

Hazardous Waste Operations

Substantial Uncertainty as More California Facilities Close

Permitted hazardous waste facilities in California are a vital component of the state's economy and perform essential functions relating to military defense, recycling, the environment and public health. More than 1.8 billion pounds of California hazardous waste is disposed of in these facilities each year. Despite the critical functions these hazardous waste facilities perform, the number of hazardous waste facilities in California is declining at an alarming rate each year. The primary driver for the decline is the complex and extraordinary cost associated with the permitting process.

BACKGROUND

The federal Resource Conservation and Recovery Act (RCRA) of 1976 is the primary law governing the disposal and treatment of hazardous waste. RCRA is a comprehensive “cradle to grave” regulation that imposes stringent record keeping and reporting requirements on generators, transporters, and operators of treatment, storage and disposal facilities handling hazardous waste. The California Department of Toxic Substances Control (DTSC) regulates the handling, management, and remediation of hazardous substances, materials, and waste, and administers the federal RCRA program in California.

Over the last several years, DTSC has struggled with significant public relations issues, including decreased stakeholder confidence and public trust, arising out of: the mishandling of the hazardous waste facility permitting and enforcement resulting in contamination; neglected cost-recovery efforts for cleanups across the state leading to an accumulation of 1,661 projects totaling almost \$194 million in uncollected cleanup costs dating back 26 years.

DTSC, the Brown administration, and the Legislature took several actions over the last few years to try to restore public confidence in DTSC. These efforts have included budget augmentations and numerous statutory changes to help DTSC better achieve its mandates. Some of these actions, however, have imposed additional unnecessary costly and burdensome requirements on permitted hazardous waste facilities operating in good faith and in full compliance. The consequence has been a significant decline in the number of permitted hazardous waste facilities operating in California.

ELIMINATION OF FLAT FEE LEADS TO SUBSTANTIAL COST INCREASES TO FACILITIES

Historically, hazardous waste facilities seeking to obtain a hazardous waste permit had two options. They could either pay DTSC a flat statutory fee or enter into a reimbursement agreement where DTSC would be paid by the hour for staff time spent on processing the application. In an effort to recoup the costs associated with processing RCRA permit applications, DTSC proposed budget trailer language in 2016 to eliminate the flat fee option for applicants and to instead require a reimbursement agreement in all circumstances.

That budget trailer language, labeled a job killer by the California Chamber of Commerce, was later inserted into SB 839 (Committee on Budget and Fiscal Review), the Natural Resources budget bill, which the Legislature passed and the Governor subsequently signed. From CalChamber's perspective, DTSC's proposal is akin to handing DTSC a “blank check” to process permit applications that will discourage these facilities from further modernizing and improving their infrastructure. In addition, there is uncertainty whether DTSC can charge applicants for the agency costs to handle fee disputes—a serious disincentive to questioning the agency's oversight fees.

As the regulated community predicted, the DTSC proposal led to intractable disputes, additional delays in the permitting process, and unpredictable costs that have driven many facilities to simply close. Today, there are only 80 permitted hazardous waste facilities left operating in California, including the seven facilities operated by the military, and 28 Post Closure Facilities

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(closed and going through final remediation), that provide for the treatment, storage, or disposal of substances regulated as hazardous waste under federal and state law for all of California.

Compare that to 2006 when there were 137 permitted hazardous waste facilities operating in the state. At this closure rate, California is on a trajectory to have an inadequate number of permitted operating hazardous waste facilities to process the 1.7 million tons of hazardous waste produced each year by Californians. When there are inadequate permitted hazardous waste facilities in-state, California ships its hazardous waste to neighboring states or even other countries, like Mexico, where regulations are far less stringent and hazardous waste is treated merely as garbage. Approximately 540,000 tons of California hazardous waste was exported to 31 different states for disposal in 2011.

LEGISLATION AFFECTING CALIFORNIA HAZARDOUS WASTE FACILITIES

CalChamber led a coalition to support AB 2606, a bill by Assembly Member Vince Fong (R-Bakersfield) that would have directly addressed the unsustainable permit fees which are forcing California's permitted hazardous waste facilities to close. AB 2606 received strong support from the U.S. military, which operates seven hazardous waste facilities in California.

AB 2606 would have required DTSC to process permit renewal applications in an expedited manner so long as three conditions were met:

- operations at the hazardous waste facility have not changed significantly since the previous permit term;
- the hazardous waste facility did not have any significant issues with compliance during the preceding term of the permit; and
- the hazardous waste facility was not the subject of any significant public concerns during the preceding term of the permit.

The rationale behind the bill was that the vast majority of hazardous waste facilities in California operate in full compliance with the law with little or no issues, yet DTSC has historically treated all hazardous waste facilities as essentially the same. This has led to many facilities operating off interim permits as their renewal applications sat, sometimes for years, with DTSC. AB 2606 would have reduced the time and costs associated with permit renewals for "good actor" hazardous waste facilities that met the above conditions. Unfortunately, the bill died in appropriations after DTSC stated it would need to hire 22 full-time employees, which CalChamber disputed.

CalChamber also led a coalition opposing AB 2094, a bill by Assembly Member Ash Kalra (D-San Jose) that would have required DTSC to adopt regulations establishing the inspection frequencies for permitted waste transporters and imposing arbitrary inspection frequencies of two (2) times per calendar year for land disposal facilities and once per calendar year for any other permitted hazardous waste treatment, storage or disposal facility.

CalChamber argued that additional regulatory requirements on DTSC when the agency was already struggling to clear permit backlogs and implement other regulatory reforms was counter-productive. Additionally, the mandatory inspections, regardless of the facility's history of compliance, would undoubtedly result in additional unrestrained and unreviewable costs being imposed on permittees. As costs on permitted facilities already are unsustainable, AB 2094 inevitably would have resulted in even more closures. Although this bill died in appropriations, a version of this bill is expected in the 2019 legislative session.

In 2019, CalChamber anticipates a number of similar bills affecting permitted hazardous waste facilities in California. Legislation increasing inspections on existing hazardous facilities is highly likely, as well as a bill creating a DTSC board that could have responsibility over how the agency permits or renews permits on these types of facilities.

CALCHAMBER POSITION

The CalChamber supports treating, storing, and disposing of hazardous waste in California. The California protocols dealing with hazardous waste are more rigid than any other state, resulting in the processing of more hazardous waste into nontoxic form and sending less hazardous materials into landfills. To this end, CalChamber endorses California's policy of managing its own hazardous waste and not exporting it to other states or nations, where protocols are either nonexistent or far less stringent, resulting in less environmental protection.

However, understanding the importance of keeping hazardous waste in California, hazardous waste permits must be issued in a timely and cost-effective manner and subject to clear and predictable procedures.



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