

TEXT OF PROPOSED REGULATIONS

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DIVISION 4.5, TITLE 22, CALIFORNIA CODE OF REGULATIONS

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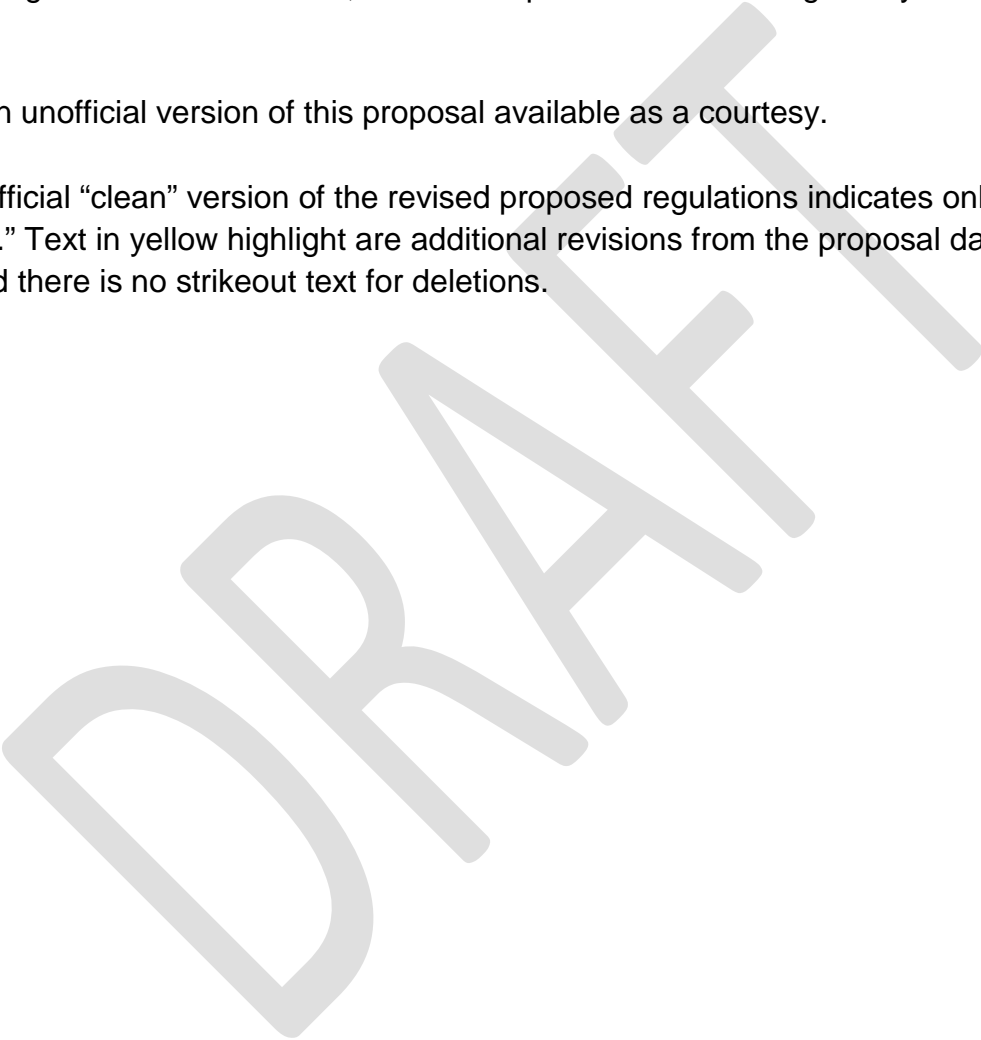
ATTACHMENT

**TEXT OF PROPOSED REGULATIONS – POST-HEARING CHANGES
May 2018**

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.

This is an unofficial version of this proposal available as a courtesy.

This 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.



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CHAPTER 10. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

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

§ 66260.10. Definitions.

When used in this division, the following terms have the meanings given below:

...

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

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

...

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

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

17 (1) The owner or operator shall ensure that the training program includes all the
18 elements specified in this section.

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

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

29 (A) procedures for using, inspecting, repairing, and replacing facility emergency
30 and monitoring equipment;

31 (B) key parameters for automatic waste feed cut-off systems;

32 (C) communications or alarm systems;

33 (D) response to fires or explosions;

34 (E) response to groundwater contamination incidents; and

35 (F) shutdown of operations; (G) self-protection measures; and

36 (H) accident prevention methods.

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

39 (A) General awareness training. The owner or operator shall ensure all facility
40 personnel successfully complete training that provides description of the facility,
41 and an overview of the facility and facility operations that are subject to this
42 chapter, including, but not limited to, security and safety considerations; and

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 (B) Function-specific job training. The owner or operator shall ensure all facility
2 personnel who are involved with hazardous waste management activities
3 successfully complete training concerning the requirements of this chapter and
4 any relevant hazardous waste procedures applicable to job tasks and functions
5 performed by the employee.
- 6 (b) The owner or operator shall ensure that facility personnel successfully complete the
7 program required in subsection (a) of this section within 180 days after the date of their
8 employment or assignment to a facility or to a new position at a facility. Employees hired
9 after the effective date of these regulations shall not work in unsupervised positions until
10 they have completed the training requirements of subsection (a) of this section.
- 11 (c) The owner or operator shall ensure that facility personnel take part in an annual review of
12 the initial training required in subsection (a) of this section, unless otherwise specified.
- 13 (d) The training records required by this subsection must demonstrate compliance with
14 subsection (a) and include the specific elements set out in paragraphs (1) through (4). The
15 owner or operator shall maintain the following documents and records at the facility:
- 16 (1) the job title for each position at the facility related to hazardous waste management,
17 and the name of the employee filling each job;
- 18 (2) a written job description for each position listed under paragraph (d)(1) of this
19 section. This description may be consistent in its degree of specificity with descriptions
20 for other similar positions in the same company location or bargaining unit, but shall
21 include the requisite skill, education, or other qualifications, and duties of employees
22 assigned to each position;
- 23 (3) a written description, including a syllabus and/or outline, of the type and amount of
24 both introductory and continuing training that will be given to each person filling a
25 position listed under paragraph (d)(1) of this section;
- 26 (4) employee-signed or certified records that document that the training required under
27 subsections (a), (b), and (c) of this section has been given to, and completed by, each
28 employee.
- 29 (e) The owner or operator shall maintain training records on current personnel until closure
30 of the facility and training records on former employees for at least three years from the date
31 the employee last worked at the facility. Personnel training records may accompany
32 personnel transferred within the same company.
- 33 (f) Effective March 1, 2021, the owner or operator shall prepare and submit to the
34 Department by March 1 of each year, an annual certification that attests to the training of the
35 facility personnel for the previous calendar year in accordance with subsections (a) and (c).
36 The certification must include the following:
- 37 (1) a signed statement by the owner or operator certifying that facility personnel have
38 been trained in a manner that satisfies the requirements of this section and any
39 applicable requirements of subsection 5192(p) of Title 8, California Code of Regulations
40 and section 172.704 of Title 49, Code of Federal Regulations.
- 41 (2) the job title for each position at the facility related to hazardous waste management,
42 and the name of the employee filling each job.

1
2 *Note: Authority cited: Sections 25150, 25159, 25200.21, 58004, and 58012 Health and Safety*
3 *Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section*
4 *264.16.*

5
6 ...
7

8 **§ 66264.101. Corrective Action for Waste Management Units.**

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

14 (b) The owner or operator shall provide a financial assurance mechanism for corrective
15 action to the Department within 90 days of the Department's approval of a corrective
16 measures implementation workplan or a Department-approved equivalent. The financial
17 assurance mechanism must consist of one of the options specified in section 66264.143.
18 The owner or operator shall establish the financial assurance mechanism to allow the
19 Department access to the funds to undertake corrective measures implementation tasks if
20 the owner or operator is unable or unwilling to undertake the required tasks. The financial
21 assurance mechanism is subject to the Department's approval.

22 (b)(c) Corrective action must be specified in the permit, order, or agreement for corrective
23 action issued or entered into by the Department in accordance with this article, article 15.5,
24 or article 17, and Health and Safety Code sections 25200.10, 25187, 25200.14, or 25358.9
25 where as provided for under the provisions of that section the Department has excluded the
26 removal or remedial action at a site from the hazardous waste facilities permit required by
27 Health and Safety Code section 25201. The permit, order, or agreement must contain
28 schedules of compliance for such corrective action (where such corrective action cannot be
29 completed prior to issuance of the permit) and assurances of financial responsibility for
30 completing such corrective action.

31 (c)(d) Where necessary to protect human health or the environment, the owner or operator
32 shall implement corrective action beyond the facility boundary unless the owner or operator
33 demonstrates to the satisfaction of the Department, that despite the owner's or operator's
34 best efforts, the owner or operator was unable to obtain the necessary permission to
35 undertake such action. The owner or operator is not relieved of responsibility to clean up a
36 release that has migrated beyond the facility boundary where off-site access is denied. On-
37 site measures to address such release will be determined on a case-by-case basis.
38 Assurance of financial responsibility for such corrective action shall be provided.

39
40 *Note: Authority cited: Sections 25150, 25159, 25187, 25200.10, 25200.21, 25245, 25355.5,*
41 *25356.9, 25358.3, 25358.9, 58004 and 58012, Health and Safety Code. Reference: Sections*

1 25150, 25159.5, 25187, 25200, 25200.10, 25355.5, 25356.9, 25358.3 and 25358.9, Health
2 and Safety Code; 40 CFR Section 264.101.

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4 ...

5
6 **§ 66264.143. Financial Assurance for Closure.**

7 (a) Closure trust fund.

8 ...

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

10 ...

11 (c) Surety bond guaranteeing performance of closure.

12 ...

13 (d) Closure letter of credit.

14 ...

15 (e) Closure insurance.

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

- 23 (A) licensed to transact the business of insurance in California; or
24 (B) eligible to provide insurance as an excess or surplus lines insurer in
25 California. Any excess or surplus insurance relied upon by the owner or operator
26 to meet the requirements of this subsection shall be transacted by an admitted
27 carrier.

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

31 ...

32 (f) Financial test and guarantee for closure.

33 (1) An owner or operator may satisfy the requirements of this section by demonstrating
34 that the owner or operator passes the financial test specified in this subsection. To pass
35 this test, the owner or operator shall meet the criteria of either subsection (f)(1)(A) or (B)
36 of this section.

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

- 38 1. two of the following three ratios: a ratio of total liabilities to net worth
39 less than 2.0; a ratio of the sum of net income plus depreciation, depletion
40 and amortization to total liabilities greater than 0.1; and a ratio of current
41 assets to current liabilities greater than 1.5;

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1 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by
2 Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and
3 ~~2-3.~~ net working capital and tangible net worth each at least six times the
4 sum of the current closure and postclosure cost estimates and the current
5 plugging and abandonment cost estimates;
6 ~~3.~~ 4. tangible net worth of at least \$20 million; and
7 ~~4-5.~~ assets located in the United States amounting to at least 90 percent
8 of total assets or at least six times the sum of the current closure and
9 postclosure cost estimates for all of the owner's or operator's hazardous
10 waste facilities regulated by the Department and the current plugging and
11 abandonment cost estimates.

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

13 1. a current rating for his or her most recent bond issuance of AAA, AA, A,
14 or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued
15 by Moody's;
16 2. tangible net worth at least six times the sum of the current closure and
17 postclosure cost estimates and the current plugging and abandonment
18 cost estimates;
19 3. tangible net worth of at least \$20 million; and
20 4. assets located in the United States amounting to at least 90 percent of
21 total assets or at least six times the sum of the current closure and
22 postclosure cost estimates for all of the owner's or operator's hazardous
23 waste facilities regulated by the Department and the current plugging and
24 abandonment cost estimates.

25 (2) The phrase "current closure and postclosure cost estimates" as used in subsection
26 (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1
27 through 6 of the letter from the owner's or operator's chief financial officer as specified in
28 subsection 66264.151(f). The phrase "current plugging and abandonment cost
29 estimates" as used in subsection (f)(1) of this section refers to the cost estimates
30 required to be shown in paragraphs 1 through 6 of the letter from the owner's or
31 operator's chief financial officer.

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

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

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

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

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

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1 (10) An owner or operator may meet the requirements of this section by obtaining a
2 written guarantee. The guarantor shall be the direct or higher-tier "parent corporation,"
3 as defined in section 66260.10, of the owner or operator, a firm whose parent
4 corporation is also the parent corporation of the owner or operator, or a firm with a
5 "substantial business relationship," as defined in section 66260.10, with the owner or
6 operator. The guarantor shall meet and comply with the requirements for owners or
7 operators in subsections (f)(1) through (f)(8) of this section and shall comply with the
8 terms of the guarantee. The guarantee shall be on the official letterhead stationery of
9 the parent corporation. The guarantee shall contain an original signature which shall be
10 formally witnessed or notarized, and the wording shall be identical to the wording
11 specified in section 66264.151, subsection (h). A certified copy of the guarantee shall
12 accompany the items sent to the Department as specified in subsection (f)(3) of this
13 section. One of these items must be the letter from the guarantor's chief financial officer.
14 If the guarantor's parent corporation is also the parent corporation of the owner or
15 operator, the letter must describe the value received in consideration of the guarantee.
16 If the guarantor is a firm with a "substantial business relationship" with the owner or
17 operator, this letter must describe this "substantial business relationship" and the value
18 received in consideration of the guarantee. The terms of the guarantee shall provide
19 that:

- 20 (A) if the owner or operator fails to perform final closure of a facility covered by
21 the guarantee in accordance with the closure plan and other permit requirements
22 whenever required to do so, the guarantor shall do so or establish a trust fund as
23 specified in subsection (a) of this section in the name of the owner or operator;
- 24 (B) the guarantee shall remain in force unless the guarantor sends notice of
25 cancellation by certified mail to the owner or operator and to the Department.
26 Cancellation shall not occur, however, during the 120 days beginning on the date
27 of receipt of the notice of cancellation by both the owner or operator and the
28 Department, as evidenced by the return receipts;
- 29 (C) if the owner or operator fails to provide alternate financial assurance as
30 specified in this section and obtain the written approval of such alternate
31 assurance from the Department within 90 days after receipt by both the owner or
32 operator and the Department of a notice of cancellation of the guarantee from the
33 guarantor, the guarantor shall provide such alternative financial assurance in the
34 name of the owner or operator.

