

CHAPTER 11 IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

This chapter is based on 40 CFR Part 261. Article 1 defines the terms "waste" and "hazardous waste" in a manner intended to allow the reader to determine whether material is a waste and a hazardous waste. Article 2 identifies the criteria the Department will use in identifying new characteristics of hazardous waste. Article 3 sets forth the existing characteristics used to identify hazardous wastes. Article 4 sets forth lists of wastes which are hazardous wastes. Article 5 sets forth distinct categories of hazardous waste and establishes special requirements for handling those categories of hazardous waste.

ARTICLE 1: GENERAL

ARTICLE OVERVIEW: This article defines "waste" and "hazardous waste". These definitions aid the reader in determining whether a material is a waste and, if so, whether it is also a hazardous waste. This article also establishes exemptions from regulation for certain materials and special management requirements for hazardous waste that is recycled, and classification and management standards for contaminated containers.

Section 66261.1: This section is based on 40 CFR section 261.1. This section contains an overview of the material contained in Chapter 11, explains the consequences of the waste classification determinations made in Chapter 11, and clarifies that materials which the Department has reason to believe meet the statutory definition of hazardous waste are subject to the inspection and sampling authorities of Chapter 6.5 of Division 20 of the Health and Safety Code even if they are not otherwise identified as hazardous by Chapter 11. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons and as follows:

In section 66261.1(a)(1), the reference to subpart A of Part 261 is being modified to refer to Article 1 of proposed Chapter 11. In addition, the reference to special requirements for small quantity generators is being deleted because those special requirements are not being included in the proposed regulations. Lastly, a reference has been added for the second comment period informing the reader of the existence of section 66261.7, "Contaminated Containers".

In section 66261.1(a)(2), the phrase "and to list particular wastes" is not being incorporated because the department is not adopting a regulation which parallels 40 CFR section 261.11, the section referred to by that phrase.

Section 66261.1(a)(5) is being added to describe proposed article 5.

In section 66261.1(b)(1), the phrase "for the purposes of the regulations implementing Subtitle D of RCRA" is being replaced by the phrase "pursuant to this division and Chapter 6.5 of the Health and Safety Code" because a reference to state law is appropriate in this instance. The phrase "and Chapter 6.5 of Division 20 of the Health and Safety Code" has been included because California's statutes as well as the Department's regulations are relevant to hazardous waste determinations. The phrase "and that are recycled" is not being adopted because the definition of waste in our regulations applies only to waste that is also hazardous. The definition in RCRA applies to all solid waste, including non-hazardous waste. Non-hazardous waste is not included in the Department's definition of waste whether or not it is being recycled.

Section 66261.1(b)(2), refers to proposed Chapter 11 rather than 40 CFR. The structure of the paragraph has been changed for clarity. This subsection more clearly states that the regulations in Chapter 11 do not identify all wastes that meet the statutory definition of a hazardous waste. The reference to sections of RCRA giving EPA authority to sample and inspect and to order facilities to take certain actions are being replaced by a reference to the laws giving the Department similar authority. The corresponding federal regulation ends with "if" followed by two subsections joined with an "or". The phrase "if either of the following apply" replaces "if" in order to clarify that a material is a hazardous waste if either of the following subsections apply.

For the second comment period, the federal language of Section 261.1(b)(2) through (b)(2)(ii) was deleted and replaced with language that clarifies the applicability of classification under this provision by reference to the statutory definition of a hazardous waste. This change was made in response to comments 5F, 7C, and 7D.

Section 66261.2: This section is based on 40 CFR section 261.2. This section contains the procedure and standards for determining if a material is a waste and is therefore a candidate hazardous waste. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons and as follows:

In several places, the word "abandoned" was changed to the word "relinquished" to be consistent with the changes to the definition of waste in Health and Safety Code section 25120 in 1989.

In Section 66261.2(a), the reference to federal variances granted pursuant to 40 CFR sections 260.30 and 260.31 is not being incorporated because these variances are not available under State law. A reference to materials excluded from

classification as waste by Health and Safety Code sections 25143.2(b) and (d) is being inserted because those sections deem certain materials to be exempt from regulation as wastes.

40 CFR section 261(a)(2) is designated as subsection (b). The words "any of the following" are being added to the end of this subsection to clarify that the following paragraphs are presented in the alternative.

In section 66261.2(c), the syntax differs slightly from federal law in order to clarify the meaning of this section and to substitute state terminology. The new wording has the same effect as the corresponding federal law.

In section 66261.2(d), the syntax differs from federal law in order to clarify the meaning of this section and to substitute state terminology. The words "...by being managed..." are being added to clarify the effect of the lists of management techniques which follows. This wording has the same effect as the corresponding federal law.

In sections 66261.2(d)(1)(A)2. and (d)(2)(A)2., the word "remains" is being replaced by the word "is". The word "remains" is unclear because this section is being used to determine if a material is a waste; it must first be determined that a material is a waste before it can remain a waste.

