

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
July 2018

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

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

First Public Availability Dates: September 22, 2017 – November 6, 2017

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

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

Second Public Availability Dates: June 29, 2018 – July 23, 2018

Underline: Underlined text reflects new text resulting from post-hearing changes proposed June 2018.

Strikeout: ~~Strikeout~~ text reflects deleted text resulting from post-hearing changes proposed June 2018.

Third Public Availability Dates: July 27, 2018 – August 13, 2018

Underline: ***bold, italic, underline*** text reflects new text resulting from additional post-hearing changes proposed July 2018.

Strikeout: ~~***bold, italic, strikeout***~~ text reflects deleted text resulting from additional post-hearing changes proposed July 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.

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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.

~~Additional definitions applicable to management of universal wastes are found in section 66273.9.~~ 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)~~(1)~~ The owner or operator of a hazardous waste transfer, treatment, storage, or disposal
10 facility shall ensure that facility personnel shall successfully complete a training
11 program through of classroom- or online, computer-based or electronic instruction, or on-the-
12 job training that teaches facility personnel them to perform their duties in a way that ensures
13 the facility's compliance with the requirements of this chapter ~~division chapter~~ and
14 subsection 5192(p) of Title 8, California Code of Regulations. Facility personnel engaged in
15 shipping hazardous waste shall be triennially trained commensurate with their
16 responsibilities to meet the requirements in section 172.704 of Title 49, Code of Federal
17 Regulations commensurate with their responsibilities.

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

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

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

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

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

35 (C) communications or alarm systems;

36 (D) response to fires or explosions;

37 (E) response to groundwater contamination incidents; ~~and~~

38 (F) shutdown of operations; ~~(F) shutdown of operations;~~

39 (G) self-protection measures; and

40 (H) accident prevention methods.

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

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

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

10 *Note: Authority cited: Sections 208, 25150, ~~and~~ 25159, 25200.21, 58004, and 58012 Health*
11 *and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR*
12 *Section 264.16.*
13

14 ...

15
16 **§ 66264.101. Corrective Action for Waste Management Units.**

- 17 (a) The owner or operator of a facility seeking a permit for the transfer, treatment, storage,
18 or disposal of hazardous waste shall institute corrective action as necessary to protect
19 human health and the environment for all releases of hazardous waste or constituents from
20 any solid or hazardous waste management unit at the facility, regardless of the time at
21 which waste was placed in such unit.
22 (b) The owner or operator shall provide a financial assurance mechanism for corrective
23 action to the Department within 90 days of the Department's approval of a corrective
24 measures implementation workplan or a Department-approved equivalent. The financial
25 assurance mechanism must consist of one of the options specified in section 66264.143.
26 The owner or operator shall establish the financial assurance mechanism to allow the
27 Department access to the funds to undertake corrective measures implementation tasks if
28 the owner or operator is unable or unwilling to undertake the required tasks. *If the owner or*
29 *operator proposes to use the financial test or corporate guarantee as the financial assurance*
30 *mechanism for corrective action, the owner or operator shall also establish a process that allows*
31 *the Department access to the funds to undertake corrective measures implementation tasks if the*
32 *department determines that the owner or operator is unable or unwilling to undertake the required*
33 *tasks. Any financial assurance mechanism or process proposed by the owner or operator shall be*
34 *subject to the Department's approval. The financial assurance mechanism is subject to the*
35 *Department's approval.* ~~The Department shall require financial assurance for corrective action~~
36 ~~at the earliest time the Department is able to make a reasonable determination of the~~
37 ~~amount of financial assurance required. The Department shall make a reasonable~~
38 ~~determination of the amount of financial assurance required for corrective action before~~
39 ~~corrective action is initiated by a facility.~~
40 (b)(c) Corrective action must will be specified in the permit, or order, or agreement for
41 corrective action issued or entered into by the Department in accordance with this article,
42 article 15.5, or article 17, and Health and Safety Code sections 25200.10, 25187, ~~or~~
43 25200.14, or ~~section~~ 25358.9 where as provided for under the provisions of that section the
44 Department has excluded the removal or remedial action at a site from the hazardous waste

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1 facilities permit required by Health and Safety Code section 25201. The permit, ~~or order, or~~
2 agreement must will contain schedules of compliance for such corrective action (where such
3 corrective action cannot be completed prior to issuance of the permit) and assurances of
4 financial responsibility for completing such corrective action. ~~The permit or order must~~
5 ~~require the owner or operator to provide financial assurance and provide an advance~~
6 ~~payment in the amount of at least 25 percent of the amount specified in subsection (b).~~
7 ~~(c)(d) Where necessary to protect human health or the environment, the~~The owner or
8 operator shall implement corrective actions beyond the facility boundary, ~~where necessary~~
9 ~~to protect human health or the environment,~~ unless the owner or operator demonstrates to
10 the satisfaction of the Department, that despite the owner's or operator's best efforts, the
11 owner or operator was unable to obtain the necessary permission to undertake such
12 actions. The owner or operator is not relieved of all responsibility to cleanup a release that
13 has migrated beyond the facility boundary where off-site access is denied. On-site
14 measures to address such release will be determined on a case-by-case basis. Assurance
15 of financial responsibility for such corrective action shall be provided.
16

17 *Note: Authority cited: Sections 25150, 25159, 25187, 25200.10, 25200.21, 25245, 25355.5,*
18 *25356.9, 25358.3, 25358.9, 58004 and 58012, Health and Safety Code. Reference: Sections*
19 *25150, 25159.5, 25187, 25200, 25200.10, 25355.5, 25356.9, 25358.3 and 25358.9, Health*
20 *and Safety Code; 40 CFR Section 264.101.*
21

22 ...

23
24 **§ 66264.143. Financial Assurance for Closure.**

25 (a) Closure trust fund.

26 ...

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

28 ...

29 (c) Surety bond guaranteeing performance of closure.

30 ...

31 (d) Closure letter of credit.

32 ...

33 (e) Closure insurance.

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

41 (A) **an admitted carrier,** licensed to transact the business of insurance in
42 California; or

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(B) a nonadmitted carrier eligible to provide insurance as an excess or surplus lines insurer, in one or more States California. Any excess or surplus insurance relied upon by the owner or operator to meet the requirements of this subsection shall be placed by and through an excess or surplus lines broker currently licensed by the California Department of Insurance; and shall be underwritten by a surplus lines insurer that is on the California Department of Insurance's List of Approved Surplus Line Insurers as being eligible to cover risks in California. ~~transacted by an admitted carrier, and through an excess or surplus lines broker currently licensed by the California Department of Insurance.~~

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

...

(f) Financial test and guarantee for closure.

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

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

1. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; ~~and~~
2. a current corporate credit rating of AAA, AA, A₊ or BBB as issued by Standard and Poor's or Aaa, Aa, A₊ or Baa as issued by Moody's; and
- ~~2.3.~~ net working capital and tangible net worth each at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; and
- ~~3.~~ 4. tangible net worth of at least \$10-20 million; and
- ~~4.5.~~ assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and postclosure cost estimates for all of the owner's or operator's hazardous waste facilities regulated by the Department and the current plugging and abandonment cost estimates.

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

1. a current rating for his or her most recent bond issuance of AAA, AA, A₊ or BBB as issued by Standard and Poor's or Aaa, Aa, A₊ or Baa as issued by Moody's; ~~and~~
2. tangible net worth at least six times the sum of the current closure and postclosure cost estimates and the current plugging and abandonment cost estimates; ~~and~~

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- 1 3. tangible net worth of at least \$10 ~~20~~ million; and
2 4. assets located in the United States amounting to at least 90 percent of
3 total assets or at least six times the sum of the current closure and
4 postclosure cost estimates for all of the owner's or operator's hazardous
5 waste facilities regulated by the Department and the current plugging and
6 abandonment cost estimates.

7 (2) The phrase "current closure and postclosure cost estimates" as used in subsection
8 (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1
9 ~~through 4~~ through 6 of the letter from the owner's or operator's chief financial officer as
10 specified in subsection 66264.151(f). The phrase "current plugging and abandonment
11 cost estimates" as used in subsection (f)(1) of this section refers to the cost estimates
12 required to be shown in paragraphs 1 ~~through 4~~ through 6 of the letter from the owner's
13 or operator's chief financial officer.

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

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

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; and

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

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

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

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1 (6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this
2 section, the owner or operator shall send notice to the Department of the owner's or
3 operator's intent to establish alternate financial assurance as specified in this section.

4 The notice shall be sent by certified mail within 90 days after any occurrence that
5 prevents the owner or operator from meeting the requirements. The owner or operator
6 shall provide the alternate financial assurance within 120 days after the end of the
7 company's latest completed fiscal year.

8 (7) The Department may, based on a reasonable belief that the owner or operator may
9 no longer meet the requirements of subsection (f)(1) of this section, require reports of
10 financial condition at any time from the owner or operator in addition to those specified
11 in subsection (f)(3) of this section. If the Department finds, on the basis of such reports
12 or other information, that the owner or operator no longer meets the requirements of
13 subsection (f)(1) of this section, the owner or operator shall provide alternate financial
14 assurance as specified in this section within 30 days after notification of such a finding.