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

- 39 (g) Use of multiple financial mechanisms.
40 ...
- 41 (h) Use of a financial mechanism for multiple facilities.
42 ...

- 1 (i) Alternative Financial Mechanism for Closure Costs.
- 2 ...
- 3 (j) Release of the owner or operator from the requirements of this section.
- 4 ...

5
6 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, ~~and~~ 25245, 58004, and*
7 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25245, Health and Safety*
8 *Code; 40 CFR Section 264.143.*

9
10 **§ 66264.144. Cost Estimate for Postclosure Care.**

11 (a) An owner or operator of a disposal surface impoundment, disposal miscellaneous unit,
12 land treatment unit, landfill unit, or a surface impoundment or waste pile required under
13 section 66264.228 and section 66264.258 to prepare and submit to the Department a
14 contingent closure and postclosure plan, shall prepare and submit to the Department a
15 detailed written estimate, in current dollars, of the annual cost of postclosure monitoring and
16 maintenance of the facility in accordance with the applicable postclosure regulations in
17 sections 66264.117 through 66264.120, 66264.228, 66264.258, 66264.280, 66264.310, and
18 66264.603.

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

23 (2) The postclosure cost estimate is calculated by multiplying the annual postclosure
24 cost estimate by 30 years or as required under section 66264.117. The Department
25 may reset this period to 30 years each time the postclosure permit is issued or renewed.
26 This period must be consistent with determinations made under section 66264.117.

27 (b) During the active life of the facility, the owner or operator shall adjust the postclosure
28 cost estimate for inflation within 60 days prior to the anniversary date of the establishment of
29 the financial instrument(s) used to comply with section 66264.145. For owners or operators
30 using the financial test or corporate guarantee, the postclosure cost estimate shall be
31 updated for inflation within 30 days after the close of the firm's fiscal year and before the
32 submission of updated information to the Department as specified in section
33 66264.145(f)(5). The adjustment shall be made by recalculating the postclosure cost
34 estimate in current dollars or by using an inflation factor derived from the most recent
35 Implicit Price Deflator for Gross National Product published by the U.S. Department of
36 Commerce in its Survey of Current Business as specified paragraphs (1) and (2) of this
37 subsection. The inflation factor is the result of dividing the latest published annual Deflator
38 by the Deflator for the previous year. Postclosure care cost estimates must be adjusted as
39 follows:

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

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

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

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

12
13 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, 25245, 58004, and 58012,*
14 *Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR Section*
15 *264.144.*

16

17 **§ 66264.145. Financial Assurance for Postclosure Care.**

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

24 (a) Postclosure trust fund.

25 ...

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

27 ...

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

29 ...

30 (d) Postclosure letter of credit.

31 ...

32 (e) Postclosure insurance.

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

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

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

42 California. Any excess or surplus insurance relied upon by the owner or operator

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1 to meet the requirements of this subsection shall be transacted by an admitted
2 carrier.

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

6 ...

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

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

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

- 13 1. two of the following three ratios: a ratio of total liabilities to net worth
14 less than 2.0; a ratio of the sum of net income plus depreciation, depletion
15 and amortization to total liabilities greater than 0.1; and a ratio of current
16 assets to current liabilities greater than 1.5;
- 17 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by
18 Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;
- 19 3. net working capital and tangible net worth each at least six times the
20 sum of the current closure and postclosure cost estimates and the current
21 plugging and abandonment cost estimates;
- 22 3.4. tangible net worth of at least \$20 million; and
- 23 4.5. assets in the United States amounting to at least 90 percent of total
24 assets or at least six times the sum of the current closure and postclosure
25 cost estimates for all of the owner's or operator's hazardous waste
26 facilities regulated by the Department and the current plugging and
27 abandonment cost estimates.

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

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

41 (2) The phrase "current closure and postclosure cost estimates" as used in subsection
42 (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1

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

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

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

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

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

- 17 1. a statement that the independent certified public accountant has
18 compared the data which the letter from the chief financial officer specified
19 as having been derived from the independently audited, year-end financial
20 statements for the latest fiscal year with the amounts in such financial
21 statements; and
- 22 2. identification and description of the specific accounting standards and
23 guidance relied upon to prepare the report.

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

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

31 (6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this
32 section, the owner or operator shall send notice to the Department of the intent to
33 establish alternate financial assurance as specified in this section. The notice shall be
34 sent by certified mail within 90 days after any occurrence that prevents the owner or
35 operator from meeting the requirements. The owner or operator shall provide the
36 alternate financial assurance within 120 days after such occurrence.

37 (7) The Department may, based on a reasonable belief that the owner or operator may
38 no longer meet the requirements of subsection (f)(1) of this section, require reports of
39 financial condition at any time from the owner or operator in addition to those specified
40 in subsection (f)(3) of this section. If the Department finds, on the basis of such reports
41 or other information, that the owner or operator no longer meets the requirements of

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- 1 subsection (f)(1) of this section, the owner or operator shall provide alternate financial
2 assurance as specified in this section within 30 days after notification of such a finding.
- 3 (8) The Department may disallow use of this test on the basis of qualifications in the
4 opinion expressed by the independent certified public accountant in his or her report on
5 examination of the owner's or operator's financial statements (see subsection (f)(3)(B)
6 of this section). An adverse opinion or a disclaimer of opinion shall be cause for
7 disallowance. The Department shall evaluate other qualifications on an individual basis.
8 The owner or operator shall provide alternate financial assurance as specified in this
9 section within 30 days after notification of the disallowance.
- 10 (9) During the period of postclosure care, the Department shall approve a decrease in
11 the current postclosure cost estimate for which this test demonstrates financial
12 assurance if the owner or operator demonstrates to the Department that the amount of
13 the cost estimate exceeds the remaining cost of postclosure care.
- 14 (10) The owner or operator is no longer required to submit the items specified in
15 subsection (f)(3) of this section when:
- 16 (A) an owner or operator substitutes alternate financial assurance as specified in
17 this section; or
 - 18 (B) the Department releases the owner or operator from the requirements of this
19 section in accordance with subsection (j) of this section.
- 20 (11) An owner or operator may meet the requirements for this section by obtaining a
21 written guarantee. The guarantor shall be the direct or higher-tier parent corporation as
22 defined in section 66260.10, of the owner or operator, a firm whose parent corporation
23 is also the parent corporation of the owner or operator, or a firm with a "substantial
24 business relationship" with the owner or operator. The guarantor shall meet the
25 requirements for owners or operators in subsections (f)(1) through (f)(9) of this section
26 and shall comply with the terms of the guarantee. The guarantee shall contain an
27 original signature which shall be formally witnessed or notarized and the wording of the
28 guarantee shall be identical to the wording specified in section 66264.151, subsection
29 (h). A certified copy of the guarantee shall accompany the items sent to the Department
30 as specified in subsection (f)(3) of this section. One of these items must be the letter
31 from the guarantor's chief financial officer. If the guarantor's parent corporation is also
32 the parent corporation of the owner or operator, the letter must describe the value
33 received in consideration of the guarantee. If the guarantor is a firm with a "substantial
34 business relationship" with the owner or operator, this letter must describe this
35 "substantial business relationship" and the value received in consideration of the
36 guarantee. The terms of the guarantee shall provide that:
- 37 (A) if the owner or operator fails to perform postclosure care of a facility covered
38 by the guarantee in accordance with the postclosure plan and other permit
39 requirements whenever required to do so, the guarantor shall do so or establish
40 a trust fund as specified in subsection (a) of this section in the name of the owner
41 or operator;

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

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

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

16 (g) Use of multiple financial mechanisms.

17 ...

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

19 ...

20 (i) Alternative Financial Mechanism for Postclosure Care.

21 ...

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

24 ...

25
26 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, 25245, 58004, and 58012,*
27 *Health and Safety Code. Reference: Sections 25200.21 and 25245, Health and Safety Code;*
28 *40 CFR Section 264.145.*
29

30 **§ 66264.146. Use of a Mechanism for Financial Assurance of Closure, Post-Closure**
31 **Care, and Corrective Action.**

32 An owner or operator may satisfy the requirements for financial assurance for closure, post-
33 closure care, and corrective action for one or more facilities by using a trust fund, surety
34 bond, letter of credit, insurance, financial test, corporate guarantee, or alternative
35 mechanism that meets the specifications for the mechanism in both sections 66264.143 and
36 66264.145 for each facility. The amount of funds available through the mechanism shall be
37 no less than the sum of funds that would be available if a separate mechanism had been
38 established and maintained for financial assurance of closure, post-closure care, and
39 corrective action.
40

1 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, 25245, 58004, and 58012,*
2 *Health and Safety Code. Reference: Sections 25200.21 and 25425, Health and Safety Code;*
3 *40 CFR Section 264.146.*
4

5 **§ 66264.147. Liability Requirements.**

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

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

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

- 17 1. licensed to transact the business of insurance in California; or
18 2. eligible to provide insurance as an excess or surplus lines insurer, in
19 California. This insurance shall be transacted by an admitted carrier.

20 (B) Each insurance policy shall be amended by attachment of the Hazardous
21 Waste Facility Liability Endorsement or evidenced by a Certificate of Liability
22 Insurance. If requested by the Department, the owner or operator shall provide
23 the Department with a copy of the insurance policy containing original signatures.

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

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

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

35 ...

36 (b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface
37 impoundment, as defined in section 66260.10, landfill, as defined in section 66260.10, land
38 treatment facility, as defined in section 66260.10, or disposal miscellaneous unit that is used
39 to manage hazardous waste, or a group of such facilities, shall demonstrate to the
40 Department financial responsibility for bodily injury and property damage to third parties
41 caused by nonsudden accidental occurrences arising from operations of the facility or group
42 of facilities. The owner or operator shall have and maintain liability coverage for nonsudden

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1 accidental occurrences in the amount of at least \$3 million per occurrence, as defined in
2 section 66260.10, with an annual aggregate of at least \$6 million, exclusive of legal defense
3 costs. An owner or operator who must meet the requirements of this section may combine
4 the required per-occurrence coverage levels for sudden and nonsudden accidental
5 occurrences into a single per-occurrence level, and combine the required annual aggregate
6 coverage levels for sudden and nonsudden accidental occurrences into a single annual
7 aggregate level. Owners or operators who combine coverage levels for sudden and
8 nonsudden accidental occurrences must maintain liability coverage in the amount of at least
9 \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be
10 demonstrated, as specified in subsections (b)(1) through (b)(7) of this section.

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

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

- 14 1. licensed to transact the business of insurance in California; or
15 2. eligible to provide insurance as an excess or surplus lines insurer, in
16 California. This insurance shall be transacted by an admitted carrier. (B) Each
17 insurance policy shall be amended by attachment of the Hazardous Waste
18 Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance.
19 If requested by the Department, the owner or operator shall provide the
20 Department a copy of the insurance policy containing original signatures.

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

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

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

32 ...

33 (c) Request for variance.

34 ...

35 (d) Adjustments by the Department.

36 ...

37 (e) Period of coverage.

38 ...

39 (f) Financial test for liability coverage.

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

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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;
- 4 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by
- 5 Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;
- 6 3. tangible net worth of at least \$20 million; and
- 7 4. 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 the most recent bond issuance of AAA, AA, A, or
- 13 BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued
- 14 by Moody's;
- 15 2. tangible net worth of at least \$20 million;
- 16 3. tangible net worth at least six times the amount of liability coverage to
- 17 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.
- 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 stationary 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 by
- 32 sections 66264.143, subsection (f), 66264.145, subsection (f), 66265.143,
- 33 subsection (e) and 66265.145, subsection (e), and liability coverage as specified
- 34 in subsections (a) and (b) of this section. If an owner or operator is using the
- 35 financial test to cover both forms of financial responsibility, a separate letter is not
- 36 required;
- 37 (B) a copy of the owner's or operator's financial statements and the independent
- 38 certified public accountant's report on examination of the owner's or operator's
- 39 financial statements for the latest completed fiscal year;
- 40 (C) a special report from the owner's or operator's independent certified public
- 41 accountant to the owner or operator that includes the following:

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- 1 1. a statement that the independent certified public accountant has
- 2 compared the data which the letter from the chief financial officer specifies
- 3 as having been derived from the independently audited, year-end financial
- 4 statements for the latest fiscal year with the amounts in such financial
- 5 statements; and
- 6 2. identification and description of the specific accounting standards and
- 7 guidance relied upon to prepare the report.