In sections 66261.2(d)(1)(B) and (d)(2)(B), as originally proposed, the federal exemption of designated commercial chemical products from classification as waste was modified to indicate that these products may be classified as "non-RCRA" hazardous waste pursuant to proposed section 66261.101. These materials are not subject to exemption from regulation pursuant to Health and Safety Code section 25143.2 thus, they were not exempted from regulation in these regulations. This regulation was modified for the December 1990 to January 1991 comment period by clarifying that these materials are identified as waste only when they are discarded and not during normal usage.

Many comments were received which dealt with the subject of commercial chemical products either recycled by application to land or for burning for energy recovery. See the response to comments 5F, 7C, and 7D for further discussion of these provisions and modifications made to them in response to comment.

In section 66261.2(d)(2), the word "burning" is being replaced by the word "burned" to be consistent with the syntax of subsection (d).

In sections 66261.2(d)(3) and (d)(4), the double asterisk symbol "***" is being added to correspond to the format of Table 1 of section 66261.2.

In Table 1 of section 66261.2, a legend has been created to differentiate between materials that are "solid waste" under the federal system and materials that are not "solid waste" under the federal system but might be "waste" under the State's hazardous waste control law because the State does not have the same exemptions as the federal government. In Table 1 of section 66261.2, the double asterisk symbol "***" has been entered into those columns lacking a single asterisk symbol "*" in Table 1 of 40 CFR section 261.2 in order to indicate that those categories of materials so marked maybe classified as non-RCRA hazardous waste even though they are not RCRA regulated solid hazardous waste. This table has been the subject of several comments. It has been altered in both the second and third comment periods in response to comment. For further discussion, please see the responses to comments AI9 and AI10.

In Table 1 of section 66261.2, the reference to "scrap metal" in Table 1 of 40 CFR section 261.2 is not being incorporated. Pursuant to the Department's existing regulations, "scrap metal" is defined as being exclusive of hazardous waste and therefore exempt from regulation under California's hazardous waste control law. If waste metallic materials contain a listed hazardous waste or exhibit a characteristic of a hazardous waste, they are not eligible for inclusion in the category "scrap metal" under current and proposed State law.

This category is in the table in 40 CFR section 261.2 because RCRA regulates both hazardous and nonhazardous waste. Since metallic scrap which doesn't meet the State's current or proposed definition of "scrap metal" is regulated as hazardous waste, the inclusion of this category in table 1 to section 66261.2 is unnecessary. The regulation of this material as hazardous waste is equivalent to or more stringent than the regulation placed on materials designated as "scrap metal" in federal law and thus meets the statutory requirements of Health and Safety Code section 25159.

40 CFR sections 261.2(d)(2) through (d)(2)(ii) have not been included in these regulations. These subsections set forth the criteria by which the EPA Administrator adds new hazardous wastes to the category of "Inherently wastelike". The Department is adopting this term as part of these regulations but will not add new hazardous wastes to this list unless they are first added by the EPA Administrator. Thus, these criteria will not be used by the Department and are not being included in the proposed regulations.

In section 66261.2(e), the phrase "in any manner" is not being incorporated because it is redundant to the word recycled. The word "recycled" without this qualification means recycling in any manner.

Sections 66261.2(f), (f)(4) and (f)(5) are new regulations added for the second comment period. These provisions refer to materials which are included in the statutory definition of waste in Health and Safety Code section 25124. These provisions are verbatim restatements of the Health and Safety Code provisions and are being included for clarity.

40 CFR sections 261.2(e) and (f) are not being included in the proposed regulations. These provisions establish exemptions from regulation and documentation requirements for hazardous waste being recycled and are not being adopted because they duplicate provisions found in Health and Safety Code sections 25143.2(b), (e) and (g).

Section 66261.3: This section is based on 40 CFR section 261.3. This section sets forth the procedure and standards for determining if a waste is a hazardous waste. This section also excludes some materials from regulation as a hazardous waste and declares others to be non-RCRA hazardous wastes. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons and as follows:

In section 66261.3(a)(1), a reference to the exclusions of certain materials from classification as waste that are set forth in Health and Safety Code sections 25143.2(b) and 25143.2(d) is being added. This addition is being made because materials exempted from classification as a waste under that Health and Safety Code section are not waste and thus cannot be hazardous waste.

In section 66261.3(a)(2)(B), the reference in the federal regulation to wastes excluded from the lists in Subpart D under 260.20 and 260.22 is being modified by the addition of the requirement that this "delisting" be approved by the USEPA Administrator. Because the lists of hazardous wastes referred to are federal regulations, the Department cannot exclude a waste from these lists. Thus, a petitioner must gain an exclusion from the lists of hazardous wastes from the EPA. If his waste is not otherwise identified as a hazardous waste (by application of the characteristics of a hazardous waste), it is not a hazardous waste. This provision was changed for the second comment period in response to comments T24 and T41. See the responses to those comments for additional discussion.

