

## TEXT OF PROPOSED REGULATIONS

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## DIVISION 4.5, TITLE 22, CALIFORNIA CODE OF REGULATIONS

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## ATTACHMENT

TEXT OF PROPOSED REGULATIONS – POST-HEARING CHANGES  
May 2018

Changes in this version reflect post-hearing changes to the text as originally proposed.

The original text that exists in Title 22 of the California Code of Regulations is shown with no underlines. The proposed text changes are indicated as follows:

**Underline:** Underlined text reflects new text proposed in September 2017.

**Strikeout:** ~~Strikeout~~ text reflects deleted text proposed in September 2017.

**Underline:** Underlined text reflects new text resulting from post-hearing changes.

**Strikeout:** ~~Strikeout~~ text reflects deleted text resulting from post-hearing changes.

For ease of reading and referencing the proposed regulations, line numbers and table of content page numbers are added, but are not part of the actual regulatory text.

NOTE: There is an unofficial version of this proposal available on the Department of Toxic Substances Control's website as a courtesy.

The unofficial "clean" version of the revised proposed regulations indicates only "simple changes." Text in yellow highlight are additional revisions from the proposal dated September 2017 and there is no strikeout text for deletions. If the text in a section, subsection, or paragraph is highlighted, it is new. Some nonsubstantive revisions may be shown in the clean version.

1       \*\*Underlined text reflects new text as proposed in September 2017  
2       \*\*~~Strikeout~~ text reflects deleted text as proposed in September 2017  
3  
4       \*\*Underlined text reflects new text as proposed in June 2018  
5       \*\*~~Strikeout~~ text reflects deleted text as proposed in June 2018  
6  
7  
8  
9

10   **CHAPTER 10. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL**

11  
12   **Amend Title 22, division 4.5, chapter 10, article 2, section 66260.10 to read:**

13  
14   **§ 66260.10. Definitions.**

15   ~~Additional definitions applicable to management of universal wastes are found in section~~  
16   ~~66273.9.~~ When used in this division, the following terms have the meanings given below:

17   ...

18   "Admitted carrier" means an insurance company entitled to transact business of insurance in  
19   this state, having complied with the laws imposing conditions precedent to transactions of  
20   such business.

21  
22   "Chemical of Potential Concern" or "COPC" means a chemical or chemical constituent at or  
23   from the facility that is present in soil, water or air, at a concentration that may pose a risk,  
24   and is potentially due to facility related activities or contamination. This definition is solely for  
25   purposes of the health risk assessment process pursuant to section 66270.14(e).

26   ...

27  
28   *Note: Authority cited: Sections 25141, 25150, 25158.1, 25158.4, 25159, 25159.5, 25187.7,*  
29   *25200.10, 25204, 25214.9, 25214.10.2, 25218.3(d), 25200.21, 25245, 25316, 25355.5,*  
30   *25356.9, 25358.3, 25358.9, 58004, and 58012, Health and Safety Code; Governor's*  
31   *Reorganizational Plan #1 of 1991; and Sections 42475.1 and 42475.2, Public Resources*  
32   *Code. Reference: Sections 25110.02, 25110.1, 25110.5, 25111, 25112, 25112.5, 25113,*  
33   *25114, 25115, 25117, 25117.1, 25117.3, 25117.8, 25117.9, 25117.11, 25118, 25119, 25120,*  
34   *25121, 25121.5, 25122.7, 25123, 25123.3, 25123.5, 25123.6, 25141, 25150, 25158.2, 25159,*  
35   *25159.5, 25187.7, 25200.10, 25201.6, 25204, 25214.9, 25218.1(f), 25218.3, 25200.21, 25229,*  
36   *25245, 25316, 25354(b), 25355.5, 25355.6, 25356.9, 25358.1, 25358.9, 25359.8, 25361,*  
37   *25501, 25529, 58004, and 58012, Health and Safety Code; Section 42463(f)(1), Public*  
38   *Resources Code; and 40 Code of Federal Regulations Sections 260.10, 261.1, 262.21,*  
39   *264.551, 264.1031, 268.2, 270.2 and 273.6.*

40  
41

1 **CHAPTER 14. Standards for Owners and Operators of Hazardous Waste Transfer,**  
2 **Treatment, Storage, and Disposal Facilities**

3  
4 **Amend** sections 66264.16, 66264.101, 66264.141, 66264.143, 66264.144, 66264.145,  
5 66264.146, 66264.147, and 66264.151 of Title 22 of the California Code of Regulations, to  
6 read:

7  
8 **§ 66264.16. Personnel Training.**

9 (a)(1) The owner or operator of a hazardous waste transfer, treatment, storage, or disposal  
10 facility shall ensure that facility Facility personnel shall successfully complete a training  
11 program ~~through~~ of classroom ~~or online~~, computer-based or electronic instruction, or on-the-  
12 job training that teaches facility personnel them to perform their duties in a way that ensures  
13 the facility's compliance with the requirements of this ~~chapter~~ ~~division~~ chapter and  
14 subsection 5192(p) of Title 8, California Code of Regulations. Facility personnel engaged in  
15 shipping hazardous waste shall be triennially trained commensurate with their  
16 responsibilities to meet the requirements in section 172.704 of Title 49, Code of Federal  
17 Regulations commensurate with their responsibilities.

18 (1) The owner or operator shall ensure that ~~this~~ the training program includes all the  
19 elements specified in this section ~~described in the document required under subsection~~  
20 ~~(d)(3) of this section.~~

21 (2) This ~~program~~ Hazardous waste management training ~~must~~ shall be directed by a  
22 person trained in hazardous waste management procedures, and ~~must~~ shall include  
23 instruction ~~which~~ that teaches facility personnel hazardous waste management  
24 procedures (including, but not limited to, contingency plan implementation, and the  
25 identification and segregation of incompatible hazardous wastes or products) relevant to  
26 the positions in which they are employed.

27 (3) At a minimum, the emergency response training ~~program~~ shall ~~must~~ be designed to  
28 ensure that facility personnel are able to respond effectively to emergencies by  
29 familiarizing them with ~~emergency prevention, mitigation, abatement, and notification~~  
30 procedures, emergency equipment, and emergency systems, including all the following;  
31 ~~where applicable~~ where applicable:

- 32 (A) procedures for using, inspecting, repairing, and replacing facility emergency
- 33 and monitoring equipment;
- 34 (B) key parameters for automatic waste feed cut-off systems;
- 35 (C) communications or alarm systems;
- 36 (D) response to fires or explosions;
- 37 (E) response to groundwater contamination incidents; ~~and~~
- 38 (F) shutdown of operations; ~~(F) shutdown of operations;~~
- 39 (G) self-protection measures; and
- 40 (H) accident prevention methods.

41 (4) Effective July 1, 2019, the ~~The~~ training program must also be designed to ensure the  
42 following every 24 months:

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 (A) General awareness training. The owner or operator shall ensure all ~~All~~ facility  
2 ~~personnel shall be provided~~ successfully complete training that provides  
3 description of the facility, and an overview of the facility ~~description and~~ facility  
4 operations that are subject to this chapter, including, but not limited to, security  
5 and safety considerations; and
- 6 (B) Function-specific job training. The owner or operator shall ensure all ~~All~~  
7 facility personnel who are involved with hazardous waste management activities  
8 ~~shall be provided~~ successfully complete training concerning the requirements of  
9 this chapter and any relevant ~~hazardous waste standard operating~~ procedures  
10 applicable to job tasks and functions performed by the employee.
- 11 (b) The owner or operator shall ensure that facility ~~Facility~~ personnel ~~shall~~ successfully  
12 complete the program required in subsection (a) of this section within 180 days ~~six months~~  
13 after the date of their employment or assignment to a facility, or to a new position at a  
14 facility. Employees hired after the effective date of these regulations shall not work in  
15 unsupervised positions until they have completed the training requirements of subsection (a)  
16 of this section.
- 17 (c) The owner or operator shall ensure that facility ~~Facility~~ personnel ~~shall~~ take part in an  
18 annual review of the initial training required in subsection (a) of this section, unless  
19 otherwise specified.
- 20 (d) The training records required by this subsection must demonstrate compliance with  
21 subsection (a) and include the specific elements set out in paragraphs (1) through (4). The  
22 owner or operator shall maintain the following documents and records at the facility:  
23 (1) the job title for each position at the facility related to hazardous waste management,  
24 and the name of the employee filling each job;  
25 (2) a written job description for each position listed under paragraph ~~subsection~~-(d)(1) of  
26 this section. This description may be consistent in its degree of specificity with  
27 descriptions for other similar positions in the same company location or bargaining unit,  
28 but shall include the requisite skill, education, or other qualifications, and duties of  
29 employees assigned to each position;  
30 (3) a written description, including a syllabus and/or outline, of the type and amount of  
31 both introductory and continuing training that will be given to each person filling a  
32 position listed under paragraph (d)(1) of this section;  
33 (4) employee ~~signed or~~ certified records that document that the training ~~or job~~  
34 ~~experience~~ required under subsections (a), (b), and (c) of this section has been given  
35 to, and completed by, each employee.
- 36 (e) The owner or operator shall maintain training ~~Training~~ records on current personnel ~~shall~~  
37 ~~be kept~~ until closure of the facility and ~~training records on former employees shall be kept~~  
38 for at least three years from the date the employee last worked at the facility. Personnel  
39 training records may accompany personnel transferred within the same company.
- 40 (f) Effective March 1, 2021, the ~~The~~ owner or operator shall prepare and submit to the  
41 Department by March 1 of each year, an annual certification that attests to the training of the

- 1 facility personnel for the previous calendar year in accordance with subsections (a) and (c).  
2 The certification must include the following:  
3 (1) a signed statement by the owner or operator certifying that facility personnel have  
4 been trained in a manner that satisfies the requirements of this section 66264.16 and  
5 any applicable requirements of subsection 5192(p) of Title 8, California Code of  
6 Regulations and section 172.704 of Title 49, Code of Federal Regulations.  
7 (2) the job title for each position at the facility related to hazardous waste management,  
8 and the name of the employee filling each job.  
9

10 *Note: Authority cited: Sections 208, 25150, and 25159, 25200.21, 58004, and 58012 Health*  
11 *and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR*  
12 *Section 264.16.*

13  
14 ...

15

16 **§ 66264.101. Corrective Action for Waste Management Units.**

17 (a) The owner or operator of a facility seeking a permit for the transfer, treatment, storage,  
18 or disposal of hazardous waste shall institute corrective action as necessary to protect  
19 human health and the environment for all releases of hazardous waste or constituents from  
20 any solid or hazardous waste management unit at the facility, regardless of the time at  
21 which waste was placed in such unit.

22 (b) The owner or operator shall provide a financial assurance mechanism for corrective  
23 action to the Department within 90 days of the Department's approval of a corrective  
24 measures implementation workplan or a Department-approved equivalent. The financial  
25 assurance mechanism must consist of one of the options specified in section 66264.143.  
26 The owner or operator shall establish the financial assurance mechanism to allow the  
27 Department access to the funds to undertake corrective measures implementation tasks if  
28 the owner or operator is unable or unwilling to undertake the required tasks. The financial  
29 assurance mechanism is subject to the Department's approval. The Department shall  
30 require financial assurance for corrective action at the earliest time the Department is able to  
31 make a reasonable determination of the amount of financial assurance required. The  
32 Department shall make a reasonable determination of the amount of financial assurance  
33 required for corrective action before corrective action is initiated by a facility.

34 (b)(c) Corrective action ~~must~~ will be specified in the permit, ~~or order,~~ or agreement for  
35 corrective action issued or entered into by the Department in accordance with this article,  
36 article 15.5, or article 17, and Health and Safety Code sections 25200.10, 25187, ~~or~~  
37 25200.14, or ~~section~~ 25358.9 where as provided for under the provisions of that section the  
38 Department has excluded the removal or remedial action at a site from the hazardous waste  
39 facilities permit required by Health and Safety Code section 25201. The permit, ~~or order,~~ or  
40 agreement ~~must~~ will contain schedules of compliance for such corrective action (where such  
41 corrective action cannot be completed prior to issuance of the permit) and assurances of  
42 financial responsibility for completing such corrective action. ~~The permit or order must~~

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 ~~require the owner or operator to provide financial assurance and provide an advance~~  
2 ~~payment in the amount of at least 25 percent of the amount specified in subsection (b).~~  
3 ~~(c)~~ (d) Where necessary to protect human health or the environment, the The owner or  
4 operator shall implement corrective actions beyond the facility boundary, ~~where necessary~~  
5 ~~to protect human health or the environment,~~ unless the owner or operator demonstrates to  
6 the satisfaction of the Department, that despite the owner's or operator's best efforts, the  
7 owner or operator was unable to obtain the necessary permission to undertake such  
8 actions. The owner or operator is not relieved of all responsibility to clean up a release that  
9 has migrated beyond the facility boundary where off-site access is denied. On-site  
10 measures to address such release will be determined on a case-by-case basis. Assurance  
11 of financial responsibility for such corrective action shall be provided.  
12

13 *Note: Authority cited: Sections 25150, 25159, 25187, 25200.10, 25200.21, 25245, 25355.5,*  
14 *25356.9, 25358.3, 25358.9, 58004 and 58012, Health and Safety Code. Reference: Sections*  
15 *25150, 25159.5, 25187, 25200, 25200.10, 25355.5, 25356.9, 25358.3 and 25358.9, Health*  
16 *and Safety Code; 40 CFR Section 264.101.*  
17

18 ...

19  
20 **§ 66264.143. Financial Assurance for Closure.**

21 (a) Closure trust fund.

22 ...

23 (b) Surety bond guaranteeing payment into a closure trust fund.

24 ...

25 (c) Surety bond guaranteeing performance of closure.

26 ...

27 (d) Closure letter of credit.

28 ...

29 (e) Closure insurance.

30 (1) An owner or operator may satisfy the requirements of this section by obtaining  
31 closure insurance ~~which~~ that conforms to the requirements of this section and  
32 submitting a certificate of such insurance to the Department. An owner or operator of a  
33 new facility shall submit the certificate of insurance to the Department at least 60 days  
34 before the date on which hazardous waste is first received for transfer, treatment,  
35 storage, or disposal. The insurance shall be effective before this initial receipt of  
36 hazardous waste. At a minimum, the insurer shall be:

37 (A) licensed to transact the business of insurance in California; or

38 (B) eligible to provide insurance as an excess or surplus lines insurer, ~~in one or~~

39 ~~more States~~ California. Any excess or surplus insurance relied upon by the

40 owner or operator to meet the requirements of this subsection shall be transacted

41 by an admitted carrier, and through an excess or surplus lines broker currently

42 licensed by the California Department of Insurance.

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1 (2) The wording of the certificate of insurance shall be identical to the wording specified  
2 in section 66264.151, subsection (e). The certificate of insurance shall contain original  
3 signatures.

4 ...

5 (f) Financial test and guarantee for closure.

6 (1) An owner or operator may satisfy the requirements of this section by demonstrating  
7 that ~~he or she~~ the owner or operator passes ~~the~~ a financial test ~~as~~ specified in this  
8 subsection. To pass this test, the owner or operator shall meet the criteria of either  
9 subsection (f)(1)(A) or (B) of this section ~~and comply with subsection (f)(11) of this~~  
10 section.

11 (A) The owner or operator shall have all the following:

12 1. two of the following three ratios: a ratio of total liabilities to net worth  
13 less than 2.0; a ratio of the sum of net income plus depreciation, depletion  
14 and amortization to total liabilities greater than 0.1; and a ratio of current  
15 assets to current liabilities greater than 1.5; ~~and~~

16 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by  
17 Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

18 ~~2-3.~~ net working capital and tangible net worth each at least six times the  
19 sum of the current closure and postclosure cost estimates and the current  
20 plugging and abandonment cost estimates; and

21 ~~3.~~ 4. tangible net worth of at least \$10-20 million; and

22 ~~4-5.~~ assets located in the United States amounting to at least 90 percent  
23 of total assets or at least six times the sum of the current closure and  
24 postclosure cost estimates for all of the owner's or operator's hazardous  
25 waste facilities regulated by the Department and the current plugging and  
26 abandonment cost estimates.

27 (B) The owner or operator shall have all the following:

28 1. a current rating for his or her most recent bond issuance of AAA, AA, A,  
29 or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued  
30 by Moody's; ~~and~~

31 2. tangible net worth at least six times the sum of the current closure and  
32 postclosure cost estimates and the current plugging and abandonment  
33 cost estimates; ~~and~~

34 3. tangible net worth of at least \$10-20 million; and

35 4. assets located in the United States amounting to at least 90 percent of  
36 total assets or at least six times the sum of the current closure and  
37 postclosure cost estimates for all of the owner's or operator's hazardous  
38 waste facilities regulated by the Department and the current plugging and  
39 abandonment cost estimates.

40 (2) The phrase "current closure and postclosure cost estimates" as used in subsection  
41 (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1  
42 ~~through 4~~ through 6 of the letter from the owner's or operator's chief financial officer as



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1 specified in subsection 66264.151(f). The phrase “current plugging and abandonment  
2 cost estimates” as used in subsection (f)(1) of this section refers to the cost estimates  
3 required to be shown in paragraphs 1 ~~through 4~~ through 6 of the letter from the owner's  
4 or operator's chief financial officer.

5 (3) To demonstrate that this test has been met, the owner or operator shall submit all of  
6 the following items to the Department:

7 (A) a letter signed by the owner's or operator's chief financial officer. The letter  
8 shall be on the owner's or operator's official letterhead stationery, shall contain  
9 an original signature and shall be completed as specified in section 66264.151,  
10 subsection (f); ~~and~~

11 (B) a copy of the owner's or operator's financial statements and the independent  
12 certified public accountant's report on examination of the owner's or operator's  
13 financial statements for the latest completed fiscal year; and

14 (C) a special report from the owner's or operator's independent certified public  
15 accountant to the owner or operator stating that includes the following:

16 1. a statement that the independent certified public accountant has  
17 compared the data which the letter from the chief financial officer specifies  
18 as having been derived from the independently audited, year-end financial  
19 statements for the latest fiscal year with the amounts in such financial  
20 statements; and

21 2. ~~in connection with that procedure, no matters came to the independent~~  
22 ~~certified public accountant's attention which caused that accountant to~~  
23 ~~believe that the specified data should be adjusted~~ identification and  
24 description of the specific accounting standards and guidance relied upon  
25 to prepare the report.

26 (4) An owner or operator of a new facility shall submit the items specified in subsection  
27 (f)(3) of this section to the Department at least 60 days before the date on which  
28 hazardous waste is first received for transfer, treatment, storage, or disposal.

29 (5) After the initial submission of items specified in subsection (f)(3) of this section, the  
30 owner or operator shall send updated information to the Department within 90 days after  
31 the close of each succeeding fiscal year. This information shall consist of all three items  
32 specified in subsection (f)(3) of this section.

33 (6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this  
34 section, the owner or operator shall send notice to the Department of the owner's or  
35 operator's intent to establish alternate financial assurance as specified in this section.  
36 The notice shall be sent by certified mail within 90 days after any occurrence that  
37 prevents the owner or operator from meeting the requirements. The owner or operator  
38 shall provide the alternate financial assurance within 120 days after the end of the  
39 company's latest completed fiscal year.

40 (7) The Department may, based on a reasonable belief that the owner or operator may  
41 no longer meet the requirements of subsection (f)(1) of this section, require reports of  
42 financial condition at any time from the owner or operator in addition to those specified

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1 in subsection (f)(3) of this section. If the Department finds, on the basis of such reports  
2 or other information, that the owner or operator no longer meets the requirements of  
3 subsection (f)(1) of this section, the owner or operator shall provide alternate financial  
4 assurance as specified in this section within 30 days after notification of such a finding.

5 (8) The Department may disallow use of this test by an owner or operator on the basis  
6 of qualifications in the opinion expressed by the independent certified public accountant  
7 in his or her report on examination of the owner's or operator's financial statements (see  
8 subsection (f)(3)(B) of this section). An adverse opinion or a disclaimer of opinion shall  
9 be cause for disallowance. The Department shall evaluate other qualifications on an  
10 individual basis. The owner or operator shall provide alternate financial assurance as  
11 specified in this section, within 30 days after notification of the disallowance.

12 (9) The owner or operator is no longer required to submit the items specified in  
13 subsection (f)(3) of this section when:

14 (A) ~~on the~~ owner or operator substitutes alternate financial assurance as  
15 specified in this section; or

16 (B) the Department releases the owner or operator from the requirements in  
17 accordance with subsection (j) of this section.

18 (10) An owner or operator may meet the requirements of this section by obtaining a  
19 written guarantee. The guarantor shall be the direct or higher-tier parent corporation,  
20 as defined in section 66260.10, of the owner or operator, a firm whose parent  
21 corporation is also the parent corporation of the owner or operator, or a firm with a  
22 “substantial business relationship,” as defined in section 66260.10, with the owner or  
23 ~~operator as defined in section 66260.10.~~ The guarantor shall meet and comply with the  
24 requirements for owners or operators in subsections (f)(1) through (f)(8) of this section  
25 and shall comply with the terms of the guarantee. The guarantee shall be on the official  
26 letterhead stationery of the parent corporation. The guarantee shall contain an original  
27 signature which shall be formally witnessed or notarized, and the wording shall be  
28 identical to the wording specified in section 66264.151, subsection (h). A certified copy  
29 of the guarantee shall accompany the items sent to the Department as specified in  
30 subsection (f)(3) of this section. One of these items must be the letter from the  
31 guarantor's chief financial officer. If the guarantor's parent corporation is also the parent  
32 corporation of the owner or operator, the letter must describe the value received in  
33 consideration of the guarantee. If the guarantor is a firm with a “substantial business  
34 relationship” with the owner or operator, this letter must describe this “substantial  
35 business relationship” and the value received in consideration of the guarantee. The  
36 terms of the guarantee shall provide that:

37 (A) if the owner or operator fails to perform final closure of a facility covered by  
38 the guarantee in accordance with the closure plan and other permit requirements  
39 whenever required to do so, the guarantor shall do so or establish a trust fund as  
40 specified in subsection (a) of this section in the name of the owner or operator;

41 (B) the guarantee shall remain in force unless the guarantor sends notice of  
42 cancellation by certified mail to the owner or operator and to the Department.

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1 Cancellation shall not occur, however, during the 120 days beginning on the date  
2 of receipt of the notice of cancellation by both the owner or operator and the  
3 Department, as evidenced by the return receipts;

4 (C) if the owner or operator fails to provide alternate financial assurance as  
5 specified in this section and obtain the written approval of such alternate  
6 assurance from the Department within 90 days after receipt by both the owner or  
7 operator and the Department of a notice of cancellation of the guarantee from the  
8 guarantor, the guarantor shall provide such alternative financial assurance in the  
9 name of the owner or operator.

