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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE MORNING STAR COMPANY, Plaintiff and Appellant, v. BOARD OF EQUALIZATION et al., Defendants and Respondents.	C063437 (Super. Ct. No. 34-2008-00005600-CU-MC-GDS)

APPEAL from a judgment of the Superior Court of Sacramento County, Lloyd G. Connelly, Judge. Affirmed.

Law Offices of Brian C. Leighton and Brian C. Leighton for Plaintiff and Appellant.

Edmund G. Brown, Jr., Attorney General, Paul D. Gifford, Assistant Attorney General, William L. Carter and Molly K. Mosley, Deputy Attorneys General, for Defendants and Respondents.

In this appeal, we uphold the validity of a regulation adopted by defendant Department of Toxic Substances Control (the Department)—California Code of Regulations, title 22, section 66269.1 (the Regulation)—which interprets its underlying

statute, Health and Safety Code section 25205.6.[1] We also conclude that section 25205.6 imposes a constitutionally valid tax. Section 25205.6 imposes an annual charge on those types of businesses, with at least 50 employees, which use, generate, store, or conduct activities in California related to hazardous materials. (§ 25205.6, subds. (b), (c).)

We have seen this matter before. So too has the state Supreme Court. Contrary to our prior opinion,[2] the Supreme Court subsequently concluded in *Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal.4th 324 (*Morning Star*) that the Department's broad interpretation of former section 25205.6—as applicable to essentially all corporations with at least 50 employees, given that most modern office equipment contains hazardous materials—constituted a "regulation" subject to the formal rulemaking procedures of the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.). (*Morning Star*, at pp. 332, 334, 342 [when *Morning Star* was decided, former § 25205.6 applied only to *corporations*; the statute was amended in 2006 to apply essentially to all *business organizations*, not just corporations (Stats. 2006, ch. 77, § 13, eff. July 18, 2006; Stats. 2006, ch. 344, §§ 1, 2, eff. Sept. 20, 2006)].) The

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[1] Undesignated statutory references are to the Health and Safety Code.

[2] *Morning Star Co. v. State Bd. of Equalization* (2004) 115 Cal.App.4th 799, review granted Apr. 28, 2004, S123481.

Regulation was the result of *Morning Star*. (Cal. Code Regs., tit. 22, § 66269.1, Register 2007, No. 45 (Nov. 7, 2007).)

And the present appeal is the result of two questions left open in *Morning Star*, plus the issue of the Regulation's consistency with section 25205.6. (*Morning Star*, *supra*, 38 Cal.4th at pp. 332, 342.) Specifically, we conclude here that (1) the Regulation is consistent with section 25205.6; (2) section 25205.6 imposes a tax rather than a regulatory fee; and (3) this tax does not violate equal protection or substantive due process. Consequently, we shall affirm the judgment, which concluded likewise.

FACTUAL AND PROCEDURAL BACKGROUND

Instead of reinventing the wheel, we will draw much of our background from that provided in *Morning Star*, *supra*, 38 Cal.4th 324, with references to the current version of section 25205.6 (Stats. 2006, ch. 77, § 13, eff. July 18, 2006).

This case concerns an annual charge imposed on businesses that was enacted in 1989 as part of a comprehensive overhaul of state law concerning hazardous materials. (*Morning Star*, *supra*, 38 Cal.4th at p. 328.)

The charge works as follows. Pursuant to section 25205.6, subdivision (b), each year the Department must provide California's Board of Equalization (the Board) with a schedule (i.e., a list) of business classification codes that identifies the "'types of [businesses] that use, generate, store, or conduct activities in this state related to hazardous

materials.'"[3] (*Morning Star*, *supra*, 38 Cal.4th at p. 327.) If a business has 50 or more employees in this state and falls within one of the listed codes, it must pay a graduated annual charge based on how many employees it has. The charge, which ranges from the hundreds to the thousands of dollars, is deposited in the state's Toxic Substances Control Account, to be disbursed to various programs relating to the control of hazardous materials. (§ 25205.6, subd. (d); see also § 25173.6, subd. (b) [identifying programs funded by this account].) (*Morning Star*, *supra*, 38 Cal.4th at pp. 327, 329.)