Section 66261.3(a)(2)(C) has been added in order to clarify that a waste which is listed or contains a constituent listed in Appendix X to proposed Chapter 11 is a hazardous waste.

Appendix X consists of the list currently set forth in title 22, California Code of Regulations, Division 4, Chapter 30, Article 9. Section 66261.3(a)(2)(C) was modified for the second comment period to clarify that a person may self-determine rather than demonstrate to the Department that a waste is not a hazardous waste; this change was made in response to comment. For further discussion, see the response to comment M11.

Section 66261.3(a)(2)(C)1. has been added to clarify that persons cannot classify a listed hazardous waste as nonhazardous by the provisions of subsections (a)(2)(C)2.(i) and (a)(2)(C)2.(ii). This section was added for the second comment period in response to comment A2.

Section 66261.3(a)(2)(C)2. was added for the second comment period to allow the regulated community to test a waste listed in Appendix X to rebut the presumption that it is a hazardous waste.

Sections 66261.3(a)(2)(C)2.(i) and (a)(2)(C)2.(ii) have been added to establish methodologies for determining whether a waste listed in Appendix X to proposed Chapter 11 is not a hazardous waste.

Section 66261.3(a)(2)(D) is being rewritten to eliminate the use of the term "solid waste" and substitute the phrase "another waste". This change is necessary to conform to state terminology and maintain a coherent sentence structure. This new construction does not change the meaning of this subsection. This section was changed again in the third comment period to eliminate the reference to section 66261.3(e) which was deleted for the second comment period.

In section 66261.3(a)(2)(E), the reference in the parallel federal regulation to wastes being "excluded from this paragraph" was replaced with a reference to the State's variance authority. This provision was changed for the second comment period to require that the wastes be excluded by the EPA Administrator in response to comment. Because the lists of hazardous wastes in 40 CFR Part 261 are federal regulations, the Department cannot exclude a waste from these lists. Thus, a petitioner must gain an exclusion from the lists of hazardous wastes from the EPA to manage listed wastes as nonhazardous wastes.

In section 66261.3(b), a specific reference to exclusions in section 66261.4(b) and Health and Safety Code sections 25143.2(b) or (d) has been inserted in place of a cross-reference to those sections in "paragraph (a)(1) of this section". This change was made because it is more clear in this context to list the actual sections of law which set

forth the exclusions from classification as a waste and hazardous waste.

In section 66261.3(c)(2), the phrase "which has not been in direct contact with hazardous waste" has been added to the language of the parallel 40 CFR section in order to qualify the provision of the federal regulation that provides that precipitation run-off from hazardous waste is not a hazardous waste. Current State law has no provision which specifies that rain water runoff from hazardous waste is not hazardous waste. The "mixture rule" of title 22, CCR, section 66300 (a) would require that run-off which has been in contact with hazardous waste be tested as potential hazardous waste. This qualifying statement adds no new regulatory requirements.

Section 66261.3(c)(2)(A). Specific differences between 40 CFR sections 261.3(c)(2)(ii) through (c)(2)(ii)(B) and section 66261.3(c)(2)(A) are:

Section 66261.3(c)(2)(A) parallels 40 CFR section 261.3(c)(2)(ii). The federal provision is being modified by making the word "wastes" singular and conforming the grammar of the rest of the sentence to this change. This change is necessary because 40 CFR section 261.3(c)(2)(ii)(B) has not been included in these regulations as discussed in the following paragraph. 40 CFR section 261.3(c)(2)(ii)(A) has been merged into the text of section 66261.3(c)(2)(A).

40 CFR section 261.3(c)(2)(ii)(B) has not been included in the proposed regulations. This subsection states that wastes from the burning of certain materials exempted from regulation by 40 CFR sections 261.6(a)(3)(v) through (a)(3)(ix) are not hazardous. Burning of these materials is not exempted from regulation under current State law and wastes derived from burning these materials are regulated under title 22, CCR, section 66300(a).

Section 66261.3(a)(2)(F) incorporates the provisions of existing title 22, CCR, sections 66696(a)(6) and 66305(a)(2) which allow the Department to classify a waste as a hazardous waste even if it does not meet the existing regulatory criteria for classification as hazardous waste when the Department determines that the waste does meet the statutory definition in Health and Safety Code section 25117. In response to comment, the Department has amended the original proposal by not requiring generators to consider the statutory definition when classifying wastes. See the response to comment 11 for further discussion.

In Section 66261.3(d) the introductory phrase, "In the case of any solid waste," is not being adopted because it is superfluous.