10 ~~(11) The owner or operator shall establish a trust fund that conforms to subsection (a) of~~  
11 ~~this section within 180 days of the effective date of this section or the date of the next~~  
12 ~~submittal required by subsection (f)(5) of this section, whichever is later. The value of~~  
13 ~~the trust fund must be equal to 20 percent of the current closure cost estimate as~~  
14 ~~specified in section 66264.142. The owner or operator shall make the payments into the~~  
15 ~~trust fund according to the following schedule:~~

16 ~~(A) an initial payment upon the establishment of the trust fund in an amount~~  
17 ~~equal to two percent of the current closure cost estimate as specified in section~~  
18 ~~66264.142;~~

19 ~~(B) subsequent annual payments in an amount equivalent to two percent of the~~  
20 ~~current closure cost estimate as specified in section 66264.142 until the value of~~  
21 ~~the trust fund is equal to 20 percent of the current closure cost estimate; and~~

22 ~~(C) upon meeting the requirements of paragraph (B), the trust fund must be~~  
23 ~~maintained at 20 percent of the current closure cost estimate, at a minimum.~~

24 **(11)(12)** An owner or operator may not rely on any assets to meet the requirements of  
25 this section if those same assets serve as the basis of satisfying any financial  
26 assurance or financial guarantee requirement imposed by any other "governmental  
27 agency," as defined in California Civil Code section 1633.2, **subdivision (i).**

28 (g) Use of multiple financial mechanisms.

29 ...

30 (h) Use of a financial mechanism for multiple facilities.

31 ...

32 (i) Alternative Financial Mechanism for Closure Costs.

33 ...

34 (j) Release of the owner or operator from the requirements of this section.

35 ...

36  
37 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, and 25245, 58004, and*  
38 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25245, Health and Safety*  
39 *Code; 40 CFR Section 264.143.*

40  
41 **§ 66264.144. Cost Estimate for Postclosure Care.**

## HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (a) ~~The An~~ owner or operator of a disposal surface impoundment, disposal miscellaneous  
2 unit, land treatment unit, ~~or~~ landfill unit, or ~~of~~ a surface impoundment or waste pile required  
3 under section 66264.228 and section 66264.258 to prepare and submit to the Department a  
4 contingent closure and postclosure plan, shall prepare and submit to the Department a  
5 detailed written estimate, in current dollars, of the annual cost of postclosure monitoring and  
6 maintenance of the facility in accordance with the applicable postclosure regulations in  
7 sections 66264.117 through 66264.120, 66264.228, 66264.258, 66264.280, 66264.310, and  
8 66264.603.

9 (1) The postclosure cost estimate shall be based on the costs to the owner or operator  
10 of hiring a "third party" to conduct postclosure care activities. A "third party" is a party  
11 who is neither a parent nor a subsidiary of the owner or operator. (See definition of  
12 "parent corporation" in section 66260.10).

13 (2) The postclosure cost estimate is calculated by multiplying the annual postclosure  
14 cost estimate by the number of 30 years or as of postclosure care required under  
15 section 66264.117. The Department may reset this period to 30 years each time the  
16 postclosure permit is issued or renewed. This period must be consistent with  
17 determinations made under section 66264.117.

18 (b) During the active life of the facility, the owner or operator shall adjust the postclosure  
19 cost estimate for inflation within 60 days prior to the anniversary date of the establishment of  
20 the financial instrument(s) used to comply with section 66264.145. For owners or operators  
21 using the financial test or corporate guarantee, the postclosure cost estimate shall be  
22 updated for inflation within 30 days after the close of the firm's fiscal year and before the  
23 submission of updated information to the Department as specified in section  
24 66264.145(f)(5). The adjustment shall be made by recalculating the postclosure cost  
25 estimate in current dollars or by using an inflation factor derived from the most recent  
26 Implicit Price Deflator for Gross National Product published by the U.S. Department of  
27 Commerce in its Survey of Current Business as specified ~~in subsections (b)(1) and (b)(2) of~~  
28 ~~this section~~ paragraphs (1) and (2) of this subsection. The inflation factor is the result of  
29 dividing the latest published annual Deflator by the Deflator for the previous year.

30 Postclosure care cost estimates must be adjusted as follows:

31 (1) The first adjustment is made by multiplying the postclosure cost estimate by the  
32 inflation factor. The result is the adjusted postclosure cost estimate.

33 (2) Subsequent adjustments are made by multiplying the latest adjusted postclosure  
34 cost estimate by the latest inflation factor.

35 (c) During the active life of the facility, the owner or operator shall revise the postclosure  
36 cost estimate within 30 days after the Department has approved ~~the a~~ request to modify the  
37 postclosure plan, if the change in the postclosure plan increases the cost of postclosure  
38 care. The revised postclosure cost estimate shall be adjusted for inflation as specified in  
39 subsection (b) ~~section 66264.144(b)~~.

40 (d) ~~The An~~ owner or operator shall keep the following at the facility during the operating life  
41 of the facility: the latest postclosure cost estimate prepared in accordance with ~~section~~  
42 ~~66264.144(a) and (e)~~ subsections (a) and (c), and, when this estimate has been adjusted in

**HAZARDOUS WASTE FACILITY PERMITTING CRITERIA**

1 accordance with subsection (b)~~section 66264.144(b)~~, the latest adjusted postclosure cost  
2 estimate.

3  
4 *Note: Authority cited: Sections 208, 25150, 25159, 25159.5, 25200.21, and 25245, 58004, and*  
5 *58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR*  
6 *Section 264.144.*

7  
8 **§ 66264.145. Financial Assurance for Postclosure Care.**

9 ~~The~~ An owner or operator of a hazardous waste management unit subject to the  
10 requirements of section 66264.144 shall establish and demonstrate to the Department  
11 financial assurance for postclosure care in accordance with the approved postclosure plan  
12 for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of  
13 the regulation, whichever is later. The owner or operator shall choose from the following  
14 options as specified in subsections (a) through (f) and (i) of this section.

15 (a) Postclosure trust fund.

16 ...

17 (b) Surety bond guaranteeing payment into a postclosure trust fund.

18 ...

19 (c) Surety bond guaranteeing performance of postclosure care.

20 ...

21 (d) Postclosure letter of credit.

22 ...

23 (e) Postclosure insurance.

24 (1) An owner or operator may satisfy the requirements of this section by obtaining  
25 postclosure insurance ~~which~~ that conforms to the requirements of this subsection and  
26 submitting a certificate of such insurance to the Department. An owner or operator of a  
27 new facility shall submit the certificate of insurance to the Department at least 60 days  
28 before the date on which hazardous waste is first received for disposal. The insurance  
29 shall be effective before this initial receipt of hazardous waste. At a minimum, the  
30 insurer shall be:

31 (A) licensed to transact the business of insurance in California; or

32 (B) eligible to provide insurance as an excess or surplus lines insurer, in one or  
33 more States California. Any excess or surplus insurance relied upon by the  
34 owner or operator to meet the requirements of this subsection shall be transacted  
35 by an admitted carrier, and through an excess or surplus lines broker currently  
36 licensed by the California Department of Insurance.

37 (2) The wording of the certificate of insurance shall be identical to the wording specified  
38 in section 66264.151, subsection (e). The certificate of insurance shall contain original  
39 signatures.

40 ...

41 (f) Financial test and guarantee for postclosure care.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (1) An owner or operator may satisfy the requirements of this section by demonstrating  
2 that he or she passes a financial test as specified in this section. To pass this test the  
3 owner or operator shall meet the criteria of either subsections (f)(1)(A) or (f)(1)(B) ~~and~~  
4 ~~comply with subsection (f)(12)~~ of this section.

5 (A) the owner or operator shall have all the following:

- 6 1. two of the following three ratios: a ratio of total liabilities to net worth  
7 less than 2.0; a ratio of the sum of net income plus depreciation, depletion  
8 and amortization to total liabilities greater than 0.1; and a ratio of current  
9 assets to current liabilities greater than 1.5; ~~and~~
- 10 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by  
11 Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; ~~and~~
- 12 3. net working capital and tangible net worth each at least six times the  
13 sum of the current closure and postclosure cost estimates and the current  
14 plugging and abandonment cost estimates; ~~and~~
- 15 3.4. tangible net worth of at least \$40-20 million; and
- 16 4.5. assets in the United States amounting to at least 90 percent of total  
17 assets or at least six times the sum of the current closure and postclosure  
18 cost estimates for all of the owner's or operator's hazardous waste  
19 facilities regulated by the Department and the current plugging and  
20 abandonment cost estimates.

21 (B) the owner or operator shall have all the following:

- 22 1. a current rating for his or her most recent bond issuance of AAA, AA, A,  
23 or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued  
24 by Moody's; ~~and~~
- 25 2. tangible net worth at least six times the sum of the current closure and  
26 postclosure cost estimates and the current plugging and abandonment  
27 cost estimates; ~~and~~
- 28 3. tangible net worth of at least \$40-20 million; and
- 29 4. assets located in the United States amounting to at least 90 percent of  
30 total assets or at least six times the sum of the current closure and  
31 postclosure cost estimates for all of the owner's or operator's hazardous  
32 waste facilities regulated by the Department and the current plugging and  
33 abandonment cost estimates.

34 (2) The phrase "current closure and postclosure cost estimates" as used in subsection  
35 (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1  
36 ~~through 4~~ through 6 of the letter from the owner's or operator's chief financial officer  
37 (section ~~66264.151-66265.151~~, subsection (f)). The phrase "current plugging and  
38 abandonment cost estimates" as used in subsection (f)(1) of this section refers to the  
39 cost estimates required to be shown in paragraphs 1 ~~through 4~~ through 6 of the letter  
40 from the owner's or operator's chief financial officer.

41 (3) To demonstrate that this test has been met, the owner or operator shall submit the  
42 following items to the Department:

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 (A) a letter signed by the owner's or operator's chief financial officer and worded  
2 as specified in section 66264.151, subsection (f). The letter shall be on the  
3 owner's or operator's official letterhead stationery, and shall contain an original  
4 signature; and
- 5 (B) a copy of the owner's or operator's financial statements and the independent  
6 certified public accountant's report on examination of the owner's or operator's  
7 financial statements for the latest completed fiscal year; and
- 8 (C) a special report from the owner's or operator's independent certified public  
9 accountant to the owner or operator ~~stating that~~ includes the following:
- 10 1. a statement that the independent certified public accountant has  
11 compared the data which the letter from the chief financial officer specified  
12 as having been derived from the independently audited, year-end financial  
13 statements for the latest fiscal year with the amounts in such financial  
14 statements; and
- 15 2. ~~in connection with that procedure, no matters came to the independent~~  
16 ~~certified public accountant's attention which caused a belief that the~~  
17 ~~specified data should be adjusted.~~ identification and description of the  
18 specific accounting standards and guidance relied upon to prepare the  
19 report.
- 20 (4) An owner or operator of a new facility shall submit the items specified in subsection  
21 (f)(3) of this section to the Department at least 60 days before the date on which  
22 hazardous waste is first received for disposal.
- 23 (5) After the initial submission of items specified in subsection (f)(3) of this section, the  
24 owner or operator shall send updated information to the Department within 90 days after  
25 the close of each succeeding fiscal year. This information shall consist of all three items  
26 specified in subsection (f)(3) of this section.
- 27 (6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this  
28 section, the owner or operator shall send notice to the Department of the intent to  
29 establish alternate financial assurance as specified in this section. The notice shall be  
30 sent by certified mail within 90 days after any occurrence that prevents the owner or  
31 operator from meeting the requirements. The owner or operator shall provide the  
32 alternate financial assurance within 120 days after such occurrence.
- 33 (7) The Department may, based on a reasonable belief that the owner or operator may  
34 no longer meet the requirements of subsection (f)(1) of this section, require reports of  
35 financial condition at any time from the owner or operator in addition to those specified  
36 in subsection (f)(3) of this section. If the Department finds, on the basis of such reports  
37 or other information, that the owner or operator no longer meets the requirements of  
38 subsection (f)(1) of this section, the owner or operator shall provide alternate financial  
39 assurance as specified in this section within 30 days after notification of such a finding.
- 40 (8) The Department may disallow use of this test on the basis of qualifications in the  
41 opinion expressed by the independent certified public accountant in his or her report on  
42 examination of the owner's or operator's financial statements (see subsection (f)(3)(B))

**HAZARDOUS WASTE FACILITY PERMITTING CRITERIA**

1 of this section). An adverse opinion or a disclaimer of opinion shall be cause for  
2 disallowance. The Department shall evaluate other qualifications on an individual basis.  
3 The owner or operator shall provide alternate financial assurance as specified in this  
4 section within 30 days after notification of the disallowance.

5 (9) During the period of postclosure care, the Department shall approve a decrease in  
6 the current postclosure cost estimate for which this test demonstrates financial  
7 assurance if the owner or operator demonstrates to the Department that the amount of  
8 the cost estimate exceeds the remaining cost of postclosure care.

9 (10) The owner or operator is no longer required to submit the items specified in  
10 subsection (f)(3) of this section when:

11 (A) an owner or operator substitutes alternate financial assurance as specified in  
12 this section; or

13 (B) the Department releases the owner or operator from the requirements of this  
14 section in accordance with subsection (j) of this section.

15 (11) An owner or operator may meet the requirements for this section by obtaining a  
16 written guarantee. The guarantor shall be the direct or higher-tier parent corporation as  
17 defined in section 66260.10, of the owner or operator, a firm whose parent corporation  
18 is also the parent corporation of the owner or operator, or a firm with a “substantial  
19 business relationship” with the owner or operator. The guarantor shall meet the  
20 requirements for owners or operators in subsections (f)(1) through (f)(9) of this section  
21 and shall comply with the terms of the guarantee. The guarantee shall contain an  
22 original signature which shall be formally witnessed or notarized and the wording of the  
23 guarantee shall be identical to the wording specified in section 66264.151, subsection  
24 (h). A certified copy of the guarantee shall accompany the items sent to the Department  
25 as specified in subsection (f)(3) of this section. One of these items must be the letter  
26 from the guarantor's chief financial officer. If the guarantor's parent corporation is also  
27 the parent corporation of the owner or operator, the letter must describe the value  
28 received in consideration of the guarantee. If the guarantor is a firm with a “substantial  
29 business relationship” with the owner or operator, this letter must describe this  
30 “substantial business relationship” and the value received in consideration of the  
31 guarantee. The terms of the guarantee shall provide that:

32 (A) if the owner or operator fails to perform postclosure care of a facility covered  
33 by the guarantee in accordance with the postclosure plan and other permit  
34 requirements whenever required to do so, the guarantor shall do so or establish  
35 a trust fund as specified in subsection (a) of this section in the name of the owner  
36 or operator;

37 (B) the guarantee shall remain in force unless the guarantor sends notice of  
38 cancellation by certified mail to the owner or operator and to the Department.  
39 Cancellation shall not occur, however, during the 120 days beginning on the date  
40 of receipt of the notice of cancellation by both the owner or operator and the  
41 Department, as evidenced by the return receipts;



HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

(C) if the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the guarantee from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

~~(12) The owner or operator shall establish a trust fund that conforms to subsection (a), within 180 days of the effective date of this section or the date the next submittal required by subsection (f)(5), whichever is later. The value of the trust fund must be equal to 20 percent of the current postclosure cost estimate as specified in section 66264.144. The owner or operator shall make payments into the trust fund according to the following schedule:~~

~~(A) an initial payment upon the establishment of the trust fund in an amount equal to two percent of the current postclosure care costs as specified in section 66264.144;~~

~~(B) subsequent annual payments in an amount equivalent to two percent of the current postclosure care cost estimate as specified in section 66264.144 until the value of the trust fund is equal to 20 percent of the postclosure care cost estimate; and~~

~~(C) upon meeting the requirements of paragraph (B), the trust fund must be maintained at 20 percent of the current postclosure care cost estimate, at a minimum.~~

**(12)** ~~(13)~~ An owner or operator may not rely on any assets to meet the requirements of this section if those same assets serve as the basis of satisfying any financial assurance or financial guarantee requirement imposed by any other "governmental agency," as defined in California Civil Code section 1633.2, **subdivision (i)**.

(g) Use of multiple financial mechanisms.

...

(h) Use of a financial mechanism for multiple facilities for postclosure care.

...

(i) Alternative Financial Mechanism for Postclosure Care.

...

(j) Release of the owner or operator from financial assurance requirements for postclosure care.

...

*Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21 and 25245, 58004, and 58012, Health and Safety Code. Reference: Sections 25200.21 and 25245, Health and Safety Code; 40 CFR Section 264.145.*

**§ 66264.146. Use of a Mechanism for Financial Assurance of ~~Both Closure~~ and Post-Closure Care, **and Corrective Action**.**

1 An owner or operator may satisfy the requirements for financial assurance for ~~both~~ closure  
2 ~~and~~ post-closure care, and corrective action for one or more facilities by using a trust fund,  
3 surety bond, letter of credit, insurance, financial test, corporate guarantee, or alternative  
4 mechanism, that meets the specifications for the mechanism in both sections § 66264.143  
5 ~~and section 66264.145~~ for each facility. The amount of funds available through the  
6 mechanism shall be no less than the sum of funds that would be available if a separate  
7 mechanism had been established and maintained for financial assurance of closure, ~~and of~~  
8 post-closure care, and corrective action.

9  
10 *Note: Authority cited: Sections 208, 25150, 25159, 25159.5, 25200.21 and 25245, 58004, and*  
11 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25425, Health and Safety*  
12 *Code; 40 CFR Section 264.146.*

### 13 14 **§ 66264.147. Liability Requirements.**

15 (a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous  
16 waste transfer, treatment, storage, or disposal facility, or a group of such facilities, shall  
17 demonstrate to the Department financial responsibility for bodily injury and property damage  
18 to third parties caused by sudden accidental occurrences arising from operations of the  
19 facility or group of facilities. The owner or operator shall have and maintain liability coverage  
20 for sudden accidental occurrences in the amount of at least \$1 million per occurrence with  
21 an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability  
22 coverage may be demonstrated as specified in subsections (a)(1) through (7) of this section.

23 (1) An owner or operator may demonstrate the required liability coverage by having  
24 liability insurance as specified in this subsection.

25 (A) At a minimum, the insurer shall be:

- 26 1. licensed to transact the business of insurance in California; or  
27 2. eligible to provide insurance as an excess or surplus lines insurer, in  
28 ~~one or more states California~~. This insurance shall be transacted by an  
29 admitted carrier, ~~and through an excess or surplus lines broker currently~~  
30 ~~licensed by the California Department of Insurance.~~

31 (B) Each insurance policy shall be amended by attachment of the Hazardous  
32 Waste Facility Liability Endorsement or evidenced by a Certificate of Liability  
33 Insurance. If requested by the Department, the owner or operator shall provide  
34 the Department with a copy of the insurance policy; ~~the copy of the insurance~~  
35 ~~policy shall contain~~ containing original signatures.

36 (C) The wording of the liability endorsement shall be identical to the wording  
37 specified in section 66264.151, subsection (i). The liability endorsement shall  
38 contain original signatures and shall be submitted to the Department.

39 (D) The wording of the certificate of insurance shall be identical to the wording  
40 specified in section 66264.151, subsection (j). The certificate of insurance shall  
41 contain original signatures and shall be submitted to the Department.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (E) An owner or operator of a new facility shall submit the liability endorsement or  
2 certificate of insurance to the Department at least 60 days before the date on  
3 which hazardous waste is first received for transfer, treatment, storage, or  
4 disposal. The insurance shall be effective before this initial receipt of hazardous  
5 waste.

6 ...

7 (b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface  
8 impoundment, as defined in section 66260.10, landfill, as defined in section 66260.10, land  
9 treatment facility, as defined in section 66260.10, or disposal miscellaneous unit ~~which~~ that  
10 is used to manage hazardous waste, or a group of such facilities, shall demonstrate to the  
11 Department financial responsibility for bodily injury and property damage to third parties  
12 caused by nonsudden accidental occurrences arising from operations of the facility or group  
13 of facilities. The owner or operator shall have and maintain liability coverage for nonsudden  
14 accidental occurrences in the amount of at least \$3 million per occurrence, as defined in  
15 section 66260.10, with an annual aggregate of at least \$6 million, exclusive of legal defense  
16 costs. An owner or operator who must meet the requirements of this section may combine  
17 the required per-occurrence coverage levels for sudden and nonsudden accidental  
18 occurrences into a single per-occurrence level, and combine the required annual aggregate  
19 coverage levels for sudden and nonsudden accidental occurrences into a single annual  
20 aggregate level. Owners or operators who combine coverage levels for sudden and  
21 nonsudden accidental occurrences must maintain liability coverage in the amount of at least  
22 \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be  
23 demonstrated, as specified in subsections (b)(1) through (b)(7) of this section.

24 (1) An owner or operator may demonstrate the required liability coverage by obtaining  
25 liability insurance as specified in this subsection.

26 (A) At a minimum, the insurer shall be:

- 27 1. licensed to transact the business of insurance in California; or  
28 2. eligible to provide insurance as an excess or surplus lines insurer, in  
29 California. This insurance shall be transacted by an admitted carrier ~~and~~  
30 ~~through an excess or surplus lines broker currently licensed by the~~  
31 California Department of Insurance.

32 (B) Each insurance policy shall be amended by attachment of the Hazardous  
33 Waste Facility Liability Endorsement or evidenced by a Certificate of Liability  
34 Insurance. If requested by the Department, the owner or operator shall provide  
35 the Department a copy of the insurance policy; ~~the copy of the insurance policy~~  
36 ~~shall contain~~ containing original signatures.

37 (C) The wording of the liability endorsement shall be identical to the wording  
38 specified in section 66264.151, subsection (i). The liability endorsement shall  
39 contain original signatures and shall be submitted to the Department.

40 (D) The wording of the certificate of insurance shall be identical to the wording  
41 specified in section 66264.151, subsection (j). The certificate of insurance shall  
42 contain original signatures and shall be submitted to the Department.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (E) An owner or operator of a new facility shall submit the liability endorsement or  
2 certificate of insurance to the Department at least 60 days before the date on  
3 which hazardous waste is first received for transfer, treatment, storage, or  
4 disposal. The insurance shall be effective before this initial receipt of hazardous  
5 waste.

6 ...  
7 (c) Request for variance.

8 ...  
9 (d) Adjustments by the Department.

10 ...  
11 (e) Period of coverage.

12 ...  
13 (f) Financial test for liability coverage.

14 (1) An owner or operator may satisfy the requirements of this section by demonstrating  
15 that ~~he or she~~ the owner or operator passes a financial test as specified in this  
16 subsection. To pass this test, the owner or operator shall meet the criteria of subsection  
17 (f)(1)(A) or (B).

18 (A) The owner or operator shall have all the following:  
19 1. net working capital and tangible net worth each at least six times the  
20 amount of liability coverage to be demonstrated by this test; ~~and~~  
21 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by  
22 Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; ~~and~~  
23 ~~2.3.~~ tangible net worth of at least \$~~40~~20 million; and  
24 3. ~~4.~~ assets in the United States amounting to either:  
25 a. at least 90 percent of total assets; or  
26 b. at least six times the amount of liability coverage to be  
27 demonstrated by this test.

28 (B) The owner or operator shall have all the following:  
29 1. a current rating for the most recent bond issuance of AAA, AA, A, or  
30 BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued  
31 by Moody's; ~~and~~  
32 2. tangible net worth of at least \$~~40~~20 million; ~~and~~  
33 3. tangible net worth at least six times the amount of liability coverage to  
34 be demonstrated by this test; and  
35 4. assets in the United States amounting to either:  
36 a. at least 90 percent of total assets; or  
37 b. at least six times the amount of liability coverage to be  
38 demonstrated by this test.