In the Regulation, the Department finds that "every" nonexempted "business in California with fifty or more employees uses, generates, stores, or conducts activities in this state related to hazardous materials." (Cal. Code Regs., tit. 22, § 66269.1; § 25205.6, subd. (b); *Morning Star*, *supra*, 38 Cal.4th at p. 327.) The Department reasons that materials it regards as inherent in everyday business activity, such as fluorescent light bulbs, batteries, inks, correction fluid, and toner used in printers and fax machines, constitute "hazardous materials," and that all qualifying companies "'use, generate, store, or conduct activities'" related to these items. (*Morning Star*, at p. 327.) Thus, each year the list submitted by the Department has included the codes for all businesses, except for one type

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[3] As noted, before it was amended in 2006, section 25205.6 applied only to "corporations"; it now covers essentially all business organizations. (Stats. 2006, ch. 77, § 13; § 25205.6, subds. (a), (b).)

of business that section 25205.6 specifically exempts from the charge—nonprofit residential care facilities (§ 25205.6, subd. (h)). (*Morning Star*, at p. 327.) This means that virtually all businesses with 50 or more employees in this state must pay the hazardous materials charge. (*Morning Star*, at p. 328.)

Plaintiff The Morning Star Company (the Company) is a California corporation that offers labor services to companies involved in the tomato processing business. (*Morning Star*, *supra*, 38 Cal.4th at p. 328.) The Company believes that it should not have to pay the hazardous materials charge. (*Ibid*.) The Company acknowledges that it uses computers, printers, fluorescent lights, and other items that the Department classifies as (or regards as containing) "hazardous materials." (*Ibid*.) But the Company asserts that the Legislature did not consider companies in its position as "'us[ing], generat[ing], stor[ing], or conduct[ing] activities . . . related to hazardous materials,'" and that the Department, therefore, has promulgated overly expansive lists of codes in the Regulation. (*Ibid*.)

Consistent with this position, the Company paid its section 25205.6 charges for the years 1993 through 1996 and 2003 through 2005 under protest, and sought refunds from the Board. (*Morning Star*, *supra*, 38 Cal.4th at p. 328.) The Company instituted this action when the Board rejected its demand. The Company seeks a refund, an injunction preventing collection of the charge, a declaration that the Regulation conflicts with section 25205.6, and a declaration that section 25205.6 is a regulatory fee that

violates equal protection and substantive due process. (See *Morning Star*, at p. 328.)

In a bench trial, the trial court rejected the Company's position and denied it relief. So do we.

DISCUSSION

I. The Regulation Is Consistent and Not in Conflict with Section 25205.6

A. Legal Background

"Government Code section 11342.2 provides the general standard of review for determining the validity of administrative regulations. That section states that '[w]henever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless [1] consistent and not in conflict with the statute and [2] reasonably necessary to effectuate the purpose of the statute.'

"Under the first prong of this standard, the judiciary independently reviews the administrative regulation for consistency with controlling law. The question is whether the regulation alters or amends the governing statute or case law, or enlarges or impairs its scope. In short, the question is whether the regulation is within the scope of the authority conferred; if it is not, it is void. This is a question particularly suited for the judiciary as the final arbiter of

the law, and does not invade the technical expertise of the agency.

"By contrast, the second prong of this standard, reasonable necessity, generally does implicate the agency's expertise; therefore, it receives a much more deferential standard of review. The question is whether the agency's action was arbitrary, capricious, or without reasonable or rational basis." (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 108-109, fns. omitted; *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11 & fn. 4.) A regulation which interprets a statute may be declared invalid if the agency's determination that the regulation is reasonably necessary to effectuate the statutory purpose is not supported by substantial evidence. (Gov. Code, § 11350, subd. (b)(1).)

The Regulation interprets section 25205.6, which currently provides in pertinent part:

"(a) For purposes of this section, 'organization' means a corporation, limited liability company, limited partnership, limited liability partnership, general partnership, and sole proprietorship.

"(b) On or before November 1 of each year, the [D]epartment shall provide the [B]oard with a schedule of codes, that consists of the types of organizations that use, generate, store, or conduct activities in this state related to hazardous materials, as defined in Section 25501, including, but not

limited to, hazardous waste. The schedule shall consist of identification codes from one of the following classification systems, as deemed suitable by the [D]epartment:

"(1) The Standard Industrial Classification (SIC) system established by the United States Department of Commerce.

"(2) The North American Industry Classification System (NAICS) adopted by the United States Census Bureau.