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

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

24 (A) ~~an~~ the owner or operator substitutes alternate financial assurance as
25 specified in this section; or

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

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

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1 consideration of the guarantee. If the guarantor is a firm with a “substantial business
2 relationship” with the owner or operator, this letter must describe this “substantial
3 business relationship” and the value received in consideration of the guarantee. The
4 terms of the guarantee shall provide that:

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

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

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

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

26 ~~(A) an initial payment upon the establishment of the trust fund in an amount~~
27 ~~equal to two percent of the current closure cost estimate as specified in section~~
28 ~~66264.142;~~

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

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

34 ~~(11)(12) An owner or operator may not rely on any assets to meet the requirements of~~
35 ~~this section if those same assets serve as the basis of satisfying any financial~~
36 ~~assurance or financial guarantee requirement imposed by any other “governmental~~
37 ~~agency,” as defined in California Civil Code section 1633.2, subdivision (i).~~

- 38 (g) Use of multiple financial mechanisms.
39 ...
40 (h) Use of a financial mechanism for multiple facilities.
41 ...
42 (i) Alternative Financial Mechanism for Closure Costs.

- 1 ...
2 (j) Release of the owner or operator from the requirements of this section.
3 ...

4
5 *Note: Authority cited: Sections 25150, 25159, 25159.5, ~~25200.21~~, and 25245, 58004, and*
6 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25245, Health and Safety*
7 *Code; 40 CFR Section 264.143.*

8
9 **§ 66264.144. Cost Estimate for Postclosure Care.**

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

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

22 (2) The postclosure cost estimate is calculated by multiplying the annual postclosure
23 cost estimate by ~~the number of 30 years or as of postclosure care~~ required under
24 section 66264.117. The Department may reset this period to 30 years each time the
25 postclosure permit is issued or renewed. This period must be consistent with
26 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 ~~in subsections (b)(1) and (b)(2) of~~
37 ~~this section~~ paragraphs (1) and (2) of this subsection. The inflation factor is the result of
38 dividing the latest published annual Deflator by the Deflator for the previous year.

39 Postclosure care cost estimates must be adjusted as 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 ~~the 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)~~section 66264.144(b)~~.

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

13
14 *Note: Authority cited: Sections 208, 25150, 25159, 25159.5, 25200.21, and 25245, 58004, and*
15 *58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR*
16 *Section 264.144.*

17

18 **§ 66264.145. Financial Assurance for Postclosure Care.**

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

25 (a) Postclosure trust fund.

26 ...

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

28 ...

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

30 ...

31 (d) Postclosure letter of credit.

32 ...

33 (e) Postclosure insurance.

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

41 (A) an admitted carrier, licensed to transact the business of insurance in
42 California; or

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1 (B) a nonadmitted carrier eligible to provide insurance as an excess or surplus
2 lines insurer, in one or more States California. Any excess or surplus insurance
3 relied upon by the owner or operator to meet the requirements of this subsection
4 shall be placed by and through an excess or surplus lines broker currently licensed by
5 the California Department of Insurance; and shall be underwritten by a surplus lines
6 insurer that is on the California Department of Insurance's List of Approved Surplus
7 Line Insurers as being eligible to cover risks in California. ~~transacted by an admitted~~
8 ~~carrier, and through an excess or surplus lines broker currently licensed by the~~
9 ~~California Department of Insurance.~~

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

13 ...

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

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

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

- 20 1. two of the following three ratios: a ratio of total liabilities to net worth
21 less than 2.0; a ratio of the sum of net income plus depreciation, depletion
22 and amortization to total liabilities greater than 0.1; and a ratio of current
23 assets to current liabilities greater than 1.5; ~~and~~
- 24 2. a current corporate credit rating of AAA, AA, A₊ or BBB as issued by
25 Standard and Poor's or Aaa, Aa, A₊ or Baa as issued by Moody's; ~~and~~
- 26 3. net working capital and tangible net worth each at least six times the
27 sum of the current closure and postclosure cost estimates and the current
28 plugging and abandonment cost estimates; ~~and~~
- 29 ~~3.4.~~ tangible net worth of at least \$40-20 million; and
- 30 4-5. assets in the United States amounting to at least 90 percent of total
31 assets or at least six times the sum of the current closure and postclosure
32 cost estimates for all of the owner's or operator's hazardous waste
33 facilities regulated by the Department and the current plugging and
34 abandonment cost estimates.

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

- 36 1. a current rating for his or her most recent bond issuance of AAA, AA, A₊
37 or BBB as issued by Standard and Poor's or Aaa, Aa, A₊ or Baa as issued
38 by Moody's; ~~and~~
- 39 2. tangible net worth at least six times the sum of the current closure and
40 postclosure cost estimates and the current plugging and abandonment
41 cost estimates; ~~and~~
- 42 3. tangible net worth of at least \$40-20 million; and

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- 1 4. assets located in the United States amounting to at least 90 percent of
2 total assets or at least six times the sum of the current closure and
3 postclosure cost estimates for all of the owner's or operator's hazardous
4 waste facilities regulated by the Department and the current plugging and
5 abandonment cost estimates.
- 6 (2) The phrase "current closure and postclosure cost estimates" as used in subsection
7 (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1
8 ~~through 4~~ through 6 of the letter from the owner's or operator's chief financial officer
9 (section ~~66264.151-66265.151~~, subsection (f)). The phrase "current plugging and
10 abandonment cost estimates" as used in subsection (f)(1) of this section refers to the
11 cost estimates required to be shown in paragraphs 1 ~~through 4~~ through 6 of the letter
12 from the owner's or operator's chief financial officer.
- 13 (3) To demonstrate that this test has been met, the owner or operator shall submit the
14 following items to the Department:
- 15 (A) a letter signed by the owner's or operator's chief financial officer and worded
16 as specified in section 66264.151, subsection (f). The letter shall be on the
17 owner's or operator's official letterhead stationery, and shall contain an original
18 signature; and
- 19 (B) a copy of the owner's or operator's financial statements and the independent
20 certified public accountant's report on examination of the owner's or operator's
21 financial statements for the latest completed fiscal year; and
- 22 (C) a special report from the owner's or operator's independent certified public
23 accountant to the owner or operator ~~stating that~~ includes the following:
- 24 1. a statement that the independent certified public accountant has
25 compared the data which the letter from the chief financial officer specified
26 as having been derived from the independently audited, year-end financial
27 statements for the latest fiscal year with the amounts in such financial
28 statements; and
- 29 2. ~~in connection with that procedure, no matters came to the independent~~
30 ~~certified public accountant's attention which caused a belief that the~~
31 ~~specified data should be adjusted.~~ identification and description of the
32 specific accounting standards and guidance relied upon to prepare the
33 report.
- 34 (4) An owner or operator of a new facility shall submit the items specified in subsection
35 (f)(3) of this section to the Department at least 60 days before the date on which
36 hazardous waste is first received for disposal.
- 37 (5) After the initial submission of items specified in subsection (f)(3) of this section, the
38 owner or operator shall send updated information to the Department within 90 days after
39 the close of each succeeding fiscal year. This information shall consist of all three items
40 specified in subsection (f)(3) of this section.
- 41 (6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this
42 section, the owner or operator shall send notice to the Department of the intent to

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1 establish alternate financial assurance as specified in this section. The notice shall be
2 sent by certified mail within 90 days after any occurrence that prevents the owner or
3 operator from meeting the requirements. The owner or operator shall provide the
4 alternate financial assurance within 120 days after such occurrence.

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

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

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

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

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

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

29 (11) An owner or operator may meet the requirements for this section by obtaining a
30 written guarantee. The guarantor shall be the direct or higher-tier parent corporation as
31 defined in section 66260.10, of the owner or operator, a firm whose parent corporation
32 is also the parent corporation of the owner or operator, or a firm with a "substantial
33 business relationship" with the owner or operator. The guarantor shall meet the
34 requirements for owners or operators in subsections (f)(1) through (f)(9) of this section
35 and shall comply with the terms of the guarantee. The guarantee shall contain an
36 original signature which shall be formally witnessed or notarized and the wording of the
37 guarantee shall be identical to the wording specified in section 66264.151, subsection
38 (h). A certified copy of the guarantee shall accompany the items sent to the Department
39 as specified in subsection (f)(3) of this section. One of these items must be the letter
40 from the guarantor's chief financial officer. If the guarantor's parent corporation is also
41 the parent corporation of the owner or operator, the letter must describe the value
42 received in consideration of the guarantee. If the guarantor is a firm with a "substantial

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1 business relationship” with the owner or operator, this letter must describe this
2 “substantial business relationship” and the value received in consideration of the
3 guarantee. The terms of the guarantee shall provide that:

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

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

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

20 ~~(12) The owner or operator shall establish a trust fund that conforms to subsection (a),~~
21 ~~within 180 days of the effective date of this section or the date the next submittal~~
22 ~~required by subsection (f)(5), whichever is later. The value of the trust fund must be~~
23 ~~equal to 20 percent of the current postclosure cost estimate as specified in section~~
24 ~~66264.144. The owner or operator shall make payments into the trust fund according to~~
25 ~~the following schedule:~~

26 ~~(A) an initial payment upon the establishment of the trust fund in an amount~~
27 ~~equal to two percent of the current postclosure care costs as specified in section~~
28 ~~66264.144;~~

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

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

36 ~~(12)(13) An owner or operator may not rely on any assets to meet the requirements of~~
37 ~~this section if those same assets serve as the basis of satisfying any financial~~
38 ~~assurance or financial guarantee requirement imposed by any other “governmental~~
39 ~~agency,” as defined in California Civil Code section 1633.2, subdivision (i).~~

40 (g) Use of multiple financial mechanisms.