39 (2) The phrase "amount of liability coverage" as used in subsection (f)(1) of this section  
40 refers to the annual aggregate amounts for which coverage is required under  
41 subsections (a) and (b) of this section.

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- 1 (3) To demonstrate that this test can be met, the owner or operator shall submit the  
2 following items to the Department:
- 3 (A) a letter signed by the owner's or operator's chief financial officer and worded  
4 as specified in section 66264.151, subsection (g). The letter shall be on the  
5 official letterhead stationary of the owner or operator, and shall contain an  
6 original signature. An owner or operator may use the financial test to  
7 demonstrate both assurance for closure or postclosure care, as specified by  
8 sections 66264.143, subsection (f), 66264.145, subsection (f), 66265.143,  
9 subsection (e) and 66265.145, subsection (e), and liability coverage as specified  
10 in subsections (a) and (b) of this section. If an owner or operator is using the  
11 financial test to cover both forms of financial responsibility, a separate letter is not  
12 required;
- 13 (B) a copy of the owner's or operator's financial statements and the independent  
14 certified public accountant's report on examination of the owner's or operator's  
15 financial statements for the latest completed fiscal year;
- 16 (C) a special report from the owner's or operator's independent certified public  
17 accountant to the owner or operator stating that includes the following:
- 18 1. a statement that the independent certified public accountant has  
19 compared the data which the letter from the chief financial officer specifies  
20 as having been derived from the independently audited, year-end financial  
21 statements for the latest fiscal year with the amounts in such financial  
22 statements; and
- 23 2. ~~in connection with that procedure, no matters came to the independent~~  
24 ~~certified public accountant's attention which caused that accountant to~~  
25 ~~believe that the specified data should be adjusted.~~ identification and  
26 description of the specific accounting standards and guidance relied upon  
27 to prepare the report.
- 28 (4) An owner or operator of a new facility shall submit the items specified in subsection  
29 (f)(3) of this section to the Department at least 60 days before the date on which  
30 hazardous waste is first received for transfer, treatment, storage, or disposal.
- 31 (5) After the initial submission of items specified in subsection (f)(3) of this section, the  
32 owner or operator shall send updated information to the Department within 90 days after  
33 the close of each succeeding fiscal year. This information shall consist of all items  
34 specified in subsection (f)(3) of this section.
- 35 (6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this  
36 section, liability coverage shall be obtained for the entire amount of coverage as  
37 described in this section by use of the financial mechanisms described in this section.  
38 Notice shall be sent to the Department of the owner's or operator's intent to obtain the  
39 required coverage; notice shall be sent by either registered mail or by certified mail  
40 within 90 days after any ~~occurrence~~ occurrence that prevents the owner or operator from  
41 meeting the test requirements. Evidence of liability coverage shall be submitted to the

**HAZARDOUS WASTE FACILITY PERMITTING CRITERIA**

1 Department within 90 days after any occurrence that prevents the owner or operator  
2 from meeting the requirements.

3 (7) The Department may, based on a reasonable belief that the owner or operator no  
4 longer meets the requirements of subsection (f)(1) of this section, require reports of  
5 financial condition at any time from the owner or operator in addition to those specified  
6 in subsection (f)(3) of this section. If the Department finds, on the basis of such reports  
7 or other information, that the owner or operator no longer meets the requirements of  
8 subsection (f)(1) of this section, the owner or operator shall provide alternate financial  
9 assurance for closure and postclosure care and evidence of the required liability  
10 coverage as specified in this section within 30 days after notification of such a finding.

11 (8) The Department may disallow use of this test on the basis of qualifications in the  
12 opinion expressed by the independent certified public accountant in his or her report on  
13 examination of the owner's or operator's financial statements (see subsection (f)(3)(B)  
14 of this section). An adverse opinion or a disclaimer of opinion will be cause for  
15 disallowance. The Department will evaluate other qualifications on an individual basis.  
16 The owner or operator shall provide evidence of liability coverage for the amount  
17 required as specified in this section within 30 days after notification of disallowance.

18 (9) The owner or operator is no longer required to submit the items specified in  
19 subsection (f)(3) of this section when:

20 (A) an owner or operator substitutes alternate financial assurance for closure and  
21 postclosure care and evidence of liability insurance as specified in this section; or

22 (B) the Department releases the owner or operator from the requirements of this  
23 section in accordance with sections 66264.143, subsection (j), 66264.145,  
24 subsection (j) and 66264.147, subsection (e).

25 (g) Guarantee for liability coverage.

26 ...

27 (h) Letter of credit for liability coverage.

28 ...

29 (i) Payment bond for liability coverage.

30 ...

31 (j) Trust fund for liability coverage.

32 ...

33 (k) Liability Coverage -Alternative Mechanism.

34 ...

35  
36 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, 25245, 58004 and 58012,*  
37 *Health and Safety Code. Reference: Sections 25200.1 and 25245, Health and Safety Code; 40*  
38 *CFR Section 264.147.*

39 ...

40 ...

41 ...

42 **§ 66264.151. Wording of the Instruments.**

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 ...

2 (e) A certificate of insurance, as specified in section 66264.143, subsection (e) or section  
3 66264.145, subsection (e) or section 66265.143, subsection (d) or section 66265.145,  
4 subsection (d) of this division, shall be worded as follows, except that instructions in  
5 brackets are to be replaced with the relevant information and the brackets deleted:  
6

7 CERTIFICATE OF INSURANCE FOR CLOSURE OR POSTCLOSURE CARE

8 Name and Address of Insurer (herein called the "Insurer"):

9 California License Number: [insert license number]

10 Admitted [ ] Excess or Surplus Lines [ ]

11 Name and Address of Insured (herein called the "Insured"):

12 Facilities Covered: [List for each facility/transportable treatment unit (TTU): The  
13 EPA Identification Number, name, address, and the amount of insurance for closure  
14 and/or the amount for postclosure care (these amounts for all facilities covered shall  
15 total the face amount shown below).]

16 Face Amount:

17 Policy Number:

18 Effective Date:  
19

20 The Insurer hereby certifies that it has issued to the Insured the policy of insurance  
21 identified above to provide financial assurance for [insert "closure" or "closure and  
22 postclosure care" or "postclosure care"] for the facilities/TTU(s) identified above.

23 The Insurer further warrants that such policy conforms in all respects with the  
24 requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15,  
25 article 8, section 66264.143, subsection (e), section 66264.145, subsection (e), section  
26 66265.143, subsection (d) and section 66265.145, subsection (d) as applicable and as  
27 such regulations were constituted on the date shown below. It is agreed that any provision  
28 of the policy inconsistent with such regulations is hereby amended to eliminate such  
29 inconsistency.

30 The Insurer certifies that it will not cancel, terminate, or fail to renew this policy except for  
31 failure to pay the premium, and that the automatic renewal of the policy provides the  
32 insured with the option of renewal at the face amount of the expiring policy. If there is a  
33 failure to pay the premium and the Insurer elects to cancel, terminate, or not renew the  
34 policy, the Insurer will send notice by either registered or certified mail to the owner or  
35 operator and the Department of Toxic Substances Control (DTSC).

36 Cancellation, termination, or failure to renew may not occur, however, during the one  
37 hundred twenty (120) days beginning with the date of receipt of the notice by the owner or  
38 operator and the DTSC as evidence by the return receipt. Cancellation, termination or  
39 failure to renew will not occur and the policy will remain in full force and effect in the event  
40 that on or before the date of expiration:

41 (1) The DTSC deems the facility/TTU abandoned; or

42 (2) The permit is terminated or revoked or a new permit is denied by the DTSC; or

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (3) Closure is ordered by the DTSC; or any other State or Federal agency, or a court of  
2 competent jurisdiction; or

3 (4) The owner or operator is named as a debtor in a voluntary or involuntary  
4 proceeding under Title 11 (Bankruptcy) U. S. Code; or

5 (5) The premium due is paid. The Insurer certifies that:

6 (A) it is licensed to transact the business of insurance in California; or

7 (B) it is eligible to provide insurance as an excess or surplus lines insurer, in  
8 California, and this insurance has been transacted by an admitted carrier, and  
9 through a surplus lines broker currently licensed by the California Department  
10 of Insurance.

11 Whenever requested by the Department of Toxic Substances Control (DTSC) of the  
12 State of California, the Insurer agrees to furnish to DTSC a duplicate original of the original  
13 policy listed above, including all endorsements thereon.

14 In the event this policy is used in combination with another mechanism, this policy  
15 shall be considered [insert "primary" or "excess"] coverage.

16 The parties below certify that the wording of this certificate is identical to the wording  
17 specified in California Code of Regulations, title 22, section 66264.151, subsection (e)  
18 and is being executed in accordance with the requirements of California Code of  
19 Regulations, title 22, division 4.5, chapters 14 and 15, article 8.

20

21 [Authorized signature for Insurer]

22 [Name of person signing]

23 [Title of person signing] Signature

24 of witness or notary: [Date]

25

26 ...  
27 (f) A letter from the chief financial officer, as specified in section 66264.143, subsection (f)  
28 or section 66264.145, subsection (f), or section 66265.143, subsection (e) or section  
29 66265.145, subsection (e) of this division, shall be worded as follows, except that  
30 instructions in brackets are to be replaced with the relevant information and the brackets  
31 deleted:

32

LETTER FROM CHIEF FINANCIAL OFFICER

33

34 Department of Toxic Substances Control Financial  
35 Responsibility Section  
36 8800 Cal Center Drive Sacramento,  
37 California 95826

38

39 I am the chief financial officer of [insert name and address of firm]. This letter is in support  
40 of this firm's use of the financial test to demonstrate financial assurance for closure and/or  
41 postclosure costs, as specified in California Code of Regulations, title 22, division 4.5,  
chapter 14 and 15, article 8.



**HAZARDOUS WASTE FACILITY PERMITTING CRITERIA**

1 [Fill out the following paragraphs regarding facilities/transportable treatment units (TTU)  
2 and associated cost estimates. If your firm has no facilities/TTUs that belong in a particular  
3 paragraph, write "None" in the space indicated. For each facility/TTU, include its EPA  
4 Identification Number, name, address and current closure and/or postclosure cost  
5 estimates. Identify each cost estimate separately as to whether it is for closure or  
6 postclosure care.]  
7

8 1. This firm is the owner or operator of the following facilities/TTUs for which financial  
9 assurance for closure or postclosure care is demonstrated through the financial test  
10 specified in section 66264.143, subsection (f), section 66264.145, subsection (f), section  
11 66265.143, subsection (e), and section 66265.145, subsection (e) of California Code of  
12 Regulations, title 22, division 4.5, chapter 14 and 15, article 8. The current closure and/or  
13 postclosure cost estimates covered by the test are shown for each facility/TTU:\_\_\_\_\_.

14  
15 2. This firm guarantees, through the guarantee specified in section 66264.143,  
16 subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and  
17 section 66265.145, subsection (e) of California Code of Regulations, title 22, division  
18 4.5, chapter 14 and 15, article 8, the closure and/or postclosure care of the following  
19 facilities/TTUs owned or operated by the guaranteed party. The current cost estimates  
20 for the closure or postclosure care so guaranteed are shown for each facility/TTU:\_\_\_\_\_.

21 The firm identified above is [insert one or more: (1) The direct or higher-tier parent  
22 corporation of the owner or operator; (2) owned by the same parent corporation as the  
23 parent corporation of the owner or operator, and receiving the following value in  
24 consideration of this guarantee [insert dollars]; or (3) engaged in the following substantial  
25 business relationship with the owner or operator [insert business relationship], and  
26 receiving the following value in consideration of the guarantee [insert dollars]]. [Attach a  
27 written description of the business relationship or a copy of the contract establishing such  
28 relationship to this letter.]  
29

30 3. In states where the U.S. Environmental Protection Agency is not administering the  
31 financial requirements of subpart H of 40 CFR parts 264 and 265, this firm, as owner or  
32 operator or guarantor, is demonstrating financial assurance for the closure or postclosure  
33 care of the following facilities/TTUs through the use of a test equivalent or substantially  
34 equivalent to the financial test specified in subpart H of 40 CFR parts 264 and 265 or  
35 California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8. The  
36 current closure and/or postclosure cost estimates covered by such a test are shown for  
37 each facility/TTU:\_\_\_\_\_.

38  
39 4. This firm is the owner or operator of the following hazardous waste management  
40 facilities/TTUs for which financial assurance for closure or, if a disposal facility, postclosure  
41 care, is not demonstrated either to U.S. Environmental Protection Agency or a State  
42 through the financial test or any other financial assurance mechanism specified in subpart

**HAZARDOUS WASTE FACILITY PERMITTING CRITERIA**

1 H of 40 CFR parts 264 and 265, California Code of Regulations, title 22, division 4.5,  
2 chapter 14 or 15, article 8 or equivalent or substantially equivalent State mechanisms. The  
3 current closure and/or postclosure cost estimates not covered by such financial assurance  
4 are shown for each facility/TTU:\_\_\_\_\_.

5  
6 5. This firm is using the financial test, or its equivalent, to provide financial assurance or  
7 guarantee to the following governmental agencies: [list each agency and the amount  
8 assured]

9  
10 56. This firm is the owner or operator of the following Underground Injection Control  
11 facilities for which financial assurance for plugging and abandonment is required under 40  
12 CFR part 144. The current closure cost estimates as required by 40 CFR are shown for  
13 each facility:\_\_\_\_\_.

14 This firm [insert "is" or "is not"] required to file a Form 10K with the Securities and  
15 Exchange Commission (SEC) for the latest fiscal year.

16 The fiscal year of this firm ends on [insert month, day]. The figures for the following items  
17 marked with an asterisk are derived from this firm's independently audited, year-end  
18 financial statements for the latest completed fiscal year, ended [insert date].

19 This firm is using [insert "Alternative I" or "Alternative II"].

20 [Fill in Alternative I if the criteria of paragraph (f)(1)(A) of sections 66264.143 and  
21 66264.145, or of paragraph (e)(1)(A) of sections 66265.143 and 66265.145 of this division  
22 are used. Fill in Alternative II of the criteria of paragraph (f)(1)(B) of sections 66264.143  
23 and 66265.145, or of paragraph (e)(1)(B) of sections 66265.143 and 66265.145 of this  
24 division are used.]

25  
26 **ALTERNATIVE I**

27  
28 1. Sum of current closure and postclosure cost estimate (total of all cost estimates  
29 shown in the ~~five~~six paragraphs above) \$ \_\_\_\_\_

30 \*2. Total liabilities (if any portion of the closure or postclosure cost estimates is included in  
31 total liabilities, you may deduct the amount of that portion from this line and add that  
32 amount to lines 3 and 4) \$ \_\_\_\_\_

33 \*3. Tangible net worth \$ \_\_\_\_\_

34 \*4. Net worth \$ \_\_\_\_\_

35 \*5. Current assets \$ \_\_\_\_\_

36 \*6. Current liabilities \$ \_\_\_\_\_

37 7. Net working capital (line 5 minus line 6) \$ \_\_\_\_\_

38 \*8. The sum of net income plus depreciation, depletion, and amortization  
39 \$ \_\_\_\_\_

40 9. Total assets in U.S. (required only if less than 90% of firm's  
41 assets are located in the U.S.) \$ \_\_\_\_\_

42 10. Is line 3 at least \$~~10~~20 million? [Yes/No]

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 11. Is line 3 at least 6 times line 1? [Yes/No]
- 2 12. Is line 7 at least 6 times line 1? [Yes/No]
- 3 \*13. Are at least 90% of firm's assets located in the U.S.?
- 4 If not, complete line 14 [Yes/No]
- 5 14. Is line 9 at least 6 times line 1? [Yes/No]
- 6 15. Is line 2 divided by line 4 less than 2.0? [Yes/No]
- 7 16. Is line 8 divided by line 2 greater than 0.1? [Yes/No]
- 8 17. Is line 5 divided by line 6 greater than 1.5? [Yes/No]
- 9 18. Current corporate credit rating of this firm,
- 10 and name of rating service
- 11 19. Date of corporate credit rating
- 12 \_\_\_\_\_

ALTERNATIVE II

- 13
- 14
- 15 1. Sum of current closure and postclosure cost estimates [total of all cost estimates
- 16 shown in the ~~five~~six paragraphs above] \$ \_\_\_\_\_
- 17 2. Current bond rating of most recent issuance of this firm and name of rating service .
- 18 \_\_\_\_\_
- 19 3. Date of issuance of bond \_\_\_\_\_
- 20 4. Date of maturity of bond \_\_\_\_\_
- 21 \*5. Tangible net worth [if any portion of the closure and postclosure cost estimates is
- 22 included in "total liabilities" on your firm's financial statements, you may add the amount of
- 23 that portion to this line] \$ \_\_\_\_\_
- 24 \*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the
- 25 U.S.) \$ \_\_\_\_\_
- 26 7. Is line 5 at least \$~~20~~40-million? [Yes/No]
- 27 8. Is line 5 at least 6 times line 1? [Yes/No]
- 28 \*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10
- 29 [Yes/No]
- 30 10. Is line 6 at least 6 times line 1? [Yes/No]
- 31

32 I hereby certify that the wording of this letter is identical to the wording as specified in  
33 California Code of Regulations, title 22, section 66264.151, subsection (f) and is being  
34 executed in accordance with the requirements of California Code of Regulations, title 22,  
35 division 4.5, chapter 14 and 15, article 8.

36 [Signature]  
37 [Name] [Title]  
38 [Date]

39  
40 (g) A letter from the chief financial officer, as specified in section 66264.147, subsection  
41 (f) or section 66265.147, subsection (f) of this division, shall be worded as follows,

1 except that instructions in brackets are to be replaced with the relevant information and  
2 the brackets deleted.

3  
4 LETTER FROM CHIEF FINANCIAL OFFICER

5  
6 Department of Toxic Substances Control  
7 Financial Responsibility Section  
8 8800 Cal Center Drive  
9 Sacramento, California 95826  
10

11 I am the chief financial officer of [insert firm's name and address]. This letter is in support  
12 of the use of the financial test to demonstrate financial responsibility for liability coverage  
13 [insert "and closure and/or postclosure care" if applicable] as specified in California Code  
14 of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

15 [Fill out the following paragraphs regarding facility(ies)/transportable treatment unit  
16 (TTU) and liability coverage. If there are no facility(ies)/ TTU(s) that belong in a particular  
17 paragraph, write "None" in the space indicated. For each facility/TTU, include the  
18 hazardous waste facility/TTU EPA Identification Number, name, and address, and current  
19 liability coverage (indicate sudden and nonsudden coverage amounts separately)].

20 The firm identified above is the owner or operator of the following facility(ies)/TTU(s) for  
21 which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and  
22 nonsudden"] accidental occurrences is being demonstrated through the financial test  
23 specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15,  
24 article 8, sections 66264.147 and 66265.147:

25 The firm identified above guarantees, through the guarantee specified in California  
26 Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections  
27 66264.147 and 66265.147, liability coverage for [insert "sudden" or "nonsudden" or both  
28 "sudden and nonsudden"] accidental occurrences at the following facility(ies)/TTU(s)  
29 owned or operated by the following:

30 The firm identified above is [insert one or more: (1) the direct or higher tier parent  
31 corporation of the owner or operator; (2) owned by the same parent corporation as the  
32 parent corporation of the owner or operator, and receiving the following value in  
33 consideration of the guarantee [insert dollars]; or (3) engaged in the following substantial  
34 business relationship with the owner or operator [insert business relationship], and  
35 receiving the following value in consideration of the guarantee [insert dollars]]. [Attach a  
36 written description of the business relationship or a copy of the contract establishing such  
37 relationship to this letter.]

38 [If you are using the financial test to demonstrate coverage of both liability and financial  
39 assurance for closure and/or postclosure care, fill in the following five paragraphs  
40 regarding facilities and associated closure and postclosure cost estimates. If there are no  
41 facilities that belong in a particular paragraph, write "None" in the space indicated. For  
42 each facility/TTU, include its hazardous waste facility/TTU EPA Identification Number,

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 name, address and current closure and/or postclosure cost estimates. Identify each cost  
2 estimate separately as to whether it is for closure or postclosure care.]

3  
4 1. The firm identified above is the owner or operator of the following facilities/TTUs for  
5 which financial assurance for closure and/or postclosure or liability coverage is  
6 demonstrated through the financial test as specified in California Code of Regulations,  
7 title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f),  
8 section 66264.145, subsection (f), section 66265.143, subsection (e), and section  
9 66265.145, subsection (e). The current closure and/or postclosure cost estimates  
10 covered by the test are shown for each facility/TTU:

11  
12 2. The firm identified above guarantees, through the guarantee as specified in California  
13 Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143,  
14 subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and  
15 section 66265.145, subsection (e), the closure and/or postclosure care or liability  
16 coverage of the following facilities/TTUs owned or operated by the guaranteed party. The  
17 current cost estimates for the closure or postclosure care so guaranteed are shown for  
18 each facility/TTU:

19  
20 3. In States where the U.S. Environmental Protection Agency is not administering the  
21 financial requirements of subpart H of 40 CFR parts 264 and 265, this firm as owner,  
22 operator or guarantor is demonstrating financial assurance for the closure or postclosure  
23 care of the following facilities/TTUs through the use of a financial test equivalent or  
24 substantially equivalent to the financial test specified in California Code of Regulations, title  
25 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section  
26 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145,  
27 subsection (e). The current closure and/or postclosure cost estimates covered by such a  
28 test are shown for each facility/TTU:

29  
30 4. The firm identified above is the owner or operator of the following facilities/TTUs for  
31 which financial assurance for closure or, if a disposal facility, postclosure care, is not  
32 demonstrated either to U.S. Environmental Protection Agency or a State through the  
33 financial test or any other financial assurance mechanism as specified in California Code  
34 of Regulations, title 22, division 4.5, chapters 14 and 15, article 8 or equivalent or  
35 substantially equivalent State mechanisms. The current closure and/or postclosure cost  
36 estimates not covered by such financial assurance are shown for each facility/TTU:

37  
38 5. This firm is using the financial test, or its equivalent, to provide financial assurance or  
39 guarantee to the following governmental agencies: [list each agency and the amount  
40 assured]

41  
42 56. The firm is the owner or operator or guarantor of the following Underground Injection

**HAZARDOUS WASTE FACILITY PERMITTING CRITERIA**

1 Control facilities for which financial assurance for plugging and abandonment is required  
2 under 40 CFR part 144 and is assured through a financial test. The current closure cost  
3 estimates as specified in 40 CFR144.62 are shown for each facility:

4 This firm [insert "is required" or "is not required"] to file a Form 10K with the  
5 Securities and Exchange Commission (SEC) for the latest fiscal year.

6 The fiscal year of this firm ends on [insert date]. The figures for the following items  
7 marked with an asterisk are derived from this firm's independently audited, year- end  
8 financial statements for the latest completed fiscal year, ended [insert date].

9 This firm is using [insert "Alternative I" or "Alternative II"] for Part A [and [if this  
10 financial test includes closure and/or postclosure care, insert "Alternative I" or  
11 "Alternative II"] for Part B].

12  
13 **Part A. Liability Coverage for Accidental Occurrences**

14  
15 [Fill in Alternative I if the criteria of paragraph (f)(1)(A) of section 66264.147 or section  
16 66265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(B) of section  
17 66264.147 or section 66265.147 are used.]