"(c) Each organization of a type identified in the schedule adopted pursuant to subdivision [b] shall pay an annual fee, which shall be set in the following amounts: [¶] . . . [¶] [ranging, for example, from $200 for business organizations with 50 to 74 employees, to $1,500 for 250 to 499 employees, up to $9,500 if there are at least 1,000 employees].

"(d) The fee imposed pursuant to this section shall be paid by each organization . . . in accordance with . . . the Revenue and Taxation Code and shall be deposited in the Toxic Substances Control Account. The revenues shall be available, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25173.6 [primarily, for hazardous material remediation, cleanup and disposal, including California's share of the cost of the federal Superfund Program]."

As quoted above, section 25205.6, subdivision (b) "expressly incorporates the definition of 'hazardous material' [set forth] in section 25501. Section 25501, [former]

subdivision (o) [now (p)] states, '"Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment.' The terms 'hazardous substance' and 'hazardous waste,' both subsumed within the definition of 'hazardous materials,' are themselves also defined within section 25501 (see § 25501, subds. (p), (q)); these definitions incorporate numerous schedules and descriptions of substances and items deemed hazardous in particular contexts or concentrations under state law, federal law, or both (*ibid.*). Several of these schedules and definitions, in turn, refer to other schedules and definitions found elsewhere in the law, and so forth." (*Morning Star*, *supra*, 38 Cal.4th at p. 337, fn. 5.)

The Regulation in pertinent part "finds that every business in California with fifty or more employees [except for nonprofit residential care facilities, exempted by section 25205.6, subdivision (h)] uses, generates, stores, or conducts activities in this state related to hazardous materials, as defined in

section 25501 of the Health and Safety Code and in this section." (Cal. Code Regs., tit. 22, § 66269.1.)

B. The First Prong for Regulation Validity Under Government Code Section 11342.2

We begin with the first prong for regulation validity under Government Code section 11342.2: To be valid, the Regulation must be "consistent and not in conflict with" (Gov. Code, § 11342.2) Health and Safety Code section 25205.6.

Section 25205.6 directs the Department to inform the Board annually, through a list of business classification codes referenced in the section, of the types of businesses that use, generate, store, or conduct activities in California related to "hazardous materials," as that term is defined in section 25501, subdivision (p). (§ 25205.6, subd. (b).) In the Regulation, the Department has provided the Board with all of the business classification codes referred to in section 25205.6 (except for nonprofit residential care facilities) based on the Department's view that all modern businesses with at least 50 employees use, generate, store, or conduct activities related to common products that contain hazardous material, such as copy machines, fax machines, printers, computers, fluorescent lights, batteries, and cell phones. In this most basic sense, then, the Regulation is "consistent and not in conflict with" section 25205.6: the Regulation carries out the task the statute directed it to do.

The Company argues that had this all-inclusive view been what the Legislature intended section 25205.6 to mean, the

Legislature, in the pithy words of *Morning Star*, would have "simply said so, and said so simply." (*Morning Star*, *supra*, 38 Cal.4th at p. 337.) Instead, the Legislature in section 25205.6 adopted a detailed, code-listing scheme based on the types of businesses that use, generate, store, or conduct activities related to "hazardous materials," with "hazardous materials" defined by reference to a further array of statutes and regulations. (*Morning Star*, at p. 337.)

This is a potent argument. But it is not the whole story. In examining the legislative intent of section 25205.6, we find the rest of the story.

In 1994, the Legislature amended section 25205.6 to exempt nonprofit residential care facilities from its reach. (§ 25205.6, subd. (h), formerly subd. (g), and before that, subd. (e); Stats. 1994, ch. 619, § 1.) In the course of adopting this amendment, the Legislature was informed in 1994: "In enacting the environmental fee [in section 25205.6] . . . the Legislature authorized an assessment on *all* corporations with more than 50 employees. The purpose was to generate funding for the activities of the [Department], broaden the base of fees which support hazardous waste control activities and call attention to the fact that virtually *all* corporations, in some way, contribute to the generation of hazardous materials and hazardous waste[,] e.g., fluorescent lights contain mercury, solvents are used in everything from computers to the adhesives which hold down carpets, etc." (Sen. Com. on Appropriations,

Rep. on Assem. Bill No. 3540 (1993-1994 Reg. Sess.) Aug. 15, 1994, p. 1, some italics omitted, first italics added.)