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

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

15 (6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this
16 section, liability coverage shall be obtained for the entire amount of coverage as
17 described in this section by use of the financial mechanisms described in this section.
18 Notice shall be sent to the Department of the owner's or operator's intent to obtain the
19 required coverage; notice shall be sent by either registered mail or by certified mail
20 within 90 days after any occurrence that prevents the owner or operator from meeting
21 the test requirements. Evidence of liability coverage shall be submitted to the
22 Department within 90 days after any occurrence that prevents the owner or operator
23 from meeting the requirements.

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

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

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

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

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

4 (g) Guarantee for liability coverage.

5 ...

6 (h) Letter of credit for liability coverage.

7 ...

8 (i) Payment bond for liability coverage.

9 ...

10 (j) Trust fund for liability coverage.

11 ...

12 (k) Liability Coverage -Alternative Mechanism.

13 ...

14

15 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, 25245, 58004 and 58012,*
16 *Health and Safety Code. Reference: Sections 25200.1 and 25245, Health and Safety Code; 40*
17 *CFR Section 264.147.*

18

19 ...

20

21 **§ 66264.151. Wording of the Instruments.**

22 ...

23 (e) A certificate of insurance, as specified in section 66264.143, subsection (e) or section
24 66264.145, subsection (e) or section 66265.143, subsection (d) or section 66265.145,
25 subsection (d) of this division, shall be worded as follows, except that instructions in
26 brackets are to be replaced with the relevant information and the brackets deleted:

27

28 CERTIFICATE OF INSURANCE FOR CLOSURE OR POSTCLOSURE CARE

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

30 California License Number: [insert license number]

31 Admitted [] Excess or Surplus Lines []

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

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

37 Face Amount:

38 Policy Number:

39 Effective Date:

40

41 The Insurer hereby certifies that it has issued to the Insured the policy of insurance
42 identified above to provide financial assurance for [insert "closure" or "closure and

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1 postclosure care" or "postclosure care"] for the facilities/TTU(s) identified above.

2 The Insurer further warrants that such policy conforms in all respects with the
3 requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15,
4 article 8, section 66264.143, subsection (e), section 66264.145, subsection (e), section
5 66265.143, subsection (d) and section 66265.145, subsection (d) as applicable and as
6 such regulations were constituted on the date shown below. It is agreed that any provision
7 of the policy inconsistent with such regulations is hereby amended to eliminate such
8 inconsistency.

9 The Insurer certifies that it will not cancel, terminate, or fail to renew this policy except
10 for failure to pay the premium, and that the automatic renewal of the policy provides the
11 insured with the option of renewal at the face amount of the expiring policy. If there is a
12 failure to pay the premium and the Insurer elects to cancel, terminate, or not renew the
13 policy, the Insurer will send notice by either registered or certified mail to the owner or
14 operator and the Department of Toxic Substances Control (DTSC).
15 Cancellation, termination, or failure to renew may not occur, however, during the one
16 hundred twenty (120) days beginning with the date of receipt of the notice by the owner or
17 operator and the DTSC as evidence by the return receipt. Cancellation, termination or
18 failure to renew will not occur and the policy will remain in full force and effect in the event
19 that on or before the date of expiration:

- 20 (1) The DTSC deems the facility/TTU abandoned; or
21 (2) The permit is terminated or revoked or a new permit is denied by the DTSC; or
22 (3) Closure is ordered by the DTSC; or any other State or Federal agency, or a court of
23 competent jurisdiction; or
24 (4) The owner or operator is named as a debtor in a voluntary or involuntary
25 proceeding under Title 11 (Bankruptcy) U. S. Code; or
26 (5) The premium due is paid. The Insurer certifies that:

27 (A) it is licensed to transact the business of insurance in California; or
28 (B) it is eligible to provide insurance as an excess or surplus lines insurer, in California, and
29 this insurance has been transacted by an admitted carrier. Whenever requested by the
30 Department of Toxic Substances Control (DTSC) of the State of California, the Insurer
31 agrees to furnish to DTSC a duplicate original of the original policy listed above, including
32 all endorsements thereon.

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

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

39
40 [Authorized signature for Insurer]
41 [Name of person signing]
42 [Title of person signing] Signature

1 of witness or notary: [Date]

2 ...

3 (f) A letter from the chief financial officer, as specified in section 66264.143, subsection (f)
4 or section 66264.145, subsection (f), or section 66265.143, subsection (e) or section
5 66265.145, subsection (e) of this division, shall be worded as follows, except that
6 instructions in brackets are to be replaced with the relevant information and the brackets
7 deleted:

8

9 LETTER FROM CHIEF FINANCIAL OFFICER

10 Department of Toxic Substances Control Financial
11 Responsibility Section
12 8800 Cal Center Drive Sacramento,
13 California 95826

14

15 I am the chief financial officer of [insert name and address of firm]. This letter is in
16 support of this firm's use of the financial test to demonstrate financial assurance for closure
17 and/or postclosure costs, as specified in California Code of Regulations, title 22, division
18 4.5, chapter 14 and 15, article 8.

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

25

26 1. This firm is the owner or operator of the following facilities/TTUs for which financial
27 assurance for closure or postclosure care is demonstrated through the financial test
28 specified in section 66264.143, subsection (f), section 66264.145, subsection (f), section
29 66265.143, subsection (e), and section 66265.145, subsection (e) of California Code of
30 Regulations, title 22, division 4.5, chapter 14 and 15, article 8. The current closure and/or
31 postclosure cost estimates covered by the test are shown for each facility/TTU:_____.

32

33 2. This firm guarantees, through the guarantee specified in section 66264.143,
34 subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and
35 section 66265.145, subsection (e) of California Code of Regulations, title 22, division
36 4.5, chapter 14 and 15, article 8, the closure and/or postclosure care of the following
37 facilities/TTUs owned or operated by the guaranteed party. The current cost estimates
38 for the closure or postclosure care so guaranteed are shown for each facility/TTU:_____.

39

40 The firm identified above is [insert one or more: (1) The direct or higher-tier parent
41 corporation of the owner or operator; (2) owned by the same parent corporation as the
parent corporation of the owner or operator, and receiving the following value in

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1 consideration of this guarantee [insert dollars]; or (3) engaged in the following substantial
2 business relationship with the owner or operator [insert business relationship], and
3 receiving the following value in consideration of the guarantee [insert dollars]]. [Attach a
4 written description of the business relationship or a copy of the contract establishing such
5 relationship to this letter.]
6

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

16 4. This firm is the owner or operator of the following hazardous waste management
17 facilities/TTUs for which financial assurance for closure or, if a disposal facility, postclosure
18 care, is not demonstrated either to U.S. Environmental Protection Agency or a State
19 through the financial test or any other financial assurance mechanism specified in subpart
20 H of 40 CFR parts 264 and 265, California Code of Regulations, title 22, division 4.5,
21 chapter 14 or 15, article 8 or equivalent or substantially equivalent State mechanisms. The
22 current closure and/or postclosure cost estimates not covered by such financial assurance
23 are shown for each facility/TTU: _____.
24

25 5. This firm is using the financial test, or its equivalent, to provide financial assurance
26 or guarantee to the following governmental agencies: [list each agency and the amount
27 assured]
28

29 6. This firm is the owner or operator of the following Underground Injection Control
30 facilities for which financial assurance for plugging and abandonment is required under 40
31 CFR part 144. The current closure cost estimates as required by 40 CFR are shown for
32 each facility: _____.

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

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

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

39 [Fill in Alternative I if the criteria of paragraph (f)(1)(A) of sections 66264.143 and
40 66264.145, or of paragraph (e)(1)(A) of sections 66265.143 and 66265.145 of this division
41 are used. Fill in Alternative II of the criteria of paragraph (f)(1)(B) of sections 66264.143
42 and 66265.145, or of paragraph (e)(1)(B) of sections 66265.143 and 66265.145 of this

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 division are used.]

2

3

ALTERNATIVE I

4

5 1. Sum of current closure and postclosure cost estimate (total of all cost estimates
6 shown in the six paragraphs above) \$ _____

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

10 *3. Tangible net worth \$ _____

11 *4. Net worth \$ _____

12 *5. Current assets \$ _____

13 *6. Current liabilities \$ _____

14 7. Net working capital (line 5 minus line 6) \$ _____

15 *8. The sum of net income plus depreciation, depletion, and amortization
16 \$ _____

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

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

20 11. Is line 3 at least 6 times line 1? [Yes/No]

21 12. Is line 7 at least 6 times line 1? [Yes/No]

22 *13. Are at least 90% of firm's assets located in the U.S.?
23 If not, complete line 14 [Yes/No]

24 14. Is line 9 at least 6 times line 1? [Yes/No]

25 15. Is line 2 divided by line 4 less than 2.0? [Yes/No]

26 16. Is line 8 divided by line 2 greater than 0.1? [Yes/No]

27 17. Is line 5 divided by line 6 greater than 1.5? [Yes/No]

28 18. Current corporate credit rating of this firm,
29 and name of rating service

30 19. Date of corporate credit rating

31

32 ALTERNATIVE II

33

34 1. Sum of current closure and postclosure cost estimates [total of all cost estimates
35 shown in the ~~five~~six paragraphs above] \$ _____

36 2. Current bond rating of most recent issuance of this firm and name of rating service .

37 _____

38 3. Date of issuance of bond _____

39 4. Date of maturity of bond _____

40 *5. Tangible net worth [if any portion of the closure and postclosure cost estimates is
41 included in "total liabilities" on your firm's financial statements, you may add the amount of

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 that portion to this line] \$ _____
- 2 *6.Total assets in U.S. (required only if less than 90% of firm's assets are located in the
- 3 U.S.) \$ _____
- 4 7. Is line 5 at least \$20_million? [Yes/No]
- 5 8. Is line 5 at least 6 times line 1? [Yes/No]
- 6 *9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10
- 7 [Yes/No]
- 8 10. Is line 6 at least 6 times line 1? [Yes/No]
- 9

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

14 [Signature]
15 [Name] [Title]
16 [Date]

17
18 (g) A letter from the chief financial officer, as specified in section 66264.147, subsection
19 (f) or section 66265.147, subsection (f) of this division, shall be worded as follows,
20 except that instructions in brackets are to be replaced with the relevant information and
21 the brackets deleted.

22
23 LETTER FROM CHIEF FINANCIAL OFFICER

24
25 Department of Toxic Substances Control
26 Financial Responsibility Section
27 8800 Cal Center Drive
28 Sacramento, California 95826
29

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

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

39 The firm identified above is the owner or operator of the following facility(ies)/TTU(s)
40 for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and
41 nonsudden"] accidental occurrences is being demonstrated through the financial test
42 specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15,

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 article 8, sections 66264.147 and 66265.147:

2 The firm identified above guarantees, through the guarantee specified in California
3 Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections
4 66264.147 and 66265.147, liability coverage for [insert "sudden" or "nonsudden" or both
5 "sudden and nonsudden"] accidental occurrences at the following facility(ies)/TTU(s)
6 owned or operated by the following:

7 The firm identified above is [insert one or more: (1) the direct or higher tier parent
8 corporation of the owner or operator; (2) owned by the same parent corporation as the
9 parent corporation of the owner or operator, and receiving the following value in
10 consideration of the guarantee [insert dollars]; or (3) engaged in the following substantial
11 business relationship with the owner or operator [insert business relationship], and
12 receiving the following value in consideration of the guarantee [insert dollars]]. [Attach a
13 written description of the business relationship or a copy of the contract establishing such
14 relationship to this letter.]

