



**Yana Garcia**  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control

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**Gavin Newsom**  
Governor

December 27, 2023

City of Emeryville  
Christine Daniel  
1333 Park Avenue  
Emeryville, CA 94608

Re: Request for Exemption of Generator Fee Granted in Part

Dear Ms. Daniel:

The Department of Toxic Substances Control (DTSC) received a request from the City of Emeryville (City), dated May 2, 2020, for a refund of the generator fee that the City paid pursuant to former section 25205.5 of the California Health and Safety Code (HSC) (effective through December 31, 2021), in the amount of \$251,600.00 for the 2020 filing period. This request was transmitted to DTSC by the California Department of Tax and Fee Administration (CDTFA).

The City made the request for waste generated at three sites. The three sites are identified as Horton Landing Park Areas A-H, Horton Landing Park Area I and the South Bayfront Site. For all three sites, the City claims that the waste is exempt from the generator fee under former HSC section 25174.7 (effective through December 31, 2021), which states, "The fees provided for in Sections 25174.1 and 25205.5 do not apply to any of the following: (1) Hazardous wastes that result when a government agency, or its contractor, removes or remedies a release of hazardous waste in the state caused by another person." DTSC's current interpretation of the exemption requires the following two elements:

- 1) The hazardous waste is the result of a governmental agency, or its contractor, removing or remediating a release of hazardous waste.
- 2) The request pertains to the removal or remedy of hazardous waste that was caused by another person.

DTSC has reviewed the request for exemption and has found the City's application is granted in part and denied in part. The waste generated at Horton Landing Park Areas

A-H and Horton Landing Park Area I meets the above requirements. Both of the Horton Landing Park areas were described as having been contaminated through the continued normal application of herbicides by a prior owner of the property. Because the waste was caused by someone else and the City is removing that waste, the City qualifies for the exemption under DTSC's current interpretation of the exemption.

The waste generated at the South Bayfront Site does not meet the eligibility criteria for the exemption because the City generated the hazardous waste. The south Bayfront Site was remediated in 1999 in accordance with VCAs approved by DTSC. The remedy at that time included capping contaminated soils in place with the requirement for soil management if the cap was breached. Since the hazardous waste was already remediated, the City is not remediating Hazardous Waste. By removing the capped waste, the City is the generator of the waste.

Therefore, the City of Emeryville qualifies for the exemption for the removal of hazardous waste at the Horton Landing Park project areas, but the City does not qualify for the exemption for the removal of hazardous waste at the Bay Street project area. The City is exempt from \$182,620 t out of \$251,600 in fees.

DTSC will inform CDTFA of its determination so CDTFA can issue an approved refund, release liability for outstanding charges, or collect any unpaid fees. Please be advised that DTSC is currently in the process of reviewing the interpretation and application of the exemptions to the generation fee and the generation and handling fee (effective January 1, 2022). The determination provided in this letter holds no precedential effect.

You have the right to appeal this determination to the Appeals Bureau. To do so, you must submit a written request to DTSC within 30 days of the date of this letter for an appeals conference. (18 CCR 35017.) The appeal will be forwarded to the Appeals Bureau for the scheduling of an appeals conference. More information on the appeals process can be found at [cdtfa.ca.gov](http://cdtfa.ca.gov).

If you have any questions, please contact us at [Fees@dtsc.ca.gov](mailto:Fees@dtsc.ca.gov).