In fact, frequently, the Legislature has been told that section 25205.6 applied to all corporations (now businesses). (E.g., as cited in *Morning Star*, *supra*, 38 Cal.4th at p. 339: Sen. Com. on Environmental Quality, Analysis of Sen. Bill No. 660 (1997-1998 Reg. Sess.) Sept. 15, 1997, p. 3 [referring to the assessment as "the broadbased fee levied on all corporations"]; see also Sen. Com. on Environmental Quality, Rep. on Sen. Bill No. 660 (1997-1998 Reg. Sess.) Sept. 10, 1997; Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 2240 (1997-1998 Reg. Sess.).)

And, from the time section 25205.6 was enacted in 1989, the Department has interpreted the statute in the all-inclusive way the Regulation does.

The point is, there is strong evidence the Legislature knows full well that the Department has long been interpreting section 25205.6 in the manner expressed in the Regulation, and the Legislature is fine with that interpretation. This is strong evidence that the Regulation is "consistent and not in conflict with" (Gov. Code, § 11342.2) Health and Safety Code section 25205.6.

Furthermore, the *Morning Star* court's phrasing that section 25205.6 "could have simply said so, and said so simply" had it intended to apply to all businesses, was made in a limited context. (*Morning Star*, *supra*, 38 Cal.4th at p. 327.) That

context was *Morning Star*'s rejection of the Department's argument there that such an all-inclusive view of section 25205.6 was "'the *only* legally tenable interpretation'" of section 25205.6, and therefore exempted from the APA's requirement of formal rulemaking. (*Morning Star*, at pp. 328, 336-337, italics added, quoting Gov. Code, § 11340.9, subd. (f) [setting forth this exemption].) Significantly, *Morning Star* added, in this context, that the Department's all-inclusive view of section 25205.6 was "*reasonable*, but not plainly ineluctable." (*Morning Star*, at p. 328, italics added.)

The Company, however, points to the definition of "hazardous materials" set forth in section 25501, subdivision (p), which section 25205.6 incorporates at subdivision (b). In pertinent part, "hazardous material" is defined in section 25501 as "material that, because of its quantity, concentration, or physical or chemical characteristics, poses a *significant* present or potential hazard to human health and safety or to the environment if released into the workplace or the environment." (§ 25501, subd. (p), italics added.) The Company argues that the Regulation ignores this statutory standard of "significan[ce]" by applying section 25205.6 to virtually all businesses; therefore, the Regulation is inconsistent with section 25205.6. We disagree.

As the trial court found, the Department's view that all modern businesses, in some way, use, generate, store, or conduct activities related to hazardous materials is supported by

substantial evidence in the rulemaking record for the Regulation. That record disclosed that products used by virtually all California businesses in their normal operations—e.g., batteries, computers, personal data assistants, cell phones, copy machines, fax machines, toner cartridges, and fluorescent lights—contain materials which have been identified as hazardous within the meaning of section 25501. In short, the Regulation simply recognizes that virtually all modern businesses are surrounded by modern business equipment containing hazardous material. Given this hazardous material ubiquity in the modern economy, the Regulation is "consistent and not in conflict with" section 25205.6's standard of hazardous material *significance* (incorporated from § 25501, subd. (p)), because the statute applies only to relatively large businesses—those with *at least 50 employees*.

In a related argument, the Company argues that, because section 25205.6's standard of hazardous material significance (incorporated from § 25501, subd. (p)) defines "hazardous material" as one "pos[ing] a significant present or potential hazard to human health and safety or to the environment," scientific peer review under section 57004 is required to determine whether *the Company*'s use of its batteries, fluorescent lights, copy machines, computers and toners, for example, poses a "significant present or potential hazard." In other words, the Company argues, section 25501, subdivision (p) calls for science, and thus scientific peer review, as opposed

to the Department's merely assuming that any business which has fluorescent lights, computers, copy machines, etc., must pay the fee. Section 57004 requires scientific peer review of the scientific basis for a proposed administrative regulation establishing a regulatory level or standard for the protection of public health or the environment. (§ 57004, subds. (a)(2), (b).)

This argument stumbles in two respects, however. First, section 25501, subdivision (p) and the Regulation incorporate already-established hazardous material regulatory levels and standards from federal and state law. (§ 25501, subds. (p), (q), (r); Cal. Code Regs., tit. 22, § 66269.1, subds. (a), (b); see *Morning Star*, *supra*, 38 Cal.4th at p. 337, fn. 5.) Second, section 25205.6 applies to "*types* of [business] organizations" (and the Company is of the regulated "type"), rather than to *individual* businesses (such as the Company individually, independent of its type). (§ 25205.6, subd. (b).)