15 [If you are using the financial test to demonstrate coverage of both liability and
16 financial assurance for closure and/or postclosure care, fill in the following five paragraphs
17 regarding facilities and associated closure and postclosure cost estimates. If there are no
18 facilities that belong in a particular paragraph, write "None" in the space indicated. For
19 each facility/TTU, include its hazardous waste facility/TTU EPA Identification Number,
20 name, address and current closure and/or postclosure cost estimates. Identify each cost
21 estimate separately as to whether it is for closure or postclosure care.]
22

23 1. The firm identified above is the owner or operator of the following facilities/TTUs
24 for which financial assurance for closure and/or postclosure or liability coverage is
25 demonstrated through the financial test as specified in California Code of Regulations,
26 title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f),
27 section 66264.145, subsection (f), section 66265.143, subsection (e), and section
28 66265.145, subsection (e). The current closure and/or postclosure cost estimates
29 covered by the test are shown for each facility/TTU:
30

31 2. The firm identified above guarantees, through the guarantee as specified in
32 California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section
33 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143,
34 subsection (e), and section 66265.145, subsection (e), the closure and/or postclosure
35 care or liability coverage of the following facilities/TTUs owned or operated by the
36 guaranteed party. The current cost estimates for the closure or postclosure care so
37 guaranteed are shown for each facility/TTU:
38

39 3. In States where the U.S. Environmental Protection Agency is not administering the
40 financial requirements of subpart H of 40 CFR parts 264 and 265, this firm as owner,
41 operator or guarantor is demonstrating financial assurance for the closure or postclosure
42 care of the following facilities/TTUs through the use of a financial test equivalent or

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 substantially equivalent to the financial test specified in California Code of Regulations, title
2 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section
3 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145,
4 subsection (e). The current closure and/or postclosure cost estimates covered by such a
5 test are shown for each facility/TTU:
6

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

15 5. This firm is using the financial test, or its equivalent, to provide financial assurance
16 or guarantee to the following governmental agencies: [list each agency and the amount
17 assured]
18

19 6. The firm is the owner or operator or guarantor of the following Underground Injection
20 Control facilities for which financial assurance for plugging and abandonment is required
21 under 40 CFR part 144 and is assured through a financial test. The current closure cost
22 estimates as specified in 40 CFR 144.62 are shown for each facility:
23

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

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

29 This firm is using [insert "Alternative I" or "Alternative II"] for Part A [and [if this
30 financial test includes closure and/or postclosure care, insert "Alternative I" or
31 "Alternative II"] for Part B].
32

33 **Part A. Liability Coverage for Accidental Occurrences**

34 [Fill in Alternative I if the criteria of paragraph (f)(1)(A) of section 66264.147 or section
35 66265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(B) of section
36 66264.147 or section 66265.147 are used.]
37

38 **ALTERNATIVE I**

- 39
- 40 1. Amount of annual aggregate liability coverage to be demonstrated \$ _
41 *2. Current assets \$ _____
42 *3. Current liabilities \$ _____

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 4. Net working capital [line 2 minus line 3] \$ _____
- 2 *5. Tangible net worth \$ _____
- 3 *6. If less than 90 percent of assets are located in the United States, give total United
- 4 States assets \$ _____
- 5 7. Is line 5 at least \$20 million? [Yes/No]
- 6 8. Is line 4 at least 6 times line 1? [Yes/No]
- 7 9. Is line 5 at least 6 times line 1? [Yes/No]
- 8 10. Are at least 90 percent of assets located in the United States? If not, complete
- 9 line 11. [Yes/No]
- 10 11. Is line 6 at least 6 times line 1? [Yes/No]
- 11 12. Current corporate credit rating of this firm and name of rating service
- 12 13. Date of corporate credit rating _____
- 13

ALTERNATIVE II

- 15 1. Amount of annual aggregate liability coverage to be demonstrated \$ _____
- 16 2. Current bond rating of most recent issuance and
- 17 name of rating service \$ _____
- 18 3. Date of issuance of bond \$ _____
- 19 4. Date of maturity of bond \$ _____
- 20 *5. Tangible net worth \$ _____
- 21 *6. Total assets in the United States [required only if less than 90 percent of assets are
- 22 located in the United States] \$ _____
- 23 7. Is line 5 at least \$20 million? [Yes/No]
- 24 8. Is line 5 at least 6 times line 1? [Yes/No]
- 25 *9. Are at least 90 percent of assets located in the United States? [Yes/No]
- 26 10. Is line 9 at least 6 times line 1? [Yes/No]
- 27

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

29 coverage and closure or postclosure care.]

31 Part B. Closure or Postclosure Care and Liability Coverage

33 [Fill in Alternative I if the criteria of paragraphs (f)(1)(A) of 66264.143 or 66264.145

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

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

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

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

38 are used.]

40 ALTERNATIVE I

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 1. Sum of current closure and postclosure cost estimates (Total of all cost estimates
- 2 shown in the paragraphs of the letter to the Director of the Department of Toxic
- 3 Substances Control) \$ _____
- 4 2. Amount of annual aggregate liability coverage to be demonstrated \$ _
- 5 3. Sum of lines 1 and 2 \$ _____
- 6 *4. Total liabilities (if any portion of your closure or postclosure cost estimate is included in
- 7 your total liabilities, you may deduct that portion from this line and add that amount to lines
- 8 5 and 6) \$ _____
- 9 *5. Tangible net worth \$ _____
- 10 *6. Net worth \$ _____
- 11 *7. Current assets \$ _____
- 12 *8. Current liabilities \$ _____
- 13 9. Net working capital (line 7 minus line 8) \$ _____
- 14 10. The sum of net income plus depreciation, depletion, and amortization \$
- 15 *11. Total assets in the United States (required only if less than 90 percent of
- 16 firm's assets are located in the United States) \$ _____
- 17 12. Is line 5 at least \$20 million? [Yes/No]
- 18 13. Is line 5 at least 6 times line 3? [Yes/No]
- 19 14. Is line 9 at least 6 times line 3? [Yes/No]
- 20 *15. Are at least 90 percent of the firm's assets located in the United States? If not,
- 21 complete line 16 [Yes/No]
- 22 16. Is line 11 at least 6 times line 3? [Yes/No]
- 23 17. Is line 4 divided by line 6 less than 2.0? [Yes/No]
- 24 18. Is line 10 divided by line 4 greater than 0.1? [Yes/No]
- 25 19. Is line 7 divided by line 8 greater than 1.5? [Yes/No]
- 26 20. Current corporate credit rating of this firm and name of rating service
- 27 21. Date of corporate credit rating _____

ALTERNATIVE II

- 31 1. Sum of current closure and postclosure cost estimates (Total of all cost estimates
- 32 shown in the paragraphs of the letter to the Director of the Department of Toxic
- 33 Substances Control) \$ _____
- 34 2. Amount of annual aggregate liability coverage to be demonstrated \$
- 35 3. Sum of lines 1 and 2 \$ _____
- 36 4. Current bond rating of most recent issuance and name of rating service: _____
- 37 _____
- 38 5. Date of issuance of bond: _____
- 39 6. Date of maturity of bond: _____
- 40 *7. Tangible net worth (if any portion of the closure and post-closure cost estimates is
- 41 included in "total liabilities" on your firm's financial statements, you may add the amount of

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 that portion to this line.) _____
- 2 *8. Total assets in the United States (required only if less than 90 percent of firm's
- 3 assets are located in the United States) \$ _____
- 4 9. Is line 7 at least \$20 million? [Yes/No]
- 5 10. Is line 7 at least 6 times line 3? [Yes/No]
- 6 *11. Are at least 90 percent of the firm's assets located in the United States? If not,
- 7 complete line 12. [Yes/No]
- 8 12. Is line 8 at least 6 times line 3? [Yes/No]
- 9

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

14 [Signature]
15 [Name] [Title]
16 [Date]

17
18 (h)(1) A corporate guarantee, as specified in section 66264.143, subsection (f) or section
19 66264.145, subsection (f), or section 66265.143, subsection (e) or section 66265.145,
20 subsection (e) of this division, shall be worded as follows, except that instructions in
21 brackets are to be replaced with the relevant information and the brackets deleted:

22 ...

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

26
27 **HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT**

28
29 1. This endorsement certifies that the Insurer has issued liability insurance covering
30 bodily injury and property damage to [name of insured], [address of insured] in connection
31 with the insured's obligation to demonstrate financial responsibility under California Code
32 of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and
33 66265.147. The coverage applies at [list EPA Identification Number, name, and address
34 for each facility/transportable treatment unit (TTU)] for [insert "sudden accidental
35 occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental
36 occurrences"]; if coverage is for multiple facilities and the coverage is different for different
37 facilities, indicate which facilities are insured for sudden accidental occurrences, which are
38 insured for nonsudden accidental occurrences, and which are insured for both]. The limits
39 of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate"
40 limits of the Insurer's liability], exclusive of legal defense costs. The coverage provided by
41 the above policy is [insert "primary" or "excess"]. If excess coverage, the primary coverage
42 mechanism shall also be demonstrated.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

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

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

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

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

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

27
28 3. The Insurer certifies that **it is an admitted carrier.**

29
30 Attached to and forming part of policy No. [insert policy number] issued by [insert name
31 of Insurer], herein called the Insurer, of [insert address of Insurer] to [insert name of
32 insured] of [insert address of insured] this [insert day] day of [insert month] , [insert year].
33 The effective date of said policy is [insert day] day of [insert month]. California License
34 Number: [insert license number] Admitted [] Excess or Surplus Lines []
35

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

42 [Signature of Authorized Representative of Insurer]

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 [Type name]
2 [Title], Authorized Representative of [name of Insurer]
3 [Address of Representative]
4

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

8
9 **HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE**

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

28
29 2. The Insurer further certifies the following with respect to the insurance
30 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, section 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 of the original of the policy and all
41 endorsements.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

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

10
11 3. The Insurer certifies that **it is an admitted carrier.**

12 I hereby certify that the wording of this instrument is identical to the wording specified in
13 California Code of Regulations, title 22, section 66264.151, subsection (j), is being
14 executed in accordance with California Code of Regulations, title 22, division 4.5, chapter
15 14 and 15, article 8, and that the Insurer is licensed to transact the business of insurance in
16 California, or eligible to provide insurance as an excess or surplus lines insurer, **in**
17 California. **The** California License Number: [insert license number]

18 Admitted [] Excess or Surplus Lines []

19
20 [Signature of authorized representative of Insurer]

21 [Type name]

22 [Title],

23 Authorized Representative of [name of Insurer]

24 [Address of Representative]

25 ...

26
27 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, 25245, 58004, and*
28 *58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; and*
29 *40 CFR Section 264.151.*

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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) Notwithstanding subsection (g), an owner or operator of a hazardous waste transfer, treatment, storage, or disposal facility shall ensure that facility personnel successfully complete a training program through ~~of-classroom~~, 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 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.

(1) The owner or operator shall ensure that ~~this~~ the training program includes all the elements specified in this section.

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

(3) At a minimum, the emergency response training must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with prevention, mitigation, abatement, and notification procedures, emergency equipment, and emergency systems, including all the following, 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;
- (F) shutdown of operations;
- (G) self-protection measures; and
- (H) accident prevention methods.

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

- (A) General awareness training. The owner or operator shall ensure all facility personnel successfully complete training that provides description of the facility,

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1 and an overview of the facility and facility operations that are subject to this
2 chapter, including, but not limited to, security and safety considerations; and
3 (B) Function-specific job training. The owner or operator shall ensure all facility
4 personnel who are involved with hazardous waste management activities
5 successfully complete training concerning the requirements of this chapter and
6 any relevant hazardous waste procedures applicable to job tasks and functions
7 performed by the employee.

8 (b) The owner or operator shall ensure that facility personnel successfully complete the
9 program required in subsection (a) of this section within 180 days after the date of their
10 employment or assignment to a facility, or to a new position at a facility. Employees hired
11 after the effective date of these regulations shall not work in unsupervised positions until
12 they have completed the training requirements of subsection (a) of this section.

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

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

18 (1) the job title for each position at the facility related to hazardous waste management,
19 and the name of the employee filling each job;

20 (2) a written job description for each position listed under paragraph (d)(1) of this
21 section. This description may be consistent in its degree of specificity with descriptions
22 for other similar positions in the same company location or bargaining unit, but shall
23 include the requisite skill, education, or other qualifications, and duties of employees
24 assigned to each position;

25 (3) a written description, including a syllabus and/or outline, of the type and amount of
26 both introductory and continuing training that will be given to each person filling a
27 position listed under paragraph (d)(1) of this section;

28 (4) employee-signed or -certified records that document that the training required under
29 subsections (a), (b), and (c) of this section has been given to, and completed by, each
30 employee.

31 (e) The owner or operator shall maintain training records on current personnel until closure
32 of the facility and training records on former employees for at least three years from the date
33 the employee last worked at the facility. Personnel training records may accompany
34 personnel transferred within the same company.

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

38 The certification must include the following:

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

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

3 (g) A generator, who is not an owner or an operator of a hazardous waste facility, that
4 accumulates hazardous waste onsite in compliance with section 66262.34, is not subject to
5 subsection (f) of this section or the training requirements of subsection 5192(p) of Title 8,
6 California Code of Regulations.
7

8 *Note: Authority cited: Sections 25150, 25159, 25200.21, 58004, and 58012, Health and Safety*
9 *Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section*
10 *265.16.*

11 ...
12 ...

13
14 **§ 66265.143. Financial Assurance for Closure.**

15 ...

16 (a) Closure trust fund.

17 ...

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

19 ...

20 (c) Closure letter of credit.

21 ...

22 (d) Closure insurance.

23 (1) An owner or operator may satisfy the requirements of this section by obtaining
24 closure insurance that conforms to the requirements of this section and submitting a
25 certificate of such insurance to the Department. The owner or operator shall submit to
26 the Department a letter from an insurer stating that the insurer is considering issuance
27 of closure insurance conforming to the requirements of this subsection to the owner or
28 operator. The owner or operator shall submit the certificate of insurance to the
29 Department or establish other financial assurance as specified in this section. At a
30 minimum, the 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
33 California. This insurance shall be transacted by an admitted carrier. ...

34 (e) Financial test and guarantee for closure.

35 (1) An owner or operator may satisfy the requirements of this section by
36 demonstrating that the owner or operator passes the financial test specified in this
37 subsection. To pass this test the owner or operator shall meet the criteria of either
38 subsection (e)(1)(A) or (B) of this section:

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

40 1. two of the following three ratios: a ratio of total liabilities to net worth
41 less than 2.0; a ratio of the sum of net income plus depreciation, depletion

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1 and amortization to total liabilities greater than 0.1; and a ratio of current
2 assets to current liabilities greater than 1.5; and
3 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by
4 Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and
5 23. net working capital and tangible net worth each at least six times the
6 sum of the current closure and postclosure cost estimates and the current
7 plugging and abandonment cost estimates; and
8 34. tangible net worth of at least \$20 million; and
9 45. assets located in the United States amounting to at least 90 percent of
10 total assets or at least six times the sum of the current closure and post-
11 closure cost estimates for all of the owner's or operator's hazardous waste
12 facilities regulated by the Department and the current plugging and
13 abandonment cost estimates.