In section 66261.3(d)(2), the reference in the parallel federal regulation to wastes being "excluded from this paragraph" was replaced with a reference to the State's variance authority. This provision was changed for the second comment period in response to a comment to require that the wastes be excluded by the EPA Administrator. Because the lists of hazardous wastes in 40 CFR Part 261 are federal regulations, the Department cannot exclude a waste from these lists. Thus, a petitioner must gain an exclusion from the lists of hazardous wastes from the EPA to manage listed wastes as nonhazardous wastes.

Originally proposed section 66261.3(e) was a new regulation which had no 40 CFR counterpart. This section stated that certain waste mixtures which are nonhazardous by application of the other criteria of this section are non-RCRA hazardous wastes if they otherwise meet the definition of a hazardous waste and the criteria in subsections 66261.3(f)(1) and (f)(2). These subsections were transferred directly from existing law and appear currently in title 22, CCR, sections 66300(a)(2) and (a)(3). These subsections were deleted for the second comment period in response to comments. For further discussion of the mixture rules in this package, see the response to comment I3.

Section 66261.4: This section is based on 40 CFR section 261.4. This section contains exclusions from classification as waste and exclusions from classification as hazardous waste. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons and as follows:

Section 66261.4(a) is based on 40 CFR section 261.4(a). The proposed subsection declares that certain materials are not wastes. Federal exclusions for wastes which parallel similar exclusions under existing State law are being retained in this section. Provisions excluding wastes under federal law which do not have counter parts under current State law are being placed in a section which excludes waste from classification as RCRA hazardous wastes or are not being incorporated at all. Specific differences between 40 CFR section 261.4(a) and section 66261.4 (a) are:

40 CFR section 261.4(a)(1)(i) and (a)(1)(ii) are not being incorporated because current State law has no exclusion for either domestic sewage or for mixtures of domestic sewage and other wastes.

The comment following 40 CFR section 261.4(a)(2) is being included as the second sentence in section 66261.4(a)(1) because it is regulatory in nature and places limits on those wastes which are eligible for the exclusion pursuant to this subsection.

40 CFR section 261.4(a)(3) is not being incorporated because irrigation return flows are not exempt from regulation under current State law.

40 CFR section 261.4(a)(4) is being adopted as section 66261.4(a)(2). A new sentence, originally proposed to clarify that only the radionuclide portion of a radioactive waste is exempt from regulation under the hazardous waste control law, was removed in response to comment that this section was unclear. The section is now identical to the corresponding federal regulation and the meaning is well known in the hazardous waste field. The Department is choosing this approach because the Toxic Substances Control Program regulates only those radioactive wastes which must be regulated to obtain RCRA authorization.

40 CFR Section 264.1(a)(5) is not being incorporated because in-situ mining wastes are not exempt from regulation under current State law. This provision was included in the original version of the proposed regulations. It was dropped for the second comment period because analysis showed that this provision was new and less stringent than existing State law.

40 CFR Section 264.1(a)(6) is not being incorporated because the exemption for mining overburden is set forth in Health and Safety Code section 25143.1(b). This provision was included in the original version of the proposed regulations. It was dropped for the second comment period because the statute is dependent on the federal regulation scheme and subject to changes in effect.

Subsection (b)(3) has been added to clarify that wastes exempted from classification as hazardous waste under federal law which are not exempted from regulation under State law are categorized as non-RCRA hazardous wastes. This clarification was added in response to comment I4.

The definitions contained in 40 CFR section 261.1(c) are not being included in this section. These definitions are being included in proposed section 66260.10 where all the generally applicable definitions in the proposed regulations are being set forth. Mixtures of hazardous and radioactive wastes, known as "mixed waste", are regulated under RCRA and must be regulated by the Department under the authorized RCRA-equivalent program. Therefore, only the radionuclide portion of mixed waste can be excluded from regulation under these regulations.

40 CFR section 261.4(a)(5) is being adopted as section 66261.4(a)(3).

40 CFR section 261.4(a)(6) is not being incorporated. Pulp and paper products are currently regulated under State law unless they are exempt under Health and Safety Code section 25143.2.

40 CFR section 261.4(a)(7) is being adopted as section 66261.4(a)(4).

40 CFR section 261.4(a)(8) is not being incorporated. These secondary materials reclaimed onsite may be exempt from regulation when "recycled and used on the site where they were generated" as specified in Health and Safety Code section 25143.2.

Section 66261.4(b) is based on 40 CFR section 261.4(b). The proposed subsection declares that certain materials are wastes but are not hazardous wastes. Federal provisions for wastes which would qualify for similar exclusions under State law are being retained in this section. Provisions excluding wastes from classification as hazardous wastes under federal law which are not excluded under current State law are not being incorporated. Specific differences between 40 CFR section 261.4(b) and section 66261.4(b) are:

40 CFR sections 261.4(b)(1) and (b)(2) are not being incorporated because these wastes are not exempt from classification as a hazardous waste under current State law.

