

✘ The meltdown of the State of California's budget raises a host of questions about governance, taxes and politics in the state and beyond. One of those questions implicates other concerns regarding the design and implementation of effective environmental regulation. As my father used to say, "Sometimes cheap is too expensive," an adage that is borne out by the results of regulation on the cheap. California legislators add more and more regulatory initiatives to a raft of existing programs without establishing stable funding sources. In the face of the budget crisis, the future of these regulatory programs is at risk. For example, the Office of Environmental Health Hazard Assessment is on the [chopping block](#), while the new Green Chemistry regulatory program lacks any dedicated funding. I blogged earlier about the [fiscal gorilla in the closet in the debates over federal chemical policy](#), and it seems that the California budget crisis will bring that gorilla into the state's living room.

But perhaps the long term resolution to funding regulatory programs could arise from the crisis, and even play a role in resolving it. One of the barriers to a sensible settlement of the budget battles has been Proposition 13's requirement that taxes be approved by a supermajority in the legislature. Taxes are distinguished from fees, which require only a majority vote. As one would expect, there has been significant litigation and associated case law concerning this distinction. While the legal standards are far from crystal clear, one thing is certain: fees imposed to fund regulatory programs are not considered taxes so long as the fees do not exceed the reasonable cost of program and are not levied for any revenue purposes unrelated to the program. The California Supreme Court has defined regulatory purposes of fees broadly, including support of permitting, oversight, cleanup and mitigation activities, and even "deterring further manufacture, distribution, or sale of dangerous products" and "stimulating research and development efforts to produce safer or alternative products." *Sinclair Paint Co. v. State Bd. of Equalization*, 937 P.2d 1350, 1356 (1997). In that case, a fee was imposed on paint manufacturers based upon market share to fund evaluation, screening, and medically necessary follow-up services for child victims of lead poisoning. Later cases applied fairly liberal standards to the specific design of the fees, particularly regarding how the program costs are apportioned among the responsible companies or individuals.

Legislators have a dual opportunity in the midst of the crisis, if they can muster the necessary political and person will. First, they can finally establish stable funding for a variety of regulatory programs by mandating the collection of fees from the regulated entities. Many examples of such fees are already on the books, and the time has come to systematize and expand this approach. As one California Appeals Court noted, "[a] reasonable way to achieve Proposition 13's goal of tax relief is to shift the costs of

controlling stationary sources of pollution from the tax-paying public to the pollution-causing industries themselves” through fees. *San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.*, 203 Cal. App. 3d 1132, 1148 (1988). Second, by relying upon fees to fund regulatory programs—in the environmental area and beyond—they free up general revenue funds for other programs such as education and social services. It appears that the administration has taken some steps in this direction already. For example, the [Governor’s May Revision](#) proposes to increase employer fees to fund the Occupational Safety and Health program and the Labor Standards Enforcement program, freeing up more than \$60 million in the general fund. Clearly this approach would not resolve the budget crisis itself, and no doubt it creates its own problems. Moreover, it will likely give rise to its own political and policy costs. Yet it may well be an idea whose time has come.