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

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

27 (2) The phrase "current closure and post-closure cost estimates" as used in subsection
28 (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1-
29 through 6 of the letter from the owner's or operator's chief financial officer as specified in
30 section 66264.151 subsection (f). The phrase "current plugging and abandonment cost
31 estimates" as used in subsection (e)(1) of this section refers to the cost estimates
32 required to be shown in paragraphs 1 through 6 of the letter from the owner's or
33 operator's chief financial officer.

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

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

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

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- 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. identification and description of the specific accounting standards and
9 guidance relied upon to prepare the report.

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

- 15 (f) Use of multiple financial mechanisms.
16 ...
17 (g) Use of a financial mechanism for multiple facilities.
18 ...
19 (h) Alternative Financial Mechanism for Closure Costs.
20 ...
21 (i) Release of the owner or operator from the requirements of this section.
22 ...

23
24 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, 25245, 58004, and 58012,*
25 *Health and Safety Code. Reference: Sections 25200.21 and 25245, Health and Safety Code;*
26 *40 CFR Section 265.143.*
27

28 **§ 66265.144. Cost Estimate for Postclosure Care.**

29 (a) An owner or operator of a hazardous waste disposal unit shall prepare and submit to
30 the Department a detailed written estimate, in current dollars, of the annual cost of
31 postclosure monitoring and maintenance of the facility in accordance with the applicable
32 postclosure regulations in sections 66265.117 through 66265.120, 66265.228,
33 66265.258, 66265.280, and 66265.310.

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

38 (2) The postclosure cost estimate is calculated by multiplying the annual postclosure
39 cost estimate by 30 years or as required under section 66265.117. The Department
40 may reset this period to 30 years each time the postclosure permit is issued or
41 renewed. This period will be determined consistent with determinations made in
42 section 66265.117.

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1 (b) During the active life of the facility, the owner or operator shall adjust the postclosure
2 cost estimate for inflation within 60 days prior to the anniversary date of the establishment
3 of the financial instrument(s) used to comply with section 66265.145. For owners or
4 operators using the financial test or corporate guarantee, the postclosure care cost
5 estimate shall be updated for inflation no later than 30 days after the close of the firm's
6 fiscal year and before submission of updated information to the Department as specified in
7 section 66265.145(e)(4). The adjustment shall be made by recalculating the postclosure
8 cost estimate in current dollars or by using an inflation factor derived from the most recent
9 Implicit Price Deflator for Gross National Product published by the U.S. Department of
10 Commerce in its Survey of Current Business as specified in paragraphs (1) and (2) of this
11 subsection. The inflation factor is the result of dividing the latest published annual Deflator
12 by the Deflator for the previous year.

13 (c) During the active life of the facility, the owner or operator shall revise the postclosure
14 cost estimate within 30 days after the Department has approved the request to modify the
15 postclosure plan, if the change in the postclosure plan increases the cost of postclosure
16 care. The revised postclosure cost estimate shall be adjusted for inflation as specified in
17 subsection (b).

18 (d) The owner or operator shall keep the following at the facility during the operating life of
19 the facility: the latest postclosure cost estimate prepared in accordance with subsections (a)
20 and (c) and, when this estimate has been adjusted in accordance with subsection (b), the
21 latest adjusted postclosure cost estimate.
22

23 *NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5, 25200.21, 25245, 58004, and*
24 *58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40*
25 *CFR Section 265.144.*
26

27 **§ 66265.145. Financial Assurance for Postclosure Care.**

28 **An** owner or operator of a facility with a hazardous waste disposal unit shall establish and
29 demonstrate to the Department financial assurance for postclosure care of the disposal
30 unit(s). The owner or operator shall choose from the options as specified in subsections (a)
31 through (e) and (h) of this section.
32

32 ...

33 (d) Postclosure insurance.

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

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

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1 (B) eligible to provide insurance as an excess or surplus lines insurer, in
2 California. If coverage is obtained from an excess or surplus lines insurer, the
3 insurance shall be transacted by **an admitted carrier.**

4 ...

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

6 (1) An owner or operator may satisfy the requirements of this section by
7 demonstrating that he or she passes a financial test as specified in this section. To
8 pass this test the owner or operator shall meet the criteria either of subsection
9 (e)(1)(A) or (B) 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,
13 depletion and amortization to total liabilities greater than 0.1; and a ratio
14 of current assets to current liabilities greater than 1.5;
- 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;
- 17 3. net working capital and tangible net worth each at least six times
18 the sum of the current closure and postclosure cost estimates and the
19 current plugging and abandonment cost estimates;
- 20 4. tangible net worth of at least \$20 million; and
- 21 5. assets in the United States amounting to at least 90 percent of total
22 assets or at least six times the sum of the current closure and
23 postclosure cost estimates for all of the owner's or operator's hazardous
24 waste 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,
28 A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as
29 issued by Moody's;
- 30 2. tangible net worth at least six times the sum of the current closure and
31 postclosure cost estimates and the current plugging and abandonment
32 cost estimates;
- 33 3. tangible net worth of at least \$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
36 postclosure cost estimates for all of the owner's or operator's hazardous
37 waste facilities regulated by the Department and the current plugging
38 and abandonment cost estimates.

39 (2) The phrase "current closure and postclosure 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 6 of the letter from the owner's or operator's chief financial officer as specified
42 in section 66264.151 subsection (f). The phrase "current plugging and abandonment

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

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

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

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 that includes the following:

15 1. 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. identification and description of the specific accounting standards and
21 guidance relied upon to prepare the report.

22 ...

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

27 ...

28 (f) Use of multiple financial mechanisms.

29 ...

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

31 ...

32 (h) Alternative Financial Mechanism for Postclosure Care.

33 ...

34 (i) Release of the owner or operator from Financial Assurance requirements for postclosure
35 care.

36 ...

37 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, 25245, 58004, and*
38 *58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40*
39 *CFR Section 265.145.*

40
41 **§ 66265.146. Use of a Mechanism for Financial Assurance of Both Closure and Post-**
42 **Closure Care.**

1 An owner or operator may satisfy the requirements for financial assurance for both closure
2 and post-closure care for one or more facilities by using a trust fund, surety bond, letter of
3 credit, insurance, financial test, or corporate guarantee or alternative mechanism, that meets
4 the specifications for the mechanism in both sections 66265.143 and 66265.145 for each
5 facility. The amount of funds available through the mechanism shall be no less than the sum
6 of funds that would be available if a separate mechanism had been established and
7 maintained for financial assurance of closure and of post-closure care.

8
9 *Note: Authority cited: Sections 208, 25150, 25159, 25159.5, 25200.21, 25245, 58004, and*
10 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25425, Health and Safety*
11 *Code; 40 CFR Section 265.146*

12 13 **§ 66265.147. Liability Requirements.**

14 (a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous
15 waste transfer, treatment, storage, or disposal facility or a group of such facilities, shall
16 demonstrate to the Department financial responsibility for bodily injury and property damage
17 to third parties caused by sudden accidental occurrences arising from operations of the
18 facility or group of facilities. Except as specified in Section 67450.16, the owner or operator
19 shall have and maintain liability coverage for sudden accidental occurrences in the amount
20 of at least \$1 million per occurrence with an annual aggregate of at least \$2 million,
21 exclusive of legal defense costs. This liability coverage may be demonstrated, as specified
22 in subsections (a)(1), (2), (3), (4), (5), (6) or (8) of this section, and for an operator which is a
23 public agency proposing to operate a household hazardous waste collection facility,
24 subsection (7).

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

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

- 28 1. licensed to transact the business of insurance in California, or
- 29 2. eligible to provide insurance as an excess or surplus lines insurer, in
30 California. This insurance shall be transacted by **an admitted carrier**...

31 (b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface
32 impoundment as defined in section 66260.10, landfill as defined in section 66260.10, or
33 land treatment facility as defined in section 66260.10 which is used to manage hazardous
34 waste, or a group of such facilities, shall demonstrate to the Department financial
35 responsibility for bodily injury and property damage to third parties caused by nonsudden
36 accidental occurrences arising from operations of the facility or group of facilities. The
37 owner or operator shall have and maintain liability coverage for nonsudden accidental
38 occurrences in the amount of at least \$3 million per occurrence, as defined in section
39 66260.10 with an annual aggregate of at least \$6 million, exclusive of legal defense costs.
40 An owner or operator who must meet the requirements of this section may combine the
41 required per-occurrence coverage levels for sudden and nonsudden accidental
42 occurrences into a single per-occurrence level, and combine the required annual aggregate

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1 coverage levels for sudden and nonsudden accidental occurrences into a single annual
2 aggregate level. Owners or operators who combine coverage levels for sudden and
3 nonsudden accidental occurrences shall maintain liability coverage in the amount of at
4 least \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may
5 be demonstrated as specified in subsections (b)(1) through (7) of this section.

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

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

- 9 1. licensed to transact the business of insurance in California, or
- 10 2. eligible to provide insurance as an excess or surplus lines insurer, in
11 California. This insurance shall be transacted by **an admitted carrier.**

12 ...

13 (c) Request for variance.

14 ...

15 (d) Adjustments by the Department.

16 ...

17 (e) Period of coverage.

18 ...

19 (f) Financial test for liability coverage.

20 (1) An owner or operator may satisfy the requirements of this section by demonstrating
21 that **the owner or operator** passes a financial test as specified in this subsection. To
22 pass this test the owner or operator shall meet the criteria of subsection (f)(1)(A) or (B)
23 of this section.

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

- 25 1. net working capital and tangible net worth each at least six times the
26 amount of liability coverage to be demonstrated by this test;
- 27 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by
28 Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;
- 29 3. tangible net worth of at least \$20 million; and
- 30 4. assets in the United States amounting to either:
31 a. at least 90 percent of total assets; or
32 b. at least six times the amount of liability coverage to be
33 demonstrated by this test.

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

- 35 1. a current rating for his or her most recent bond issuance of AAA, AA,
36 A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as
37 issued by Moody's;
- 38 2. tangible net worth of at least \$20 million;
- 39 3. tangible net worth at least six times the amount of liability
40 coverage to be demonstrated by this test; and
- 41 4. assets in the United States amounting to either:
42 a. at least 90 percent of total assets; or

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1 b. at least six times the amount of liability coverage to be
2 demonstrated by this test.

3 (2) The phrase "amount of liability coverage" as used in subsection (f)(1) of this section
4 refers to the annual aggregate amounts for which coverage is required under
5 subsections (a) and (b) of this section and sections 67450.14 and 67450.15.

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

8 (A) a letter signed by the owner's or operator's chief financial officer and worded
9 as specified in section 66264.151, subsection (g). The letter shall be on the
10 official letterhead stationery of the owner or operator, and shall contain an
11 original signature. An owner or operator may use the financial test to
12 demonstrate both assurance for closure or postclosure care, as specified in
13 section 66264.143, subsection (f), section 66264.145, subsection (f), section
14 66265.143, subsection (e), section 66265.145, subsection (e) and section
15 67450.13, and liability coverage as specified in section 66264.147, subsection
16 (a), section 66264.147, subsection (b), section 66265.147, subsection (a),
17 section 66265.147, subsection (b), sections 67450.14 and 67450.15. If an owner
18 or operator is using the financial test to cover both forms of financial
19 responsibility, a separate letter is not required.

20 (B) a copy of the owner's or operator's financial statements and the independent
21 certified public accountant's report on examination of the owner's or operator's
22 financial statements for the latest completed fiscal year.

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

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

30 2. identification and description of the specific accounting standards and
31 guidance relied upon to prepare the report.

32 ...

33 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, 25245, 58004 and 58012,*
34 *Health and Safety Code. Reference: Sections 25200.1 and 25245, Health and Safety Code;*
35 *40 CFR Section 265.147.*

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) of Title 22 of the California Code of Regulations, to read:

7
8 **§ 66270.14(b) Contents of the Part B: General Requirements**

9 ...
10 (22) When applicable, the most recent corrective action cost estimate for the facility
11 prepared in accordance sections 66264.100, 66264.101 and 66264.708, and a copy of
12 the documentation required to demonstrate financial assurance for monitoring and
13 completing such corrective action. For a new facility, a copy of the required
14 documentation may be submitted sixty (60) days prior to the initial receipt of hazardous
15 waste, if that is later than the submission of the Part B.