18  
19 **ALTERNATIVE I**

- 20  
21 1. Amount of annual aggregate liability coverage to be demonstrated \$ \_  
22 \*2. Current assets \$ \_\_\_\_\_  
23 \*3. Current liabilities \$ \_\_\_\_\_  
24 4. Net working capital [line 2 minus line 3] \$ \_\_\_\_\_  
25 \*5. Tangible net worth \$ \_\_\_\_\_  
26 \*6. If less than 90 percent of assets are located in the United States, give total United  
27 States assets \$ \_\_\_\_\_  
28 7. Is line 5 at least \$4020 million? [Yes/No]  
29 8. Is line 4 at least 6 times line 1? [Yes/No]  
30 9. Is line 5 at least 6 times line 1? [Yes/No]  
31 10. Are at least 90 percent of assets located in the United States? If not, complete  
32 line 11. [Yes/No]  
33 11. Is line 6 at least 6 times line 1? [Yes/No]  
34 12. Current corporate credit rating of this firm and name of rating service  
35 13. Date of corporate credit rating \_\_\_\_\_  
36

37 **ALTERNATIVE II**

- 38 1. Amount of annual aggregate liability coverage to be demonstrated \$ \_  
39 2. Current bond rating of most recent issuance and  
40 name of rating service \$ \_\_\_\_\_  
41 3. Date of issuance of bond \$ \_\_\_\_\_

**HAZARDOUS WASTE FACILITY PERMITTING CRITERIA**

- 1 4. Date of maturity of bond \$ \_\_\_\_\_
- 2 \*5. Tangible net worth \$ \_\_\_\_\_
- 3 \*6. Total assets in the United States [required only if less than 90 percent of assets are
- 4 located in the United States] \$ \_\_\_\_\_
- 5 7. Is line 5 at least \$20 ~~40~~-million? [Yes/No]
- 6 8. Is line 5 at least 6 times line 1? [Yes/No]
- 7 \*9. Are at least 90 percent of assets located in the United States? [Yes/No]
- 8 10. Is line 9 at least 6 times line 1? [Yes/No]

9  
10 [Fill in Part B if you are using the financial test to demonstrate assurance of both liability

11 coverage and closure or postclosure care.]

12  
13 **Part B. Closure or Postclosure Care and Liability Coverage**

14  
15 [Fill in Alternative I if the criteria of paragraphs (f)(1)(A) of 66264.143 or 66264.145 and/or

16 (f)(1)(A) of 66264.147 are used or if the criteria of paragraphs (e)(1)(A) of 66265.143 or

17 66265.145 and/or (f)(1)(A) of 66265.147 are used. Fill in Alternative II if the criteria of

18 paragraphs (f)(1)(B) of 66264.143 or 66264.145 and/or (f)(1)(B) of 66264.147 are used or if

19 the criteria of paragraphs (e)(1)(B) of 66265.143 or 66265.145 and (f)(1)(B) of 66265.147

20 are used.]

21  
22 **ALTERNATIVE I**

- 23
- 24 1. Sum of current closure and postclosure cost estimates (Total of all cost estimates
- 25 shown in the paragraphs of the letter to the Director of the Department of Toxic
- 26 Substances Control) \$ \_\_\_\_\_
- 27 2. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_\_
- 28 3. Sum of lines 1 and 2 \$ \_\_\_\_\_
- 29 \*4. Total liabilities (if any portion of your closure or postclosure cost estimate is included in
- 30 your total liabilities, you may deduct that portion from this line and add that amount to lines
- 31 5 and 6) \$ \_\_\_\_\_
- 32 \*5. Tangible net worth \$ \_\_\_\_\_
- 33 \*6. Net worth \$ \_\_\_\_\_
- 34 \*7. Current assets \$ \_\_\_\_\_
- 35 \*8. Current liabilities \$ \_\_\_\_\_
- 36 9. Net working capital (line 7 minus line 8) \$ \_\_\_\_\_
- 37 10. The sum of net income plus depreciation, depletion, and amortization \$ \_\_\_\_\_
- 38 \*11. Total assets in the United States (required only if less than 90 percent of
- 39 firm's assets are located in the United States) \$ \_\_\_\_\_
- 40 12. Is line 5 at least \$20 ~~40~~-million? [Yes/No]
- 41 13. Is line 5 at least 6 times line 3? [Yes/No]
- 42 14. Is line 9 at least 6 times line 3? [Yes/No]

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 \*15. Are at least 90 percent of the firm's assets located in the United States? If not,
- 2 complete line 16 [Yes/No]
- 3 16. Is line 11 at least 6 times line 3? [Yes/No]
- 4 17. Is line 4 divided by line 6 less than 2.0? [Yes/No]
- 5 18. Is line 10 divided by line 4 greater than 0.1? [Yes/No]
- 6 19. Is line 7 divided by line 8 greater than 1.5? [Yes/No]
- 7 20. Current corporate credit rating of this firm and name of rating service
- 8 21. Date of corporate credit rating

ALTERNATIVE II

- 12 1. Sum of current closure and postclosure cost estimates (Total of all cost estimates
- 13 shown in the paragraphs of the letter to the Director of the Department of Toxic
- 14 Substances Control \$ \_\_\_\_\_)
- 15 2. Amount of annual aggregate liability coverage to be demonstrated \$ \_\_\_\_\_
- 16 3. Sum of lines 1 and 2 \$ \_\_\_\_\_
- 17 4. Current bond rating of most recent issuance and name of rating service: \_\_\_\_\_
- 18 \_\_\_\_\_
- 19 5. Date of issuance of bond: \_\_\_\_\_
- 20 6. Date of maturity of bond: \_\_\_\_\_
- 21 \*7. Tangible net worth (if any portion of the closure and post-closure cost estimates is
- 22 included in "total liabilities" on your firm's financial statements, you may add the amount of
- 23 that portion to this line.) \_\_\_\_\_
- 24 \*8. Total assets in the United States (required only if less than 90 percent of firm's
- 25 assets are located in the United States) \$ \_\_\_\_\_
- 26 9. Is line 7 at least \$20-40 million? [Yes/No]
- 27 10. Is line 7 at least 6 times line 3? [Yes/No]
- 28 \*11. Are at least 90 percent of the firm's assets located in the United States? If not,
- 29 complete line 12. [Yes/No]
- 30 12. Is line 8 at least 6 times line 3? [Yes/No]

32 I hereby certify that the wording of this letter is identical to the wording as specified in  
33 California Code of Regulations, title 22, section 66264.151, subsection (g) and is being  
34 executed in accordance with the requirements of California Code of Regulations, title 22,  
35 division 4.5, chapter 14 and 15, article 8.

36 [Signature]  
37 [Name] [Title]  
38 [Date]

40 (h)(1) A corporate guarantee, as specified in section 66264.143, subsection (f) or section  
41 66264.145, subsection (f), or section 66265.143, subsection (e) or section 66265.145,



**HAZARDOUS WASTE FACILITY PERMITTING CRITERIA**

1 subsection (e) of this division, shall be worded as follows, except that instructions in  
2 brackets are to be replaced with the relevant information and the brackets deleted:

3 ...

4 (i) A hazardous waste facility liability endorsement as required in section 66264.147 or  
5 section 66265.147 shall be worded as follows, except that instructions in brackets are to  
6 be replaced with the relevant information and the brackets deleted:

7  
8  
9 **HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT**

10  
11 1.This endorsement certifies that the Insurer has issued liability insurance covering  
12 bodily injury and property damage to [name of insured], [address of insured] in connection  
13 with the insured's obligation to demonstrate financial responsibility under California Code  
14 of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and  
15 66265.147. The coverage applies at [list EPA Identification Number, name, and address  
16 for each facility/transportable treatment unit (TTU)] for [insert "sudden accidental  
17 occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental  
18 occurrences"; if coverage is for multiple facilities and the coverage is different for different  
19 facilities, indicate which facilities are insured for sudden accidental occurrences, which are  
20 insured for nonsudden accidental occurrences, and which are insured for both]. The limits  
21 of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate"  
22 limits of the Insurer's liability], exclusive of legal defense costs. The coverage provided by  
23 the above policy is [insert "primary" or "excess"]. If excess coverage, the primary coverage  
24 mechanism shall also be demonstrated.

25  
26 2.The insurance afforded with respect to such occurrences is subject to all of the terms  
27 and conditions of the policy; provided, however, that any provisions of the policy  
28 inconsistent with subsections (a) through (e) of this Paragraph 1 are hereby amended to  
29 conform with subsections (a) through (e). The Insurer certifies the following with respect to  
30 the insurance described above:

31 (a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its  
32 obligations under the policy.

33 (b) The Insurer is liable for the payment of amounts within any deductible applicable to  
34 the policy, with a right of reimbursement by the insured for any such payment made by  
35 the Insurer. This provision does not apply with respect to that amount of any  
36 deductible for which coverage is demonstrated as specified in California Code of  
37 Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and  
38 66265.147.

39 (c) Whenever requested by the Department of Toxic Substances Control (DTSC), the  
40 Insurer agrees to furnish to DTSC a signed duplicate original of the policy and all  
41 endorsements.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

(d) Cancellation of the insurance, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility/TTU, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by DTSC as evidenced by the return receipt.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by DTSC as evidenced by the return receipt.

3. The Insurer certifies that it is an admitted carrier.

~~(a) it is licensed to transact the business of insurance in California; or~~

~~(b) it is eligible to provide insurance as an excess or surplus lines insurer, in~~

~~California, and the insurance has been transacted by and through a surplus lines~~

~~broker currently licensed by the California Department of Insurance.~~

Attached to and forming part of policy No. [insert policy number] issued by [insert name of Insurer], herein called the Insurer, of [insert address of Insurer] to [insert name of insured] of [insert address of insured] this [insert day] day of [insert month] , [insert year]. The effective date of said policy is [insert day] day of [insert month]. California License Number: [insert license number] Admitted [ ] Excess or Surplus Lines [ ]

I hereby certify that the wording of this endorsement is identical to the wording specified in California Code of Regulations, title 22, section 66264.151, subsection (i), is being executed in accordance with the requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, and that the Insurer is licensed to transact the business of insurance in California, or eligible to provide insurance as an excess or surplus lines insurer, ~~in one or more states in California.~~

[Signature of Authorized Representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

(j) A certificate of liability insurance as required in section 66264.147 or section 66265.147 shall be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE

1. [Insert name of Insurer], (the "Insurer"), of [insert address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [insert name of insured], (the "insured"), of [insert address of insured] in connection with the

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 insured's obligation to demonstrate financial responsibility under California Code of  
2 Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and  
3 66265.147. The coverage applies at the facilities/transportable treatment units (TTU) [list  
4 EPA Identification Number, name, and address for each facility/TTU] for [insert "sudden  
5 accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden  
6 accidental occurrences"; if coverage is for multiple facilities and the coverage is different for  
7 different facilities, indicate which facilities are insured for sudden accidental occurrences,  
8 which are insured for nonsudden accidental occurrences, and which are insured for both].  
9 The limits of liability are [insert the dollar amount of the "each occurrence" and "annual  
10 aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is  
11 provided under policy number [insert policy number], issued on [insert date]. The effective  
12 date of said policy is [insert date]. The coverage provided by the above policy is [insert  
13 "primary" or "excess"]. If excess coverage, the primary coverage mechanism shall also be  
14 demonstrated.  
15

16 2. The Insurer further certifies the following with respect to the insurance  
17 described above:

- 18 (a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its  
19 obligations under the policy.  
20 (b) The Insurer is liable for the payment of amounts within any deductible applicable to  
21 the policy, with a right of reimbursement by the insured for any such payment made by  
22 the Insurer. This provision does not apply with respect to that amount of any  
23 deductible for which coverage is demonstrated as specified in California Code of  
24 Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.147 and  
25 66265.147.  
26 (c) Whenever requested by the Department of Toxic Substances Control (DTSC), the  
27 Insurer agrees to furnish to DTSC a signed duplicate of the original of the policy and all  
28 endorsements.  
29 (d) Cancellation of the insurance, whether by the Insurer, the insured, a parent  
30 corporation providing insurance coverage for its subsidiary, or by a firm having an  
31 insurable interest in and obtaining liability insurance on behalf of the owner or  
32 operator of the hazardous waste management facility/TTU will be effective only  
33 upon written notice and only after the expiration of 60 days after a copy of such  
34 written notice is received by DTSC as evidenced by the return receipt.  
35 (e) Any other termination of the insurance will be effective only upon written notice  
36 and only after the expiration of thirty (30) days after a copy of such written notice is  
37 received by the DTSC as evidenced by the return receipt.  
38

39 3. The Insurer certifies that: it is an admitted carrier.

- 40 ~~(a) it is licensed to transact the business of insurance in California; or~~  
41 ~~(b) it is eligible to provide insurance as an excess or surplus lines insurer, in~~  
42 ~~California, and the insurance has been transacted by and through a surplus lines~~

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 ~~broker currently licensed by the California Department of Insurance.~~

2  
3 I hereby certify that the wording of this instrument is identical to the wording specified in  
4 California Code of Regulations, title 22, section 66264.151, subsection (j), is being  
5 executed in accordance with California Code of Regulations, title 22, division 4.5, chapter  
6 14 and 15, article 8, and that the Insurer is licensed to transact the business of insurance in  
7 California, or eligible to provide insurance as an excess or surplus lines insurer, ~~in one or~~  
8 ~~more states~~ the in California. The California License Number: [insert license number]  
9 Admitted [ ] Excess or Surplus Lines [ ]

10  
11 [Signature of authorized representative of Insurer]  
12 [Type name]  
13 [Title],  
14 Authorized Representative of [name of Insurer]  
15 [Address of Representative]  
16 ...

17  
18 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, and 25245, 58004, and*  
19 *58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; and*  
20 *40 CFR Section 264.151.*

21  
22

DIVISION 4.5, TITLE 22, CALIFORNIA CODE OF REGULATIONS

CHAPTER 15. Interim Status Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities

Amend sections 66265.16 and 66265.101, 66265.141, 66265.143, 66265.144, 66265.145, 66265.146, and 66265.147 of Title 22 of the California Code of Regulations, to read:

§ 66265.16. Personnel Training.

(a)(1) Notwithstanding subsection (g), Facility an owner or operator of a hazardous waste transfer, treatment, storage, or disposal facility shall ensure that facility personnel shall successfully complete a training program through of classroom or online, computer-based, or electronic instruction or on-the-job training that teaches facility personnel them to perform their duties in a way that ensures the facility's compliance with the requirements of this chapter division chapter and subsection 5192(p) of Title 8, California Code of Regulations. Facility personnel engaged in shipping hazardous waste shall be triennially trained commensurate with their responsibilities to meet the requirements in section 172.704 of Title 49, Code of Federal Regulations commensurate with their responsibilities.

(1) The owner or operator shall ensure that this the training program includes all the elements specified in this section. described in the document required under subsection (d)(3) of this section.

(2) This program Hazardous waste management training must shall be directed by a person trained in hazardous waste management procedures, and must shall include instruction which that teaches facility personnel hazardous waste management procedures (including, but not limited to, contingency plan implementation, and the identification and segregation of incompatible hazardous wastes or products) relevant to the positions in which they are employed.

(3) At a minimum, the emergency response training program shall must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency prevention, mitigation, abatement, and notification procedures, emergency equipment, and emergency systems, including all the following, where applicable where applicable:

- (A) procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;
- (B) key parameters for automatic waste feed cut-off systems;
- (C) communications or alarm systems;
- (D) response to fires or explosions;
- (E) response to groundwater contamination incidents; and
- (F) shutdown of operations; ~~(F) shutdown of operations;~~
- (G) self-protection measures; and
- (H) accident prevention methods.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (4) Effective July 1, 2019, the ~~The~~ training program must also be designed to ensure the  
2 following every 24 months:

3 (A) General awareness training. The owner or operator shall ensure all ~~All~~ facility  
4 personnel shall be provided successfully complete training that provides  
5 description of the facility, and an overview of the facility ~~description and~~ facility  
6 operations that are subject to this chapter, including, but not limited to, security  
7 and safety considerations; and

8 (B) Function-specific job training. The owner or operator shall ensure all ~~All~~  
9 facility personnel who are involved with hazardous waste management activities  
10 shall be provided successfully complete training concerning the requirements of  
11 this chapter and any relevant hazardous waste standard operating procedures  
12 applicable to job tasks and functions performed by the employee.

13 (b) The owner or operator shall ensure that facility ~~Facility~~ personnel shall successfully  
14 complete the program required in subsection (a) of this section within 180 days ~~six months~~  
15 after the date of their employment or assignment to a facility, or to a new position at a  
16 facility. Employees hired after the effective date of these regulations shall not work in  
17 unsupervised positions until they have completed the training requirements of subsection (a)  
18 of this section.

19 (c) The owner or operator shall ensure that facility ~~Facility~~ personnel shall take part in an  
20 annual review of the initial training required in subsection (a) of this section, unless  
21 otherwise specified.

22 (d) The training records required by this subsection must demonstrate compliance with  
23 subsection (a) and include the specific elements set out in paragraphs (1) through (4). The  
24 owner or operator shall maintain the following documents and records at the facility:

- 25 (1) the job title for each position at the facility related to hazardous waste management,  
26 and the name of the employee filling each job;  
27 (2) a written job description for each position listed under paragraph ~~subsection~~-(d)(1) of  
28 this section. This description may be consistent in its degree of specificity with  
29 descriptions for other similar positions in the same company location or bargaining unit,  
30 but shall include the requisite skill, education, or other qualifications, and duties of  
31 employees assigned to each position;  
32 (3) a written description, including a syllabus and/or outline, of the type and amount of  
33 both introductory and continuing training that will be given to each person filling a  
34 position listed under paragraph (d)(1) of this section;  
35 (4) employee ~~signed or~~ certified records that document that the training ~~or job~~  
36 ~~experience~~ required under subsections (a), (b), and (c) of this section has been given  
37 to, and completed by, each employee.

38 (e) The owner or operator shall maintain training ~~Training~~ records on current personnel shall  
39 ~~be kept~~ until closure of the facility and ~~=~~ training records on former employees shall be kept  
40 for at least three years from the date the employee last worked at the facility. Personnel  
41 training records may accompany personnel transferred within the same company.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

(f) Effective March 1, 2021, the ~~The~~ owner or operator shall prepare and submit to the Department by March 1 of each year, an annual certification that attests to the training of the facility personnel for the previous calendar year in accordance with subsections (a) and (c).

The certification must include the following:

(1) a signed statement by the owner or operator certifying that facility personnel have been trained in a manner that satisfies the requirements of this section ~~66265.16~~ and any applicable requirements of subsection 5192(p) of Title 8, California Code of Regulations and section 172.704 of Title 49, Code of Federal Regulations.

(2) the job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job.

(g) A generator, who is not an owner or an operator of a hazardous waste facility, that accumulates hazardous waste onsite in compliance with section 66262.34, is not subject to subsection (f) of this section or the training requirements of subsection 5192(p) of Title 8, California Code of Regulations.

Note: Authority cited: Sections 208, 25150, ~~and 25159~~, 25200.21, 58004, and 58012, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 265.16.

§ 66265.143. Financial Assurance for Closure.

(a) Closure trust fund.

(b) Surety bond guaranteeing payment into a closure trust fund.

(c) Closure letter of credit.

(d) Closure insurance.

(1) An owner or operator may satisfy the requirements of this section by obtaining closure insurance which that conforms to the requirements of this section and submitting a certificate of such insurance to the Department. The owner or operator shall submit to the Department a letter from an insurer stating that the insurer is considering issuance of closure insurance conforming to the requirements of this subsection to the owner or operator. The owner or operator shall submit the certificate of insurance to the Department or establish other financial assurance as specified in this section. At a minimum, the insurer shall be:

(A) licensed to transact the business of insurance in California; or

(B) eligible to provide insurance as an excess or surplus lines insurer, ~~in one or more states~~ California. This insurance shall be transacted by an admitted carrier.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 ~~and through a surplus lines broker currently licensed by the California~~  
2 ~~Department of Insurance.~~

3 ...

4 (e) Financial test and guarantee for closure.

5 (1) An owner or operator may satisfy the requirements of this section by  
6 demonstrating that ~~he or she~~ the owner or operator passes a the financial test as  
7 specified in this subsection. To pass this test the owner or operator shall meet the  
8 criteria of either subsection (e)(1)(A) or (B) ~~and comply with the requirements of~~  
9 ~~subsection (e)(10)~~ of this section:

10 (A) the owner or operator shall have all the following:

- 11 1. two of the following three ratios: a ratio of total liabilities to net worth  
12 less than 2.0; a ratio of the sum of net income plus depreciation, depletion  
13 and amortization to total liabilities greater than 0.1; and a ratio of current  
14 assets to current liabilities greater than 1.5; and  
15 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by  
16 Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and  
17 ~~23.~~ net working capital and tangible net worth each at least six times the  
18 sum of the current closure and postclosure cost estimates and the current  
19 plugging and abandonment cost estimates; and  
20 ~~34.~~ tangible net worth of at least \$10-20 million; and  
21 ~~45.~~ assets located in the United States amounting to at least 90 percent of  
22 total assets or at least six times the sum of the current closure and post-  
23 closure cost estimates for all of the owner's or operator's hazardous waste  
24 facilities regulated by the Department and the current plugging and  
25 abandonment cost estimates.

26 (B) The owner or operator shall have all the following:

- 27 1. a current rating for his or her most recent bond issuance of AAA, AA, A,  
28 or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued  
29 by Moody's; and  
30 2. tangible net worth at least six times the sum of the current closure and  
31 post-closure cost estimates and the current plugging and abandonment  
32 cost estimates; and  
33 3. tangible net worth of at least \$10-20 million; and  
34 4. assets located in the United States amounting to at least 90 percent of  
35 total assets or at least six times the sum of the current closure and post-  
36 closure cost estimates for all of the owner's or operator's hazardous waste  
37 facilities regulated by the Department and the current plugging and  
38 abandonment cost estimates.

39 (2) The phrase "current closure and post-closure cost estimates" as used in subsection  
40 (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1-  
41 ~~through 4~~ through 6 of the letter from the owner's or operator's chief financial officer as  
42 specified in section 66264.151 subsection (f). The phrase "current plugging and



HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 abandonment cost estimates" as used in subsection (e)(1) of this section refers to the  
2 cost estimates required to be shown in paragraphs 1 through 4 through 6 of the letter  
3 from the owner's or operator's chief financial officer.

4 (3) To demonstrate that this test has been met, the owner or operator shall submit **all of**  
5 the following items to the Department:

6 (A) a letter signed by the owner's or operator's chief financial officer. The letter  
7 shall be on the owner's or operator's official letterhead stationery, shall contain  
8 an original signature and shall be worded as specified in section 66264.151,  
9 subsection (f); ~~and~~

10 (B) a copy of the owner's or operator's financial statements and the independent  
11 certified public accountant's report on examination of the owner's or operator's  
12 financial statements for the latest completed fiscal year; and

13 (C) a special report from the owner's or operator's independent certified public  
14 accountant to the owner or operator stating that includes the following:

15 1. A **a** statement that the independent certified public accountant has  
16 compared the data which the letter from the chief financial officer specifies  
17 as having been derived from the independently audited, year-end financial  
18 statements for the latest fiscal year with the amounts in such financial  
19 statements; and

20 2. in connection with that procedure, no matters came to the independent  
21 certified public accountant's attention which caused that accountant to  
22 believe that the specified data should be adjusted. identification and  
23 description of the specific accounting standards and guidance relied upon  
24 to prepare the report.