41 ...

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

- 1 ...
- 2 (i) Alternative Financial Mechanism for Postclosure Care.
- 3 ...
- 4 (j) Release of the owner or operator from financial assurance requirements for postclosure
- 5 care.
- 6 ...
- 7

8 *Note: Authority cited: Sections 25150, 25159, 25159.5, ~~25200.21~~ and 25245, 58004, and*
9 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25245, Health and Safety*
10 *Code; 40 CFR Section 264.145.*

11

12 **§ 66264.146. Use of a Mechanism for Financial Assurance of ~~Both Closure, and Post-~~**
13 **Closure Care, and Corrective Action.**

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

22

23 *Note: Authority cited: Sections 208, 25150, 25159, 25159.5, 25200.21 and 25245, 58004, and*
24 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25425, Health and Safety*
25 *Code; 40 CFR Section 264.146.*

26

27 **§ 66264.147. Liability Requirements.**

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

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

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

- 39 1. **an admitted carrier,** licensed to transact the business of insurance in
40 California, or
- 41 2. **a nonadmitted carrier** eligible to provide insurance as an excess or
42 surplus lines insurer, in one or more States California. Any excess or

1 surplus insurance relied upon by the owner or operator to meet the
2 requirements of this subsection shall be *placed by and through an excess or*
3 *surplus lines broker currently licensed by the California Department of*
4 *Insurance; and shall be underwritten by a surplus lines insurer that is on the*
5 *California Department of Insurance's List of Approved Surplus Line Insurers*
6 *as being eligible to cover risks in California. ~~transacted by an admitted carrier,~~*
7 ~~and through an excess or surplus lines broker currently licensed by the~~
8 ~~California Department of Insurance.~~

9 (B) Each insurance policy shall be amended by attachment of the Hazardous
10 Waste Facility Liability Endorsement or evidenced by a Certificate of Liability
11 Insurance. If requested by the Department, the owner or operator shall provide
12 ~~the Department with a copy of the insurance policy; the copy of the insurance~~
13 ~~policy shall contain~~ containing original signatures.

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

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

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

25 ...

26 (b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface
27 impoundment, as defined in section 66260.10, landfill, as defined in section 66260.10, land
28 treatment facility, as defined in section 66260.10, or disposal miscellaneous unit ~~which that~~
29 is used to manage hazardous waste, or a group of such facilities, shall demonstrate to the
30 Department financial responsibility for bodily injury and property damage to third parties
31 caused by nonsudden accidental occurrences arising from operations of the facility or group
32 of facilities. The owner or operator shall have and maintain liability coverage for nonsudden
33 accidental occurrences in the amount of at least \$3 million per occurrence, as defined in
34 section 66260.10, with an annual aggregate of at least \$6 million, exclusive of legal defense
35 costs. An owner or operator who must meet the requirements of this section may combine
36 the required per-occurrence coverage levels for sudden and nonsudden accidental
37 occurrences into a single per-occurrence level, and combine the required annual aggregate
38 coverage levels for sudden and nonsudden accidental occurrences into a single annual
39 aggregate level. Owners or operators who combine coverage levels for sudden and
40 nonsudden accidental occurrences must maintain liability coverage in the amount of at least
41 \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be
42 demonstrated, as specified in subsections (b)(1) through (b)(7) of this section.

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

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

1. **an admitted carrier**, licensed to transact the business of insurance in California; or
2. **a nonadmitted carrier** eligible to provide insurance as an excess or surplus lines insurer in one or more States California. Any excess or surplus insurance relied upon by the owner or operator to meet the requirements of this subsection shall be **placed by and through an excess or surplus lines broker currently licensed by the California Department of Insurance; and shall be underwritten by a surplus lines insurer that is on the California Department of Insurance's List of Approved Surplus Line Insurers as being eligible to cover risks in California. transacted by an admitted carrier, and through an excess or surplus lines broker currently licensed by the California Department of Insurance.**

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

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

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

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

...

- (c) Request for variance.
- ...
- (d) Adjustments by the Department.
- ...
- (e) Period of coverage.
- ...
- (f) Financial test for liability coverage.

(1) An owner or operator may satisfy the requirements of this section by demonstrating that ~~he or she~~ the owner or operator passes a financial test as specified in this

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1 subsection. To pass this test, the owner or operator shall meet the criteria of subsection
2 (f)(1)(A) or (B).

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

- 4 1. net working capital and tangible net worth each at least six times the
5 amount of liability coverage to be demonstrated by this test; ~~and~~
- 6 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by
7 Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; ~~and~~
- 8 ~~2.3.~~ tangible net worth of at least \$4020 million; and
- 9 ~~3.4.~~ assets in the United States amounting to either:
 - 10 a. at least 90 percent of total assets; or
 - 11 b. at least six times the amount of liability coverage to be
12 demonstrated by this test.

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

- 14 1. a current rating for the most recent bond issuance of AAA, AA, A, or
15 BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued
16 by Moody's; ~~and~~
- 17 2. tangible net worth of at least \$4020 million; ~~and~~
- 18 3. tangible net worth at least six times the amount of liability coverage to
19 be demonstrated by this test; and
- 20 4. assets in the United States amounting to either:
 - 21 a. at least 90 percent of total assets; or
 - 22 b. at least six times the amount of liability coverage to be
23 demonstrated by this test.

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

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

29 (A) a letter signed by the owner's or operator's chief financial officer and worded
30 as specified in section 66264.151, subsection (g). The letter shall be on the
31 official letterhead stationary of the owner or operator, and shall contain an
32 original signature. An owner or operator may use the financial test to
33 demonstrate both assurance for closure or postclosure care, as specified by
34 sections 66264.143, subsection (f), 66264.145, subsection (f), 66265.143,
35 subsection (e) and 66265.145, subsection (e), and liability coverage as specified
36 in subsections (a) and (b) of this section. If an owner or operator is using the
37 financial test to cover both forms of financial responsibility, a separate letter is not
38 required;

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

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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. ~~in connection with that procedure, no matters came to the independent~~
9 ~~certified public accountant's attention which caused that accountant to~~
10 ~~believe that the specified data should be adjusted.~~ identification and
11 description of the specific accounting standards and guidance relied upon
12 to prepare the report.
- 13 (4) An owner or operator of a new facility shall submit the items specified in subsection
14 (f)(3) of this section to the Department at least 60 days before the date on which
15 hazardous waste is first received for transfer, treatment, storage, or disposal.
- 16 (5) After the initial submission of items specified in subsection (f)(3) of this section, the
17 owner or operator shall send updated information to the Department within 90 days after
18 the close of each succeeding fiscal year. This information shall consist of all items
19 specified in subsection (f)(3) of this section.
- 20 (6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this
21 section, liability coverage shall be obtained for the entire amount of coverage as
22 described in this section by use of the financial mechanisms described in this section.
23 Notice shall be sent to the Department of the owner's or operator's intent to obtain the
24 required coverage; notice shall be sent by either registered mail or by certified mail
25 within 90 days after any ~~occurrence~~ occurrence that prevents the owner or operator from
26 meeting the test requirements. Evidence of liability coverage shall be submitted to the
27 Department within 90 days after any occurrence that prevents the owner or operator
28 from meeting the requirements.
- 29 (7) The Department may, based on a reasonable belief that the owner or operator no
30 longer meets the requirements of subsection (f)(1) of this section, require reports of
31 financial condition at any time from the owner or operator in addition to those specified
32 in subsection (f)(3) of this section. If the Department finds, on the basis of such reports
33 or other information, that the owner or operator no longer meets the requirements of
34 subsection (f)(1) of this section, the owner or operator shall provide alternate financial
35 assurance for closure and postclosure care and evidence of the required liability
36 coverage as specified in this section within 30 days after notification of such a finding.
- 37 (8) The Department may disallow use of this test on the basis of qualifications in the
38 opinion expressed by the independent certified public accountant in his or her report on
39 examination of the owner's or operator's financial statements (see subsection (f)(3)(B)
40 of this section). An adverse opinion or a disclaimer of opinion will be cause for
41 disallowance. The Department will evaluate other qualifications on an individual basis.

