

Retail Waste Working Group

HWCL Foundational Issues & Terms and Definitions

Presented by Jay Cross, Office of Legal Affairs
Department of Toxic Substances Control
February 3, 2017

California's HWCL: Statutes and Regulations



- Health and Safety Code, Division 20, Chapter 6.5 Hazardous Waste Control Law § 25100 et seq
- California Code of Regulations (CCR), Title 22, Division 4.5, Environmental Health Standards for the Management of Hazardous Waste.

(Chapter 10, Article 2, Definitions § 662601.10)



Foundational Issue:

Is the material (i.e., non-salable retail item) a “waste” under the HWCL?

Foundational Issue:

“**Waste**” (i.e., an item that has been “**discarded**”) is defined in Health and Safety Code section 25124 and in California Code of Regulations (“CCR”), section 66261.2.



Foundational Issue:

Under the HWCL, the term “discard” (or “waste”) includes much more than “disposal.”

Foundational Issue:

Under HSC § 25124, a regulated “waste” (if “hazardous”) can include items that are:

recycled (e.g., “used,” “reused,” or “reclaimed”) either on site or offsite, except as provided under HSC § 25143.2.



Health & Safety Code, § 25124(b)(2)

Foundational Issue:

Under HSC § 25124, a regulated “**waste**” (if “hazardous”) can include items that are:

stored, accumulated or treated **BEFORE** they are “recycled” (e.g., “used,” “reused,” or “reclaimed”) either on site or offsite, except as provided under HSC § 25143.2.

(Health & Saf. Code, § 25124(b)(2).)

Foundational Issue:

Under HSC § 25124, a regulated “waste” (if “hazardous”) can include items that are:

stored, accumulated or treated **BEFORE**, or in lieu of, being **disposed of**.

(Health & Saf. Code, § 25124(b)(1)(C).)

Foundational Issue:

Under CCR, tit. 2, section 66261.2, a regulated “waste” (if “hazardous”) can include items that are:

Reclaimed, except as provided under HSC § 25143.2, subdivisions (b) and (d).

(CCR, tit. 22, § 66261.2(d)(3).)

Foundational Issue:

Under CCR, tit. 2, section 66261.2, a regulated “**waste**” (if “hazardous”) can include items that are:

stored, accumulated, or treated **BEFORE** they are reclaimed, except as provided under HSC § 25143.2, subdivisions (b) and (d).

(CCR, tit. 22, § 66261.2(d)(3).)

Foundational Issue:

Under CCR, tit. 2, section 66261.2, a regulated “**waste**” (if “hazardous”) can include items that are:

stored, accumulated, or treated **BEFORE** they are recycled by being used in a manner that constitutes disposal.

(CCR, tit. 22, § 66261.2(d)(2).)

Foundational Issue:

Under CCR, tit. 2, section 66261.2, a regulated “**waste**” (if “hazardous”) can include items that are:

accumulated speculatively.

(CCR, tit. 22, § 66261.2(d)(4).)

Foundational Issue:

Under CCR, tit. 2, section 66261.2, a regulated “waste” (if “hazardous”) can include items that are:

- accumulated speculatively.

(CCR, tit. 22, § 66261.2(d)(4).)

Foundational Issue:

Is the waste “hazardous”
under the HWCL?

Foundational Issue:

Under the HWCL, a generator is required to characterize a non-excluded **waste** for its **hazardous** potential.

(CCR, tit. 22, § § 66262.11 & 66260.200(c).)

Foundational Issue:

Is the non-excluded **waste** “listed” as **hazardous**?

(CCR, tit. 22, § 66262.11(b).)

Foundational Issue:

Does the non-excluded **waste** meet one or more **hazardous** characteristics?

Is it toxic, reactive, ignitable, and/or corrosive?



(CCR, tit. 22, § § 66262.11(b), 66261.3, 66261.20-66261.24.)

Discussion:



Discussion:

Disposition of a “product”

- Sale to Consumer
- Sale to another retailer
- Donation
- Accumulation, storage and transportation of the “product” for disposal
- (either recycling, reclamation, incineration, landfill)



Discussion:

Scenario 1

- Product Sale from Retailer 1 to Retailer 2
 - ❖ sale of product (Flammable Paint)
- Retailer 2
 - ❖ retailer 2 sells to consumer
 - ❖ retailer 2 discards
- Who is the generator?



Discussion:

- Scenario 2
- Retailer 1 donates to a charitable organization
- Charitable organization
 - ❖ sells to consumer
 - ❖ gives it away
 - ❖ discards
- Who is the generator?



Discussion:

If it was a waste prior to sale or donation, then the generator would be
Retailer 1.

Discussion:

When the retailer sends it to the reverse distributor is it a waste?

If the item is sent to be accumulated prior to disposal, then it is a waste when it was at the retailer.

If the item is sent to be accumulated for recycling, it is also a waste when it was a retailer.

Discussion:

Recall

- Is the manufacturer that issues a recall the generator?
- Is the retailer that identifies the product and sets it aside the generator?
- The retailer must manage it as hazardous waste (if it is hazardous).

Discussion:

Return to Manufacturer

- Is there discard?
- Is it a buy back?
- Retrograde material are a subset of recyclable material and are waste.

HWCL Terms and Definitions

“Generator” or “Producer” (CCR, tit. 22, § 66260.10)

...whose act or process produces hazardous waste identified or listed in chapter 11 of CCR or whose act first causes a hazardous waste to become subject to regulation.