40 CFR section 261.4(b)(3) was originally proposed to be adopted as section 66261.4(b)(1). As discussed in reference to 40 CFR section 261.4(a)(b) above, the mining overburden exemptions were dropped from the rulemaking in deference to Health and Safety Code section 25143.1(b).

40 CFR sections 261.4(b)(4) through (b)(9) are not being incorporated because these wastes are not exempt from classification as hazardous wastes under current State law.

Title 22, CCR, section 66300(c) is being incorporated as section 66261.4(b)(1). This provision, originally proposed as subsection (b)(2), has no 40 CFR counterpart. Current title 22, CCR, section 66300(c) is being modified to conform to the format of this section.

Title 22, CCR, section 66300(g) is being incorporated as section 66261.4(b)(2). The containers specified in this section are exempt under federal law pursuant to 40 CFR section 261.4(b)(1) and under the definition of empty containers in 40 CFR section 261.7. The current title 22, CCR, section is being modified to conform to the format of this section.

In section 66261.4(d)(1)(C), a reference to the State's 90-day limitation for storage without a permit has been added to be consistent with existing title 22, CCR, section 66508.

In section 66261.4(d)(2)(A, the reference to the "California Highway Patrol (CHP)" is being added to the list of agencies whose rules a person shipping samples must comply with for that person's samples to be exempt from regulation. This requirement is found in current title 22, CCR, section 66824(b)(1).

Section 66261.6: This section is based on 40 CFR section 261.6. This section contains: an index to the regulations for recyclable materials set forth in Chapter 16 of the proposed regulations; a list of materials that are exempt from regulation; a list of prohibited actions; and two conditional exemptions from regulation. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this "Statement of Reasons" and in the additions, replacements, and deletions discussed below:

Additions and Replacements

In section 66261.6(a)(1), the phrase "Hazardous wastes that are recycled" is being replaced with the term "Recyclable materials". This change is being made because materials included in the phrase are included in the term "recyclable materials". That term (in singular form) is defined in state statute (Health and Safety Code section 25120.5) to mean hazardous wastes that are capable of being recycled. The change is being made for consistency with the state's hazardous waste recycling statute, Health and Safety Code section 25143.2, which refers to "recyclable materials".

Also in section 66261.6(a)(1), the word "and" is being moved from between the cross-references to subsections (a)(2) and (a)(3) to between the cross-references to new subsections (a)(4) and (a)(5). These changes are being made to the original proposed regulations for the reasons stated below with respect to new subsections (a)(4) and (a)(5).

As a consequence of a comment received during the December 1990 to February 1991 comment period (comment no. b-1), a special provision for recyclable materials, which are hazardous only by TCLP, is being added to section 66261.6 as described below with respect to new subsection (a)(6). Since that special provision is less stringent than the essentially full regulation of most recyclable materials addressed in section 66261.6(a)(1), a cross-reference to that special provision is being added to proposed section 66261.6(a)(1).

In section 66261.6(a) (2), the phrase "not subject to the requirements of this section but are" is being deleted and the phrase "also [regulated under] the articles of Chapter 16 specified below," is being added to conform with the format of the proposed regulations and to reflect the deletions of the 40 CFR section 261.6(b) and (c) requirements discussed further, below. Conforming changes are also being made in new section 66261.6(a)(2) (D) (formerly 40 CFR section 261.6(a) (2) (v)). In indirect response to OAL comment no. 60, the phrase "of this Division" is being added and parenthesis are being inserted before the word "of" (the first time it occurs) and after the word "Division" (the first time it occurs), in order to clarify the cross-reference to Chapter 16 in section 66261.6(a)(2). These changes conform with those made in direct response to the subject comment that are described in the following paragraphs.

Lastly in section 66261.6(a)(2), four new subsections are being added for clarity to direct the reader to the Department's regulations for specific recyclable materials managed in specific ways. New subsection (a) (2) (B) references the state's used oil statutes and the Department's proposed regulations in new Articles 4 and 6 of new Chapter 16 addressing recycling of used oil. New subsection (a)(2)(C) references the Department's proposed regulations in new Article 4 of new Chapter 16 addressing fuels derived from hazardous wastes other than used oils. New subsection (a)(2)(E) references the Department's existing regulations in new Article 8 of new Chapter 16 addressing recyclable materials used for agricultural purposes. Lastly, new subsection (a)(2)(F) references the Department's existing regulations in new Article 9 of new Chapter 16 addressing recycling of waste elemental mercury. In direct response to OAL comment no. 60, the phrase "of Chapter 16 of this Division" is being added to all four new subsections and to subsection (a)(2)(D) to clarify the cross-reference.

New section 66261.6(a)(3)(A) is being added to existing 40 CFR section 261.6(a)(3) to add to the list of recyclable materials exempted from federal regulation under that subsection, those materials that are conditionally exempted from regulation under the state's hazardous waste recycling statute (Health and Safety Code section 25143.2). This new subsection is necessary for clarity; it informs the reader that the reader must look in state statute for additional exemptions from state regulation for recyclable materials.