25 ...

26 ~~(10) The owner or operator shall establish a trust fund that conforms to the~~  
27 ~~requirements specified in subsection (a) of this section, within 180 days of the~~  
28 ~~effective date of this section or the date of the next submittal required by subsection~~  
29 ~~(e)(5) of this section, whichever is later. The value of the trust fund shall be equal to~~  
30 ~~20 percent of the current closure cost estimate as specified in section 66265.142.~~  
31 ~~Payments may be made over a period of ten (10) years beginning with establishment~~  
32 ~~of the fund. The payments into the trust fund shall comply with the following schedule:~~

33 ~~(A) An initial payment shall be made upon establishment of the trust fund in an~~  
34 ~~amount equal to two percent of the current closure cost as specified in section~~  
35 ~~66265.142.~~

36 ~~(B) Subsequent annual payments shall be equivalent to two percent of the~~  
37 ~~current closure cost estimate as specified in section 66265.142 until the value~~  
38 ~~of the trust fund is equal to 20 percent of the closure cost estimate.~~

39 ~~(C) Once the current value of the trust fund is equal to 20 percent of the closure~~  
40 ~~cost estimate as specified in section 66265.142, the owner or operator shall~~  
41 ~~maintain the trust fund at a minimum value of 20 percent of the current closure~~  
42 ~~cost estimate.~~

1 ~~(10)(4)~~ An owner or operator may not rely on any assets to meet the requirements of  
2 this section if those same assets serve as the basis of satisfying any financial assurance  
3 or financial guarantee requirement imposed by any other "governmental agency," as  
4 defined in California Civil Code of section 1633.2, subdivision (i).

5 (f) Use of multiple financial mechanisms.

6 ...

7 (g) Use of a financial mechanism for multiple facilities.

8 ...

9 (h) Alternative Financial Mechanism for Closure Costs.

10 ...

11 (i) Release of the owner or operator from the requirements of this section.

12 ...

13  
14 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, and 25245, 58004, and*  
15 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25245, Health and Safety*  
16 *Code; 40 CFR Section 265.143.*

17  
18 **§ 66265.144. Cost Estimate for Postclosure Care.**

19 (a) ~~The~~ An owner or operator of a hazardous waste disposal unit shall prepare and  
20 submit to the Department a detailed written estimate, in current dollars, of the annual  
21 cost of postclosure monitoring and maintenance of the facility in accordance with the  
22 applicable postclosure regulations in sections 66265.117 through 66265.120, 66265.228,  
23 66265.258, 66265.280, and 66265.310.

24 (1) The postclosure cost estimate must be based on the costs to the owner or  
25 operator of hiring a "third party" to conduct postclosure care activities. A "third party"  
26 is a party who is neither a parent nor subsidiary of the owner or operator. (See  
27 definition of "parent corporation" in section 66260.10).

28 (2) The postclosure cost estimate is calculated by multiplying the annual postclosure  
29 cost estimate by the number of 30 years or as of postclosure care required under  
30 section 66265.117. The Department may reset this period to 30 years each time the  
31 postclosure permit is issued or renewed. This period will be determined consistent  
32 with determinations made in section 66265.117.

33 (b) During the active life of the facility, the owner or operator shall adjust the postclosure  
34 cost estimate for inflation within 60 days prior to the anniversary date of the establishment  
35 of the financial instrument(s) used to comply with section 66265.145. For owners or  
36 operators using the financial test or corporate guarantee, the postclosure care cost  
37 estimate shall be updated for inflation no later than 30 days after the close of the firm's  
38 fiscal year and before submission of updated information to the Department as specified in  
39 section 66265.145 ~~(e)(4)(5)~~. The adjustment shall be made by recalculating the  
40 postclosure cost estimate in current dollars or by using an inflation factor derived from the  
41 most recent Implicit Price Deflator for Gross National Product published by the U.S.  
42 Department of Commerce in its Survey of Current Business as specified in subsections

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 ~~(b)(1) and (b)(2) of this section paragraphs (1) and (2) of this subsection.~~ The inflation  
2 factor is the result of dividing the latest published annual Deflator by the Deflator for the  
3 previous year.

4 (c) During the active life of the facility, the owner or operator shall revise the postclosure  
5 cost estimate within 30 days after the Department has approved the request to modify the  
6 postclosure plan, if the change in the postclosure plan increases the cost of postclosure  
7 care. The revised postclosure cost estimate shall be adjusted for inflation as specified in  
8 subsection (b) section 66264.144(b).

9 (d) The owner or operator shall keep the following at the facility during the operating life of  
10 the facility: the latest postclosure cost estimate prepared in accordance with ~~section~~  
11 ~~66264.144(a) and (c)~~ subsections (a) and (c) and, when this estimate has been adjusted in  
12 accordance with subsection (b) section 66264.144(b), the latest adjusted postclosure cost  
13 estimate.

14  
15 *NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5, 25200.21, and 25245, 58004,*  
16 *and 58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40*  
17 *CFR Section 265.144.*

18

19 **§ 66265.145. Financial Assurance for Postclosure Care.**

20 ~~The~~ An owner or operator of a facility with a hazardous waste disposal unit shall establish  
21 and demonstrate to the Department financial assurance for postclosure care of the disposal  
22 unit(s). The owner or operator shall choose from the options as specified in subsections (a)  
23 through (e) and (h) of this section.

24 ...

25 (d) Postclosure insurance.

26 (1) An owner or operator may satisfy the requirements of this section by obtaining  
27 postclosure insurance ~~which that~~ conforms to the requirements of this subsection and  
28 submitting a certificate of such insurance to the Department. The owner or operator  
29 shall submit to the Department a letter from an insurer stating that the insurer is  
30 considering issuance of postclosure insurance conforming to the requirements of this  
31 section to the owner or operator. The owner or operator shall submit the certificate of  
32 insurance to the Department or establish other financial assurance as specified in this  
33 section. At a minimum, the insurer shall be:

- 34 (A) licensed to transact the business of insurance in California, or  
35 (B) eligible to provide insurance as an excess or surplus lines insurer, in  
36 California one or more states. If coverage is obtained from an excess or surplus  
37 lines insurer, the insurance shall be transacted by an admitted carrier, and  
38 through a surplus lines broker currently licensed by the California Department of  
39 Insurance.

40 ...

41 (e) Financial test and guarantee for postclosure care.

42 (1) An owner or operator may satisfy the requirements of this section by

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 demonstrating that he or she passes a financial test as specified in this section. To  
2 pass this test the owner or operator shall meet the criteria either of subsection  
3 (e)(1)(A) or (B) ~~and comply with the requirements of subsection (e)(1)~~ of this section.

4 (A) the owner or operator shall have all the following:

- 5 1. two of the following three ratios: a ratio of total liabilities to net worth  
6 less than 2.0; a ratio of the sum of net income plus depreciation,  
7 depletion and amortization to total liabilities greater than 0.1; and a ratio  
8 of current assets to current liabilities greater than 1.5; ~~and~~  
9 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by  
10 Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;  
11 23. net working capital and tangible net worth each at least six times  
12 the sum of the current closure and postclosure cost estimates and the  
13 current plugging and abandonment cost estimates; ~~and~~  
14 34. tangible net worth of at least \$1020 million; and  
15 45. assets in the United States amounting to at least 90 percent of total  
16 assets or at least six times the sum of the current closure and  
17 postclosure cost estimates for all of the owner's or operator's hazardous  
18 waste facilities regulated by the Department and the current plugging and  
19 abandonment cost estimates.

20 (B) the owner or operator shall have all the following:

- 21 1. a current rating for his or her most recent bond issuance of AAA, AA,  
22 A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as  
23 issued by Moody's; ~~and~~
- 24 2. tangible net worth at least six times the sum of the current closure and  
25 postclosure cost estimates and the current plugging and abandonment  
26 cost estimates; ~~and~~
- 27 3. tangible net worth of at least \$1020 million; and
- 28 4. assets located in the United States amounting to at least 90 percent of  
29 total assets or at least six times the sum of the current closure and  
30 postclosure cost estimates for all of the owner's or operator's hazardous  
31 waste facilities regulated by the Department and the current plugging  
32 and abandonment cost estimates.

33 (2) The phrase "current closure and postclosure cost estimates" as used in subsection  
34 (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1  
35 ~~through 4~~ through 6 of the letter from the owner's or operator's chief financial officer  
36 as specified in section 66264.151 subsection (f). The phrase "current plugging and  
37 abandonment cost estimates" as used in subsection (e)(1) of this section refers to the  
38 cost estimates required to be shown in paragraphs 1 ~~through 4~~ through 6 of the letter  
39 from the owner's or operator's chief financial officer.

40 (3) To demonstrate that this test can be met, the owner or operator shall submit the  
41 following items to the Department:

42 (A) a letter signed by the owner's or operator's chief financial officer and worded

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1 as specified in section 66264.151, subsection (f). The letter shall be on the  
2 owner's or operator's official letterhead stationery, and shall contain an original  
3 signature, and

4 (B) a copy of the owner's or operator's financial statements and the independent  
5 certified public accountant's report on examination of the owner's or operator's  
6 financial statements for the latest completed fiscal year; and

7 (C) a special report from the owner's or operator's independent certified public  
8 accountant to the owner or operator stating that includes the following:

9 1. a statement that the independent certified public accountant has  
10 compared the data which the letter from the chief financial officer specifies  
11 as having been derived from the independently audited, year-end financial  
12 statements for the latest fiscal year with the amounts in such financial  
13 statements; and

14 2. in connection with that procedure, no matters came to the independent  
15 certified public accountant's attention which caused that accountant to  
16 believe that the specified data should be adjusted. identification and  
17 description of the specific accounting standards and guidance relied upon  
18 to prepare the report.

19 ...

20 ~~(11) The owner or operator shall establish a trust fund that conforms to the~~  
21 ~~requirements specified in subsection (a) of this section, within 180 days of the effective~~  
22 ~~date of this section or the date of the next submittal required by subsection (c)(5) of~~  
23 ~~this section, whichever is later. The value of the trust fund shall be equal to 20 percent~~  
24 ~~of the current postclosure cost estimate as specified in section 66265.144.~~  
25 ~~Payments may be made over a period of ten (10) years beginning with establishment~~  
26 ~~of the fund. The payments into the trust fund shall comply with the following schedule:~~

27 ~~(A) An initial payment shall be made upon establishment of the trust fund in an~~  
28 ~~amount equal to two percent of the current postclosure cost as specified in~~  
29 ~~section 66265.144.~~

30 ~~(B) Subsequent annual payments shall be equivalent to two percent of the~~  
31 ~~current postclosure cost estimate as specified in section 66265.144 until the~~  
32 ~~value of the trust fund is equal to 20 percent of the postclosure cost estimate.~~

33 ~~(C) Once the current value of the trust fund is equal to 20 percent of the~~  
34 ~~postclosure cost estimate as specified in section 66265.144, the owner or~~  
35 ~~operator shall maintain the trust fund at a minimum value of 20 percent of the~~  
36 ~~current postclosure cost estimate.~~

37 **(11)** ~~(12)~~ An owner or operator may not rely on any assets to meet the requirements of  
38 this section if those same assets serve as the basis of satisfying any financial  
39 assurance or financial guarantee requirement imposed by any other "governmental  
40 agency," as defined in California Civil Code section 1633.2, **subdivision (i).**

41 ...

42 (f) Use of multiple financial mechanisms.

- 1 ...
- 2 (g) Use of a financial mechanism for multiple facilities for postclosure care.
- 3 ...
- 4 (h) Alternative Financial Mechanism for Postclosure Care.
- 5 ...
- 6 (i) Release of the owner or operator from Financial Assurance requirements for postclosure
- 7 care.

8 ...

9 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, ~~and~~ 25245, 58004, and*

10 *58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40*

11 *CFR Section 265.145.*

12

13 **§ 66265.146. Use of a Mechanism for Financial Assurance of Both Closure and Post-**

14 **Closure Care.**

15 An owner or operator may satisfy the requirements for financial assurance for both closure

16 and post-closure care for one or more facilities by using a trust fund, surety bond, letter of

17 credit, insurance, financial test, or corporate guarantee or alternative mechanism, that meets

18 the specifications for the mechanism in both sections 66265.143 and 66265.145 for each

19 facility. The amount of funds available through the mechanism shall be no less than the sum

20 of funds that would be available if a separate mechanism had been established and

21 maintained for financial assurance of closure and of post-closure care.

22

23 *Note: Authority cited: Sections 208, 25150, 25159, 25159.5, 25200.21, ~~and~~ 25245, 58004, and*

24 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25425, Health and Safety*

25 *Code; 40 CFR Section 265.146*

26

27 **§ 66265.147. Liability Requirements.**

28 (a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous

29 waste transfer, treatment, storage, or disposal facility or a group of such facilities, shall

30 demonstrate to the Department financial responsibility for bodily injury and property damage

31 to third parties caused by sudden accidental occurrences arising from operations of the

32 facility or group of facilities. Except as specified in Section 67450.16, the owner or operator

33 shall have and maintain liability coverage for sudden accidental occurrences in the amount

34 of at least \$1 million per occurrence with an annual aggregate of at least \$2 million,

35 exclusive of legal defense costs. This liability coverage may be demonstrated, as specified

36 in subsections (a)(1), (2), (3), (4), (5), (6) or (8) of this section, and for an operator which is a

37 public agency proposing to operate a household hazardous waste collection facility,

38 subsection (7).

- 39 (1) An owner or operator may demonstrate the required liability coverage by having
- 40 liability insurance as specified in this subsection.
  - 41 (A) At a minimum, the insurer shall be:
    - 42 1. licensed to transact the business of insurance in California, or
    - 43 2. eligible to provide insurance as an excess or surplus lines insurer, in

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1 ~~the California one or more states. This insurance shall be transacted by~~  
2 ~~an admitted carrier, and through an excess or surplus lines broker~~  
3 ~~currently licensed by the California Department of Insurance.~~

4 ...

5 (b) Coverage for nonsudden ~~non-sudden~~ accidental occurrences. An owner or operator of  
6 a surface impoundment as defined in section 66260.10, landfill as defined in section  
7 66260.10, or land treatment facility as defined in section 66260.10 which is used to  
8 manage hazardous waste, or a group of such facilities, shall demonstrate to the  
9 Department financial responsibility for bodily injury and property damage to third parties  
10 caused by nonsudden ~~non-sudden~~ accidental occurrences arising from operations of the  
11 facility or group of facilities. The owner or operator shall have and maintain liability  
12 coverage for nonsudden ~~non-sudden~~ accidental occurrences in the amount of at least \$3  
13 million per occurrence, as defined in section 66260.10 with an annual aggregate of at least  
14 \$6 million, exclusive of legal defense costs. An owner or operator who must meet the  
15 requirements of this section may combine the required per-occurrence coverage levels for  
16 sudden and nonsudden ~~non-sudden~~ accidental occurrences into a single per-occurrence  
17 level, and combine the required annual aggregate coverage levels for sudden and  
18 nonsudden accidental occurrences into a single annual aggregate level. Owners or  
19 operators who combine coverage levels for sudden and nonsudden ~~non-sudden~~ accidental  
20 occurrences shall maintain liability coverage in the amount of at least \$4 million per  
21 occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated  
22 as specified in subsections (b)(1) through (7) of this section.

23 (1) An owner or operator may demonstrate the required liability coverage by  
24 having liability insurance as specified in this subsection.

25 (A) At a minimum, the insurer shall be:

- 26 1. licensed to transact the business of insurance in California, or  
27 2. eligible to provide insurance as an excess or surplus lines insurer, in  
28 California one or more states. This insurance shall be transacted by an  
29 admitted carrier, and through a surplus lines broker currently licensed by  
30 the California Department of Insurance.

31 ...

32 (c) Request for variance.

33 ...

34 (d) Adjustments by the Department.

35 ...

36 (e) Period of coverage.

37 ...

38 (f) Financial test for liability coverage.

39 (1) An owner or operator may satisfy the requirements of this section by demonstrating  
40 that ~~he or she~~ the owner or operator passes a financial test as specified in this  
41 subsection. To pass this test the owner or operator shall meet the criteria of subsection  
42 (f)(1)(A) or (B) of this section.

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- 1 (A) the owner or operator shall have all the following:
- 2 1. net working capital and tangible net worth each at least six times the
- 3 amount of liability coverage to be demonstrated by this test; ~~and~~
- 4 2. a current corporate credit rating of AAA, AA, A<sub>1</sub> or BBB as issued by
- 5 Standard and Poor's or Aaa, Aa, A<sub>1</sub> or Baa as issued by Moody's;
- 6 ~~23.~~ tangible net worth of at least \$~~10~~20 million; and
- 7 ~~34.~~ assets in the United States amounting to either:
- 8 a. at least 90 percent of total assets; or
- 9 b. at least six times the amount of liability coverage to be
- 10 demonstrated by this test.
- 11 (B) the owner or operator shall have all the following:
- 12 1. a current rating for his or her most recent bond issuance of AAA, AA,
- 13 A<sub>1</sub> or BBB as issued by Standard and Poor's, or Aaa, Aa, A<sub>1</sub> or Baa as
- 14 issued by Moody's; ~~and~~
- 15 2. tangible net worth of at least \$~~10~~20 million; ~~and~~
- 16 3. tangible net worth at least six times the amount of liability
- 17 coverage to be demonstrated by this test; and
- 18 4. assets in the United States amounting to either:
- 19 a. at least 90 percent of total assets; or
- 20 b. at least six times the amount of liability coverage to be
- 21 demonstrated by this test.
- 22 (2) The phrase "amount of liability coverage" as used in subsection (f)(1) of this section
- 23 refers to the annual aggregate amounts for which coverage is required under
- 24 subsections (a) and (b) of this section and sections 67450.14 and 67450.15.
- 25 (3) To demonstrate that this test can be met, the owner or operator shall submit the
- 26 following items to the Department:
- 27 (A) a letter signed by the owner's or operator's chief financial officer and worded
- 28 as specified in section 66264.151, subsection (g). The letter shall be on the
- 29 official letterhead stationery of the owner or operator, and shall contain an
- 30 original signature. An owner or operator may use the financial test to
- 31 demonstrate both assurance for closure or postclosure care, as specified in
- 32 section 66264.143, subsection (f), section 66264.145, subsection (f), section
- 33 66265.143, subsection (e), section 66265.145, subsection (e) and section
- 34 67450.13, and liability coverage as specified in section 66264.147, subsection
- 35 (a), section 66264.147, subsection (b), section 66265.147, subsection (a),
- 36 section 66265.147, subsection (b), sections 67450.14 and 67450.15. If an owner
- 37 or operator is using the financial test to cover both forms of financial
- 38 responsibility, a separate letter is not required.
- 39 (B) a copy of the owner's or operator's financial statements and the independent
- 40 certified public accountant's report on examination of the owner's or operator's
- 41 financial statements for the latest completed fiscal year.



**HAZARDOUS WASTE FACILITY PERMITTING CRITERIA**

---

1 (C) a special report from the owner's or operator's independent certified public  
2 accountant to the owner or operator ~~stating that~~ includes the following:  
3 1. a statement that the independent certified public accountant has  
4 compared the data which the letter from the chief financial officer specifies  
5 as having been derived from the independently audited, year-end financial  
6 statements for the latest fiscal year with the amounts in such financial  
7 statements; and  
8 2. ~~in connection with that procedure, no matters came to the independent~~  
9 ~~certified public accountant's attention which caused that accountant to~~  
10 ~~believe that the specified data should be adjusted.~~ identification and  
11 description of the specific accounting standards and guidance relied upon  
12 to prepare the report.

13 ...

14 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, 25245, 58004 and 58012,*  
15 *Health and Safety Code. Reference: Sections 25200.1 and 25245, Health and Safety Code;*  
16 *40 CFR Section 265.147.*

DRAFT

1 **CHAPTER 20. The Hazardous Waste Permit Program**

2  
3 **Add** sections 66270.14(b)(22), 66270.14(b)(23), 66270.14(b)(24), and 66270.14(e) of Title 22  
4 of the California Code of Regulations, to read:

5  
6 **Amend** section 66270.14(c)(8) ~~and B.5 of Appendix I~~ of Title 22 of the California Code of  
7 Regulations, to read:

8  
9 **§ 66270.14(b) Contents of the Part B: General Requirements**

10 ...

11 (22) When applicable, the most recent corrective action cost estimate for the facility  
12 prepared in accordance sections 66264.100, 66264.101 and 66264.708, and a copy of  
13 the documentation required to demonstrate financial assurance for monitoring and  
14 completing such corrective action. For a new facility, a copy of the required  
15 documentation may be submitted sixty (60) days prior to the initial receipt of hazardous  
16 waste, if that is later than the submission of the Part B.

17  
18 ~~(23) Relevant standard operating procedures, or other documents serving a similar~~  
19 ~~purpose, if any, that a facility has developed and maintained for the purpose of~~  
20 ~~describing facility procedures for hazardous waste operation and maintenance. The~~  
21 ~~applicant may submit these documents in an electronic format or on paper.~~

22  
23 (24) Community Involvement Profile.

24 A community involvement profile (Profile) that includes needs to include only reasonably  
25 readily available information for the surrounding community. The surrounding  
26 community for purposes of the information included in the Profile must include all the  
27 United States census tracts in which that border the facility is located. If the facility is  
28 located in a census tract that has a population of less than 2,000 people, any other  
29 census tracts located within one (1) mile of the facility must also be included in the  
30 surrounding community. The Profile must include all the following:

31 (A) Project Description. The applicant shall provide a The description of the  
32 proposed hazardous waste facility must that includes all the following:

- 33 1. the activities to be conducted by the owner or operator that require a  
34 hazardous waste facility permit as specified in subsections 66270.13(a)  
35 and 66270.13(i) all hazardous waste activities to be conducted at the  
36 facility;  
37 2. the hazardous waste facility site address, or, if a street address is not  
38 available, an equivalent description of the facility's location; and  
39 3. the county assessor's parcel number(s) or a description of the legal  
40 boundaries of the facility site as provided in subsection  
41 66270.14(b)(18)(G); and

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~~3. 4.~~ the surrounding land uses and zoning designations within a ~~one-mile~~  
radius 2,000 feet of the facility's boundaries as specified in subsection  
66270.14(b)(18)(D) ~~boundaries.~~

(B) Surrounding Community Demographics. The applicant shall provide a preliminary identification and summary of the following relevant demographic characteristics as defined by the United States Census Bureau regarding the surrounding community for the most current year. These factors must include the following identified for each census tract:

1. age structure;
2. educational attainment;
3. household income;
4. languages spoken in the home;
5. linguistic isolation or ability to speak English;
6. population size, and population projections, if available;
7. race and ethnicity data; and
8. unemployment rate.

(C) Surrounding Community Issues. The applicant shall identify known health or environmental concerns relevant to the facility's operation, hazardous waste activities, or facility modifications that have been asserted by the public or government agencies since the last hazardous waste facility permit issuance date.