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- 1 The owner or operator shall provide evidence of liability coverage for the amount
2 required as specified in this section within 30 days after notification of disallowance.
3 (9) The owner or operator is no longer required to submit the items specified in
4 subsection (f)(3) of this section when:
5 (A) an owner or operator substitutes alternate financial assurance for closure and
6 postclosure care and evidence of liability insurance as specified in this section; or
7 (B) the Department releases the owner or operator from the requirements of this
8 section in accordance with sections 66264.143, subsection (j), 66264.145,
9 subsection (j) and 66264.147, subsection (e).
10 (g) Guarantee for liability coverage.
11 ...
12 (h) Letter of credit for liability coverage.
13 ...
14 (i) Payment bond for liability coverage.
15 ...
16 (j) Trust fund for liability coverage.
17 ...
18 (k) Liability Coverage -Alternative Mechanism.
19 ...

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

24
25 ...

26
27 **§ 66264.151. Wording of the Instruments.**

28 ...
29 (e) A certificate of insurance, as specified in section 66264.143, subsection (e) or section
30 66264.145, subsection (e) or section 66265.143, subsection (d) or section 66265.145,
31 subsection (d) of this division, shall be worded as follows, except that instructions in
32 brackets are to be replaced with the relevant information and the brackets deleted:

33
34 CERTIFICATE OF INSURANCE FOR CLOSURE OR POSTCLOSURE CARE
35 Name and Address of Insurer (herein called the "Insurer"):
36 California License Number: [insert license number]
37 Admitted [] Excess or Surplus Lines []
38 Name and Address of Insured (herein called the "Insured"):
39 Facilities Covered: [List for each facility/transportable treatment unit (TTU): The
40 EPA Identification Number, name, address, and the amount of insurance for closure
41 and/or the amount for postclosure care (these amounts for all facilities covered shall
42 total the face amount shown below).]

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 Face Amount:
- 2 Policy Number:
- 3 Effective Date:
- 4

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

8 The Insurer further warrants that such policy conforms in all respects with the
9 requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15,
10 article 8, section 66264.143, subsection (e), section 66264.145, subsection (e), section
11 66265.143, subsection (d) and section 66265.145, subsection (d) as applicable and as
12 such regulations were constituted on the date shown below. It is agreed that any provision
13 of the policy inconsistent with such regulations is hereby amended to eliminate such
14 inconsistency.

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

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

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

33 (A) **an admitted carrier**, licensed to transact the business of insurance in
34 California; or

35 (B) **a nonadmitted carrier** eligible to provide insurance as an excess or surplus
36 lines insurer, in one or more States California. Any excess or surplus insurance
37 relied upon by the owner or operator to meet the requirements of this subsection
38 shall be placed by and through an excess or surplus lines broker currently licensed by
39 the California Department of Insurance; and shall be underwritten by a surplus lines
40 insurer that is on the California Department of Insurance's List of Approved Surplus
41 Line Insurers as being eligible to cover risks in California. ~~transacted by an admitted~~
42 ~~carrier, and through an excess or surplus lines broker currently licensed by the~~
43 ~~California Department of Insurance.~~

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1
2 Whenever requested by the Department of Toxic Substances Control (DTSC) of the
3 State of California, the Insurer agrees to furnish to DTSC a duplicate original of the original
4 policy listed above, including all endorsements thereon.

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

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

11
12 [Authorized signature for Insurer]
13 [Name of person signing]
14 [Title of person signing] Signature
15 of witness or notary: [Date]

16 ...
17 (f) A letter from the chief financial officer, as specified in section 66264.143, subsection (f)
18 or section 66264.145, subsection (f), or section 66265.143, subsection (e) or section
19 66265.145, subsection (e) of this division, shall be worded as follows, except that
20 instructions in brackets are to be replaced with the relevant information and the brackets
21 deleted:

22
23 LETTER FROM CHIEF FINANCIAL OFFICER

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

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

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

39
40 1. This firm is the owner or operator of the following facilities/TTUs for which financial
41 assurance for closure or postclosure care is demonstrated through the financial test

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

5
6 2. This firm guarantees, through the guarantee specified in section 66264.143,
7 subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and
8 section 66265.145, subsection (e) of California Code of Regulations, title 22, division
9 4.5, chapter 14 and 15, article 8, the closure and/or postclosure care of the following
10 facilities/TTUs owned or operated by the guaranteed party. The current cost estimates
11 for the closure or postclosure care so guaranteed are shown for each facility/TTU:____.

12 The firm identified above is [insert one or more: (1) The direct or higher-tier parent
13 corporation of the owner or operator; (2) owned by the same parent corporation as the
14 parent corporation of the owner or operator, and receiving the following value in
15 consideration of this guarantee [insert dollars]; or (3) engaged in the following substantial
16 business relationship with the owner or operator [insert business relationship], and
17 receiving the following value in consideration of the guarantee [insert dollars]]. [Attach a
18 written description of the business relationship or a copy of the contract establishing such
19 relationship to this letter.]
20

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

29
30 4. This firm is the owner or operator of the following hazardous waste management
31 facilities/TTUs for which financial assurance for closure or, if a disposal facility, postclosure
32 care, is not demonstrated either to U.S. Environmental Protection Agency or a State
33 through the financial test or any other financial assurance mechanism specified in subpart
34 H of 40 CFR parts 264 and 265, California Code of Regulations, title 22, division 4.5,
35 chapter 14 or 15, article 8 or equivalent or substantially equivalent State mechanisms. The
36 current closure and/or postclosure cost estimates not covered by such financial assurance
37 are shown for each facility/TTU:_____.

38
39 5. This firm is using the financial test, or its equivalent, to provide financial assurance or
40 guarantee to the following governmental agencies: [list each agency and the amount
41 assured]
42

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

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

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

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

11 [Fill in Alternative I if the criteria of paragraph (f)(1)(A) of sections 66264.143 and
12 66264.145, or of paragraph (e)(1)(A) of sections 66265.143 and 66265.145 of this division
13 are used. Fill in Alternative II of the criteria of paragraph (f)(1)(B) of sections 66264.143
14 and 66265.145, or of paragraph (e)(1)(B) of sections 66265.143 and 66265.145 of this
15 division are used.]

16
17 **ALTERNATIVE I**

18
19 1. Sum of current closure and postclosure cost estimate (total of all cost estimates
20 shown in the ~~five~~ six paragraphs above) \$ _____

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

24 *3. Tangible net worth \$ _____

25 *4. Net worth \$ _____

26 *5. Current assets \$ _____

27 *6. Current liabilities \$ _____

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

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

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

33 10. Is line 3 at least \$1020 million? [Yes/No]

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

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

36 *13. Are at least 90% of firm's assets located in the U.S.?

37 If not, complete line 14 [Yes/No]

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

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

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

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

42 18. Current corporate credit rating of this firm,

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 and name of rating service
2 19. Date of corporate credit rating
3 _____

4 ALTERNATIVE II

5
6 1. Sum of current closure and postclosure cost estimates [total of all cost estimates
7 shown in the ~~five~~six paragraphs above] \$ _____

8 2. Current bond rating of most recent issuance of this firm and name of rating service .
9 _____

10 3. Date of issuance of bond _____

11 4. Date of maturity of bond _____

12 *5. Tangible net worth [if any portion of the closure and postclosure cost estimates is
13 included in "total liabilities" on your firm's financial statements, you may add the amount of
14 that portion to this line] \$ _____

15 *6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the
16 U.S.) \$ _____

17 7. Is line 5 at least \$~~20~~10-million? [Yes/No]

18 8. Is line 5 at least 6 times line 1? [Yes/No]

19 *9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10
20 [Yes/No]

21 10. Is line 6 at least 6 times line 1? [Yes/No]
22

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

27 [Signature]
28 [Name] [Title]
29 [Date]
30

31 (g) A letter from the chief financial officer, as specified in section 66264.147, subsection
32 (f) or section 66265.147, subsection (f) of this division, shall be worded as follows,
33 except that instructions in brackets are to be replaced with the relevant information and
34 the brackets deleted.
35

36 LETTER FROM CHIEF FINANCIAL OFFICER

37
38 Department of Toxic Substances Control
39 Financial Responsibility Section
40 8800 Cal Center Drive
41 Sacramento, California 95826

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1
2 I am the chief financial officer of [insert firm's name and address]. This letter is in support
3 of the use of the financial test to demonstrate financial responsibility for liability coverage
4 [insert "and closure and/or postclosure care" if applicable] as specified in California Code
5 of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

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

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

16 The firm identified above guarantees, through the guarantee specified in California
17 Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections
18 66264.147 and 66265.147, liability coverage for [insert "sudden" or "nonsudden" or both
19 "sudden and nonsudden"] accidental occurrences at the following facility(ies)/TTU(s)
20 owned or operated by the following:

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

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

36
37 1. The firm identified above is the owner or operator of the following facilities/TTUs for
38 which financial assurance for closure and/or postclosure or liability coverage is
39 demonstrated through the financial test as specified in California Code of Regulations,
40 title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f),
41 section 66264.145, subsection (f), section 66265.143, subsection (e), and section

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 66265.145, subsection (e). The current closure and/or postclosure cost estimates
2 covered by the test are shown for each facility/TTU:

3
4 2. The firm identified above guarantees, through the guarantee as specified in California
5 Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143,
6 subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and
7 section 66265.145, subsection (e), the closure and/or postclosure care or liability
8 coverage of the following facilities/TTUs owned or operated by the guaranteed party. The
9 current cost estimates for the closure or postclosure care so guaranteed are shown for
10 each facility/TTU:

11
12 3. In States where the U.S. Environmental Protection Agency is not administering the
13 financial requirements of subpart H of 40 CFR parts 264 and 265, this firm as owner,
14 operator or guarantor is demonstrating financial assurance for the closure or postclosure
15 care of the following facilities/TTUs through the use of a financial test equivalent or
16 substantially equivalent to the financial test specified in California Code of Regulations, title
17 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section
18 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145,
19 subsection (e). The current closure and/or postclosure cost estimates covered by such a
20 test are shown for each facility/TTU:

21
22 4. The firm identified above is the owner or operator of the following facilities/TTUs for
23 which financial assurance for closure or, if a disposal facility, postclosure care, is not
24 demonstrated either to U.S. Environmental Protection Agency or a State through the
25 financial test or any other financial assurance mechanism as specified in California Code
26 of Regulations, title 22, division 4.5, chapters 14 and 15, article 8 or equivalent or
27 substantially equivalent State mechanisms. The current closure and/or postclosure cost
28 estimates not covered by such financial assurance are shown for each facility/TTU:

29
30 5. This firm is using the financial test, or its equivalent, to provide financial assurance or
31 guarantee to the following governmental agencies: [list each agency and the amount
32 assured]

33
34 56. The firm is the owner or operator or guarantor of the following Underground Injection
35 Control facilities for which financial assurance for plugging and abandonment is required
36 under 40 CFR part 144 and is assured through a financial test. The current closure cost
37 estimates as specified in 40 CFR 144.62 are shown for each facility:

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

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

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 This firm is using [insert "Alternative I" or "Alternative II"] for Part A [and [if this
2 financial test includes closure and/or postclosure care, insert "Alternative I" or
3 "Alternative II"] for Part B].
4

5 Part A. Liability Coverage for Accidental Occurrences
6

7 [Fill in Alternative I if the criteria of paragraph (f)(1)(A) of section 66264.147 or section
8 66265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(B) of section
9 66264.147 or section 66265.147 are used.]
10

11 ALTERNATIVE I
12

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

29 ALTERNATIVE II
30

- 31 1. Amount of annual aggregate liability coverage to be demonstrated \$ _
32 2. Current bond rating of most recent issuance and
33 name of rating service \$ _____
34 3. Date of issuance of bond \$ _____
35 4. Date of maturity of bond \$ _____
36 *5. Tangible net worth \$ _____
37 *6. Total assets in the United States [required only if less than 90 percent of assets are
38 located in the United States] \$ _____
39 7. Is line 5 at least \$2040-million? [Yes/No]
40 8. Is line 5 at least 6 times line 1? [Yes/No]
41 *9. Are at least 90 percent of assets located in the United States? [Yes/No]
10. Is line 9 at least 6 times line 1? [Yes/No]

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1
2 [Fill in Part B if you are using the financial test to demonstrate assurance of both liability
3 coverage and closure or postclosure care.]
4

5 Part B. Closure or Postclosure Care and Liability Coverage
6

7 [Fill in Alternative I if the criteria of paragraphs (f)(1)(A) of 66264.143 or 66264.145 and/or
8 (f)(1)(A) of 66264.147 are used or if the criteria of paragraphs (e)(1)(A) of 66265.143 or
9 66265.145 and/or (f)(1)(A) of 66265.147 are used. Fill in Alternative II if the criteria of
10 paragraphs (f)(1)(B) of 66264.143 or 66264.145 and/or (f)(1)(B) of 66264.147 are used or if
11 the criteria of paragraphs (e)(1)(B) of 66265.143 or 66265.145 and (f)(1)(B) of 66265.147
12 are used.]
13

14 ALTERNATIVE I
15

- 16 1. Sum of current closure and postclosure cost estimates (Total of all cost estimates
17 shown in the paragraphs of the letter to the Director of the Department of Toxic
18 Substances Control) \$ _____
19 2. Amount of annual aggregate liability coverage to be demonstrated \$ _____
20 3. Sum of lines 1 and 2 \$ _____
21 *4. Total liabilities (if any portion of your closure or postclosure cost estimate is included in
22 your total liabilities, you may deduct that portion from this line and add that amount to lines
23 5 and 6) \$ _____
24 *5. Tangible net worth \$ _____
25 *6. Net worth \$ _____
26 *7. Current assets \$ _____
27 *8. Current liabilities \$ _____
28 9. Net working capital (line 7 minus line 8) \$ _____
29 10. The sum of net income plus depreciation, depletion, and amortization \$ _____
30 *11. Total assets in the United States (required only if less than 90 percent of
31 firm's assets are located in the United States) \$ _____
32 12. Is line 5 at least \$~~20~~ 40 million? [Yes/No]
33 13. Is line 5 at least 6 times line 3? [Yes/No]
34 14. Is line 9 at least 6 times line 3? [Yes/No]
35 *15. Are at least 90 percent of the firm's assets located in the United States? If not,
36 complete line 16 [Yes/No]
37 16. Is line 11 at least 6 times line 3? [Yes/No]
38 17. Is line 4 divided by line 6 less than 2.0? [Yes/No]
39 18. Is line 10 divided by line 4 greater than 0.1? [Yes/No]
40 19. Is line 7 divided by line 8 greater than 1.5? [Yes/No]
41 20. Current corporate credit rating of this firm and name of rating service
42 21. Date of corporate credit rating

ALTERNATIVE II

1
2
3
4 1. Sum of current closure and postclosure cost estimates (Total of all cost estimates
5 shown in the paragraphs of the letter to the Director of the Department of Toxic
6 Substances Control \$ _____

7 2. Amount of annual aggregate liability coverage to be demonstrated \$

8 3. Sum of lines 1 and 2 \$ _____

9 4. Current bond rating of most recent issuance and name of rating service: _____

10
11 5. Date of issuance of bond: _____

12 6. Date of maturity of bond: _____

13 *7. Tangible net worth (if any portion of the closure and post-closure cost estimates is
14 included in "total liabilities" on your firm's financial statements, you may add the amount of
15 that portion to this line.) _____

16 *8. Total assets in the United States (required only if less than 90 percent of firm's
17 assets are located in the United States) \$ _____

18 9. Is line 7 at least \$20-40-million? [Yes/No]

19 10. Is line 7 at least 6 times line 3? [Yes/No]

20 *11. Are at least 90 percent of the firm's assets located in the United States? If not,
21 complete line 12. [Yes/No]

22 12. Is line 8 at least 6 times line 3? [Yes/No]

23
24 I hereby certify that the wording of this letter is identical to the wording as specified in
25 California Code of Regulations, title 22, section 66264.151, subsection (g) and is being
26 executed in accordance with the requirements of California Code of Regulations, title 22,
27 division 4.5, chapter 14 and 15, article 8.

28 [Signature]

29 [Name] [Title]

30 [Date]

31
32 (h)(1) A corporate guarantee, as specified in section 66264.143, subsection (f) or section
33 66264.145, subsection (f), or section 66265.143, subsection (e) or section 66265.145,
34 subsection (e) of this division, shall be worded as follows, except that instructions in
35 brackets are to be replaced with the relevant information and the brackets deleted:

36 ...

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

HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT

1
2
3 1. This endorsement certifies that the Insurer has issued liability insurance covering
4 bodily injury and property damage to [name of insured], [address of insured] in connection
5 with the insured's obligation to demonstrate financial responsibility under California Code
6 of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and
7 66265.147. The coverage applies at [list EPA Identification Number, name, and address
8 for each facility/transportable treatment unit (TTU)] for [insert "sudden accidental
9 occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental
10 occurrences"]; if coverage is for multiple facilities and the coverage is different for different
11 facilities, indicate which facilities are insured for sudden accidental occurrences, which are
12 insured for nonsudden accidental occurrences, and which are insured for both]. The limits
13 of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate"
14 limits of the Insurer's liability], exclusive of legal defense costs. The coverage provided by
15 the above policy is [insert "primary" or "excess"]. If excess coverage, the primary coverage
16 mechanism shall also be demonstrated.
17

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

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

25 (b) The Insurer is liable for the payment of amounts within any deductible applicable to
26 the policy, with a right of reimbursement by the insured for any such payment made by
27 the Insurer. This provision does not apply with respect to that amount of any
28 deductible for which coverage is demonstrated as specified in California Code of
29 Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and
30 66265.147.