16
17 **(23) Community Involvement Profile.**

18 A community involvement profile (Profile) **needs to include only reasonably** available
19 information for the surrounding community. The surrounding community for purposes of
20 the Profile must include **the** United States census tract **in which** the facility **is located. If**
21 **the facility is located in a census tract that has a population of less than 2,000 people,**
22 **any other census tracts located within one (1) mile of the facility must also be included**
23 **in the surrounding community.** The Profile must include all the following:

24 (A) Project Description. **The applicant shall provide a** description of the proposed
25 hazardous waste facility **that includes** all the following:

- 26 1. **the activities to be conducted by the owner or operator that require a**
27 **hazardous waste facility permit as specified in subsections 66270.13(a)**
28 **and 66270.13(i);**
- 29 2. **the hazardous waste facility site address, or, if a street address is not**
30 **available, an equivalent description of the facility's location;**
- 31 3. **the county assessor's parcel number(s) or a description of the legal**
32 **boundaries of the facility site as provided in subsection**
33 **66270.14(a)(18)(G); and**
- 34 4. **the surrounding land uses and zoning designations within 2,000 feet of**
35 **the facility's boundaries as specified in subsection 66270.14(a)(18)(D).**

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

- 41 1. age structure;
- 42 2. educational attainment;

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

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

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

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

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

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

- 28 1. other hazardous waste facilities;
- 29 2. large quantity generators of hazardous waste;
- 30 3. sites identified by the Department pursuant to Health and Safety Code
31 section 65962.5 (Cortese List);
- 32 4. entities or industrial facilities required to report under the Toxics
33 Release Inventory Program pursuant to Emergency Planning and
34 Community Right-to-Know Act, section 313. (42 U.S.C. §11023 and 40
35 CFR Part 372);
- 36 5. entities or industrial facilities handling or storing any hazardous
37 materials that are required to report under section 312 of the Emergency
38 Planning and Community Right-to-Know Act. (42 U.S.C. §11022 and 40
39 CFR Part 355); and
- 40 6. transportation corridors in relation to the facility, including freeways,
41 major state vehicle routes, seaports, airports, and railyards.

1 ...

2 **§ 66270.14(c)**

3 ...

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

10 ...

11 **§ 66270.14(e) Hazardous Waste Facility Permit Health Risk Assessment.**

12 **Except as provided in paragraph (22) of this subsection, an applicant** shall prepare and
13 submit a hazardous waste facility permit health risk assessment, subject Department
14 **approval**, as follows:

15 (1) The **hazardous waste facility permit health risk assessment** must identify **and**
16 **describe in detail all of** the following:

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

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

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

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

29 (2) The **hazardous waste facility permit health risk assessment** process may include up
30 to three steps:

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

33 (B) A **screening level health risk assessment** for a hazardous waste facility permit
34 (“Screening Level HRA”) completed in accordance with paragraphs (e)(10)
35 through (e)(15);

36 (C) A **baseline health risk assessment** for a hazardous waste facility permit
37 (“Baseline HRA”) completed in accordance with paragraphs (e)(16) through
38 (e)(21);

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

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

- 5 1. Class 1 Landfill;
- 6 2. large hazardous waste treatment facility with an operating permit
7 pursuant to Title V of the federal Clean Air Act (42 U.S.C. §1857 et seq.)
8 or the California Clean Air Act of 1988 (Health & Saf. Code, §39000 et
9 seq.) or their implementing regulations and rules;
- 10 3. hazardous waste incinerator; or
- 11 4. boiler or industrial furnace burning hazardous waste.

12 (4) Hazardous Waste Facility Permit Health Risk Assessment Questionnaire. The
13 applicant for a hazardous waste facility permit shall submit a completed HRA
14 Questionnaire that includes the following information:

15 (A) Information that can be reasonably ascertained by an applicant to assess the
16 potential for the public to be exposed to hazardous wastes or hazardous
17 constituents from sources related to the facility.

18 (B) Inventory of potential facility releases, emissions, and discharges in
19 accordance with paragraph (e)(5);

20 (C) A completed health risk assessment assumptions checklist in accordance
21 with paragraph (e)(6); and

22 (D) A conceptual site model of exposures or potential exposures that organizes
23 the existing data and documents known site conditions in accordance with
24 paragraph (e)(7).

25 (5) Inventory of Potential Facility Releases, Emissions, and Discharges. The applicant
26 shall provide an inventory of potential facility releases, emissions, and discharges that
27 includes a description of hazardous waste facility operations and known emissions or
28 releases of chemicals of potential concern. At a minimum, the applicant shall submit all
29 of the following:

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

- 32 1. a summary of past uses of the site;
- 33 2. hazardous waste handling processes;
- 34 3. types of permitted hazardous waste management units;
- 35 4. maximum permit capacity of hazardous waste transfer, treatment,
36 storage, and disposal;
- 37 5. types and quantity of hazardous waste transferred, treated, stored or
38 disposed onsite;
- 39 6. overall process flow diagrams showing hazardous waste movement or
40 flow through the facility;
- 41 7. description of vehicular traffic, including diesel truck traffic under normal
42 and maximum permitted operations; and

1 8. a listing of other environmental permits as provided in subsection
2 66270.13(k) and corresponding expiration dates.

3 (B) Identification of All Known and Potential Sources of Chemicals of Potential
4 Concern. If applicable, the source information must include all of the following:

- 5 1. air emission information including air sources listed by individual
6 processes or equipment (tanks, valves, scrubbers, etc.), pollutants, daily
7 emission limitations stipulated by a Title V operating permit or a local air
8 district operating permit, and a summary of the monitoring data for the
9 most recent three (3) years;
- 10 2. wastewater discharge information, including discharge points, pollutants
11 discharged, daily discharges stipulated in a National Pollutant Discharge
12 Elimination System permit or by California waste discharge requirements
13 (WDRs), and a summary of the monitoring data for the most recent three
14 (3) years;
- 15 3. soil or groundwater contamination plume information at and under the
16 facility, including potential sources, chemicals of potential concern, a
17 summary of available groundwater monitoring, and a summary of
18 available indoor air and soil-gas monitoring data for the most recent three
19 (3) years;
- 20 4. list of all known spills documented in accordance with any previous
21 authorization of hazardous waste activities or subject to hazardous
22 materials reporting requirements under state or federal laws and the
23 names of the corresponding reporting agency, if applicable;
- 24 5. assessment of any foreseeable accidents or upset conditions, such as
25 fire, floods, earthquakes, or catastrophic releases; and
26 6. a summary of any remediation or corrective action performed that
27 addresses any of the emissions or releases pursuant to subparagraphs 1
28 through 5 of this subsection.

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

30 (A) Hazard Identification of Chemicals of Potential Concern. This information
31 must include the following:

- 32 1. identification of chemicals of potential concern for each environmental
33 media; and
- 34 2. chemicals of potential concern's transformation or degradation
35 products, if applicable.

36 (B) Toxicity Assessment. The toxicity assessment of chemicals of potential
37 concern must include a description of the relationship between the
38 concentrations of the chemicals of potential concern (dose) and their anticipated
39 toxic reaction (response). This information must include the following:

- 40 1. identification of the inherent chemical hazard traits or toxicity
41 characteristics of the chemicals of potential concern;

- 1 2. regulatory screening levels for each chemical of potential concern listed
- 2 by environmental media for the protection of human health developed by
- 3 state or federal environmental agencies, if available; and
- 4 3. categories of receptors likely affected or most susceptible to the
- 5 chemicals of potential concern, if applicable.

6 (C) Exposure Assessment. This information must include all the following:

- 7 1. chemical transport processes that influence the movement of each
- 8 chemical of potential concern;
- 9 2. identification of, and rationale for, exposure scenarios of each of the
- 10 chemicals of potential concern in environmental media;
- 11 3. identification of, and rationale for, potential receptors; and
- 12 4. identification of, and rationale for, potentially **ly complete** or complete
- 13 exposure pathways.

14 (7) Conceptual Site Model.

15 (A) A conceptual site model must include a written description and a visual

16 representation of actual or predicted relationships between receptor populations

17 and the chemicals of potential concern to which they may be exposed. The

18 conceptual site model may be represented as a diagram, map, cross section,

19 matrix, or other graphic to describe the site condition or environmental setting.

20 (B) **The** applicant shall submit a conceptual site model that outlines and includes:

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

27 (8) Department **HRA Questionnaire** Completeness Determination. Within ninety (90)

28 days of receipt of the HRA Questionnaire, the Department shall evaluate the applicant's

29 HRA Questionnaire for completeness of information required in paragraphs (e)(4)

30 through (e)(7).

31 (A) The Department may require the applicant to submit supplemental

32 information to complete the Department's evaluation of the HRA Questionnaire.

- 33 1. the applicant shall submit to the Department the supplemental
- 34 information within thirty (30) days of receipt of the request for
- 35 supplemental information.
- 36 2. **within** thirty (30) days of receipt of the supplemental information, the
- 37 Department shall complete its evaluation of the HRA Questionnaire.
- 38 3. **if** the Department determines that the supplemental information is not
- 39 submitted in a timely manner, is unacceptable, or does not fulfill the
- 40 requirements of the HRA Questionnaire, the Department shall require **an**
- 41 **applicant** to complete a Screening Level HRA in accordance with the
- 42 requirements of paragraphs (e)(9)(A), (e)(10) and (e)(13).

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 (B) The Department shall make one of the following determinations:
2 1. require a Screening Level HRA in accordance with the requirements of
3 paragraphs (e)(10) and (e)(13). The Department shall require a Screening
4 Level HRA if any of the following factors is present:
5 a. evidence of limited onsite contamination; or
6 b. normal management of hazardous waste results in the release,
7 emission, or discharge of any pollutant or chemical of potential
8 concern with no offsite consequences; or
9 c. there may be a potential complete pathway between the
10 chemical of potential concern and potential receptors; or
11 d. foreseeable risk conditions may impact onsite receptors.
12 2. require a Baseline HRA in accordance with the requirements of
13 paragraphs (e)(16) and (e)(19). The Department shall require a Baseline
14 HRA if any of the following factors is present:
15 a. evidence of facility-wide onsite contamination or contamination
16 has migrated beyond the facility boundaries; or
17 b. normal management of hazardous waste results in the release,
18 emission, or discharge of any pollutant or chemical of potential
19 concern with offsite consequences; or
20 c. there is a potential complete pathway between the chemical of
21 potential concern and potential receptors; or
22 d. foreseeable risk of upset scenarios may impact offsite receptors.
23 3. not require a Screening Level HRA or a Baseline HRA. The Department
24 shall require no further action if all the following factors are met:
25 a. evidence of no onsite contamination;
26 b. normal management of hazardous waste does not result in the
27 release, emission, or discharge of any pollutant or chemical of
28 potential concern;
29 c. there is no potential complete pathway between the chemical of
30 potential concern and potential receptors; and
31 d. the foreseeable onsite risk of upset scenarios does not impact
32 any offsite receptors.
- 33 (9) HRA Questionnaire Notice. The Department shall notify the applicant in writing of its
34 HRA Questionnaire determination in accordance with paragraph (8) of this subsection
35 and provide the basis of the determination.
- 36 (A) Within ninety (90) days of the Department's determination that a Screening
37 Level HRA is required, the applicant shall consult with the Department and
38 submit a Screening Level HRA work plan.
- 39 (B) Within ninety (90) days of the Department's determination that a Baseline
40 HRA is required, the applicant shall consult with the Department and submit a
41 Baseline HRA work plan.
- 42 (10) Screening Level Health Risk Assessment Work Plan.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (A) The applicant shall submit to the Department, for its evaluation and approval,
2 a Screening Level HRA work plan. The Screening Level HRA must be based on
3 a work plan that compares the concentration of a chemical of potential concern to
4 media specific screening levels for relevant receptors. The Screening Level HRA
5 work plan must describe the approach to evaluate potential human health risks
6 posed by conditions and operations at the facility. The work plan and subsequent
7 Screening Level HRA must include all the following:

8 1. exposure assessment. Exposure must be assessed using the maximum
9 permitted capacity for treatment, storage, transfer, and disposal of
10 hazardous waste requested in the permit application and include all the
11 following:

12 a. a summary of toxicity assessment for each of the chemicals of
13 potential concern, including appropriate toxicity values;

14 b. the approach and estimate of reasonable maximum exposure
15 concentrations based on sampling or modeling data;

16 c. identification of receptors, routes, and simple exposure
17 pathways;

18 d. the approach to risk assessment for pathways, routes, and
19 chemicals of potential concern for cancer and non-cancer health
20 impacts;

21 2. the regulatory screening levels listed by environmental media for the
22 protection of human health must be based on peer reviewed toxicity
23 information and tools developed by the Office of Environmental Health
24 Hazard Assessment, and the United States Environmental Protection
25 Agency; and

26 3. an outline of the presentation for the data, analyses, and findings.

27 (11) Department Screening Level HRA Work Plan Determination. Within sixty (60) days
28 of receipt of the Screening Level HRA work plan, the Department shall evaluate the
29 work plan for compliance with the requirements of subparagraph (e)(10)(A).

30 (A) The Department may require the applicant to submit supplemental
31 information to ensure that the Screening Level HRA work plan is complete.

32 1. the applicant shall submit to the Department the supplemental
33 information within thirty (30) days of the receipt of the request for
34 supplemental information; and

35 2. within thirty (30) days of receipt of the supplemental information, the
36 Department shall complete its evaluation of the supplemental information
37 and provide a determination to accept or reject the Screening Level HRA
38 work plan.

39 (12) Screening Level HRA Work Plan Notice. The Department shall notify the applicant
40 in writing of its determination to accept or reject the Screening Level HRA work plan and
41 provide the basis of the determination. The Department shall specify a due date to
42 complete the Screening Level HRA.

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1 (A) For a Screening Level HRA, the due date is 180 days after the date the
2 Department issues a Screening Level HRA work plan notice, unless the
3 Department specifies an alternative due date.

4 (13) Screening Level HRA Submittal. The applicant shall submit to the Department the
5 Screening Level HRA that complies with subparagraph (e)(10)(A) and the accepted the
6 Screening Level HRA work plan by the due date specified in the notice in accordance
7 with subparagraph (e)(12)(A).