(D) Surrounding Community Interest. The applicant shall summarize or describe any known public activities regarding the hazardous waste facility within the last five (5) years. This may include any ~~community or~~ public meetings or hearings.

(E) Sensitive Receptors. The applicant shall identify sensitive receptors in the surrounding community. These include: all schools, child care facilities, hospitals, elderly housing, elder care facilities, or convalescent facilities.

(F) Location of Tribal Lands. The applicant shall identify tribal lands in the surrounding community that are owned either by an individual Indian or a tribe, the title to which is held in trust by the federal government or a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004.

(G) Potential Offsite Sources. The applicant shall identify and provide the locations of any potential offsite handlers of hazardous materials or hazardous waste ~~and sites~~ within the surrounding community. These ~~The~~ offsite sources must include the identification of the following:

1. other hazardous waste facilities;
2. large quantity generators of hazardous waste;
3. sites identified by the Department pursuant to Health and Safety Code section 65962.5 (Cortese List);

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1 4. entities or industrial facilities required to report under the Toxics  
2 Release Inventory Program pursuant to Emergency Planning and  
3 Community Right-to-Know Act, section 313. (42 U.S.C. §11023 and 40  
4 CFR Part 372);

5 5. entities or industrial facilities handling or storing any hazardous  
6 materials that are required to report under section 312 of the Emergency  
7 Planning and Community Right-to-Know Act. (42 U.S.C. §11022 and 40  
8 CFR Part 355); and

9 6. transportation corridors in relation to the facility, including freeways,  
10 major state vehicle routes, seaports, airports, and railyards.

11  
12 ~~Note: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25200.21, 25245, 58004, and~~  
13 ~~58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6, 25200~~  
14 ~~and 58012, Health and Safety Code; and 40 CFR Section 270.14.~~

15 ...

16 **§ 66270.14(c)**

17 ...

18 (8) If a corrective action program is required under sections 66264.91 and/or 66264.701  
19 at the time of permit application, the owner or operator shall submit sufficient  
20 information, supporting data, and analyses to establish a corrective action program  
21 which meets the requirements of sections 66264.100 and/or 66264.7087098. To  
22 demonstrate compliance with sections 66264.100 and/or 66264.7087098, the owner or  
23 operator shall address, at a minimum, the following items:

24 ...

25 **§ 66270.14(e) Hazardous Waste Facility Permit Health Risk Assessment.**

26 Except as provided in paragraph (22) of this subsection, an applicant-Applicants shall  
27 prepare and submit a hazardous waste facility permit health risk assessment, subject to the  
28 approval of the Department approval, as follows:

29 (1) The Hazardous Waste Facility Permit Health Risk Assessment must in its  
30 entirety identify and describe in detail all of the following:

31 (A) Known releases of hazardous waste or chemicals of potential concern at the  
32 facility that have resulted in contaminated media;

33 (B) Reasonably foreseeable potential releases of hazardous waste or chemicals  
34 of potential concern at the facility from normal operations, upset conditions, or  
35 both, including, but not limited to, releases associated with transportation to or  
36 from the facility;

37 (C) Potential pathways of human exposure to hazardous wastes or chemicals of  
38 potential concern resulting from the releases specified in either subparagraphs  
39 (1)(A) or (1)(B) or both of this subsection; and

40 (D) Potential magnitude and potential health impact of the human exposure to  
41 persons both within and outside of the facility resulting from releases specified in  
42 either subparagraphs (1)(A) or (1)(B) or both of this subsection.

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1 (2) The Hazardous Waste Facility Permit Health Risk Assessment process may  
2 include up to three steps:

3 (A) A hazardous waste facility permit health risk assessment questionnaire  
4 (“HRA Questionnaire”) completed in accordance with paragraph (e)(4):

5 (B) A Screening Level Health Risk Assessment for a hazardous waste  
6 facility permit (“Screening Level HRA”) completed in accordance with paragraphs  
7 (e)(10) through (e)(15):

8 (C) A Baseline Health Risk Assessment for a hazardous waste facility permit  
9 (“Baseline HRA”) completed in accordance with paragraphs (e)(16) through  
10 (e)(21):

11 (3) The An applicant for hazardous waste facility permit shall submit to the Department  
12 an HRA Questionnaire that complies with paragraphs (e)(4) through (e)(7) requirements  
13 concurrently with the Part B permit application.

14 (A) The An applicant shall also submit a Baseline HRA work plan in accordance  
15 with paragraphs (e)(1) and (e)(16) requirements, concurrently with the Part B  
16 permit application for a hazardous waste facility permit if applying for any of the  
17 following types of hazardous waste facility permits:

18 1. Class 1 Landfill;

19 2. large hazardous waste treatment facility with an operating permit  
20 pursuant to Title V of the federal Clean Air Act (42 U.S.C. §1857 et seq.)  
21 or the California Clean Air Act of 1988 (Health & Saf. Code, §39000 et  
22 seq.) or their implementing regulations and rules;

23 3. Hazardous waste incinerator; or

24 4. Boiler or industrial furnace burning hazardous waste.

25 (4) Hazardous Waste Facility Permit Health Risk Assessment Questionnaire. The An  
26 applicant for a hazardous waste facility permit shall submit an a completed HRA  
27 Questionnaire that meets includes the following information:

28 (A) The applicant shall provide available information that can be reasonably  
29 ascertained by the owner or operator an applicant to assess the potential for the  
30 public to be exposed to hazardous wastes or hazardous constituents from  
31 sources related to the facility.

32 (B) The HRA Questionnaire shall include all the following:

33 (B) 1. a facility description inventory of potential facility releases, emissions, and  
34 discharges in accordance with paragraph (e)(5);

35 (C) 2. completion of a A completed health risk assessment assumptions checklist  
36 in accordance with paragraph (e)(6); and

37 (D) 3. a A conceptual site model of exposures or potential exposures that  
38 organizes the existing data and documents known site conditions in accordance  
39 with paragraph (e)(7).

40 (5) Inventory of Potential Facility Releases, Emissions, and Discharges. The applicant  
41 shall provide an inventory of potential facility releases, emissions, and discharges that  
42 includes a description of hazardous waste facility operations and known emissions or

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 releases of chemicals of potential concern. At a minimum, the applicant shall submit all  
2 of the following:

3 (A) Hazardous Waste Facility Operations Description. A description of hazardous  
4 waste facility operations must include all the following:

5 ~~(A) Name of the facility and contact information;~~

6 ~~(B) Description of the facility and its physical setting;~~

7 1. ~~(C) a summary of past~~ Past uses of the site;

8 2. ~~(D) hazardous~~ Hazardous waste handling processes;

9 3. ~~(E) types~~ Types of permitted hazardous waste management units;

10 4. ~~(F) Normal and maximum permit capacity~~ production rates of hazardous  
11 waste ~~transfer,~~ treatment, ~~transfer,~~ and storage, and disposal;

12 5. ~~(G) types~~ Type and quantity of hazardous waste transferred, treated,  
13 stored ~~or~~ and treated disposed onsite;

14 6. ~~(H) overall~~ Overall process flow diagrams showing hazardous waste  
15 movement or flow through the facility;

16 7. ~~(I) description~~ Description of vehicular traffic, including diesel delivery  
17 truck traffic under normal and maximum permitted operations; and

18 8. ~~(J) a listing~~ Listing of other environmental permits as provided in  
19 subsection 66270.13(k) and corresponding expiration dates ~~as listed in the~~  
20 Part A permit application.

21 ~~(6) The Health Risk Assessment Assumptions Checklist must include:~~

22 ~~(B) (A) Identification of All Known and Potential Sources of Chemicals of~~  
23 ~~Potential Concern. If applicable, the source information must include all of the~~  
24 ~~following: This information must include the following, if applicable:~~

25 1. air emission information including air sources listed by individual  
26 processes or equipment (tanks, valves, scrubbers, etc.), pollutants, daily  
27 emission limitations stipulated by a Title V operating permit or a local air  
28 district operating permit, and a summary of the monitoring data for the  
29 most recent three (3) years;

30 2. wastewater discharge information, including discharge points, pollutants  
31 discharged, daily discharges stipulated in a National Pollutant Discharge  
32 Elimination System permit or by California waste discharge requirements  
33 (WDRs), and a summary of the monitoring data for the most recent three  
34 (3) years;

35 3. soil or groundwater contamination plume information at and under the  
36 facility, including potential sources, chemicals of potential concern, a  
37 summary of available groundwater monitoring, and a summary of  
38 available indoor air vapor intrusion and soil-gas monitoring data for the  
39 most recent three (3) years;

40 4. list of all known spills documented in accordance with any previous  
41 authorization of hazardous waste activities or subject to hazardous

1 materials reporting requirements under state or federal laws and the  
2 names of the corresponding reporting agency, if applicable; and  
3 5. assessment of any foreseeable accidents or upset conditions, such as  
4 fire, floods, earthquakes, or catastrophic releases; and  
5 6. a summary of any remediation or corrective action performed that  
6 addresses any of the emissions or releases pursuant to subparagraphs 1  
7 through 5 of this subsection.

8 (6) The Health Risk Assessment Assumptions Checklist must include:

9 ~~(A) Identification of Known and Potential Sources of Chemicals of Potential~~  
10 ~~Concern. This information must include the following, if applicable:~~

11 (A) ~~(B)~~ Hazard Identification of Chemicals of Potential Concern. This information  
12 must include the following:

- 13 1. identification of chemicals of potential concern for each environmental  
14 media; and
- 15 2. chemicals of potential concern's transformation or degradation  
16 products, if applicable.

17 (B) ~~(C)~~ Toxicity Assessment. The toxicity assessment of chemicals of potential  
18 concern must include a description of the relationship between the  
19 concentrations of the chemicals of potential concern (dose) and their anticipated  
20 toxic reaction (response). This information must include the following:

- 21 1. identification of the inherent chemical hazard traits or toxicity  
22 characteristics of the chemicals of potential concern;
- 23 2. regulatory screening levels for each chemical of potential concern listed  
24 by environmental media for the protection of human health developed by  
25 state or federal environmental agencies, if available; and
- 26 3. categories of receptors likely affected or most susceptible to the  
27 chemicals of potential concern, if applicable.

28 (C) ~~(D)~~ Exposure Assessment. This information must include all the following:

- 29 1. chemical transport processes that influence the movement of each  
30 chemical of potential concern;
- 31 2. identification of, and rationale for, exposure scenarios of each of the  
32 chemicals of potential concern in environmental media;
- 33 3. identification of, and rationale for, potential receptors; and
- 34 4. identification of, and rationale for, potentially complete or complete  
35 exposure pathways.

36 (7) Conceptual Site Model.

37 (A) A conceptual site model must include a written description and a visual  
38 representation of actual or predicted relationships between receptor populations  
39 and the chemicals of potential concern to which they may be exposed. The  
40 conceptual site model may be represented as a diagram, map, cross section,  
41 matrix, or other graphic to describe the site condition or environmental setting.

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1 (B) ~~The~~ An applicant shall submit a conceptual site model that outlines and  
2 includes:

- 3 1. potential and actual, sources of emissions, and releases;
- 4 2. a listing of chemicals of potential concern and release mechanisms;
- 5 3. impacted environmental media or medium;
- 6 4. potential exposure pathways, including fate and transport routes; and
- 7 5. exposure routes for each potential receptor on and adjacent to the  
8 facility.

9 (8) ~~HRA Questionnaire~~ Department's ~~HRA Questionnaire~~ ~~Completeness Determination.~~  
10 Within ninety (90) days of receipt of the HRA Questionnaire, the Department shall  
11 evaluate the applicant's HRA Questionnaire for completeness of information required in  
12 paragraphs (e)(4) through (e)(7).

13 (A) The Department may require the applicant to submit supplemental  
14 information to complete the Department's evaluation of the HRA Questionnaire.

- 15 1. the applicant shall submit to the Department the supplemental  
16 information within thirty (30) days of the receipt of the request for  
17 supplemental information.
- 18 2. ~~within~~ Within thirty (30) days of receipt of the supplemental information,  
19 the Department shall complete its evaluation of the HRA Questionnaire.
- 20 3. ~~if~~ If the Department determines that the supplemental information is not  
21 submitted in a timely manner, is unacceptable, or does not fulfill the  
22 requirements of the HRA Questionnaire, the Department shall require ~~the~~  
23 ~~facility owner or operator~~ ~~an applicant~~ to complete a Screening Level HRA  
24 in accordance with the requirements of paragraphs (e)(9)(A), (e)(10) and  
25 (e)(13).

26 (B) The Department shall make one of the following determinations:

- 27 1. require a Screening Level HRA in accordance with the requirements of  
28 paragraphs (e)(10) and (e)(13). The Department shall require a Screening  
29 Level HRA if any of the following factors is present:
  - 30 a. evidence of limited onsite contamination; or
  - 31 b. normal management of hazardous waste results in the release,  
32 emission, or discharge of any pollutant or chemical of potential  
33 concern with no offsite consequences; or
  - 34 c. there may be a potential complete pathway between the  
35 chemical of potential concern and potential receptors; or
  - 36 d. foreseeable risk conditions may impact onsite receptors.
- 37 2. require a Baseline HRA in accordance with the requirements of  
38 paragraphs (e)(16) and (e)(19). The Department shall require a Baseline  
39 HRA if any of the following factors is present:
  - 40 a. evidence of facility-wide onsite contamination or contamination  
41 has migrated beyond the facility boundaries; or



- 1                                    b. normal management of hazardous waste results in the release,  
2                                    emission, or discharge of any pollutant or chemical of potential  
3                                    concern with offsite consequences; or  
4                                    c. there is a potential complete pathway between the chemical of  
5                                    potential concern and potential receptors; or  
6                                    d. foreseeable risk of upset scenarios may impact offsite receptors.  
7                                    3. not require a Screening Level HRA or a Baseline HRA. The Department  
8                                    shall require no further action if all the following factors are met:  
9                                    a. evidence of no onsite contamination;  
10                                   b. normal management of hazardous waste does not result in the  
11                                   release, emission, or discharge of any pollutant or chemical of  
12                                   potential concern;  
13                                   c. there is no potential complete pathway between the chemical of  
14                                   potential concern and potential receptors; and  
15                                   d. the foreseeable onsite risk of upset scenarios does not impact  
16                                   any offsite receptors.  
17                                   (9) HRA Questionnaire Notice. The Department shall notify the applicant in writing of its  
18                                   HRA Questionnaire determination in accordance with paragraph (8) of this subsection  
19                                   and provide the basis of the determination.  
20                                   (A) Within ninety (90) days of the Department's determination that a Screening  
21                                   Level HRA is required, the applicant shall consult with the Department and  
22                                   submit a Screening Level HRA work plan.  
23                                   (B) Within ninety (90) days of the Department's determination that a Baseline  
24                                   HRA is required, the applicant shall consult with the Department and submit a  
25                                   Baseline HRA work plan.  
26                                   (10) Screening Level Health Risk Assessment Work Plan.  
27                                   (A) The applicant shall submit to the Department, for its evaluation and approval,  
28                                   a Screening Level HRA work plan. The Screening Level HRA must be based on  
29                                   a work plan must include a plan to complete a Screening Level HRA that  
30                                   compares the concentration of a chemical of potential concern to media specific  
31                                   screening levels for relevant receptors. The Screening Level HRA work plan  
32                                   must describe the approach to evaluate potential human health risks in the  
33                                   Screening Level HRA posed by conditions and operations at the facility. The  
34                                   work plan and subsequent Screening Level HRA must include all the following:  
35                                   1. exposure assessment. The exposure assessment Exposure must be  
36                                   assessed using the maximum permitted capacity for treatment, storage,  
37                                   transfer, and disposal of hazardous waste requested in the permit  
38                                   application and include only simple exposure pathways all the following:  
39                                   a. a summary of toxicity assessment for each of the chemicals of  
40                                   potential concern, including appropriate toxicity values;  
41                                   b. the approach and estimate of reasonable maximum exposure  
42                                   concentrations based on sampling or modeling data;

- 1 c. identification of receptors, routes, and simple exposure  
2 pathways;  
3 d. the approach to risk assessment for pathways, routes, and  
4 chemicals of potential concern for cancer and non-cancer health  
5 impacts;  
6 2. the regulatory screening levels listed by environmental media for the  
7 protection of human health must be based on peer reviewed toxicity  
8 information and tools developed by the Office of Environmental Health  
9 Hazard Assessment, and the United States Environmental Protection  
10 Agency; and  
11 3. an outline of the presentation for the data, analysis, and findings.
- 12 (11) Department Screening Level HRA Work Plan Department Determination. Within  
13 sixty (60) days of receipt of the Screening Level HRA work plan, the Department shall  
14 evaluate the work plan for compliance with the requirements of subparagraph  
15 (e)(10)(A).
- 16 (A) The Department may require the applicant to submit supplemental  
17 information to ensure that the Screening Level HRA work plan is complete.
- 18 1. the applicant shall submit to the Department the supplemental  
19 information within thirty (30) days of the receipt of receiving the request for  
20 supplemental information; and  
21 2. within thirty (30) days of receipt of the supplemental information, the  
22 Department shall complete its evaluation of the supplemental information  
23 and provide a determination to accept or reject the Screening Level HRA  
24 work plan.
- 25 (12) Screening Level HRA Work Plan Notice. The Department shall notify the applicant  
26 in writing of its determination to accept or reject the Screening Level HRA work plan and  
27 provide the basis of the determination. The Department shall specify a due date to  
28 complete the Screening Level HRA.
- 29 (A) For a Screening Level HRA, the due date is 180 days after the date the  
30 Department issues a Screening Level HRA work plan notice, unless the  
31 Department specifies an alternative due date.
- 32 (13) Screening Level HRA Submittal. The applicant shall submit to the Department the  
33 Screening Level HRA that complies with subparagraph (e)(10)(A) and the accepted the  
34 Screening Level HRA work plan by the due date specified in the notice in accordance  
35 with subparagraph (e)(12)(A).
- 36 (14) Department Screening Level HRA Department Determination. Within ninety (90)  
37 days of receipt of the Screening Level HRA, the Department shall evaluate the  
38 Screening Level HRA for completeness with subparagraph (e)(10)(A) and the accepted  
39 Screening Level HRA work plan.
- 40 (A) The Department may require the applicant to submit supplemental  
41 information to ensure completeness of the Screening Level HRA.

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1 1. the applicant shall submit to the Department the supplemental  
2 information within thirty (30) days of ~~the receipt of~~ receiving the request for  
3 supplemental information; and

4 2. within thirty (30) days of receipt of the supplemental information, the  
5 Department shall complete its evaluation of the supplemental information  
6 and provide a determination of the Screening Level HRA.

7 (B) The Department shall either:

8 1. accept the Screening Level HRA; or

9 2. reject the Screening Level HRA and require a Baseline HRA.

10 (15) Screening Level HRA Notice. The Department shall notify the applicant in writing of  
11 its determination based on its evaluation of the Screening Level HRA, and if applicable,  
12 the need to prepare and submit a Baseline HRA. The Department shall provide the  
13 basis for its determination.

14 (A) If the Department determines that a Baseline HRA is required, the applicant  
15 shall submit to the Department a Baseline HRA work plan to the Department  
16 within ninety (90) days of receipt of the notice that a Baseline HRA is required.

17 (16) Baseline Health Risk Assessment Work Plan.

18 (A) The applicant shall submit to the Department, for its evaluation and approval,  
19 a Baseline HRA work plan. The Baseline HRA ~~must~~ must be based on a work plan  
20 ~~must~~ that describe the approach to estimate potential human health risks ~~in the~~  
21 ~~Baseline HRA~~ posed by conditions and operations at the facility. The work plan  
22 and subsequent Baseline HRA must include all the following:

23 1. a summary of toxicity assessments for each of the chemicals of  
24 potential concern, including appropriate toxicity values;

25 2. the approach and estimate of reasonable maximum exposure  
26 concentration estimates based on sampling or modeling data;

27 3. identification of receptors, routes, and complex exposure pathways;

28 4. the approach to risk assessment for all pathways, routes, and  
29 chemicals of potential concern for cancer and non-cancer health impacts;

30 5. the approach for the quantification of both exposure and risk  
31 characterization; ~~and~~

32 6. an outline of the presentation for the data, analysis, and findings; and

33 7. ~~6.~~ any additional information specified by the Department.

34 (B) The due dates for the Baseline HRA work plan are specified in  
35 subparagraphs (e)(3)(A), (e)(9)(B), or (e)(15)(A). The applicant shall submit the  
36 Baseline HRA work plan within ninety (90) days of receipt of the notice that a  
37 Baseline HRA is required, or as provided pursuant to subparagraph (e)(3)(A),  
38 unless another due date is provided by the Department.

39 (17) Department Baseline HRA Work Plan ~~Department~~ Determination. Within sixty (60)  
40 days of receipt of the Baseline HRA work plan, the Department shall evaluate the work  
41 plan for completeness with paragraph (e)(1), and subparagraph (e)(16)(A).

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1 (A) The Department may require the applicant to submit supplemental  
2 information to ensure completeness of the Baseline HRA work plan.

3 1. the applicant shall submit to the Department the supplemental  
4 information within thirty (30) days of ~~the receipt of~~ ~~receiving~~ the request for  
5 supplemental information; and

6 2. within thirty (30) days of receipt of the supplemental information, the  
7 Department shall complete its evaluation of the supplemental information  
8 and provide a determination to accept or reject the Baseline HRA work  
9 plan.

10 (18) Baseline HRA Work Plan Notice. The Department shall notify the applicant in  
11 writing of its determination to accept or reject the work plan and provide the basis of the  
12 determination. The Department shall specify a due date for the submittal of the Baseline  
13 HRA, if applicable.

14 (A) For a Baseline HRA, the due date is 180 days after the date the Department  
15 issues the Baseline HRA work plan notice, unless the Department specifies an  
16 alternative due date.

17 (19) Baseline HRA Submittal. The applicant shall submit to the Department the Baseline  
18 HRA that complies with paragraph (e)(1), subparagraph (e)(16)(A) and the accepted  
19 Baseline HRA work plan by the due date specified in the notice in accordance with  
20 subparagraph (e)(18)(A).

21 (20) Baseline HRA Department Determination. Within ninety (90) days, of receipt of the  
22 Baseline HRA, the Department shall evaluate the Baseline HRA for completeness with  
23 paragraph (e)(1), subparagraph (e)(16)(A) and the accepted Baseline HRA work plan.

24 (A) The Department may require the applicant to submit supplemental  
25 information to complete its evaluation of the Baseline HRA.

26 1. the applicant shall submit to the Department the supplemental  
27 information within ~~thirty (30)~~ ~~sixty (60)~~ days of receipt of the ~~request for~~  
28 supplemental information, ~~unless the Department specifies an alternative~~  
29 ~~due date~~; and

30 2. within thirty (30) days of receipt of the supplemental information, the  
31 Department shall complete its evaluation of the supplemental information  
32 and provide a determination to accept or reject the Baseline HRA.

33 (21) Baseline HRA Notice. The Department shall notify the applicant in writing of its  
34 determination as to the Baseline HRA and provide the basis of the determination.

35 (A) If the Baseline HRA is accepted, the Department may require annual updates  
36 of the Baseline HRA.