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

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

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

- 1
2 3. The Insurer certifies that: it is an admitted carrier,
3 (a) an admitted carrier, licensed to transact the business of insurance in California; or
4 (b) a nonadmitted carrier eligible to provide insurance as an excess or surplus lines insurer in
5 California. Any excess or surplus insurance relied upon by the owner or operator to meet the
6 requirements of this subsection shall be placed by and through an excess or surplus lines
7 broker currently licensed by the California Department of Insurance; and shall be
8 underwritten by a surplus lines insurer that is on the California Department of Insurance's
9 List of Approved Surplus Line Insurers as being eligible to cover risks in California.
10 ~~(a) it is licensed to transact the business of insurance in California; or~~
11 ~~(b) it is eligible to provide insurance as an excess or surplus lines insurer, in~~
12 ~~California, and the insurance has been transacted by and through a surplus lines~~
13 ~~broker currently licensed by the California Department of Insurance.~~

14 Attached to and forming part of policy No. [insert policy number] issued by [insert name
15 of Insurer], herein called the Insurer, of [insert address of Insurer] to [insert name of
16 insured] of [insert address of insured] this [insert day] day of [insert month] , [insert year].
17 The effective date of said policy is [insert day] day of [insert month]. California License
18 Number: [insert license number] Admitted [] Excess or Surplus Lines []
19

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

26 [Signature of Authorized Representative of Insurer]
27 [Type name]
28 [Title], Authorized Representative of [name of Insurer]
29 [Address of Representative]
30

31 (j) A certificate of liability insurance as required in section 66264.147 or section 66265.147
32 shall be worded as follows, except that the instructions in brackets are to be replaced with
33 the relevant information and the brackets deleted:
34

35 HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE

36
37 1. [Insert name of Insurer], (the "Insurer"), of [insert address of Insurer] hereby certifies
38 that it has issued liability insurance covering bodily injury and property damage to [insert
39 name of insured], (the "insured"), of [insert address of insured] in connection with the
40 insured's obligation to demonstrate financial responsibility under California Code of
41 Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and
42 66265.147. The coverage applies at the facilities/transportable treatment units (TTU) [list

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 EPA Identification Number, name, and address for each facility/TTU] for [insert "sudden
2 accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden
3 accidental occurrences"; if coverage is for multiple facilities and the coverage is different for
4 different facilities, indicate which facilities are insured for sudden accidental occurrences,
5 which are insured for nonsudden accidental occurrences, and which are insured for both].
6 The limits of liability are [insert the dollar amount of the "each occurrence" and "annual
7 aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is
8 provided under policy number [insert policy number], issued on [insert date]. The effective
9 date of said policy is [insert date]. The coverage provided by the above policy is [insert
10 "primary" or "excess"]. If excess coverage, the primary coverage mechanism shall also be
11 demonstrated.

12

13 2. The Insurer further certifies the following with respect to the insurance
14 described above:

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

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

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

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

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

35

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

37 (a) an admitted carrier, licensed to transact the business of insurance in California; or
38 (b) a nonadmitted carrier eligible to provide insurance as an excess or surplus lines insurer in
39 California. Any excess or surplus insurance relied upon by the owner or operator to meet the
40 requirements of this subsection shall be placed by and through an excess or surplus lines
41 broker currently licensed by the California Department of Insurance; and shall be

1 *underwritten by a surplus lines insurer that is on the California Department of Insurance's*
2 *List of Approved Surplus Line Insurers as being eligible to cover risks in California.*
3

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

11
12 [Signature of authorized representative of Insurer]

13 [Type name]

14 [Title],

15 Authorized Representative of [name of Insurer]

16 [Address of Representative]

17 ...
18

19 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, and 25245, 58004, and*
20 *58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; and*
21 *40 CFR Section 264.151.*
22
23

DIVISION 4.5, TITLE 22, CALIFORNIA CODE OF REGULATIONS

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

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

§ 66265.16. Personnel Training.

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

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

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

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

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

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

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

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

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

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

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

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

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

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

4 The certification must include the following:

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

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

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

15
16 *Note: Authority cited: Sections 208, 25150, ~~and 25159~~, 25200.21, 58004, and 58012, Health*
17 *and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR*
18 *Section 265.16.*

19
20 ...

21
22 **§ 66265.143. Financial Assurance for Closure.**

23 ...

24 (a) Closure trust fund.

25 ...

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

27 ...

28 (c) Closure letter of credit.

29 ...

30 (d) Closure insurance.

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

39 (A) **an admitted carrier**, licensed to transact the business of insurance in
40 California; or

41 (B) **a nonadmitted carrier** eligible to provide insurance as an excess or surplus
42 lines insurer in ~~one or more States~~ California. Any excess or surplus insurance

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 relied upon by the owner or operator to meet the requirements of this subsection
2 shall be placed by and through an excess or surplus lines broker currently licensed by
3 the California Department of Insurance; and shall be underwritten by a surplus lines
4 insurer that is on the California Department of Insurance's List of Approved Surplus
5 Line Insurers as being eligible to cover risks in California. ~~transacted by an admitted~~
6 ~~carrier, and through an excess or surplus lines broker currently licensed by the~~
7 ~~California Department of Insurance.~~

8 ...

9 (e) Financial test and guarantee for closure.

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

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

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

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

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

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1 facilities regulated by the Department and the current plugging and
2 abandonment cost estimates.

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

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

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

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

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

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

26 2. in connection with that procedure, no matters came to the independent
27 certified public accountant's attention which caused that accountant to
28 believe that the specified data should be adjusted; identification and
29 description of the specific accounting standards and guidance relied upon
30 to prepare the report.

31 ...
32 ~~(10) The owner or operator shall establish a trust fund that conforms to the~~
33 ~~requirements specified in subsection (a) of this section, within 180 days of the~~
34 ~~effective date of this section or the date of the next submittal required by subsection~~
35 ~~(e)(5) of this section, whichever is later. The value of the trust fund shall be equal to~~
36 ~~20 percent of the current closure cost estimate as specified in section 66265.142.~~
37 ~~Payments may be made over a period of ten (10) years beginning with establishment~~
38 ~~of the fund. The payments into the trust fund shall comply with the following schedule:~~

39 ~~(A) An initial payment shall be made upon establishment of the trust fund in an~~
40 ~~amount equal to two percent of the current closure cost as specified in section~~
41 ~~66265.142.~~

42 ~~(B) Subsequent annual payments shall be equivalent to two percent of the~~

1 ~~current closure cost estimate as specified in section 66265.142 until the value~~
2 ~~of the trust fund is equal to 20 percent of the closure cost estimate.~~
3 ~~(C) Once the current value of the trust fund is equal to 20 percent of the closure~~
4 ~~cost estimate as specified in section 66265.142, the owner or operator shall~~
5 ~~maintain the trust fund at a minimum value of 20 percent of the current closure~~
6 ~~cost estimate.~~

7 ~~(10)(11)~~ An owner or operator may not rely on any assets to meet the requirements of
8 this section if those same assets serve as the basis of satisfying any financial assurance
9 or financial guarantee requirement imposed by any other "governmental agency," as
10 defined in California Civil Code of section 1633.2, subdivision (i).

- 11 (f) Use of multiple financial mechanisms.
- 12 ...
- 13 (g) Use of a financial mechanism for multiple facilities.
- 14 ...
- 15 (h) Alternative Financial Mechanism for Closure Costs.
- 16 ...
- 17 (i) Release of the owner or operator from the requirements of this section.
- 18 ...

19
20 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, and 25245, 58004, and*
21 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25245, Health and Safety*
22 *Code; 40 CFR Section 265.143.*

24 **§ 66265.144. Cost Estimate for Postclosure Care.**

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

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

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

39 (b) During the active life of the facility, the owner or operator shall adjust the postclosure
40 cost estimate for inflation within 60 days prior to the anniversary date of the establishment
41 of the financial instrument(s) used to comply with section 66265.145. For owners or
42 operators using the financial test or corporate guarantee, the postclosure care cost

1 estimate shall be updated for inflation no later than 30 days after the close of the firm's
2 fiscal year and before submission of updated information to the Department as specified in
3 section 66265.145~~(e)(4)(d)(5)~~. The adjustment shall be made by recalculating the
4 postclosure cost estimate in current dollars or by using an inflation factor derived from the
5 most recent Implicit Price Deflator for Gross National Product published by the U.S.
6 Department of Commerce in its Survey of Current Business as specified in ~~subsections~~
7 ~~(b)(1) and (b)(2) of this section paragraphs (1) and (2) of this subsection~~. The inflation
8 factor is the result of dividing the latest published annual Deflator by the Deflator for the
9 previous year.

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

15 (d) The owner or operator shall keep the following at the facility during the operating life of
16 the facility: the latest postclosure cost estimate prepared in accordance with ~~section~~
17 ~~66264.144(a) and (e)~~ subsections (a) and (c) and, when this estimate has been adjusted in
18 accordance with subsection (b)~~section 66264.144(b)~~, the latest adjusted postclosure cost
19 estimate.

20
21 *NOTE: Authority cited: Sections 208, 25150, 25159, 25159.5, 25200.21, and 25245, 58004,*
22 *and 58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40*
23 *CFR Section 265.144.*

24 25 **§ 66265.145. Financial Assurance for Postclosure Care.**

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

30 ...

31 (d) Postclosure insurance.

