



INITIAL STATEMENT OF REASONS
HAZARDOUS WASTES OF CONCERN: REPORTING BY GENERATORS
Department of Toxic Substances Control Reference Number: R-03-18
Office of Administrative Law Notice File Number: Z-05-0830-05

EFFORT TO AVOID DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

These regulations will expand the scope of applicability of the Hazardous Wastes of Concern (HWC) Regulations that were adopted by DTSC on July 1, 2003 (DTSC reference number R-03-02) to apply to “any person handling hazardous waste of concern,” as required by Statutes 2002, chapter 607 (Sen. Bill No. 489 (2001-2002 Reg. Sess.) Romero) hereafter referred to as SB 489. The provisions enacted by SB 489 were intended to increase the security of HWC because of the potential to use those wastes to intentionally harm human health and or the environment.

The regulations are consistent with the Hazardous Materials Transportation Act of 1994, of title 49 of the United States Code and are based on the risk management criteria implicit in the establishment of the Hazardous Materials Table and related regulations by United States Department of Transportation.

If DTSC determines that the regulations adopted could be preempted by revisions to the Hazardous Materials Transportation Authorization Act of 1994, DTSC will apply to the Secretary of Transportation for a waiver of preemption pursuant to subsection (e) of section 5125 of title 49 of the United States Code and in accordance with Health and Safety Code section 25169.7 (d).

STUDIES RELIED ON

Since the proposed regulations are mandated by statute, no studies were conducted.

ALTERNATIVES CONSIDERED

Chosen Alternative: DTSC has identified that amending existing regulations to include handling requirements for generators of hazardous wastes of concern is the best alternative that is consistent with Health and Safety Code section 25169.7.

Do nothing. DTSC rejected this option because it would create confusion since Health and Safety Code section 25169.7 makes the requirements applicable to all persons that handle HWC and the emergency regulations that were adopted inadvertently omitted generators.

DETAILED STATEMENT OF REASONS

Amend Section 66261.111 to Article 5 of Chapter 11:

DTSC is proposing the amended language in section 66261.111 to explicitly state the criteria for determining a waste as a HWC. Earlier versions of the criteria contained in section 66261.111 created some confusion in the regulated community which can be averted by modifying the language. As such, subsections (a) through (c) are being amended to clarify existing language.

Subsection (a) will be amended to indicate that hazardous wastes that originated from a material with a label placed by the manufacturer with a specific hazard class division, or hazardous wastes that are identified on the Uniform Hazardous Waste Manifest meeting the specified criteria are considered HWC. Under existing law the Department of Transportation requires that all materials be properly labeled for shipment in commerce. Labels are adhesive signs used as hazmat identifiers, designed to meet certain specifications, and affixed on packages of hazardous materials offered for transport. They communicate information about the hazards of a chemical found inside a package or of special handling requirements for the package. Hazard class and handling labels are important because they convey warnings about hazardous materials within a package. They visually identify a hazard internationally, regardless of language. Generators often rely on the information contained on the labels to properly handle materials as well as for compliance with existing requirements. Hazardous wastes often exhibit the same hazard and characteristics as the materials that they were derived from.

Subsection (b) will be amended to explicitly define a missing HWC as one that is unaccounted for, or a difference in type has been identified when it is received at the designated facility. Existing language uses the term “disappeared” which is not typically used by industry. The term “unaccounted” for is easily understood and is consistent with existing practices. In addition, a “difference in type” has been added to the definition of missing hazardous wastes of concern because occasionally wastes are identified with different criteria on the manifest in comparison to the characteristics of the wastes when received at the designated facility.

Paragraph (2) of subsection (c) will be amended to include an example of HWCs. The examples provided in existing language included “waste solvent substituted for used oil.” Neither of the two are HWCs, and it created confusion in the regulated community. An appropriate example of a HWC mislabeled as mineral spirits has been provided. Other changes in paragraph (2) are made only to clarify wording.

Amend Section 66262.10

The requirements in Health and Safety Code section 25169.7, and all of the implementing regulations, are applicable to any person handling HWC. “Persons,” as defined in Health and Safety Code section 25118 means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association and corporation. Emergency regulations adopted to implement Health and Safety Code

section 25169.7 failed to explicitly state that the requirements apply to generators of HWC. This amendment explicitly makes the requirements applicable to generators of HWC. Subsection (b) will be amended to require generators who treat, store or dispose of HWC to comply with the requirements of section 66262.44. Other changes in section 66262.10 are made only to clarify wording.

Add Section 66262.44

Health and Safety Code section 25169.7 requires DTSC to adopt regulations for the management of hazardous waste of concern. Health and Safety Code section 25169.7 requires that any person handling HWC to report missing HWC. Existing regulations do not explicitly include generators. Subsections (a) through (c) are being added to comply with statute, and are consistent with the requirements applicable to all persons handling HWC.

Subsection (a) explicitly identifies generators operating under a permit by rule, conditional authorization or conditional exemption to comply with the reporting requirements in the event that a hazardous waste of concern is discovered to be missing. The reporting requirements are consistent with statute applicable to all persons handling HWC.

Subsection (b) requires generators to immediately attempt to locate or otherwise reconcile the missing hazardous waste of concern. DTSC believes that 24 hours allows a generator reasonable time to investigate and attempt to reconcile missing HWC and provide reliable information before reporting. If the missing hazardous waste is not reconciled within 24 hours after it was first discovered as missing, the generator must call DTSC. When notifying DTSC, the generator must contact DTSC's 24 hour hotline which ensures that a person reports crucial information pertaining to the missing HWC. The generator must provide DTSC the generator's name, identification number, U.S. DOT description (i.e. shipping name of missing HWC and hazard class), the number of containers and total volume (which is typically entered in on lines 11, 12, 13, and 14 of the manifest or is contained on a materials safety data sheet). In addition, the potential locations, and or transportation routes where the waste may have become missing must be provided to enable DTSC to properly coordinate and alert the California Highway Patrol. The reporting requirements are consistent with statute applicable to all persons handling HWC.

Subsection (c) requires the generator to make a written report to DTSC within five days after the waste was determined to be missing. The written report must include the measures the generator undertook in an effort to locate the missing hazardous wastes of concern, the outcome and a copy of the manifest if appropriate. In an effort to respond effectively DTSC request that generators provide the written report to the regional office with jurisdiction of their facility. The reporting requirements are consistent with statute applicable to all persons handling HWC.

Subsection (d) states that when complying with HSC 25205.16 generators should identify themselves as a generator of HWC. Under the provisions of HSC 25205.16,

DTSC submits information to generators, transporters and treatment, storage and disposal facilities for verification on an annual basis. DTSC anticipates requests for this information from the Legislature.