In section 66261.6(a) (3)(B), a new phrase is being added to existing 40 CFR section 261.6(a) (3)(iv) that limits exempt scrap metal to those materials meeting the state's

definition of "scrap metal" in existing section 66189.5, CCR (new section 66260.10). This definition excludes specified hazardous wastes, and metals containing hazardous wastes, from classification as exempt scrap metal. Because scrap metal, which qualifies as hazardous waste due to its inherent properties or to being contaminated with hazardous waste, is fully regulated under current state law, the exemption which appears in 40 CFR section 261.6(a)(3)(iv) is being limited to apply only to scrap metal meeting the definition of "scrap metal" in existing state regulations.

New section 66261.6(a)(3)(c) is being added in response to a comment received during the December 1990 to February 1991 comment period (comment no. b-1). Under the applicable version of the proposed regulations, the Department would require persons managing certain recyclable wastes that are hazardous only by TCLP to manage those wastes as fully regulated hazardous wastes, whereas corresponding federal regulations would conditionally exempt, or specially regulate, those wastes. For example, certain used oil fuels are hazardous wastes under federal regulations only by TCLP, but are nonhazardous wastes under existing state regulations. Since the proposed regulations incorporate TCLP by reference (proposed section 66261.24(a)(1)), the used oil fuels would now be hazardous wastes under those proposed regulations. Existing state law (Health and Safety Code section 25250.5(a)), and existing, as well as proposed, state regulations regulate (or would regulate) used oil fuels that are used oils and hazardous wastes as if they were hazardous wastes destined for incineration, because no special regulation is provided for those fuels. (They could not qualify for special regulation as "recycled oil" or as used oil meaning "recycled oil" standards under Health and Safety Code section 25250.1, because they are hazardous wastes due to the presence of constituents other than those allowed for "recycled oil" under that statute.) However, existing federal regulations provide special regulation for certain used oil fuels when managed as specified under 40 CFR section 266.40 et. seq. Among those special regulations is a state-inequivalent exemption from hazardous waste facility permit requirements for owners or operators of boilers or industrial furnaces which burn those used oil fuels. Since the Department intended to regulate recyclable and other wastes that are hazardous only by TCLP no more stringently than those wastes are regulated under corresponding federal regulations, the Department is amending the proposed regulations in two ways:

- o The Department is adding as new section 66261.6(a)(3)(c) a conditional exemption from

Departmental regulation for recyclable wastes that are hazardous only by TCLP and that are conditionally exempt from federal regulation pursuant to 40 CFR section 261.6(a)(3); and

- o The Department is adding as new section 66261.6(a)(6) a special provision that allows recyclable wastes, which are hazardous only by TCLP and which are specially regulated under federal provisions in 40 CFR section 261.6(a)(2), to be regulated by the Department in the same manner specified in those federal provisions.

Since new sections 66261.6(a)(3)(c) and 66261.6(a)(6) merely add exemptions and special regulations, respectively, which already exist in federal regulations, even though they do not exist in state laws or regulations, they are already in effect in California pursuant to Health and Safety Code section 25159 et. seq. Therefore, the new subsections create no mandate for local agencies or school districts, have no fiscal impact, and have no impact on small businesses.

New section 66261.6(a)(4) is being added to the original proposed regulations as part of the second noticed revisions to retain two prohibitions which were part of deleted, proposed Article 3 of Chapter 16. The two prohibitions appeared in deleted, proposed sections 66266.23(b) and (c) of Article 3. New section 66261.6(a)(4) consists of two subsections, (a)(4)(A) and (a)(4)(B), discussed separately below.

Section 66261.6(a)(4)(A) is being added to incorporate in the proposed regulations the federal prohibition on the use of material, contaminated with hazardous waste (other than an ignitable waste, as specified), for dust suppression or road treatment. The federal prohibition appears in 40 CFR section 266.23(b). However, the first part of the text of that prohibition is being modified, primarily due to a comment (Comment No. C-12) received about deleted, proposed section 66266.23(b) which essentially duplicated in the original proposed regulations, 40 CFR section 266.23(b). The modifications to 40 CFR section 266.23(b) in new section 66261.6(a)(4)(A) are: the addition of the word "material"; the addition of "e.g."; the enclosure of "waste", "used oil", "or other material" in parentheses; and the addition of a comma and the deletion of the word "or" after the word "waste". These modifications clarify the federal regulation without altering its meaning.

Section 66261.6(a)(4) (B) is being added for clarification to notify the reader of the state statutory prohibition (in Health and Safety Code section 25250.5(b)) on the use of used oil, regardless whether it is contaminated with hazardous waste, for road oiling, dust suppression, or weed control.

