

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

DEPT: Environmental Resources

BOARD AGENDA # *B-4

Urgent

Routine

AGENDA DATE February 26, 2013

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Authorize the Department of Environmental Resources to Collect the New State Surcharge, on Behalf of the State of California, for the Certified Unified Program Agency General Oversight

STAFF RECOMMENDATIONS:

1. Authorize the Department of Environmental Resources to collect the new State surcharge of \$35, on behalf of the State of California, for the Certified Unified Program Agency General Oversight, as required in Section 25404 of the California Health and Safety Code.
2. Authorize the County to transmit the surcharge annually to the California Environmental Protection Agency.

FISCAL IMPACT:

The Department of Environmental Resources will be collecting the applicable surcharge annually on behalf of the State of California from each regulated business in the Unified Hazardous Waste and Management Regulatory Program in Stanislaus County. If authority to collect the surcharge on behalf of the State is approved, the total fee revenue estimated to be collected each year is \$80,500 from approximately 2,300 facilities. This total would then be transferred to the California Environmental Protection Agency.

BOARD ACTION AS FOLLOWS:

No. 2013-78

On motion of Supervisor O'Brien, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: O'Brien, Withrow, Monteith, De Martini and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Elizabeth King

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk BY: Deputy

File No.

Approval to Authorize the Department of Environmental Resources to Collect the New State Surcharge, on Behalf of the State of California, for the Certified Unified Program Agency General Oversight

DISCUSSION:

The California Environmental Protection Agency (Cal/EPA) has defined three surcharges within the Hazardous Materials Unified Programs: Certified Unified Program Agency (CUPA) General Oversight, Underground Storage Tank (UST), and California Accidental Release Prevention Program (CalARP). The Unified Program State surcharge is used to fund the necessary and responsible costs for program implementation, ongoing maintenance, and oversight of the Unified Programs.

Assembly Bill 2286 (Attachment A) requires all regulated businesses and all regulated local government agencies to use the California Environmental Reporting System (CERS) to file required Unified Program information that is now filed by paper forms to the State. This includes facility data regarding hazardous materials regulatory activities, chemical inventories, underground and aboveground storage tanks, and hazardous waste generation information. It also includes CUPA data such as inspections and enforcement actions. All regulated businesses and Unified Program Agencies in the State of California must use CERS to report information electronically beginning January 1, 2013.

Businesses under the Unified Program previously paid a minimum State surcharge fee of \$24 for the CUPA General Oversight. In addition, to fund the costs of implementing CERS statewide, Section 25404 of the Health and Safety Code temporarily increased the minimum surcharge by \$25 per year in the General Oversight portion of the State surcharge for three years. Therefore, regulated businesses were subject to pay \$49 per year instead of the \$24 per year for fiscal years 2009-2012.

On December 8, 2009, the Board authorized the Department of Environmental Resources (DER) to collect the additional CERS surcharge of \$25, on behalf of the State, as part of the CUPA Single Fee System. DER collected the \$49 per year for fiscal years 2009-2012. The three-year timeframe for this increase ended on June 30, 2012.

In July 2012, Cal/EPA adjusted the State surcharge for the CUPA General Oversight, reducing the CERS surcharge from \$25 to \$11, and added it to the minimum State surcharge of \$24. The new State surcharge of \$35 is required to be imposed on each regulated business in California. The UST and CalARP portions remain unchanged.

The State surcharge was publicly noticed in the California Regulatory Notice Register (Z-Register) (Attachment B) for a 30-day comment period beginning May 25, 2012, and Cal/EPA held a public workshop in June 14, 2012. No comments were received during the comment period. Cal/EPA has amended the State surcharge to those shown below, which took place in July 2012. Each CUPA will be responsible for collecting the new surcharge as part of the single fee system. The Department needs to amend these CUPA fees at this time to coincide with the annual billing which will be done in March 2013.

Approval to Authorize the Department of Environmental Resources to Collect the New State Surcharge, on Behalf of the State of California, for the Certified Unified Program Agency General Oversight

State Surcharge

For fiscal years 2012-2013 forward, the State surcharge is set as follows:

CUPA General Oversight	\$35	(reduced from \$49)
Underground Storage Tank	\$15	(unchanged)
California Accidental Release Prevention Program	\$270	(unchanged)

POLICY ISSUE:

Approval of this request supports the Board's priority of A Safe Community, A Healthy Community, and Efficient Delivery of Public Services by meeting the State mandated program requirements.

STAFFING IMPACTS:

There are no staffing impacts at this time.

CONTACT PERSON:

Jami Aggers, Director of Environmental Resources. 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.

GENERAL PUBLIC INTEREST

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY**

Unified Program State Surcharge Fee Change

NOTICE IS HEREBY GIVEN that the California Secretary for Environmental Protection is adjusting the Unified Program State Surcharge according to the California Health and Safety Code (HSC), Division 20, Chapter 6.11, Section 25404.5(b), and the California Code of Regulations, Title 27, Division 1, Subdivision 4, Chapter 1, Section 15240.

The Unified Program State Surcharge is an assessment on each entity regulated under the Unified Program. The State Surcharge is used to fund the necessary and reasonable costs of all State Agencies responsible for program implementation, ongoing maintenance, and oversight of the Unified Program. Assembly Bill 2286 (Chapter 571 Statutes of 2008) provided for an increase in the Oversight portion of the State Surcharge for three years to fund the implementation of mandatory electronic reporting. The three-year timeframe for this increased surcharge ends on June 30, 2012 and the Oversight portion of the State Surcharge will be reduced to \$35.00 per year per regulated facility. The Underground Storage Tank and California Accidental Release Prevention Program portions remain unchanged.

The State Surcharge was publicly noticed in the California Regulatory Notice Register (Z-Register) for a 30-day comment period beginning May 25, 2012 and Cal/EPA held a public workshop on June 14, 2012. No comments were received during the comment period and the workshop attendees made no suggestions for change. Cal/EPA has amended the state surcharge to those shown below. Certified Unified Program Agencies will be responsible for collecting the new Surcharge as part of their Single Fee System effective on publishing in the Z-Register, expected to be July 13, 2012.

STATE SURCHARGE

For fiscal year 2012/13 forward, the State Surcharge is set as follows:

Oversight \$35.00 (reduced
from \$49.00)

Underground Storage Tank \$15.00 (unchanged)

California Accidental

Release Prevention Program \$270.00 (unchanged)