8 (14) Department Screening Level HRA Determination. Within ninety (90) days of receipt
9 of the Screening Level HRA, the Department shall evaluate the Screening Level HRA
10 for completeness with subparagraph (e)(10)(A) and the accepted Screening Level HRA
11 work plan.

12 (A) The Department may require the applicant to submit supplemental
13 information to ensure completeness of the Screening Level HRA.

14 1. the applicant shall submit to the Department the supplemental
15 information within thirty (30) days of the receipt of the request for
16 supplemental information; and

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

20 (B) The Department shall either:

21 1. accept the Screening Level HRA; or

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

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

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

30 (16) Baseline Health Risk Assessment Work Plan.

31 (A) The applicant shall submit to the Department, for its evaluation and approval,
32 a Baseline HRA work plan. The Baseline HRA must be based on a work plan that
33 describe the approach to estimate potential human health risks posed by
34 conditions and operations at the facility. The work plan and subsequent Baseline
35 HRA must include all the following:

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

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

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

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

- 1 5. the approach for the quantification of both exposure and risk
2 characterization;
3 6. an outline of the presentation for the data, analyses, and findings; and
4 7. any additional information specified by the Department.
- 5 (B) The due dates for the Baseline HRA work plan are specified in
6 subparagraphs (e)(3)(A), (e)(9)(B), or (e)(15)(A). The applicant shall submit the
7 Baseline HRA work plan within ninety (90) days of receipt of the notice that a
8 Baseline HRA is required, or as provided pursuant to subparagraph (e)(3)(A),
9 unless another due date is provided by the Department.
- 10 (17) Department Baseline HRA Work Plan Determination. Within sixty (60) days of
11 receipt of the Baseline HRA work plan, the Department shall evaluate the work plan for
12 completeness with paragraph (e)(1), and subparagraph (e)(16)(A).
- 13 (A) The Department may require the applicant to submit supplemental
14 information to ensure completeness of the Baseline HRA work plan.
- 15 1. the applicant shall submit to the Department the supplemental
16 information within thirty (30) days of receiving the request for
17 supplemental information; and
18 2. within thirty (30) days of receipt of the supplemental information, the
19 Department shall complete its evaluation of the supplemental information
20 and provide a determination to accept or reject the Baseline HRA work
21 plan.
- 22 (18) Baseline HRA Work Plan Notice. The Department shall notify the applicant in
23 writing of its determination to accept or reject the work plan and provide the basis of the
24 determination. The Department shall specify a due date for the submittal of the Baseline
25 HRA, if applicable.
- 26 (A) For a Baseline HRA, the due date is 180 days after the date the Department
27 issues the Baseline HRA work plan notice, unless the Department specifies an
28 alternative due date.
- 29 (19) Baseline HRA Submittal. The applicant shall submit to the Department the Baseline
30 HRA that complies with paragraph (e)(1), subparagraph (e)(16)(A) and the accepted
31 Baseline HRA work plan by the due date specified in the notice in accordance with
32 subparagraph (e)(18)(A).
- 33 (20) Baseline HRA Department Determination. Within ninety (90) days, of receipt of the
34 Baseline HRA, the Department shall evaluate the Baseline HRA for completeness with
35 paragraph (e)(1), subparagraph (e)(16)(A) and the accepted Baseline HRA work plan.
- 36 (A) The Department may require the applicant to submit supplemental
37 information to complete its evaluation of the Baseline HRA.
- 38 1. the applicant shall submit to the Department the supplemental
39 information within sixty (60) days of receipt of the supplemental
40 information, unless the Department specifies an alternative due date; and

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

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

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

8 (22) The applicant for a post-closure permit, or permit modification classified as Class 1,
9 Class 1*, or Class 2 is not subject to the requirement to submit a hazardous waste
10 facility permit health risk assessment as specified in this subsection. The Department
11 may exclude the applicant for a Class 3 permit modification from the requirement to
12 submit a hazardous waste facility permit health risk assessment if the Department
13 deems it unnecessary.

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

19
20 Note: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25200.21, 25245, 58004, and
21 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6, 25200,
22 58004, and 58012, Health and Safety Code; and 40 CFR Section 270.14.

23
24
25

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 plan:	
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 of Title 22 of the California Code of Regulations, to read:

5
6 **Article 3. Violations Scoring Procedure for Hazardous Waste Facility Operations**

7
8 **§ 66271.50. Definitions and Applicability.**

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

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

17 (2) "Facility Violations Scoring Procedure Score" or "Facility VSP Score" means **the**
18 **numeric value assigned to a facility pursuant to section 66271.54(a) for the purpose of**
19 **assigning the facility to a compliance tier in accordance with section 66271.54(b).**

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

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

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

27 (4) "Violations scoring procedure" means the totality of the criteria and steps set out in
28 this article that govern the consideration of a facility's compliance history by the
29 Department in making specified permit decisions and the remedies available to **an**
30 owner **or** operator in response to decisions proposed or **made** by the Department under
31 this article.

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

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

36 (A) **post-closure** permits or orders; and

37 (B) permits or permit modifications for closure only.

38 (c) The Department shall only consider Class I violations, **as defined in section 66260.10,** for
39 purposes of **calculating** the Facility VSP Score in accordance **with this article.**

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

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

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

4 (3) the assessment of penalties under chapter 22 of this division.

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

9 (f) This article is in addition to, and does not limit or modify, the Department's authority to
10 issue, deny, revoke, suspend, or modify any permit, registration, or certificate pursuant to
11 Health and Safety Code sections 25186, 25186.05, 25186.2, 25186.2.5, 25189.3, or
12 25200.8, chapters 20 and 21 of this division, or any other statute or regulation.

13
14 *Note: Authority Sections 25150, 25200.21, 58004 and 58012, Health and Safety Code.*

15 *Reference: Sections 25110.8.5, 25117.6, 25180(d), 25186, 25186.05, 25186.2, 25186.2.5,*
16 *25189.3, and 25200.8, Health and Safety Code.*

17
18 **§ 66271.51. Determining the Initial Score for Each Class I Violation.**

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

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

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

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

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

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

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

40 (A) The characteristics of the substance involved;

41 (B) The amount of the substance involved;

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

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 (D) The extent to which animal life is threatened;
- 2 (E) The extent to which the environment is threatened; and
- 3 (F) The extent to which potable water supplies are threatened.
- 4 (3) Except as provided in paragraph (6), only violations involving one or more of the
- 5 following may be classified as posing a major potential harm:
- 6 (A) The management of hazardous waste; or
- 7 (B) The absence of adequate liability coverage or financial assurance for closure,
- 8 post-closure, or corrective action; or
- 9 (C) The absence of a contingency plan, waste analysis plan, or closure plan.
- 10 (4) Potential harm for violations of financial requirements shall be determined by
- 11 considering the amount of closure, post-closure, or corrective action costs for which
- 12 there is no financial assurance or liability coverage, and the likelihood that injury or
- 13 damages, if they occur, will not be compensated due to inadequacy in financial
- 14 assurance or liability coverage.
- 15 (5) Financial requirements violations that consist of documentation errors or omissions
- 16 that do not affect actual functioning of adequate liability coverage or financial assurance
- 17 for closure, post-closure, or corrective action may not be classified as posing a major
- 18 potential harm.
- 19 (6) Groundwater monitoring documentation violations may have a major, moderate, or
- 20 minimal potential for harm. The Department shall select the category for potential harm
- 21 based on the extent to which the violation may lead directly to environmental harm,
- 22 have a potential for harm, or cause an inability to detect releases to groundwater, in
- 23 addition to the factors specified in subsection(a)(2).
- 24 (c) Extent of Deviation. When determining the extent of deviation from hazardous waste
- 25 management requirements posed by a Class I violation, the Department shall categorize the
- 26 extent of deviation as "major," "moderate," or "minimal."
- 27 (1) The categories for extent of deviation from hazardous waste management
- 28 requirements are defined as follows:
- 29 (A) Major - The act deviates from the requirement to such an extent that the
- 30 requirement is completely ignored and none of its provisions are complied with,
- 31 or the function of the requirement is rendered ineffective because some of its
- 32 provisions are not complied with.
- 33 (B) Moderate - The act deviates from the requirement, but the requirement
- 34 functions to some extent, although not all of its important provisions are complied
- 35 with.
- 36 (C) Minimal - The act deviates in a minor way from the requirement. The
- 37 requirement functions nearly as intended, but not as well as if all provisions had
- 38 been met.
- 39 (2) Unless otherwise specified in this article, the extent of deviation of a single
- 40 requirement may be major, moderate, or minimal depending on the totality of the
- 41 circumstances.

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1 (d) Matrix for Scoring. The Department shall use the matrix set forth in this subsection to
 2 determine the initial score for each Class I violation, selecting the score from the matrix cell
 3 that corresponds to the appropriate potential harm and extent of deviation categories.
 4

		Potential Harm		
		Major	Moderate	Minimal
Extent of Deviation	Major	25	20	15
	Moderate	20	15	6
	Minimal	15	6	2

5
 6 *Note: Authority cited: Sections 25150, 25200.21, 58004 and 58012, Health and Safety Code.*
 7 *Reference: Sections 25110.8.5, 25186, 25186.05, 25187, and 25189.2, Health and Safety*
 8 *Code.*
 9

10 **§ 66271.52. Adjustment to the Initial Score for Repeat Class I Violations.**

- 11 (a) The Department shall adjust the initial score for each Class I violation to reflect repeat
 12 violations.
 13 (b) The Department shall make an adjustment for a repeat violation only if the owner or
 14 operator has been given at least one **Summary of Violations** at the same facility within the
 15 prior three (3) years or last three (3) inspections, whichever time period is longer and such
 16 **Summary of Violations** has not been cancelled, retracted, withdrawn, or successfully
 17 challenged in an administrative or judicial proceeding. The adjustment for a repeat violation
 18 based on issuance of a **Summary of Violations** shall occur regardless whether the owner or
 19 operator **corrected** a violation after receipt of the **Summary of Violations**.
 20 (c) The Department shall adjust each initial Class I violation score based on the number of
 21 **repeat violations**. The Department shall make the adjustment based on the following matrix:
 22
 23

Adjustment Factor for Repeat Violations	Circumstance
Upward Adjustment of 25 percent	Second instance
Upward Adjustment of 50 percent	Third instance
Upward Adjustment of 100 percent	Fourth or more instances

24
 25 *NOTE: Authority cited: Sections 25150, 25200.21, 58004 and 58012, Health and Safety Code.*
 26 *Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code.*
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28 **§ 66271.53. Provisional and Final Inspection Violation Scores.**

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(a) Provisional Inspection Violation Score Calculation. A provisional inspection violation score is the sum of the scores for all Class I violations found during a compliance inspection as calculated pursuant to section 66271.51 and adjusted for repeat violations pursuant to section 66271.52.

(b) Issuance of Provisional Inspection Violation Scores.

(1) For compliance inspections that occur after the effective date of this article, the Department shall issue a provisional inspection violation score, including all Class I violation scores on which the provisional inspection violation score is based, to the owner or operator concurrently with the inspection report provided to the owner or operator pursuant to section 66272.1(c).

(2) For compliance inspections that occurred before the effective date of this article, the Department shall issue provisional inspection violation scores, including all Class I violation scores on which the provisional inspection violation scores are based, to the owner or operator when the Department provides the owner or operator with written notice, in accordance with section 66271.54(c), of the facility's assignment to a compliance tier based on its Facility VSP Score.

(c) Dispute of Provisional Inspection Violation Scores.

(1) An owner or operator who seeks to dispute a provisional inspection violation score may do so by filing a Provisional Inspection Violation Score Dispute Document ("Dispute Document") with the Department within sixty (60) days of the Department sending the provisional inspection violation score pursuant to subsection (b).

(2) The Dispute Document must contain all the following:

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

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

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

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

(3) Dispute Document Extension Requests.

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

(B) The extension request must include:

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

- 1 2. The due date for the Dispute Document;
- 2 3. The amount of additional time requested; and
- 3 4. The reason the extension is needed, including a detailed explanation of
- 4 why the owner or operator could not have reasonably anticipated or
- 5 controlled the circumstances necessitating the extension.

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

9 (4) Dispute Resolution Official and Decision. The Director or Director's designee shall
10 serve as the dispute resolution official. Within ninety (90) days after receipt of a Dispute
11 Document, the dispute resolution official shall issue a written decision granting or
12 denying, in whole or in part, the relief sought by the owner or operator. If the relief is
13 denied, in whole or in part, the dispute resolution official shall include in his or her
14 decision a short and plain description of the basis for the denial. Failure of the dispute
15 resolution official to issue a written decision within ninety (90) days of receipt of the
16 Dispute Document does not constitute a partial or complete granting of the relief sought.
17 The written decision of the dispute resolution official is the Department's final decision
18 and is not subject to additional administrative dispute resolution.

19 (d) Final Inspection Violation Score.

20 (1) For all compliance inspections, the provisional inspection violation score becomes
21 the final inspection violation score if the owner or operator does not file a Dispute
22 Document with the Department within the time specified in subsection (c).

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

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

31
32 *NOTE: Authority cited: Sections 25150, 25200.21, 58004, and 58012, Health and Safety Code.*
33 *Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code.*
34

35 **§ 66271.54. Facility Violations Scoring Procedure (VSP) Score and Compliance Tiers.**

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

40 (1) For compliance inspections conducted after the effective date of this article, no
41 provisional inspection violation score may be included in the Facility VSP Score unless

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1 the **provisional** inspection violation score was sent to the owner or operator in
2 accordance with section 66271.53(b)(1).