Since new section 66261.6(a)(4) merely adds two prohibitions which already exist in federal regulations and state law, they are already in effect in California. Therefore, the new subsection creates no mandate for local agencies or school districts, has no fiscal impact, and has no impact on small businesses.

Section 66261.6(a) (5) is virtually identical to existing section 66826, CCR, except for the minor modifications (listed below) needed to conform with the format of the proposed regulations. Existing section 66826, CCR exempts from the use constituting disposal provisions of Health and Safety Code section 25143.2(e), spent catalyst generated from the fluid catalytic cracking unit in a petroleum refinery, if it is a non-RCRA hazardous waste and if it is recycled by being used as a substitute for alumina and silica in the manufacture of cement in cement kilns. The section became effective as an emergency regulation on May 8, 1990 and thus was not part of either the original proposed regulations, the first noticed revisions, or the second noticed revisions.

In the preamble of section 66261.6(a)(5), the reference to "Section 25143.2(e) of the Health and Safety Code" is being changed to "subdivision (e) of Health and Safety Code Section 25143.2" in conformance with the format of the proposed regulations.

In section 66261.6(a) (5)(A) the phrase "the substitute of alumina" is being modified to read "a substitute for alumina" in order to conform with the context of the other sections dealing with, or contained in, proposed Chapter 16.

Also, in section 66261.6(a) (5)(A) the cross-references to "Table CCWE II-C" and "Section 67755(b)(3)" are being changed to "Table I-C CCWE" and "Section 66268.106(a)", respectively, to conform with the format and numbering of the proposed regulations.

Lastly, in section 66261.6(a)(5)(A) the comma is being deleted from the number "3,000 mg/kg" to conform with the format of the proposed regulations.

Since new section 66261.6(a)(5) merely adds an exemption which already exists in the Department's regulations, it is already in effect in California. Therefore, the new subsection creates no mandate for local agencies or school districts, has no fiscal impact, and has no impact on small businesses.

New section 66261.6(a)(6) is being added in response to a comment received during the December 1990 to February 1991 comment period (comment no. b-1). Since the new subsection (a)(6) has already been discussed above with respect to new Section 66261.6(a)(3)(C), no further discussion is needed here.

Deletions

In section 66261.6(a)(1), the statement that "Hazardous wastes that are recycled will be known as recyclable materials." is being deleted as redundant, because the term "recyclable material" is defined in statute (Health and Safety Code section 25120.5) and its definition is being repeated for clarity in section 66260.10 of the proposed regulations.

In section 66261.6(a)(2), but as part of the second noticed revisions, the cross-reference in subsection (a)(2)(A) to proposed Article 3 (addressing recyclable materials used in a manner constituting disposal) is being deleted from the original proposed regulations to conform with the deletion of proposed Article 3, discussed elsewhere in this "Statement of Reasons". However, the subsection "(a)(2)(A)" designation is being reserved for future use when the Department adopts its regulations addressing "use constituting disposal".

Three existing subsections are being deleted from 40 CFR section 261.6(a)(2) which identifies those recyclable materials regulated under specific requirements contained in 40 CFR Part 266. These deleted subsections are discussed below:

Section 261.6(a)(2)(ii) (in conjunction with referenced 40 CFR Part 266, Subpart D) states (among other items) that hazardous wastes burned for energy recovery in boilers or industrial furnaces are generally not regulated under the incinerator permit standards of 40 CFR Parts 264 and 265, Subparts 0. Under existing state law, operators of facilities burning hazardous wastes for energy recovery in any device must obtain a permit or grant of interim status as operators of hazardous waste incinerators. Thus, the 40 CFR provision is less stringent than existing state law and is therefore being deleted.

(40 CFR Part 266, Subpart D is being retained to address certain used oils, and to address fuels derived from hazardous wastes and certain used oils, as discussed with regard to proposed Article 4 in this "Statement of Reasons".)

Section 261.6(a) (2)(iii) (in conjunction with referenced 40 CFR Part 266, Subpart E) states (among other items) that used oil burned for energy recovery in boilers or industrial furnaces is generally not regulated under the incinerator permit standards of 40 CFR Parts 264 and 265, Subparts O. Under existing state law (Health and Safety Code section 25250, et seq.), operators of facilities burning used oil for energy recovery must generally obtain a permit or grant of interim status as operators of hazardous waste incinerators. Thus, the 40 CFR provision is less stringent than existing state law and is therefore being deleted. (40 CFR Part 266, Subpart E is also being deleted, as discussed with regard to that subpart in this "Statement of Reasons".)

Section 261.6(a)(2)(iv) (in conjunction with referenced 40 CFR Part 266, Subpart F) includes recyclable materials from which precious metals are being reclaimed among those recyclable materials which are not subject to facility permit requirements, among other provisions, under federal hazardous waste control law. Under existing state law, facilities that store or recycle precious metal-containing hazardous wastes are required to conform with the Department's permit requirements for hazardous waste storage or recycling facilities, among other requirements. Thus, the 40 CFR provision is less stringent than existing state law and is therefore being deleted. (40 CFR Part 266, Subpart F is also being deleted, as discussed with regard to that subpart in this "Statement of Reasons".)