We conclude the Regulation is "consistent and not in conflict with" (Gov. Code, § 11342.2) Health and Safety Code section 25205.6.

C. The Second Prong for Regulation Validity Under Government Code Section 11342.2

That leads us to the second prong for regulation validity under Government Code section 11342.2: Is the Regulation reasonably necessary to effectuate the purpose of section 25205.6?

In light of what we have just said, the Regulation is not arbitrary, capricious or without reasonable or rational basis. (*Communities for a Better Environment v. California Resources Agency*, *supra*, 103 Cal.App.4th at p. 109.) As we have seen, the Department's determination that the Regulation is reasonably necessary to effectuate the purpose of section 25205.6 is supported by substantial evidence. (Gov. Code, § 11350, subd. (b)(1).)

We conclude the Regulation is "reasonably necessary to effectuate the purpose of" (Gov. Code, § 11350, subd. (b)(1)) Health and Safety Code section 25205.6.

II. Section 25205.6 Imposes a Tax Rather Than a Regulatory Fee

The Company contends that section 25205.6 imposes a regulatory fee rather than a tax. Based on this premise, the Company argues (as we shall see in pt. III of this opinion, *post*) that this fee violates equal protection and substantive due process because it is not reasonably related to the regulatory purposes of section 25205.6. We conclude section 25205.6 imposes a tax rather than a regulatory fee.

Regulatory fees are imposed under the state's police power rather than its taxing power, and must bear a reasonable relationship to the fee payer's burdens on or benefits from the regulatory activity. (*Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 874-878 (*Sinclair*).) A tax, on the other hand, may be imposed upon a class that may enjoy no direct benefit from its expenditure and may not be directly

responsible for the condition to be remedied. (*Carmichael v. Southern Coal & Coke Co.* (1937) 301 U.S. 495, 521-523 [81 L.Ed. 1245, 1260-1261]; *Leslie's Pool Mart, Inc. v. Department of Food & Agriculture* (1990) 223 Cal.App.3d 1524, 1543.) "In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted." (*Sinclair, supra*, 15 Cal.4th at p. 874; *Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 240.)

The charge imposed by section 25205.6 is a tax "if revenue is the primary purpose, and regulation is merely incidental. . . ." (*Sinclair, supra*, 15 Cal.4th at p. 880.) Regulatory fees, on the other hand, are "'"charged in connection with regulatory activities . . . [and] do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes." [Citations.]'" (*Id.* at p. 876, quoting *Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375, which quotes *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 659-660.)

In *Sinclair*, the court concluded that an assessment imposed pursuant to the Childhood Lead Poisoning Prevention Act of 1991 (§ 105275 et seq.) on manufacturers and other persons whose industry or products contributed to environmental lead contamination, was a regulatory fee imposed under the state's police power. (*Sinclair, supra*, 15 Cal.4th at p. 875.) In so holding, the court considered a number of factors. Under the

act, the prevention program was supported entirely by the fees collected pursuant to the act, the fees were imposed to mitigate the actual or anticipated adverse effects of the fee payers' operations, and the amount of the fees was required to bear a reasonable relationship to those adverse effects. (*Id.* at pp. 870-871, 876-878.) Persons able to show that their industry did not contribute to the contamination or that their product did not result in quantifiable contamination were exempt from paying the fee. (*Id.* at p. 871.) "Moreover, imposition of 'mitigating effects' fees in a substantial amount (Sinclair allegedly paid $97,825.26 in 1991) also 'regulates' future conduct by deterring further manufacture, distribution, or sale of dangerous products, and by stimulating research and development efforts to produce safer or alternative products." (*Id.* at p. 877.)

By contrast, section 25205.6 makes plain the purpose of its charge is to raise sufficient revenues to fund the purposes of subdivision (b) of section 25173.6, including the state's federal obligation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (i.e., the federal superfund program) "to pay specified costs of removal and remedial actions carried out pursuant to" the federal act. (§ 25205.6, subds. (d), (g)(1) & (2).) Section 25173.6, subdivision (b) authorizes the appropriation of section 25205.6 funds primarily to remediate, clean up and dispose of hazardous materials, rather than to regulate the payers' business

activities in using, generating or storing hazardous materials. The amount of the section 25205.6 charge does not bear a reasonable relationship to the adverse effects of the contamination generated by the payer and therefore has no regulatory deterrent effect.