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

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

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

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

13 (3) "Unacceptable." A facility that receives a Facility VSP Score equal to or greater than
14 40 shall be designated as having a Facility VSP Score that is unacceptable.

15 (c) **The Department shall annually calculate a Facility VSP Score for all hazardous waste**
16 **facilities subject to this article and assign a compliance tier to each facility.** On or before
17 September 30 of each calendar year, the Department shall provide written notice **to the**
18 **owner or operator** of the Facility VSP Score **through December 31 of the prior calendar year**
19 and the assigned compliance tier **for** each facility. On or before December 31 of each
20 calendar year, the Department shall post to the Department's website the Facility VSP
21 Score and assigned compliance tier for each facility subject to this article.

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

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

36 (f) **The compliance tier assignment for a facility that is assigned to an "unacceptable"**
37 **compliance tier based on its Facility VSP Score becomes final in accordance with section**
38 **66271.57. The owner or operator of a facility assigned to a compliance tier of "unacceptable"**
39 **may also dispute its compliance tier assignment pursuant to section 66271.57.**

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

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§ 66271.55. Hazardous Waste Facility Permit Decisions.

(a) Permit Decisions. The Department shall conduct a complete review of a facility's compliance history when making a decision to issue, deny, revoke, suspend, or modify a permit under this article.

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

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

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

(3) The facility's compliance with any permits, applicable orders, stipulations, agreements, settlement documents, judgments, decrees, grants of authorization, or other documents establishing requirements upon operations at the facility; hazardous waste laws and regulations; and any other applicable environmental laws and regulations;

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

(5) The facility's safety record;

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

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

(8) Any other information allowed by law.

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

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

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

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

(4) The facility's record with regard to returning to compliance and cooperation with the Department.

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.

§ 66271.56. Requirements for a Facility Assigned to a "Conditionally 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 owner or operator of a non-federal facility shall prepare and
5 provide to the Department third-party compliance audits in accordance with this section.
6 An owner or operator of a federal facility, however, may prepare and submit to the
7 Department a facility self-disclosure audit report and use an internal auditor in lieu of a
8 third-party auditor, but are otherwise subject to this section.

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

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

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

28 2. Within fifteen (15) days of receiving the names and qualifications of the
29 proposed third-party auditors, the Department shall provide written notice
30 to the owner or operator approving or rejecting the third-party auditors
31 proposed by the owner or operator;

32 3. If the Department approves one or more of the proposed third-party
33 auditors selected by the owner or operator, the owner or operator shall,
34 within thirty (30) days of the Department’s approval, provide written
35 notification to the Department that the owner or operator has retained the
36 services of a third-party auditor approved by the Department;

37 4. If the Department rejects all proposed third-party auditors submitted by
38 the owner or operator to the Department pursuant to subparagraph 1., the
39 Department shall, within thirty (30) days of the Department’s written notice
40 pursuant to subparagraph 2., select an auditor qualified to perform the
41 audit and inform the owner or operator of the auditor selected by the
42 Department; and

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

5 (B) Submission of Audits. The owner or operator shall submit to the Department
6 the audit reports prepared by the independent third-party auditor that meet the
7 requirements of this subparagraph according to the Audit Schedule in section
8 66271.56(a)(1)(C). Audit reports prepared pursuant to this subsection must, at a
9 minimum, include all of the following:

- 10 1. A complete description and discussion of all audit objectives, audit
11 criteria, audit activities, audit findings and conclusions, recommendations,
12 and all evidence relied upon to support the audit conclusions;
- 13 2. A complete inspection and review of all facility operations related to
14 hazardous waste and all monitoring, records, reports, and other
15 information necessary to evaluate and determine facility compliance with
16 all terms of the facility's hazardous waste facility permit, and all applicable
17 hazardous waste laws, regulations, and orders;
- 18 3. Sampling and testing of potentially hazardous materials as necessary to
19 determine compliance with all terms of the facility's hazardous waste
20 facility permit, and all applicable hazardous waste laws, regulations, and
21 orders;
- 22 4. A complete description of the inspection(s) completed, a summary of all
23 sampling and testing conducted and associated results, and discussion of
24 all information reviewed;
- 25 5. Review of all safety practices and identification of all accidents in the
26 preceding one (1) year, and any unsafe practices or conditions observed
27 that could lead to accidents;
- 28 6. A brief description of any written advisements or determination of
29 violations, including, but not limited to, Notices of Violation and inspection
30 reports directed to the facility by any local, state, or federal agency that
31 identifies any violation of any hazardous waste facility requirement; and
- 32 7. Discussion of all findings and deficiencies related to facility; and
33 compliance, including identification of all instances of noncompliance.

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

- 36 1. The first audit report shall be submitted no later than 270 days after
37 notification pursuant to section 66271.54; and
- 38 2. The second audit report shall be submitted no earlier than 180 days and
39 no later than one (1) year after the first audit report.

40 (2) Compliance Implementation Plan. The owner or operator shall, within thirty (30) days
41 following the deadline to submit each audit report pursuant to section
42 66271.56(a)(1)(C), submit a corresponding compliance implementation plan as follows:

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- 1 (A) The compliance implementation plan must describe all actions needed to
2 correct all deficiencies and address all findings identified in the audit report.
3 (B) The compliance implementation plan must identify all permits and permit
4 modifications required by the Department and any other federal, state, or local
5 agency in order to implement the actions described in subparagraph (A).
6 (C) The compliance implementation plan must include deadlines for all actions to
7 correct deficiencies and to submit applications for all permits or permit
8 modifications needed to implement such actions.

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

12 (c) The Department may also impose other requirements on an owner or operator, including,
13 but not limited to, one or more of the following:

- 14 (1) Imposing a shorter operating period for the facility's permit than that specified in the
15 permit;
16 (2) Restricting or prohibiting hazardous waste management activities at the facility that
17 are authorized in the permit;
18 (3) Imposing additional conditions on hazardous waste management activities beyond
19 those specified in the permit; and
20 (4) Imposing requirements designed to mitigate potential harm associated with
21 noncompliant activities or events, including, but not limited to, community benefit
22 agreements or projects, or other enforceable and measurable actions to reduce impacts
23 or alleviate adverse conditions caused by the facility's noncompliance with hazardous
24 waste management requirements.

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

28
29 **§ 66271.57. Requirements for a Facility Assigned to an "Unacceptable" Compliance Tier.**

30 (a) For a facility that is assigned to an "unacceptable" compliance tier based on its Facility
31 VSP Score:

- 32 (1) The Department shall, subject to subsections (b) through (f), initiate a process to
33 deny, suspend, or revoke a permit pursuant to chapter 20 or 21 of this division for a
34 facility after the facility's "unacceptable" compliance tier assignment becomes final in
35 accordance with subsection (b) or subsection (f)(1).
36 (2) Following the initiation of a process pursuant to subsection (a)(1) to deny, suspend,
37 or revoke a permit, the Department may grant a permit or permit modification or
38 otherwise resolve a pending permit action against a facility that has been assigned to an
39 "unacceptable" compliance tier only if the Department makes the written findings
40 required in subsection (g), in addition to any other findings required by law for its
41 decision.

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1 (b) An owner or operator of a facility assigned to an “unacceptable” compliance tier may
 2 challenge the “unacceptable” compliance tier assignment in accordance with the procedures
 3 set forth in this section. If an owner or operator of a facility assigned to an “unacceptable”
 4 compliance tier does not challenge the facility’s compliance tier assignment in accordance
 5 with the procedures set forth in this section, the facility’s “unacceptable” compliance tier
 6 assignment will become final sixty (60) days after the Department’s written notice to the
 7 facility of its compliance tier assignment.

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

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

17 (1) The owner or operator is able to operate the facility in compliance with the terms and
 18 conditions of its permit, applicable orders, stipulations, agreements, settlement
 19 documents, judgments, decrees, grants of authorization, and other documents
 20 establishing requirements upon operations at the facility; hazardous waste laws and
 21 regulations; and any other applicable environmental laws and regulations;

22 (2) The facility, as constructed, can be operated in compliance with the terms and
 23 conditions of its permit, applicable orders, stipulations, agreements, settlement
 24 documents, judgments, decrees, grants of authorization, and other documents
 25 establishing requirements upon operations at the facility; hazardous waste laws and
 26 regulations; and any other applicable environmental laws and regulations;

27 (3) The owner’s or operator’s continued operation of the facility is unlikely to adversely
 28 affecting human health, safety, or the environment;

29 (4) The facility’s compliance with financial assurance or liability coverage requirements
 30 for closure, post-closure, or corrective action, pursuant to article 8 of chapters 14 and 15
 31 of this division, as applicable.

32 (5) One or more audit reports required pursuant to this article demonstrates both of the
 33 following:

34 (A) an ongoing pattern of compliance with applicable hazardous waste
 35 management requirements; and

36 (B) full implementation of actions to correct deficiencies and address findings of
 37 prior audits.

38 (e) Within sixty (60) days of receipt of the owner’s or operator’s written challenge pursuant to
 39 this section, the Department shall send out a written notice regarding the time and location
 40 of a public meeting regarding the facility’s “unacceptable” compliance tier assignment. At the
 41 public meeting, the Department will present the grounds for assigning the facility an

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1 “unacceptable” compliance tier, the owner or operator may present its opposition, and the
2 public shall have an opportunity to submit comments.

3 (f) Within sixty (60) days of the date of the public meeting, the Department shall issue a
4 written decision regarding the owner’s or operator’s challenge to the facility’s “unacceptable”
5 compliance tier assignment. The Department’s decision shall be based upon its
6 consideration of the Department’s evidence to support the Facility VSP Score and
7 assignment to the “unacceptable” compliance tier; evidence presented by the owner or
8 operator in its written challenge filed pursuant to subsection (d) and at the public meeting
9 held pursuant to subsection (e); and any other relevant evidence presented at the public
10 meeting held pursuant to subsection (e).

11 (1) If the Department upholds the facility’s “unacceptable” compliance tier assignment,
12 the Department’s written decision will constitute the facility’s final “unacceptable”
13 compliance tier assignment. The Department’s written decision will also notify the owner
14 or operator regarding the Department’s decision to initiate the process to deny,
15 suspend, or revoke the facility’s permit.

16 (2) If the Department makes a determination that changes the facility’s compliance tier
17 assignment to “conditionally acceptable,” then the facility is subject to the provisions of
18 section 66271.56.

19 (g) The Department may grant a permit or permit modification or otherwise resolve a
20 pending permit action for a facility that is assigned to an “unacceptable” compliance tier if
21 the Department makes written findings based on substantial evidence that grant of the
22 permit or permit modification or other resolution of a pending permit action will not pose a
23 threat to public health or safety or the environment and that both of the following conditions
24 are met:

25 (1) The owner or operator has implemented enforceable improvements to its facility
26 operations or hazardous waste management processes or equipment that will prevent
27 future violations; and

28
29 (2) There are substantial and overriding benefits to the people of the State of California
30 resulting from the continued operation of the facility.

31 (h) If the Department grants a permit or permit modification or otherwise resolves a pending
32 permit action for a facility pursuant to subsection (g), the Department shall require all of the
33 following, in addition to any other requirements deemed necessary by the Department to
34 protect human health or safety or the environment:

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

36 (2) The permit must include enhanced compliance provisions, including, but not limited
37 to compliance audits consistent with section 66271.56(a). The permit shall specify the
38 dates for submittal of audit reports by the owner or operator; and

39 (3) The permit must include mitigation measures for all potential harm associated with
40 noncompliant activities or events, including enforceable and measurable actions to
41 eliminate or reduce impacts associated with noncompliance and to alleviate adverse

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1 conditions caused by the facility's noncompliance, or to which noncompliance may have
2 contributed.

3 (i) The Department shall order a facility that received a final "unacceptable" compliance tier
4 assignment to take any action determined by the Department as necessary to ensure the
5 facility's compliance with its permit, and any applicable orders, stipulations, agreements,
6 settlements, judgments, decrees, grants of authorization, or other documents establishing
7 requirements upon operations at the facility, as well as hazardous waste laws and
8 regulations and any other applicable environmental laws and regulations, including, but not
9 limited to:

- 10 (1) complying with section 66271.56;
- 11 (2) conducting additional and enhanced training as necessary to improve facility
12 operations and compliance;
- 13 (3) implementing facility improvements related to the causes of the facility's
14 noncompliance with its permit and applicable orders, stipulations, agreements,
15 settlements, judgments, decrees, grants of authorization, or other documents
16 establishing requirements upon operations at the facility, as well as hazardous waste
17 laws, and regulations. Facility improvements may include, but are not limited to,
18 repairing, replacing, or augmenting hazardous waste management units, equipment,
19 devices, or secondary containment;
- 20 (4) restricting or ceasing the operation of a hazardous waste management unit that is
21 the basis of the facility's violations;
- 22 (5) conducting public participation and community engagement activities, including, but
23 not limited to, public information meetings with the surrounding community and
24 distribution of fact sheets or community updates, addressing the facility's compliance
25 issues and return to compliance; and
- 26 (6) increasing or expanding facility monitoring, recordkeeping, and/or reporting.

27
28 *NOTE: Authority cited: Sections 25150, 25200.21, 58004, and 58012, Health and Safety Code.*
29 *Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code.*
30