37 (22) The applicant for a post-closure permit, or permit modification classified as Class 1,  
38 Class 1\*, or Class 2 is not subject to the requirement to submit a hazardous waste  
39 facility permit health risk assessment as specified in this subsection. The Department  
40 may exclude the applicant for a Class 3 permit modification from the requirement to  
41 submit a hazardous waste facility permit health risk assessment if the Department  
42 deems it unnecessary.

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1 (e)(f) California Environmental Quality Act (CEQA) Information Requirements. Unless the  
2 Department has determined that the activity to be permitted is exempt from the  
3 requirements of CEQA pursuant to Title 14, CCR section 15061, the applicant shall submit  
4 with Part B of the permit application all information necessary to enable the Department to  
5 prepare an Initial Study meeting the requirements of Title 14, CCR section 15063.  
6

7 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25200.21, 25245, 58004, and*  
8 *58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6, 25200,*  
9 *58004, and 58012, Health and Safety Code; and 40 CFR Section 270.14.*  
10

11 ~~*Note: Authority cited: Sections 25150, 25159, 25200.21, 58004, and 58012, Health and Safety*~~  
12 ~~*Code. Reference: Sections 25159.5 Health and Safety Code; 40 CFR Section 270.13.*~~  
13  
14

DRAFT

1 **Appendix I. Classification of Permit Modifications**

2

| Modifications   | Class |
|---|-------|
| B. General Facility Standards   |       |
| 1. Changes to waste sampling or analysis methods:   |       |
| a. To conform with Department guidance or regulations.  | 1     |
| b. To incorporate changes associated with F039 (multi- source leachate) sampling or analysis methods              | 1 *   |
| c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes      | 1 *   |
| d. Other changes.   | 2     |
| 2. Changes to analytical quality assurance/control plan:  |       |
| a. To conform with Department guidance or regulations.  | 1     |
| b. Other changes.   | 2     |
| 3. Changes in procedures for maintaining the operating record.  | 1     |
| 4. Changes in frequency or content of inspection schedules.   | 2     |
| 5. Changes in the training <del>program</del> <b>plan</b> :   |       |
| a. That affect the type or decrease the amount of training given to employees.                                    | 2     |
| b. Other changes.   | 1     |
| 6. Contingency plan:  |       |
| a. Changes in emergency procedures (i.e., spill or release response procedures).                                  | 2     |
| b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.           | 1     |
| c. Removal of equipment from emergency equipment list.  | 2     |
| d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan. | 1     |

3

4

5 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 58004 and 58012, Health and*  
6 *Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR*  
7 *Section 270.42, and 40 CFR Part 270, Appendix I.*

8

1 **CHAPTER 21. Procedures for Hazardous Waste Permit Decisions**

2  
3 **Add** Article 3, sections 66271.50, 66271.51, 66271.52, 66271.53, 66271.54, 66271.55,  
4 66271.56, and 66271.57, ~~and 66271.58~~ of Title 22 of the California Code of Regulations, to  
5 read:

6  
7 **Article 3. Violations Scoring Procedure for Hazardous Waste Facility Operations**

8  
9 **§ 66271.50. Definitions and Applicability**

10 (a) For purposes of this article, the following terms have the following meanings:

11 (1) "Compliance inspection" means an ~~on-site~~ evaluation of a hazardous waste facility's  
12 compliance with any operating **hazardous waste management** requirements set out in  
13 statute, regulations, permit, order, **stipulation, agreement, settlement document,**  
14 **judgment, decree, or other** grant of authorization issued by the Department, **or other**  
15 **document establishing requirements upon operations at the facility.** "Compliance  
16 inspection" includes, but is not limited to, scheduled and unscheduled inspections by the  
17 Department, ~~whether during routine operations or in response to an unexpected~~  
18 ~~occurrence or event at the facility.~~ **A "compliance inspection" may last more than one**  
19 **day.**

20 (2) "Facility Violations Scoring Procedure Score" or "Facility VSP Score" means **the**  
21 **numeric value assigned to a facility pursuant to section 66271.54(a) for the purpose of**  
22 **assigning the facility to a compliance tier in accordance with section 66271.54(b).** ~~the~~  
23 ~~numeric value arrived at upon completion of all of the steps specified in section~~  
24 ~~66271.54(a).~~

25 (3) "Repeat violation" means two or more violations:

26 (A) of the same **or closely-related** statutory or regulatory requirements **in**  
27 **separate compliance inspections; or**

28 (B) of the same term, **or condition,** or provision of a permit, order, **stipulation,**  
29 **agreement, settlement document, judgment, decree, grant of authorization**  
30 **issued by the Department,** or other document establishing requirements upon  
31 **operations at the facility.**

32 (4) "Violations scoring procedure" means **the totality of the criteria and steps set out in**  
33 **this article that govern the consideration of a facility's compliance history by the**  
34 **Department in making specified permit decisions and the remedies available to an**  
35 **facility owners and or operators in response to decisions proposed or made taken by the**  
36 **Department under this article.**

37 (b) Except as provided for in paragraph (1), this article applies to **all** operating hazardous  
38 waste facilities.

39 (1) Hazardous waste facilities solely authorized by **the** following permits or orders are  
40 not subject to this article:

- 41 (A) ~~post-closure~~ **post-closure** permits or orders; and  
42 (B) permits or permit modifications for closure only.

1 (c) The Department shall only consider Class I violations, as defined in section 66260.10, for  
2 purposes of calculating the Facility VSP Score in accordance with this article sections  
3 66271.51 through 66271.54.

4 (d) For purposes of the Facility VSP Score, the Department may not consider any of the  
5 following:

6 (1) "Class II violations," as defined in section 66260.10, unless the Class II violation  
7 meets the definition of a Class I violation as specified in section 66260.10;

8 (2) "Minor violations," as defined in Health and Safety Code section 25117.6; or

9 (3) the assessment of penalties under Chapter 22 of this division.

10 (e) The Department shall use the violations scoring procedure in assessing a hazardous  
11 waste facility's compliance history when making a decision under this article regarding the  
12 issuance, denial, modification, suspension, or revocation of a hazardous waste facility  
13 permit.

14 (f) This article is in addition to, and does not limit or modify, the Department's authority to  
15 issue, deny, revoke, suspend, or modify any permit, registration, or certificate pursuant to  
16 Health and Safety Code sections 25186, 25186.05, 25186.2, 25186.2.5, 25189.3, or  
17 25200.8, chapters 20 and 21 of this division, or any other statute or regulation.

18  
19 *Note: Authority Sections 25150, 25200.21, 58004 and 58012, Health and Safety Code.*

20 *Reference: Sections 25110.8.5, 25117.6, 25180(d), 25186, 25186.05, 25186.2, 25186.2.5,*  
21 *25189.3, and 25200.8, Health and Safety Code.*

22  
23 **§ 66271.51. Determining the Initial Score for Each Class I Violation**

24 (a) Initial Class I Violations Score. The Department shall determine an initial score for each  
25 Class I violation that occurred during the preceding ten (10) year period. When calculating  
26 the initial score for each Class I violation, the Department shall determine the potential harm  
27 to public health and safety or the environment posed by the violation and the extent of  
28 deviation from hazardous waste management requirements posed by the violation.

29 (b) Potential Harm. When determining the potential harm to public health and safety or the  
30 environment posed by a Class I violation, the Department shall categorize the potential  
31 harm as "major," "moderate," or "minimal."

32 (1) The categories for degree of potential harm are defined as follows:

33 (A) Major - The characteristics and/or amount of the substance involved present  
34 a major threat to public health and safety or the environment and the  
35 circumstances of the violation indicate a high potential for harm.;

36 (B) Moderate - The characteristics and/or amount of the substance involved do  
37 not present a major threat to public health and safety or the environment and the  
38 circumstances of the violation do not indicate a high potential for harm ~~and~~, but  
39 the threat posed is more than minimal.;

40 (C) Minimal - The characteristics and/or amount of the substance involved  
41 present a minimal threat to public health and safety or the environment and the  
42 circumstances of the violation indicate a low potential for harm.



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1 (2) In determining the degree of potential harm, the Department shall consider the  
2 following factors:

3 (A) The characteristics of the substance involved;

4 (B) The amount of the substance involved;

5 (C) The extent to which human life or health is threatened;

6 (D) The extent to which animal life is threatened;

7 (E) The extent to which the environment is threatened; and

8 (F) The extent to which potable water supplies are threatened.

9 (3) Except as provided in paragraph (6), only violations involving one or more of the  
10 following may be classified as posing a major potential harm:

11 (A) The management of hazardous waste; or

12 (B) The absence of adequate liability coverage or financial assurance for closure,  
13 ~~postclosure~~ post-closure, or corrective action, ~~or liability coverage~~; or

14 (C) The absence of a contingency plan, ~~a~~ waste analysis plan, ~~or a~~ closure plan.

15 (4) Potential harm for violations of financial requirements shall be determined by  
16 considering the amount of closure, ~~postclosure~~ post-closure, or corrective action costs  
17 for which there is no financial assurance or ~~the amount of required~~ liability coverage ~~that~~  
18 is absent, and the likelihood that injury or damages, if they occur, will not be  
19 compensated due to inadequacy in the financial assurance or liability coverage.

20 (5) Financial requirements violations that ~~are~~ consist of documentation errors or  
21 omissions that do not affect actual functioning of adequate liability coverage or financial  
22 assurance for closure, ~~postclosure~~ post-closure, or corrective action ~~or liability coverage~~  
23 may not be classified as posing a major potential harm.

24 (6) Groundwater monitoring documentation violations may have a major, moderate, or  
25 minimal potential for harm. The Department shall select the category for potential harm  
26 based on the extent to which the violation may lead directly to environmental harm,  
27 have a potential for harm, or cause an inability to detect releases to groundwater, in  
28 addition to the factors specified in subsection(a)(2).

29 (c) Extent of Deviation. When determining the extent of deviation from hazardous waste  
30 management requirements posed by a Class I violation, the Department shall categorize the  
31 extent of deviation as “major,” “moderate,” or “minimal.”

32 (1) The categories for extent of deviation from hazardous waste management  
33 requirements are defined as follows:

34 (A) Major - The act deviates from the requirement to such an extent that the  
35 requirement is completely ignored and none of its provisions are complied with,  
36 or the function of the requirement is rendered ineffective because some of its  
37 provisions are not complied with.

38 (B) Moderate - The act deviates from the requirement, but the requirement  
39 functions to some extent, although not all of its important provisions are complied  
40 with.

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- 1                    (C) Minimal - The act deviates in a minor way from the requirement. The  
 2                    requirement functions nearly as intended, but not as well as if all provisions had  
 3                    been met.  
 4                    (2) Unless otherwise specified in this article, the extent of deviation of a single  
 5                    requirement may be major, moderate, or minimal depending on the totality of the  
 6                    circumstances.  
 7                    (d) Matrix for Scoring. The Department shall use the matrix set forth in this subsection to  
 8                    determine the initial score for each Class I violation, selecting the score from the matrix cell  
 9                    that corresponds to the appropriate potential harm and extent of deviation categories.  
 10

|                            |                 | <u>Potential Harm</u> |                 |                |
|----------------------------|-----------------|-----------------------|-----------------|----------------|
|                            |                 | <u>Major</u>          | <u>Moderate</u> | <u>Minimal</u> |
| <u>Extent of Deviation</u> | <u>Major</u>    | <u>25</u>             | <u>20</u>       | <u>15</u>      |
|                            | <u>Moderate</u> | <u>20</u>             | <u>15</u>       | <u>6</u>       |
|                            | <u>Minimal</u>  | <u>15</u>             | <u>6</u>        | <u>2</u>       |

11  
 12 Note: Authority cited: Sections 25150, 25200.21, 58004 and 58012, Health and Safety Code.  
 13 Reference: Sections 25110.8.5, 25186, 25186.05, 25187, and 25189.2, Health and Safety  
 14 Code.  
 15

16 **§ 66271.52. Adjustment to the Initial Score for Repeat Class I Violations**

- 17 (a) The Department shall adjust the initial score for each Class I violation to reflect repeat  
 18 violations.  
 19 (b) The Department shall make an adjustment for a repeat violation only if the ~~facility owner~~  
 20 or operator has been given at least one ~~Notice to Comply or Notice Summary~~ of Violations  
 21 at the same facility within the prior three (3) years or last three (3) inspections, whichever  
 22 time period is longer, ~~for the same or similar requirement and such Notice to Comply or~~  
 23 ~~Notice Summary~~ of Violations has not been cancelled, retracted, withdrawn, or successfully  
 24 challenged in an administrative or judicial proceeding. The adjustment for a repeat violation  
 25 based on issuance of a ~~Notice to Comply or Notice Summary~~ of Violations shall occur  
 26 regardless whether the owner or operator ~~corrected~~ ~~complied with a Notice to Comply or~~  
 27 ~~cured~~ a violation after receipt of the ~~Notice Summary~~ of Violations.  
 28 (c) The Department shall adjust each initial Class I violation score based on the number of  
 29 ~~repeat violations~~ ~~times a violation or similar violation is repeated~~. The Department shall make  
 30 the adjustment based on the following matrix:  
 31  
 32

| <u>Adjustment Factor for Repeat Violations</u> | <u>Circumstance</u> |
|--|---------------------|
|--|---------------------|

|                                  |                          |
|----------------------------------|--------------------------|
| Upward Adjustment of 25 percent  | Second instance          |
| Upward Adjustment of 50 percent  | Third instance           |
| Upward Adjustment of 100 percent | Fourth or more instances |

1

2 *NOTE: Authority cited: Sections 25150, 25200.21, 58004 and 58012, Health and Safety Code.*3 *Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code.*

4

5 **§ 66271.53. Provisional and Final Inspection Violation Scores**6 ~~(a) The violation score for a Class I violation consists of the initial score calculated pursuant~~  
7 ~~to section 66271.51 and any adjustment made for repeat violations pursuant to section~~  
8 ~~66271.52.~~9 ~~(b) The preliminary inspection violation score is the initial sum calculated by the Department~~  
10 ~~of the scores for all Class I violations found during a compliance inspection, which may span~~  
11 ~~more than one day.~~12 **(a) Provisional Inspection Violation Score Calculation.** A provisional inspection violation  
13 score is the sum of the scores for all Class I violations found during a compliance inspection  
14 as calculated pursuant to section 66271.51 and adjusted for repeat violations pursuant to  
15 section 66271.52.16 ~~(c)~~ **(b) Issuance of Provisional Inspection Violation Scores.**17 (1) For compliance inspections that occur after the effective date of ~~this article~~ **these**  
18 ~~regulations~~, the Department shall ~~send~~ **issue** a ~~preliminary provisional~~ inspection  
19 violation score, **including all Class I violation scores on which the provisional inspection**  
20 **violation score is based,** to the ~~facility~~ owner or operator concurrently with the inspection  
21 report provided to the owner or operator pursuant to section 66272.1(c).22 **(2) For compliance inspections that occurred before the effective date of this article, the**  
23 **Department shall issue provisional inspection violation scores, including all Class I**  
24 **violation scores on which the provisional inspection violation scores are based, to the**  
25 **owner or operator when the Department provides the owner or operator with written**  
26 **notice, in accordance with section 66271.54(c), of the facility's assignment to a**  
27 **compliance tier based on its Facility VSP Score.**28 ~~(d)~~ **(c) Dispute of Provisional Inspection Violation Scores.**29 **(1) An** ~~A facility~~ owner or operator who seeks to dispute a ~~preliminary provisional~~  
30 inspection violation score may do so by filing a ~~Preliminary Provisional~~ Inspection  
31 Violation Score Dispute Document ("Dispute Document") with the Department within  
32 ~~thirty (30)~~ **sixty (60)** days of the Department sending the ~~preliminary provisional~~  
33 inspection violation score pursuant to subsection ~~(b)~~. ~~Failure of the facility owner or~~  
34 ~~operator to follow the procedures or timelines specified in this section for a dispute~~  
35 ~~subject to this section is a waiver of the right to further contest the disputed issue and~~  
36 ~~shall constitute a failure to exhaust administrative remedies.~~37 **(2)** ~~(c)~~ The Dispute Document must contain all the following:

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1 ~~(A)(1)~~ A statement that describes in detail the factual and legal basis of the  
2 dispute and the relief sought;

3 ~~(B)(2)~~ Any claimed erroneous facts, assumptions, approaches, or conclusions of  
4 law made by the Department;

5 ~~(C)(3)~~ A statement describing in detail any efforts already made by the owner or  
6 operator to resolve the dispute with the Department; and

7 ~~(D)(4)~~ Any photographs, documents, or any other material that supports the  
8 owner's or operator's position regarding the disputed preliminary provisional  
9 inspection violation score.

10 (3) Dispute Document Extension Requests.

11 (A) An owner or operator may request, and the Department may grant, a one-  
12 time extension of up to sixty (60) days for the owner or operator to submit a  
13 Dispute Document to the Department. The extension request must be based on  
14 circumstances that an owner or operator could not reasonably anticipate or  
15 prevent. The extension request must be received by the Department at least  
16 thirty (30) days before the Dispute Document is due.

17 (B) The extension request must include:

18 1. Information describing the type and date of the compliance inspection  
19 and a brief summary of the violations;

20 2. The due date for the Dispute Document;

21 3. The amount of additional time requested; and

22 4. The reason the extension is needed, including a detailed explanation of  
23 why the owner or operator could not have reasonably anticipated or  
24 controlled the circumstances necessitating the extension.

25 (C) The Department shall approve or deny the extension request, in whole or in  
26 part, and provide notice to the owner or operator within ten (10) working days of  
27 receipt of the extension request.

28 (4) Dispute Resolution Official and Decision. The Director or Director's designee shall  
29 serve as the dispute resolution official. Within ninety (90) days after receipt of a Dispute  
30 Document, the dispute resolution official shall issue a written decision granting or  
31 denying, in whole or in part, the relief sought by the owner or operator. If the relief is  
32 denied, in whole or in part, the dispute resolution official shall include in his or her  
33 decision a short and plain description of the basis for the denial. ~~(f) The Director or~~  
34 ~~Director's designee shall issue a written decision granting or denying the relief sought,~~  
35 ~~in whole or in part, within forty five (45) days after receipt of a Dispute Document under~~  
36 ~~subsection (e).~~ Failure of the dispute resolution official Department to issue a written  
37 decision within ~~forty five (45)~~ ninety (90) days of receipt of the Dispute Document does  
38 not constitute a partial or complete granting of the relief sought. The written decision of  
39 the dispute resolution official is the Department's final decision and is not subject to  
40 additional administrative dispute resolution.

41 ~~(g) If the relief sought is denied in whole or in part, the Department shall include in its~~  
42 ~~decision a short and plain description of the basis for the denial of the relief sought. A~~

~~decision under subsection (f) is the Department's final decision and is not subject to additional administrative dispute resolution.~~

~~(h)~~ **(d) Final Inspection Violation Score.**

~~(1) For all compliance inspections not finalized before the effective date of this regulation, the preliminary provisional inspection violation score becomes the final inspection violation score if the facility owner or operator does not file a Preliminary Inspection Score Dispute Document ("Dispute Document") with the Department within the time specified in subsection (c), thirty (30) days of the date the Department sends the preliminary inspection violation score document pursuant to subsection (e) to the facility owner or operator, or upon conclusion of the dispute resolution procedures under paragraph (3), subsection (f), if applicable.~~

**(2) For a provisional inspection violation score for which a Dispute Document was filed within the time specified in subsection (c), the provisional inspection violation score will become the final inspection score consistent with the dispute resolution official's written decision.**

**(3) Failure of the owner or operator to follow the dispute procedures or time frames specified in this section is a waiver of the right to further contest the provisional inspection violation score and shall constitute a failure to exhaust administrative remedies.**

~~(i) For inspections finalized before the effective date of this regulation, the preliminary inspection violation score is the final inspection violation score.~~

~~(j) Within ninety (90) days from the date the preliminary inspection violation score is sent to the facility owner or operator, the Department shall post the final inspection violation score on the Department's website.~~

*NOTE: Authority cited: Sections 25150, 25200.21, 58004, and 58012, Health and Safety Code. Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code.*

**§ 66271.54. Facility Violations Scoring Procedure (VSP) Score and Compliance Tiers**

**(a) Facility VSP Score Calculation.** Except as provided in paragraphs (1) and (2), the Facility VSP Score consists of the sum of **the provisional or** final inspection violation scores for **each** compliance inspections conducted during the preceding ten (10) year period, divided by the number of such inspections.

~~(1) For compliance inspections conducted evaluations reports finalized after the effective date of this article these regulations, no provisional inspection violation score may be included in the Facility VSP Score unless the provisional preliminary inspection violation score was sent to the facility owner or operator in accordance with subsection (e) of section 66271.53(b)(1).~~

~~(2) The score for any Class I violation that has been cancelled, retracted, withdrawn, or successfully challenged in an administrative or judicial proceeding may not be included in the Facility VSP Score.~~

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1 (b) Compliance Tier Assignment. The Department shall assign a facility to a compliance tier  
2 based on the Facility VSP Score as follows:

3 (1) "Acceptable." A facility that receives a Facility VSP Score of less than 20 shall be  
4 designated as having a Facility VSP Score that is acceptable.

5 (2) "Conditionally Acceptable." A facility that receives a Facility VSP Score equal to or  
6 above 20 and less than 40 shall be designated as having a Facility VSP Score that is  
7 conditionally acceptable.

8 (3) "Unacceptable." A facility that receives a Facility VSP Score equal to or greater than  
9 40 shall be designated as having a Facility VSP Score that is unacceptable.

10 (c) The Department shall annually calculate a Facility VSP Score for all hazardous waste  
11 facilities subject to this article and assign a compliance tier to each facility. On or before  
12 September 30 of each calendar year, the Department shall provide written notice to the  
13 owner or operator of the Facility VSP Score through December 31 of the prior calendar year  
14 and the assigned compliance tier for to each facility-owner or operator subject to this article.

15 (d) On or before December 31 of each calendar year, the Department shall post to the  
16 Department's website the Facility VSP Score and assigned compliance tier for each facility  
17 subject to this article.

18 (d) The Department shall include all provisional or final inspection violation scores used to  
19 calculate a Facility VSP Score in the notice to the owner or operator. The owner or operator  
20 may dispute any provisional inspection violation score used to calculate a Facility VSP  
21 Score in accordance with section 66271.53(c). If an owner or operator files a timely Dispute  
22 Document pursuant to section 66271.53(c) disputing a provisional inspection violation score  
23 and the dispute resolution official issues a written decision that results in a change to the  
24 Facility VSP Score, the Department shall post a revised Facility VSP Score on the  
25 Department's website within ninety (90) days from the issuance of the written decision of the  
26 dispute resolution official.

27 (e) The compliance tier assignment for a facility that is assigned to an "acceptable" or  
28 "conditionally acceptable" compliance tier based on its Facility VSP Score is final when all  
29 inspection violation scores on which the Facility VSP Score is based are also final pursuant  
30 to section 66271.53(d). A final compliance tier assignment of "acceptable" or "conditionally  
31 acceptable" is not subject to additional administrative dispute resolution.

32 (f) The compliance tier assignment for a facility that is assigned to an "unacceptable"  
33 compliance tier based on its Facility VSP Score becomes final in accordance with section  
34 66271.57. The owner or operator of a facility assigned to a compliance tier of "unacceptable"  
35 may also dispute its compliance tier assignment pursuant to section 66271.57.