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

40 (A) an admitted carrier, licensed to transact the business of insurance in
41 California; or

1 (B) a nonadmitted carrier eligible to provide insurance as an excess or surplus
2 lines insurer, in one or more States California. Any excess or surplus insurance
3 relied upon by the owner or operator to meet the requirements of this subsection
4 shall be placed by and through an excess or surplus lines broker currently licensed by
5 the California Department of Insurance; and shall be underwritten by a surplus lines
6 insurer that is on the California Department of Insurance's List of Approved Surplus
7 Line Insurers as being eligible to cover risks in California. ~~transacted by an admitted~~
8 carrier, and through an excess or surplus lines broker currently licensed by the
9 California Department of Insurance.

10 ...

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

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

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

- 17 1. two of the following three ratios: a ratio of total liabilities to net worth
18 less than 2.0; a ratio of the sum of net income plus depreciation,
19 depletion and amortization to total liabilities greater than 0.1; and a ratio
20 of current assets to current liabilities greater than 1.5; ~~and~~
- 21 2. a current corporate credit rating of AAA, AA, A₊ or BBB as issued by
22 Standard and Poor's or Aaa, Aa, A₊ or Baa as issued by Moody's;
23 ~~23.~~ net working capital and tangible net worth each at least six times
24 the sum of the current closure and postclosure cost estimates and the
25 current plugging and abandonment cost estimates; and
- 26 ~~34.~~ tangible net worth of at least \$1020 million; and
- 27 ~~45.~~ assets in the United States amounting to at least 90 percent of total
28 assets or at least six times the sum of the current closure and
29 postclosure cost estimates for all of the owner's or operator's hazardous
30 waste facilities regulated by the Department and the current plugging and
31 abandonment cost estimates.

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

- 33 1. a current rating for his or her most recent bond issuance of AAA, AA,
34 A₊ or BBB as issued by Standard and Poor's or Aaa, Aa, A₊ or Baa as
35 issued by Moody's; ~~and~~
- 36 2. tangible net worth at least six times the sum of the current closure and
37 postclosure cost estimates and the current plugging and abandonment
38 cost estimates; ~~and~~
- 39 3. tangible net worth of at least \$1020 million; and
- 40 4. assets located in the United States amounting to at least 90 percent of
41 total assets or at least six times the sum of the current closure and
42 postclosure cost estimates for all of the owner's or operator's hazardous
43 waste facilities regulated by the Department and the current plugging

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1 and abandonment cost estimates.

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

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

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

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

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

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

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

30 ...

31 ~~(11) The owner or operator shall establish a trust fund that conforms to the~~
32 ~~requirements specified in subsection (a) of this section, within 180 days of the effective~~
33 ~~date of this section or the date of the next submittal required by subsection (e)(5) of~~
34 ~~this section, whichever is later. The value of the trust fund shall be equal to 20 percent~~
35 ~~of the current postclosure cost estimate as specified in section 66265.144.~~

36 ~~Payments may be made over a period of ten (10) years beginning with establishment~~
37 ~~of the fund. The payments into the trust fund shall comply with the following schedule:~~

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

41 ~~(B) Subsequent annual payments shall be equivalent to two percent of the~~
42 ~~current postclosure cost estimate as specified in section 66265.144 until the~~

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

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

...

(f) Use of multiple financial mechanisms.

...

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

...

(h) Alternative Financial Mechanism for Postclosure Care.

...

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

...

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

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

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

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

§ 66265.147. Liability Requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste transfer, treatment, storage, or disposal facility or a group of such facilities, shall demonstrate to the Department financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. Except as specified in Section 67450.16, the owner or operator

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1 shall have and maintain liability coverage for sudden accidental occurrences in the amount
2 of at least \$1 million per occurrence with an annual aggregate of at least \$2 million,
3 exclusive of legal defense costs. This liability coverage may be demonstrated, as specified
4 in subsections (a)(1), (2), (3), (4), (5), (6) or (8) of this section, and for an operator which is a
5 public agency proposing to operate a household hazardous waste collection facility,
6 subsection (7).

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

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

- 10 1. **an admitted carrier**, licensed to transact the business of insurance in
11 California; or
12 2. **a nonadmitted carrier** eligible to provide insurance as an excess or
13 surplus lines insurer, in one or more States California. Any excess or
14 surplus insurance relied upon by the owner or operator to meet the
15 requirements of this subsection shall be **placed by and through an excess**
16 **or surplus lines broker currently licensed by the California Department of**
17 **Insurance; and shall be underwritten by a surplus lines insurer that is on the**
18 **California Department of Insurance's List of Approved Surplus Line Insurers**
19 **as being eligible to cover risks in California. ~~transacted by an admitted~~**
20 **carrier, and through an excess or surplus lines broker currently licensed**
21 **by the California Department of Insurance.**

22 ...

23 (b) Coverage for nonsudden ~~non-sudden~~ accidental occurrences. An owner or operator of
24 a surface impoundment as defined in section 66260.10, landfill as defined in section
25 66260.10, or land treatment facility as defined in section 66260.10 which is used to
26 manage hazardous waste, or a group of such facilities, shall demonstrate to the
27 Department financial responsibility for bodily injury and property damage to third parties
28 caused by nonsudden ~~non-sudden~~ accidental occurrences arising from operations of the
29 facility or group of facilities. The owner or operator shall have and maintain liability
30 coverage for nonsudden ~~non-sudden~~ accidental occurrences in the amount of at least \$3
31 million per occurrence, as defined in section 66260.10 with an annual aggregate of at least
32 \$6 million, exclusive of legal defense costs. An owner or operator who must meet the
33 requirements of this section may combine the required per-occurrence coverage levels for
34 sudden and nonsudden ~~non-sudden~~ accidental occurrences into a single per-occurrence
35 level, and combine the required annual aggregate coverage levels for sudden and
36 nonsudden accidental occurrences into a single annual aggregate level. Owners or
37 operators who combine coverage levels for sudden and nonsudden ~~non-sudden~~ accidental
38 occurrences shall maintain liability coverage in the amount of at least \$4 million per
39 occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated
40 as specified in subsections (b)(1) through (7) of this section.

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

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

- 2 1. an admitted carrier, licensed to transact the business of insurance in
3 California; or
4 2. a nonadmitted carrier eligible to provide insurance as an excess or
5 surplus lines insurer, in one or more States California. Any excess or
6 surplus insurance relied upon by the owner or operator to meet the
7 requirements of this subsection shall be placed by and through an excess
8 or surplus lines broker currently licensed by the California Department of
9 Insurance; and shall be underwritten by a surplus lines insurer that is on the
10 California Department of Insurance's List of Approved Surplus Line Insurers
11 as being eligible to cover risks in California. ~~transacted by an admitted~~
12 ~~carrier, and through an excess or surplus lines broker currently licensed~~
13 ~~by the California Department of Insurance.~~

14 ...

15 (c) Request for variance.

16 ...

17 (d) Adjustments by the Department.

18 ...

19 (e) Period of coverage.

20 ...

21 (f) Financial test for liability coverage.

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

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

- 27 1. net working capital and tangible net worth each at least six times the
28 amount of liability coverage to be demonstrated by this test; ~~and~~
29 2. a current corporate credit rating of AAA, AA, A₊ or BBB as issued by
30 Standard and Poor's or Aaa, Aa, A₊ or Baa as issued by Moody's;
31 ~~23.~~ 23. tangible net worth of at least \$~~10~~20 million; and
32 ~~34.~~ 34. assets in the United States amounting to either:
33 a. at least 90 percent of total assets; or
34 b. at least six times the amount of liability coverage to be
35 demonstrated by this test.

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

- 37 1. a current rating for his or her most recent bond issuance of AAA, AA,
38 A₊ or BBB as issued by Standard and Poor's, or Aaa, Aa, A₊ or Baa as
39 issued by Moody's; ~~and~~
40 2. tangible net worth of at least \$~~10~~20 million; ~~and~~
41 3. tangible net worth at least six times the amount of liability
42 coverage to be demonstrated by this test; and

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 4. assets in the United States amounting to either:
- 2 a. at least 90 percent of total assets; or
- 3 b. at least six times the amount of liability coverage to be
- 4 demonstrated by this test.

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

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

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

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

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

- 27 1. a statement that the independent certified public accountant has
28 compared the data which the letter from the chief financial officer specifies
29 as having been derived from the independently audited, year-end financial
30 statements for the latest fiscal year with the amounts in such financial
31 statements; and
- 32 2. ~~in connection with that procedure, no matters came to the independent~~
33 ~~certified public accountant's attention which caused that accountant to~~
34 ~~believe that the specified data should be adjusted.~~ identification and
35 description of the specific accounting standards and guidance relied upon
36 to prepare the report.

37 ...

38 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, 25245, 58004 and 58012,*
39 *Health and Safety Code. Reference: Sections 25200.1 and 25245, Health and Safety Code;*
40 *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) ~~and B.5 of Appendix I~~ of Title 22 of the California Code of
7 Regulations, to read:

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

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

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

22
23 ~~(23)(24) Community Involvement Profile.~~
24 A community involvement profile (Profile) that includes needs to include only reasonably
25 readily available information for the surrounding community. The surrounding
26 community for purposes of the information included in the Profile must include all the
27 United States census tracts in which that border the facility is located. If the facility is
28 located in a census tract that has a population of less than 2,000 people, any other
29 census tracts located within one (1) mile of the facility must also be included in the
30 surrounding community. The Profile must include all the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 ...