“Waste” (HSC § 25124)

..means any discarded material...that is not excluded by this chapter or by regulations adopted pursuant to this chapter.
(b) a discarded material is any material that is any of the following:

- (1) Relinquished by being any of the following:
 - (A) Disposed of.
 - (B) Burned or incinerated.
 - (C) Accumulated, stored, or treated, but not recycled, before, or in lieu of, being relinquished by being disposed of, burned, or incinerated.

“Waste” *Continued*



- (2) Recycled, or accumulated, stored, or treated before recycling, except as provided in Section 25143.2.
- (3) Poses a threat to public health or the environment:
 - (A) mislabeled or not adequately labeled,
 - (B) packaged in deteriorated or damaged containers, unless the material is contained in sound or undamaged containers within 96 hours after the containers are discovered to be deteriorated or damaged.
- (4) Considered inherently waste-like, as specified in regulations adopted by the department.

“Reclaimed” (CCR, tit. 22, § 66260.10)

...means that a material is processed to recover a usable product, or that it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.



“Recyclable Material”

(HSC § 25120.5 & CCR, tit. 22, § 66260.10)

Means hazardous waste that is capable of being recycled, including, but not limited to, any of the following:



“Recyclable Material”

(HSC § 25120.5 & CCR, tit. 22, § 66260.10)

(a) A residue.

(b) A spent material...spent stripping or plating solution or etchant.

(c) A material that is contaminated to such an extent that it can no longer be used for the purpose for which it was originally purchased or manufactured.

(d) A byproduct listed in the regulations adopted by the department as “hazardous waste from specific sources” or “hazardous waste from nonspecific sources.”

“Recyclable Material” *Continued*

(e) retrograde material that has not been used, distributed, or reclaimed through treatment by the original manufacturer or owner by the later of the following dates:

- (1) 1 year after the date when the material became a retrograde material.
- (2) If the material has been returned to the original manufacturer, 1 year after the material is returned to the original manufacturer.



“Recycled Material”

(HSC § 25121 & CCR, tit. 22, § 66260.10)

(a) “Recycled material” means a recyclable material which has been used or reused, or reclaimed.

(b) “Recycled material” does not include an intermediate manufacturing process stream.



“Recycling” (HSC § 25121.1)

(a) using, reusing, or reclaiming a recyclable material.

(b) for purposes of the fees, taxes, and charges imposed pursuant to Article 7, “recycling” means the collecting, transporting, storing, transferring, handling, segregating, processing, using or reusing, or reclaiming of recyclable material to produce recycled material.



“Used or Reused” (CCR, tit. 22, § 66260.10)

Material is either:

(a) employed as an ingredient, including use as an intermediate, in an industrial process to make a product,
or

(b) employed in a particular function or application as an effective substitute for a commercial product.



RCRA vs Non-RCRA Hazardous Waste (HSC § 25117.9)

- RCRA hazardous waste” identified as a hazardous waste in Part 261 (commencing with Section 261.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.
- “Non-RCRA hazardous waste” hazardous waste regulated in the state, other than RCRA hazardous waste, as defined in HSC § 25120.2.



“Retrograde Material” (HSC § 25121.5 & CCR, tit. 22, § 66260.10)

...hazardous material which is not to be used, sold, or distributed for use in an originally intended or prescribed manner or for an originally intended or prescribed purpose for the following criteria:

- (1) undergone chemical, biochemical, physical changes due to the passage of time or the environmental conditions under which it was stored.
- (2) has exceeded a specified or recommended shelf life.
- (3) is banned by law, regulation, ordinance, or decree.
- (4) cannot be used for reasons of economics, health or safety, or environmental hazard.

**RECALL
ALERT**

Retrograde Material Does not Include:

(b) material designated in regulations adopted by the department as included in a category which the department shall title “Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof,” if either of the following conditions is met:

(1) used in a manner constituting disposal and the material is not normally used in a manner constituting disposal.



“Surplus Material” (CCR, tit. 22, § 66260.10)

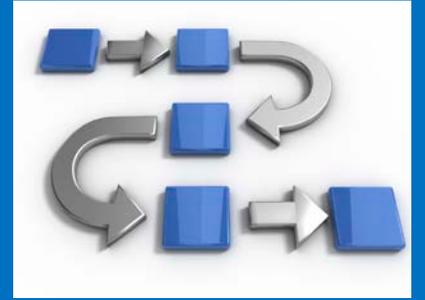


...unused raw material or commercial product from a person who intended to use/sell it, but no longer needs it, and transfers ownership to another person for use in a manner which the material or product is commonly used. Surplus material is excess material.

Surplus material is neither of the following:

- (a) a retrograde material;
- (b) a recyclable material.

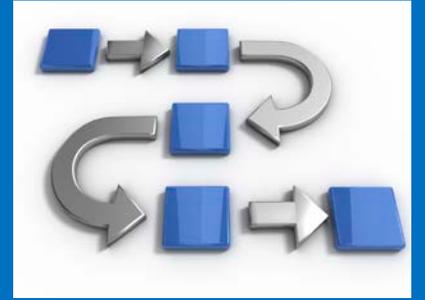
“End-User” (CCR, tit. 22, § 66260.10)



(a) a person who receives a hazardous waste from an unaffiliated third party and who intends to, or does, use or reuse that waste as:

- (1) an ingredient in an industrial process to make a product; or
- (2) a substitute for a raw material in a process that uses raw materials as principal feedstocks; or
- (3) a substitute for a commercial product in a particular function or application.

“End-User” (CCR, tit. 22, § 66260.10)



“End-user” does not include:

- (1) a person who receives a RCRA hazardous waste;
- (2) a person who receives a hazardous waste from an unaffiliated third party and who intends to, or does, process that waste to recover usable products or regenerate that waste;
- (3) a person managing a material that is not a waste pursuant to Health and Safety Code section 25143.2.