36  
37 NOTE: Authority cited: Sections 25150, 25200.21, 58004, and 58012, Health and Safety Code.  
38 Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code.

39  
40 **§ 66271.55. Hazardous Waste Facility Permit Decisions**

41 (a) Permit Decisions. ~~For permit applications that are submitted after the effective date of~~  
42 ~~this article, the~~ The Department shall conduct a complete review of ~~the~~ a facility's compliance

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1 history when making a decision to ~~issue~~ approve, deny, revoke, suspend, or modify a permit  
2 under this article.

3 (b) A complete review of the facility's compliance history shall include, ~~but is not limited to,~~  
4 all of the following:

5 (1) The facility's ~~final~~ compliance tier ~~assignment~~ based on the Facility VSP Score ~~and~~  
6 ~~all Class I violations and provisional and final inspection violation scores used to~~  
7 ~~calculate the Facility VSP Score;~~

8 (2) Class II and minor violations not quantified as part of the Facility VSP Score;

9 (3) The facility's compliance with any ~~permits, applicable orders, stipulations,~~  
10 ~~agreements, settlement documents, judgments, decrees, grants of authorization, or~~  
11 ~~other documents establishing requirements upon operations at the facility; hazardous~~  
12 ~~waste laws and regulations; and any other applicable environmental laws and~~  
13 ~~regulations or decrees issued by the Department, whether unilateral or consensual,~~  
14 ~~settlement agreements, or judgments pertaining to compliance matters, and including~~  
15 ~~corrective action;~~

16 (4) The disclosure statement pursuant to Health and Safety Code sections 25112.5 and  
17 25200.4;

18 (5) The facility's safety record; ~~and~~

19 (6) The facility's compliance with financial assurance ~~or liability coverage requirements~~  
20 ~~for closure, post-closure~~ ~~post-closure, or~~ ~~corrective action or financial liability coverage~~  
21 ~~pursuant to article 8 of chapters 14 and 15 of this division, as applicable;~~

22 (7) Information in audit reports provided to the Department pursuant to the requirements  
23 of ~~sections~~ 66271.56 and 66271.57; and

24 (8) Any other information allowed by law.

25 (c) A complete review of the facility's compliance history shall also include, ~~but is not limited~~  
26 ~~to,~~ a review of the following information to the extent such information is readily available to  
27 the Department:

28 (1) The owner's or operator's knowledge or intent in the commission of any violations;

29 (2) The record of ~~resolved~~ complaints received against the facility, ~~including the facility's~~  
30 ~~record of resolving such complaints;~~

31 (3) Violations ~~by the facility~~ of requirements of other federal, state, ~~or local~~  
32 ~~environmental agencies; and~~

33 (4) The ~~facility's~~ record of the owner's or operator's actions with regard to returning ~~ing~~  
34 ~~compliance, and cooperation with the Department.~~

35  
36 NOTE: Authority cited: Sections 25150, 25200.21, 58004, and 58012, Health and Safety Code.  
37 Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code.  
38

39 **§ 66271.56. Requirements for a Facility VSP Score of Assigned to a "Conditionally**  
40 **Acceptable" Compliance Tier**

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1 (a) The owner or operator of a facility that receives a final “conditionally acceptable”  
2 compliance tier assignment based on its Facility VSP Score shall comply with the following  
3 requirements:

4 (1) Compliance Audits: An The owners or operator of a non-federal facility shall prepare  
5 and provide to the Department third-party compliance audits in accordance with this  
6 section. An owner or operator of a federal facility, however, may prepare and submit to  
7 the Department a facility self-disclosure audit report and use an internal auditor in lieu of  
8 a third-party auditor, but are otherwise subject to this section, all of the following:

9 (A) Selection of Auditor. The owner or operator shall retain an independent third-  
10 party compliance auditor in accordance with the following:

11 1. the owner or operator shall, wW within sixty (60) days of notification of an  
12 assigned compliance tier of “CConditionally aAcceptable” pursuant to  
13 subsection 66271.54(c), the owner or operator shall provide to the  
14 Department the names and qualifications of at least three (3) names, in  
15 order of preference, and their qualifications of proposed independent third-  
16 party auditors, in order of preference, who are qualified to conduct  
17 hazardous waste facility audits to determine compliance with hazardous  
18 waste facility requirements. At a minimum, an auditor shall:

19 a. HHave graduated from an accredited college or university and  
20 possess a Bachelor of Science degree, in a physical or biological  
21 science, engineering, law, or a related field. State certification,  
22 licensing or registration, or certification by a nationally recognized  
23 professional association in a physical or biological science,  
24 engineering or law shall be considered equivalent to such training;  
25 and

26 b. eP Possess a minimum of five (5) years full time professional-level  
27 experience performing environmental audits relating to hazardous  
28 waste facilities;

29 2. the Department, shall wW within fifteen (15) days of receiving the names  
30 and qualifications of the proposed third-party auditors, the Department  
31 shall provide a written notice to the owner or operator that the Department  
32 approves or rejects the selection of approving or rejecting the third-party  
33 auditors proposed by the owner or operator, the third-party auditor on the  
34 basis of qualifications, prior conduct on the part of the proposed auditor, or  
35 conflict of interest;

36 3. iIf the Department approves one or more of the proposed third-party  
37 auditors selected by the owner or operator, the owner or operator shall,  
38 within thirty (30) days of the Department’s approval, provide written  
39 notification to the Department that the owner or operator has retained the  
40 services of a third-party an auditor approved by the Department;

41 4. iIf the Department rejects all proposed third-party auditors submitted by  
42 the owner or operator to the Department pursuant to subparagraph 1., the



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1 Department shall, within thirty (30) days of the Department's written notice  
2 pursuant to subparagraph 2., select an auditor qualified to perform the  
3 audit and inform the owner or operator of the auditor selected by the  
4 Department; and

5 5. If the Department selects an auditor pursuant to subparagraph 4., the  
6 owner or operator shall, within thirty (30) days of receipt of the notice  
7 pursuant to paragraph 4., retain the services of the auditor selected by the  
8 Department.

9 (B) Submission of Audits. The owner or operator shall submit to the Department  
10 the audit reports prepared by the independent third-party auditor that meet the  
11 requirements of this subparagraph according to the Audit Schedule in  
12 subparagraph section 66271.56(a)(1)(C). Audit reports prepared pursuant to this  
13 subsection must, at a minimum, include all of the following:

14 1. A complete description and discussion of all audit objectives, audit  
15 criteria, audit activities, audit findings and conclusions, recommendations,  
16 and all evidence relied upon to support the audit conclusions;

17 2. A complete inspection and review of all facility operations related to  
18 hazardous waste and all monitoring, records, reports, and other  
19 information necessary to evaluate and determine facility compliance with  
20 all terms of the facility's hazardous waste facility permit, and all applicable  
21 hazardous waste laws, regulations, and orders;

22 3. Sampling and testing of potentially hazardous materials as necessary  
23 to determine compliance with all terms of the facility's hazardous waste  
24 facility permit, and all applicable hazardous waste laws, regulations, and  
25 orders;

26 4. A complete description of the inspection(s) completed, a summary of  
27 all sampling and testing conducted and associated results, and discussion  
28 of all information reviewed;

29 5. Review of all safety practices and identification of all accidents in the  
30 preceding one (1) year, and any unsafe practices or conditions observed  
31 that could lead to accidents;

32 6. A brief description of any written advisements or determination of  
33 violations, including, but not limited to, Notices of Violation and inspection  
34 reports directed to the facility by any local, state, or federal agency that  
35 identifies any violation of any hazardous waste facility requirement; and

36 7. Discussion of all findings and deficiencies related to facility; and  
37 compliance, including identification of all instances of noncompliance.

38 (C) Audit Schedule. The owner or operator shall submit at least two audit reports  
39 to the Department as follows:

40 1. The first audit report shall be submitted no later than 270 days after  
41 notification pursuant to subsection 66271.54; and

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2. ~~¶~~ The second audit report shall be submitted no earlier than 180 days and no later than one (1) year after the first **audit report** evaluation.

(2) Compliance Implementation Plan. The owner or operator shall, within thirty (30) days following the deadline to submit each audit report pursuant to ~~subparagraph~~ **section 66271.56(a)(1)**(C), submit a corresponding compliance implementation plan as follows:

(A) The compliance implementation plan must describe all actions needed to correct all deficiencies and address all findings identified in the audit report.

(B) The compliance implementation plan must identify all permits and permit modifications required by the Department and any other federal, state, or local agency in order to implement the actions described in subparagraph (A).

(C) The compliance implementation plan must include deadlines for all actions to correct deficiencies and to submit applications for all permits or permit modifications needed to implement such actions.

~~(b) The Department may require the owner or operator of a facility to revise the facility's its compliance implementation plan prior to the Department's its approval of the plan. Upon approval of a plan, all actions and schedules contained therein shall be enforceable commitments.~~

~~(c) The Department may rely upon audit reports for the purposes of enforcement and calculation of inspection violation scores and Facility VSP Scores.~~

~~(d)~~ (c) The Department may also impose other **requirements** responses on a facility an owner or operator. ~~These actions include~~ **including**, but are not limited to, one or more of the following:

(1) Imposing a shorter operating period for the facility's permit than that specified in the permit;

(2) Restricting or prohibiting hazardous waste management activities at the facility that are authorized in the permit;

(3) Imposing additional conditions on hazardous waste management activities beyond those specified in the permit; **and** or

(4) Imposing requirements designed to mitigate potential harm associated with noncompliant activities or events, including, but not limited to, community benefit agreements or projects, or other enforceable and measurable actions to reduce impacts or alleviate adverse conditions caused by the facility's noncompliance with hazardous waste management requirements.

*NOTE: Authority cited: Sections 25150, 25200.21, 58004, and 58012, Health and Safety Code. Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code.*

**§ 66271.57. Requirements for a Facility VSP Score of **Assigned to an "Unacceptable" Compliance Tier****

~~(a) The Department may deny, suspend, or revoke a permit for a facility that has an "unacceptable" Facility VSP score, if the Department finds, based on substantial evidence, one or more of the following:~~

1 (a) For a facility that is assigned to an “unacceptable” compliance tier based on its Facility  
2 VSP Score:

3 (1) The Department shall, subject to subsections (b) through (f), initiate a process to  
4 deny, suspend, or revoke a permit pursuant to chapter 20 or 21 of this division for a  
5 facility after the facility’s “unacceptable” compliance tier assignment becomes final in  
6 accordance with subsection (b) or subsection (f)(1).

7 (2) Following the initiation of a process pursuant to subsection (a)(1) to deny, suspend,  
8 or revoke a permit, the Department may grant a permit or permit modification or  
9 otherwise resolve a pending permit action against a facility that has been assigned to an  
10 “unacceptable” compliance tier only if the Department makes the written findings  
11 required in subsection (g), in addition to any other findings required by law for its  
12 decision.

13 (b) An owner or operator of a facility assigned to an “unacceptable” compliance tier may  
14 challenge the “unacceptable” compliance tier assignment in accordance with the procedures  
15 set forth in this section. If an owner or operator of a facility assigned to an “unacceptable”  
16 compliance tier does not challenge the facility’s compliance tier assignment in accordance  
17 with the procedures set forth in this section, the facility’s “unacceptable” compliance tier  
18 assignment will become final sixty (60) days after the Department’s written notice to the  
19 facility of its compliance tier assignment.

20 (c) Within sixty (60) days of the Department’s written notice that the Department assigned a  
21 facility to an “unacceptable” compliance tier based on its Facility VSP Score, the owner or  
22 operator may challenge that assignment. If the “unacceptable” compliance tier assignment is  
23 based on a provisional inspection violation score disputed by the owner or operator pursuant  
24 to section 66271.53(c), then the time frame for the owner or operator to challenge the  
25 facility’s compliance tier assignment commences when the dispute resolution official issues  
26 its written decision pursuant to section 66271.53(c)(4).

27 (d) In order to challenge an “unacceptable” compliance tier assignment, an owner or  
28 operator must demonstrate, in writing, all of the following:

29 ~~(1) The current conditions at the facility present an imminent or substantial~~  
30 ~~endangerment to the public;~~

31 ~~(2) The complete review of the facility’s compliance history demonstrates at least one of~~  
32 ~~the following:~~

33 ~~(1)(A) The facility owner or operator is either unwilling or unable to operate the facility in~~  
34 ~~compliance with the terms and conditions of its permit(s), or any applicable orders,~~  
35 ~~stipulations, agreements, settlement documents, judgments, decrees, grants of~~  
36 ~~authorization, and other documents establishing requirements upon operations at the~~  
37 ~~facility; hazardous waste laws and regulations; and any other applicable environmental~~  
38 ~~laws and regulations, laws or regulations, or more than one of these;~~

39 ~~(2)(B) The facility, as constructed, cannot be operated in compliance with the terms and~~  
40 ~~conditions of its permit, applicable orders, stipulations, agreements, settlement~~  
41 ~~documents, judgments, decrees, grants of authorization, and other documents~~  
42 ~~establishing requirements upon operations at the facility; hazardous waste laws and~~

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- 1 regulations; and any other applicable environmental laws and regulations, and/or any  
2 applicable orders, laws or regulations; or;  
3 (3)(C) The owner's or operator's C continued operation of the facility is unlikely to result  
4 in adversely affecting human health, safety, or the environment; significant adverse  
5 health impacts to workers or the public; or  
6 (4)(D) The facility's has not provided adequate compliance with financial assurance or  
7 liability coverage requirements for closure, post-closure, or corrective action,  
8 and financial liability coverage as required in pursuant to article 8 of chapters 14 and 15  
9 of this division, as applicable.  
10 (5)(3) One or more audit reports required pursuant to this article demonstrates both of  
11 the following:  
12 (A) an ongoing pattern of non-compliance with applicable hazardous waste  
13 management requirements; and or  
14 (B) a failure to fully full implementation of actions to correct deficiencies and  
15 address findings of prior audits.;  
16 (4) The complete review of the facility's compliance history, in conjunction with a review  
17 of facility compliance with the requirements of other federal, state or local environmental  
18 regulations or permits, demonstrates any of the following:  
19 (A) The facility is either unwilling or unable to operate the facility in compliance  
20 with its permit(s) or any applicable orders, laws or regulations, or more than one  
21 of these;  
22 (B) The facility, as constructed, cannot be operated in compliance with its permit  
23 and/or any applicable orders, laws or regulations; or  
24 (C) Continued operation of the facility is likely to result in significant adverse  
25 health impacts to workers or the public.  
26 (e) Within sixty (60) days of receipt of the owner's or operator's written challenge pursuant to  
27 this section, the Department shall send out a written notice regarding the time and location  
28 of a public meeting regarding the facility's "unacceptable" compliance tier assignment. At the  
29 public meeting, the Department will present the grounds for assigning the facility an  
30 "unacceptable" compliance tier, the owner or operator may present its opposition, and the  
31 public shall have an opportunity to submit comments.  
32 (f) Within sixty (60) days of the date of the public meeting, the Department shall issue a  
33 written decision regarding the owner's or operator's challenge to the facility's "unacceptable"  
34 compliance tier assignment. The Department's decision shall be based upon its  
35 consideration of the Department's evidence to support the Facility VSP Score and  
36 assignment to the "unacceptable" compliance tier; evidence presented by the owner or  
37 operator in its written challenge filed pursuant to subsection (d) and at the public meeting  
38 held pursuant to subsection (e); and any other relevant evidence presented at the public  
39 meeting held pursuant to subsection (e).  
40 (1) If the Department upholds the facility's "unacceptable" compliance tier assignment,  
41 the Department's written decision will constitute the facility's final "unacceptable"  
42 compliance tier assignment. The Department's written decision will also notify the owner

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1 or operator regarding the Department's decision to initiate the process to deny,  
2 suspend, or revoke the facility's permit.

3 (2) If the Department makes a determination that changes the facility's compliance tier  
4 assignment to "conditionally acceptable," then the facility is subject to the provisions of  
5 section 66271.56.

6 ~~(c) The Department may grant a permit or permit modification for a facility with an~~  
7 ~~"unacceptable" Facility VSP Score if the Department finds that grant of the permit or permit~~  
8 ~~modification will not pose a threat to public health or safety or to the environment and that,~~  
9 ~~based on substantial evidence, at least one of the following:~~

10 (g) The Department may grant a permit or permit modification or otherwise resolve a  
11 pending permit action for a facility that is assigned to an "unacceptable" compliance tier if  
12 the Department makes written findings based on substantial evidence that grant of the  
13 permit or permit modification or other resolution of a pending permit action will not pose a  
14 threat to public health or safety or the environment and that both of the following conditions  
15 are met:

16 (1) ~~The facility owner or operator has implemented enforceable improvements to its~~  
17 facility operations or hazardous waste management processes or equipment that will  
18 substantively prevent future noncompliance; prevent future violations; and

19 ~~(2) A complete review of the facility's compliance history demonstrates that the Facility~~  
20 ~~VSP Score does not provide an accurate characterization of the facility's material~~  
21 ~~compliance record; or~~

22 ~~(2)(3) There are substantial and overriding benefits to the people of the State of~~  
23 ~~California resulting from the continued operation of the facility.~~

24 ~~(h)(e) If the Department grants a permit or permit modification~~ or otherwise resolves a  
25 pending permit action for a facility has an "unacceptable" Facility VSP score, for a facility  
26 pursuant to subsection (g), the Department shall require all of the following, in addition to  
27 any other requirements deemed necessary by the Department to protect human health or  
28 safety or the environment:

29 (1) The permit term shall not exceed five (5) years;

30 (2) The permit must include enhanced compliance provisions, including, but not limited  
31 to, annual independent third-party compliance audits consistent with subsection  
32 66271.56(a)(1)(A) and (B). The permit shall specify the dates for submittal of audit  
33 reports by the facility owner or operator; and

34 (3) The permit must include mitigation measures for all potential harm associated with  
35 noncompliant activities or events, including enforceable and measurable actions to  
36 eliminate or reduce impacts associated with noncompliance and to alleviate adverse  
37 conditions caused by the facility's noncompliance, or to which noncompliance may have  
38 contributed.

39 ~~(i)(b) The Department may~~ shall ~~order a facility that received a final~~ has an "unacceptable"  
40 Facility VSP Score compliance tier assignment to take the following actions any action  
41 determined by the Department as necessary to ensure the facility's compliance with its  
42 permit, and any applicable orders, stipulations, agreements, settlements, judgments.

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1 decrees, grants of authorization, or other documents establishing requirements upon  
2 operations at the facility, as well as ~~orders or agreements,~~ hazardous waste laws and  
3 ~~regulations,~~ and any other applicable environmental laws and regulations, including, but not  
4 limited to:

5 ~~(1) complying with section 66271.56~~ ~~conduct independent third party compliance audits~~  
6 ~~consistent with subsection 66271.56(a)(1)(A) and (B);~~

7 ~~(2)(6) conducting~~ additional and/or enhanced training as necessary to improve facility  
8 operations and compliance;

9 ~~(3)(2) implementing~~ facility improvements related to the causes of the facility's  
10 noncompliance with its permit and applicable orders, stipulations, agreements,  
11 settlements, judgments, decrees, grants of authorization, or other documents  
12 establishing requirements upon operations at the facility, as well as hazardous waste  
13 laws, and regulations, including, but not limited to, Facility improvements may include,  
14 but are not limited to, repairing, replacing, or augmenting hazardous waste  
15 management units, equipment, devices, or secondary containment;

16 ~~(4)(3) restricting~~ or ~~ceasing~~ the operation of a hazardous waste management unit that  
17 is the basis of the facility's violations;

18 ~~(5)(4) conducting~~ public participation and community engagement activities, including,  
19 but not limited to, public information meetings with the surrounding community and  
20 distribution of fact sheets or community updates, addressing the facility's compliance  
21 issues and return to compliance; and

22 ~~(6)(5) increasing~~ or ~~expanding~~ facility monitoring, recordkeeping, and/or reporting; ~~or~~  
23 ~~(7) increase by 25 percent the amount of financial assurance established and~~  
24 ~~maintained by the owner or operator of the facility for closure of the facility and~~  
25 ~~corrective action. The most recent closure cost estimate prepared in accordance with~~  
26 ~~sections 66264.142 and 66265.142 shall form the basis for the increase in financial~~  
27 ~~assurance for closure of the facility. The most recent corrective action cost estimate~~  
28 ~~prepared in accordance with sections 66264.100, 66264.101, and 66264.708 shall form~~  
29 ~~the basis for the increase in financial assurance for corrective action; or~~

30 ~~(8) implement any other actions determined by the Department to be necessary to~~  
31 ~~ensure the facility's compliance with its permit and/or any applicable orders, laws, and~~  
32 ~~regulations.~~

34 *NOTE: Authority cited: Sections 25150, 25200.21, 58004, and 58012, Health and Safety Code.*  
35 *Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code.*

37 **~~§ 66271.58. Appeals for Reconsideration~~**

38 ~~(a) A facility owner or operator may submit an appeal of any proposed decision by the~~  
39 ~~Department to deny a permit application or permit modification, or to suspend, or to revoke a~~  
40 ~~permit pursuant to this article.~~

41 ~~(b) If the facility owner or operator submits an appeal, the Department shall review its~~  
42 ~~proposed decision to determine if it is clearly erroneous or not. The Department shall have~~

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 ~~the burden of establishing that its proposed decision is not clearly erroneous. This burden~~  
2 ~~may be met by demonstrating either of the following:~~

3 ~~(1) The Facility VSP Score was calculated in a manner that is not in compliance with~~  
4 ~~this article; or~~

5 ~~(2) A manifest injustice would otherwise result from the Department taking the proposed~~  
6 ~~action. A manifest injustice may be established by evidence showing one or more of the~~  
7 ~~following:~~

8 ~~(A) The facility has implemented substantial improvements to its hazardous~~  
9 ~~waste management processes, or equipment, or both that will substantively and~~  
10 ~~effectively prevent future noncompliance;~~

11 ~~(B) A complete review of the facility's compliance history demonstrates by clear~~  
12 ~~and convincing evidence that the Facility's VSP Score does not provide an~~  
13 ~~accurate characterization of the facility's compliance record; or~~

14 ~~(C) There are substantial and overriding benefits to the people of the State of~~  
15 ~~California resulting from the continued operation of the facility.~~

16 ~~(c) A facility owner or operator who desires to appeal a decision under this section shall~~  
17 ~~submit an appeal within thirty (30) days of being informed by the Department in writing that it~~  
18 ~~is proposing one of the actions specified in subsection (a).~~

19 ~~(d) Decision on Appeals. The Director or his or her designee shall issue a decision granting~~  
20 ~~or denying the relief sought, in whole or in part, or a notice of ongoing review, within sixty~~  
21 ~~(60) days after receipt of the request under this section. If the relief sought is denied in~~  
22 ~~whole or in part, the decision by the Department shall contain a concise and plain~~  
23 ~~description of the basis for denial of the request for further administrative review.~~

24 ~~(e) Nothing in this article is intended to, or shall in any way, limit an owner's or operator's~~  
25 ~~ability to invoke the procedures in Chapter 21 relating to permit appeals.~~

26  
27 ~~NOTE: Authority cited: Sections 25150, 25200.21, 54008, and 58012, Health and Safety Code.~~  
28 ~~Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code.~~