$25 per year for the next three years. The additional money collected will be used by the California Environmental Protection Agency (CalEPA) for California Environmental Reporting System development, outreach, training and technical support. Additionally, not less than 75% of the funding will be provided to Unified Program agencies and participating agencies through grant funds or services for the purposes of the system.

Effective July 1, 2009, CUPAs are responsible for collecting the new surcharge fee of \$49.00 as part of the Single Fee System. The Department of Environmental Resources is the CUPA for Stanislaus County.

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Page 3

POLICY ISSUE:

The Board of Supervisors should determine if approval of this request supports the Board's priority of a healthy community and the efficient delivery of public services by meeting the State mandated program requirements.

STAFFING IMPACT:

There are no staffing impacts associated with this item.

CONTACT PERSON:

Sonya K. Harrigfeld, Director. Telephone: 209-525-6770.

Assembly Bill No. 2286

CHAPTER 571

An act to amend Section 25404 of the Health and Safety Code, relating to aboveground storage tanks.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2286, Feuer. Unified hazardous waste and hazardous materials.

(1) Existing law requires the Secretary for Environmental Protection to implement a unified hazardous waste and hazardous materials management regulatory program. A city or local agency that meets specified requirements is authorized to apply to the secretary to implement the unified program, and every county is required to apply to the secretary to be certified to implement the unified program.

Existing law provides that as funding becomes available, the secretary shall maintain a statewide database. Existing law also requires each certified unified program agency to institute a single fee system to implement the consolidation of certain hazardous waste requirements and to ensure the coordination and consistency of any regulations adopted pursuant to those requirements. Existing law requires the single fee system to include an assessment of a surcharge on each person regulated by the unified program, the amount of which shall be determined by the secretary annually, to cover the necessary and reasonable costs of the state agencies in carrying out their responsibilities in a unified hazardous waste and hazardous materials management regulatory program.

This bill would, instead, require that in addition to any other funding that becomes available, the secretary shall increase the oversight surcharge by an amount necessary to establish the data system, but not to exceed \$25 each year for 3 years, to establish the statewide information management system, and would provide that not less than 75% of that funding shall be provided to certified unified program agencies and participating agencies through grant funds for the purposes of the system. The bill would require the secretary to establish milestones to measure the implementation of the information management system and provide periodic status updates to interested parties.

This bill would require certified unified program agencies and participating agencies to report program data electronically not later than 3 years after the information management system is established.

The bill would require the secretary to provide technical assistance to regulated businesses to comply with the electronic reporting requirements and authorize the use of funds from the oversight surcharge for that purpose.

This bill would require a facility that is subject to the unified program and owned or operated by the federal government to pay the increased surcharge to the extent authorized by federal law.

The bill would impose a state-mandated local program by imposing new duties upon local agencies with regard to the implementation of the information management system.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 25404 of the Health and Safety Code is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) "Certified Unified Program Agency" or "CUPA" means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) "Participating Agency" or "PA" means a state or local agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) "Unified Program Agency" or "UPA" means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) "Department" means the Department of Toxic Substances Control.

(3) "Minor violation" means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the UPA is authorized

to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing, willful, or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation as provided in Section 25117.6.

(G) A class II violation committed by a chronic or a recalcitrant violator, as provided in Section 25117.6.

(H) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

(4) "Secretary" means the Secretary for Environmental Protection.

(5) "Unified program facility" means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(6) "Unified program facility permit" means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, are applicable to all of the following:

(i) Hazardous waste generators, persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(ii) Persons managing perchlorate materials.

(iii) Persons subject to Article 10.1 (commencing with Section 25211) of Chapter 6.5.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirements of Chapter 6.67 (commencing with Section 25270) concerning aboveground storage tanks.

(3) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks and the requirements of any underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(4) The requirements of Article 1 (commencing with Section 25500) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) (A) No later than January 1, 2010, the secretary shall establish a statewide information management system capable of receiving all data collected by the unified program agencies and reported by regulated businesses pursuant to this subdivision and Section 25504.1, in a manner that is most cost efficient and effective for both the regulated businesses and state and local agencies. The secretary shall prescribe an XML or other compatible Web-based format for the transfer of data from CUPAs and regulated businesses and make all nonconfidential data available on the Internet.

(B) The secretary shall establish milestones to measure the implementation of the statewide information management system and shall provide periodic status updates to interested parties.

(3) (A) (i) Except as provided in subparagraph (B), in addition to any other funding that becomes available, the secretary shall increase the oversight surcharge provided for in subdivision (b) of Section 25404.5 by an amount necessary to meet the requirements of this subdivision for a period of three years, to establish the statewide information management system, consistent with paragraph (2). The increase in the oversight surcharge shall not exceed twenty-five dollars (\$25) in any one year of the three-year period. The secretary shall thereafter maintain the statewide information management system, funded by the assessment the secretary is authorized to impose pursuant to Section 25404.5.

(ii) No less than 75 percent of the additional funding raised pursuant to clause (i) shall be provided to CUPAs and PAs through grant funds in the amounts determined by the secretary to assist these local agencies in meeting these information management system requirements.

(B) A facility that is owned or operated by the federal government and that is subject to the unified program shall pay the surcharge required by this paragraph to the extent authorized by federal law.

(C) The secretary, or one or more of the boards, departments, or offices within the California Environmental Protection Agency, shall seek available federal funding for purposes of implementing this subdivision.

(4) No later than three years after the statewide information management system is established, each CUPA, PA, and regulated business shall report program data electronically. The secretary shall work with the CUPAs to develop a phased in schedule for the electronic collection and submittal of information to be included in the statewide information management system, giving first priority to information relating to those chemicals determined by the secretary to be of greatest concern. The secretary, in making this determination shall consult with the CUPAs, the Office of Emergency Services, the State Fire Marshal, and the boards, departments, and offices within the California Environmental Protection Agency. The information initially included in the statewide information management system shall include, but is not limited to, the hazardous materials inventory information required to be submitted pursuant to Section 25504.1 for perchlorate materials.

(5) The secretary, in collaboration with the CUPAs, shall provide technical assistance to regulated businesses to comply with the electronic reporting requirements and may expend funds identified in clause (i) of subparagraph (A) of paragraph (3) for that purpose.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.