16 **§ 66270.14(c)**

17 ...

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

24 ...

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

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

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

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

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

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

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

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- 1 (2) The ~~H~~azardous ~~W~~aste ~~F~~acility ~~P~~ermit ~~H~~health ~~R~~isk ~~A~~ssessment process may
2 include up to three steps:
- 3 (A) A hazardous waste facility permit health risk assessment questionnaire
4 ("HRA Questionnaire") completed in accordance with paragraph (e)(4):
5 (B) A ~~S~~creening ~~L~~evel ~~H~~health ~~R~~isk ~~A~~ssessment for a hazardous waste
6 facility permit ("Screening Level HRA") completed in accordance with paragraphs
7 (e)(10) through (e)(15):
8 (C) A ~~B~~aseline ~~H~~health ~~R~~isk ~~A~~ssessment for a hazardous waste facility permit
9 ("Baseline HRA") completed in accordance with paragraphs (e)(16) through
10 (e)(21):
- 11 (3) The ~~A~~n applicant for hazardous waste facility permit shall submit to the Department
12 an HRA Questionnaire that complies with paragraphs (e)(4) through (e)(7) requirements
13 concurrently with the Part B permit application.
- 14 (A) The ~~A~~n applicant shall also submit a Baseline HRA work plan in accordance
15 with paragraphs (e)(1) and (e)(16) requirements, concurrently with the Part B
16 permit application for a hazardous waste facility permit if applying for any of the
17 following types of hazardous waste facility permits:
- 18 1. Class 1 Landfill;
19 2. large hazardous waste treatment facility with an operating permit
20 pursuant to Title V of the federal Clean Air Act (42 U.S.C. §1857 et seq.)
21 or the California Clean Air Act of 1988 (Health & Saf. Code, §39000 et
22 seq.) or their implementing regulations and rules;
23 3. ~~H~~azardous waste incinerator; or
24 4. ~~B~~oiler or industrial furnace burning hazardous waste.
- 25 (4) Hazardous Waste Facility Permit Health Risk Assessment Questionnaire. The ~~A~~n
26 applicant for a hazardous waste facility permit shall submit ~~an~~ a completed HRA
27 Questionnaire that ~~meets~~ includes the following information:
- 28 (A) ~~The applicant shall provide available~~ Information that can be reasonably
29 ascertained by ~~the owner or operator~~ an applicant to assess the potential for the
30 public to be exposed to hazardous wastes or hazardous constituents from
31 sources related to the facility.
- 32 (B) ~~The HRA Questionnaire shall include all the following:~~
33 (B) ~~1. a facility description~~ Inventory of potential facility releases, emissions, and
34 discharges in accordance with paragraph (e)(5);
35 (C) ~~2. completion of a~~ A completed health risk assessment assumptions checklist
36 in accordance with paragraph (e)(6); and
37 (D) ~~3. a~~ A conceptual site model of exposures or potential exposures that
38 organizes the existing data and documents known site conditions in accordance
39 with paragraph (e)(7).
- 40 (5) Inventory of Potential Facility Releases, Emissions, and Discharges. The applicant
41 shall provide an inventory of potential facility releases, emissions, and discharges that
42 includes a description of hazardous waste facility operations and known emissions or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 1. identification of chemicals of potential concern for each environmental
14 media; and

15 2. chemicals of potential concern's transformation or degradation
16 products, if applicable.

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

21 1. identification of the inherent chemical hazard traits or toxicity
22 characteristics of the chemicals of potential concern;

23 2. regulatory screening levels for each chemical of potential concern listed
24 by environmental media for the protection of human health developed by
25 state or federal environmental agencies, if available; and

26 3. categories of receptors likely affected or most susceptible to the
27 chemicals of potential concern, if applicable.

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

29 1. chemical transport processes that influence the movement of each
30 chemical of potential concern;

31 2. identification of, and rationale for, exposure scenarios of each of the
32 chemicals of potential concern in environmental media;

33 3. identification of, and rationale for, potential receptors; and

34 4. identification of, and rationale for, potentially complete or complete
35 exposure pathways.

36 (7) Conceptual Site Model.

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

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

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

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

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

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

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

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

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

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

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

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

7 (B) The Department shall either:

8 1. accept the Screening Level HRA; or

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

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

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

17 (16) Baseline Health Risk Assessment Work Plan.

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

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

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

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

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

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

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

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

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

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

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10
11 ~~*Note: Authority cited: Sections 25150, 25159, 25200.21, 58004, and 58012, Health and Safety*~~
12 ~~*Code. Reference: Sections 25159.5 Health and Safety Code; 40 CFR Section 270.13.*~~
13
14

DRAFT

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

2

Modifications	Class
B. General Facility Standards	
1. Changes to waste sampling or analysis methods:	
a. To conform with Department guidance or regulations.	1
b. To incorporate changes associated with F039 (multi- source leachate) sampling or analysis methods	1 *
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes	1 *
d. Other changes.	2
2. Changes to analytical quality assurance/control plan:	
a. To conform with Department guidance or regulations.	1
b. Other changes.	2
3. Changes in procedures for maintaining the operating record.	1
4. Changes in frequency or content of inspection schedules.	2
5. Changes in the training plan program 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, ~~and 66271.58~~ of Title 22 of the California Code of Regulations, to
5 read:

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

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

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

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

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

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

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

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

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

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

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

41 (A) post-closure post-closure permits or orders; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (A) The characteristics of the substance involved;

4 (B) The amount of the substance involved;

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

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

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

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

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

11 (A) The management of hazardous waste; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>Upward Adjustment of 25 percent</u>	<u>Second instance</u>
<u>Upward Adjustment of 50 percent</u>	<u>Third instance</u>
<u>Upward Adjustment of 100 percent</u>	<u>Fourth or more instances</u>

1

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

4

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

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- 1 (A)(1) A statement that describes in detail the factual and legal basis of the
2 dispute and the relief sought;
- 3 (B)(2) Any claimed erroneous facts, assumptions, approaches, or conclusions of
4 law made by the Department;
- 5 (C)(3) A statement describing in detail any efforts already made by the owner or
6 operator to resolve the dispute with the Department; and
- 7 (D)(4) Any photographs, documents, or any other material that supports the
8 owner's or operator's position regarding the disputed preliminary provisional
9 inspection violation score.
- 10 (3) Dispute Document Extension Requests.
- 11 (A) An owner or operator may request, and the Department may grant, a one-
12 time extension of up to sixty (60) days for the owner or operator to submit a
13 Dispute Document to the Department. The extension request must be based on
14 circumstances that an owner or operator could not reasonably anticipate or
15 prevent. The extension request must be received by the Department at least
16 thirty (30) days before the Dispute Document is due.
- 17 (B) The extension request must include:
- 18 1. Information describing the type and date of the compliance inspection
19 and a brief summary of the violations;
- 20 2. The due date for the Dispute Document;
- 21 3. The amount of additional time requested; and
- 22 4. The reason the extension is needed, including a detailed explanation of
23 why the owner or operator could not have reasonably anticipated or
24 controlled the circumstances necessitating the extension.
- 25 (C) The Department shall approve or deny the extension request, in whole or in
26 part, and provide notice to the owner or operator within ten (10) working days of
27 receipt of the extension request.
- 28 (4) Dispute Resolution Official and Decision. The Director or Director's designee shall
29 serve as the dispute resolution official. Within ninety (90) days after receipt of a Dispute
30 Document, the dispute resolution official shall issue a written decision granting or
31 denying, in whole or in part, the relief sought by the owner or operator. If the relief is
32 denied, in whole or in part, the dispute resolution official shall include in his or her
33 decision a short and plain description of the basis for the denial. ~~(f) The Director or~~
34 ~~Director's designee shall issue a written decision granting or denying the relief sought,~~
35 ~~in whole or in part, within forty five (45) days after receipt of a Dispute Document under~~
36 ~~subsection (e).~~ Failure of the dispute resolution official Department to issue a written
37 decision within forty five (45) ninety (90) days of receipt of the Dispute Document does
38 not constitute a partial or complete granting of the relief sought. The written decision of
39 the dispute resolution official is the Department's final decision and is not subject to
40 additional administrative dispute resolution.
- 41 ~~(g) If the relief sought is denied in whole or in part, the Department shall include in its~~
42 ~~decision a short and plain description of the basis for the denial of the relief sought. A~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (8) Any other information allowed by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (2) Compliance Implementation Plan. The owner or operator shall, within thirty (30) days
4 following the deadline to submit each audit report pursuant to ~~subparagraph~~ section
5 66271.56(a)(1)(C), submit a corresponding compliance implementation plan as follows:

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

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

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

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

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

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

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

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

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

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

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

37
38 **§ 66271.57. Requirements for a Facility VSP Score of Assigned to an "Unacceptable"**
39 **Compliance Tier**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (6) ~~(5)~~ increasing or expanding facility monitoring, recordkeeping, and/or reporting; or

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

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

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

37 **§ 66271.58. Appeals for Reconsideration**

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

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

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

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

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

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

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

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

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

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

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

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