In sum, the purpose of the charge imposed pursuant to section 25205.6 is to raise revenue to pay for a wide range of governmental services and programs primarily relating to hazardous waste remediation, cleanup and disposal. The charge to the Company is not regulatory because it does not seek to specifically regulate the Company's use, generation or storage of hazardous material but to raise money for the disposal and remediation of hazardous material generally. The charge is therefore a tax. As the trial court found, unlike the regulatory fee imposed on a business that generates large amounts of hazardous wastes or that disposes of hazardous waste on land or that operates a hazardous waste facility (see §§ 25205.2, 25205.4, 25205.5), the charge imposed by section 25205.6 on a business whose activities are generally "related to hazardous materials" is designed to raise revenue for toxic substances control activities and involves no regulation or policing of individual business operations.

We conclude section 25205.6 imposes a tax rather than a regulatory fee.

III. The Section 25205.6 Tax Does Not Violate Equal Protection or Substantive Due Process

The Company claims the section 25205.6 charge violates equal protection and substantive due process. Having determined that section 25205.6 imposes a tax, we reject these claims under the deferential standard of review used to assess the constitutionality of a tax.

The Company argues that the section 25205.6 charge irrationally singled out corporations (prior to being amended in 2006, when section 25205.6 was made applicable to essentially all business organizations with at least 50 employees), and irrationally bases the amount of its graduated assessment solely on the number of employees. The Company asserts that imposing the tax only on corporations or on businesses employing 50 or more persons bears no rational relationship to the goal of placing the costs of disposal on those who create the problem. We disagree.

"'It is inherent in the exercise of the power to tax that a state be free to select the subjects of taxation and to grant exemptions. Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation. [Citations.] . . . [I]nequalities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation. [Citations.]'" (*Stevens v. Watson* (1971) 16 Cal.App.3d 629, 633, quoting *Carmichael v. Southern Coal & Coke Co.*, *supra*, 301 U.S. at pp. 509-510 [81 L.Ed. at p. 1253].)

The rational basis test is used for both equal protection analysis involving economic legislation (*Swoap v. Superior Court* (1973) 10 Cal.3d 490, 504; *County of Los Angeles v. Patrick* (1992) 11 Cal.App.4th 1246, 1252) and substantive due process analysis (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 863, fn. 3; *City of San Jose v. Donohue* (1975) 51 Cal.App.3d 40, 45). We therefore treat the two claims as one. (See *Cohan v. Alvord* (1984) 162 Cal.App.3d 176, 186; see also *Minnesota v. Clover Leaf Creamery Co*. (1981) 449 U.S. 456, 470, fn. 12 [66 L.Ed.2d 659, 673].)

The legislative choices over the methods to implement its programs are not as limited as the Company argues. The Legislature is given broad power to determine the best methods to carry out its programs. The Legislature need only make statutory classifications that are rationally related to a reasonably conceivable legislative purpose. (*Warden v. State Bar* (1999) 21 Cal.4th 628, 644-651.)

The purpose of section 25205.6 is to raise revenue to fund the state's hazardous material and hazardous waste programs. The taxing of businesses with 50 or more employees, as a general measure of the size of the business and its use of hazardous material, is manifestly rationally related to that of funding the disposal of hazardous material. Furthermore, as for the pre-2006 amended version of section 25205.6 that applied to corporations only, a legislative decision to tax corporations and not other businesses (via the individuals who comprise them)

is generally permissible under the equal protection clause, given the advantages that corporations enjoy in carrying on their businesses. (*Lehnhausen v. Lake Shore Auto Parts Co.* (1973) 410 U.S. 356, 359-362, 365 [35 L.Ed.2d 351, 354-356, 358].)

To impose on the state the task and costs of relating the disposal charge to each business by the amount of hazardous material used would eviscerate the program. As with other taxes, the Legislature need only generally relate the subject of the hazardous material tax with the purpose to be served. It has done so in this case.

DISPOSITION

The judgment is affirmed. **(*CERTIFIED FOR PUBLICATION*.)**

BUTZ, J.

We concur:

BLEASE, Acting P. J.

HULL, J.