One term and five existing subsections are being deleted from 40 CFR section 261.6(a)(3) which identifies specific Code sections 25143.2(c) (1), (d)(2)(B), and (d)(2)(C) (see also exclusions from these exemptions pursuant to (e)(3) and (e) (7), and to section 25250, et seq.). All other petroleum refinery wastes exempted under the federal regulations are generally subject to full Departmental regulation under state law as hazardous wastes. Thus, the 40 CFR provisions are either redundant of, or less stringent than, existing state law and are therefore being deleted from the proposed regulations.

40 CFR section 261.6(a)(3)(vii) exempts from federal regulation coke and coal tar from the iron and steel industry that contains decanter tank car sludge (from coking operations) from the iron and steel production process. State law has no comparable exemption. Thus, the 40 CFR provision is less stringent than existing state law and is therefore being deleted from the proposed regulations.

Existing 40 CFR section 261.6(b), which states that generators and transporters of recyclable materials are subject to the generator and transporter requirements in 40 CFR Parts 262 and 263, is being deleted as redundant of corresponding state requirements. Existing state regulations in sections 66798 and 66800, CCR, require generators and transporters of recyclable materials to comply with the Department's requirements for generators and transporters of hazardous wastes, as specified. (These state regulations are being retained as new sections 66266.3 and 66266.4 of the proposed regulations.) Similarly, existing state law in Health and Safety Code section 25143.2(a) states that "recyclable materials are subject to the requirements of this chapter which apply to hazardous wastes" and which include the Department's generator and transporter requirements. Thus, since the inclusion of 40 CFR section 261.6(b) in the proposed regulations would be redundant, it is being deleted.

Existing 40 CFR section 261.6(c), which establishes federal requirements for facilities storing and/or recycling hazardous wastes, is being deleted as redundant of, and less stringent than, corresponding state requirements. The federal requirements for such facilities are generally identical to the federal requirements for hazardous waste storage facilities, because the federal requirements do not impose permit requirements on the recycling process itself. Existing state regulations in section 66806, CCR, require facilities recycling federally listed and/or characteristic hazardous wastes to comply with all applicable state hazardous waste control requirements, including permit requirements for the recycling process itself. (The state regulations are being retained as new section 66266.7 of the proposed regulations.) Similarly, existing state law in Health and Safety Code section 25143.2(a) makes facilities recycling hazardous waste subject to all the general hazardous waste facility requirements. Thus, since the inclusion of 40 CFR section 261.6(c) in the proposed regulations would be redundant of, and less stringent than, corresponding state requirements, it is being deleted.

Section 66261.7: This section is being deleted from the proposed regulations. The language of newly effective Title 22, CCR, Section 66730 (TSCP rulemaking R-91-3, effective 2/28/91) is being merged into this regulation. The resulting new regulation contains all the text of the newly effective regulation. In addition, subsection (h) of proposed Section 66261.7, which addresses an issue not addressed by newly effective Section 66730, is retained in final regulations.

Section 66261.7(h) authorizes the treatment activities specified in subsections (c) and (d) to be performed. According to Health and Safety Code section 25201, persons performing treatment shall have either a permit or other authorization from the Department. This subsection specifies that persons treating containers as specified in subsections (c) and (d) and classifying and managing the rinsate in accordance with proposed title 22, CCR, section 66262.11 are authorized to perform these activities. The phrase "on the site where the container or inner liner was generated" in the original version was replaced with "at an onsite facility" to clarify that the treatment activities must be performed onsite in order to be authorized pursuant to this subsection. The text of this subsection was altered by applying it to the rinsing activities which are carried out to meet the standards of subsection (b) and by limiting the exemption to containers of five gallons or less as the exemption of this subsection was limited as proposed and amended in this rulemaking.

This section implements the statutory recycling exemptions in Health and Safety Code section 25143.2(d) and is added as a reference citation.

ARTICLE 2: CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE

This article contains one section which specifies the criteria by which the Department identifies characteristics of hazardous waste.

Section 66261.10: This section is based on 40 CFR section 261.10. This section sets forth the criteria that the EPA and the Department use in identifying characteristics of hazardous waste. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons and as follows:

In section 66261.10 (a)(2)(A), a requirement is being added that the private sector laboratories referred to be certified by the Department. This qualification is necessary because Health and Safety Code section 25198 (a) requires that all data used to satisfy the requirements of the Hazardous Waste Control Law be generated by certified testing laboratories.

This section implements, interprets or makes specific the statutory definition of "(h)azardous waste", Health and Safety Code section 25117 and is added as a reference citation.

40 CFR section 261.11: This section is not being incorporated. This 40 CFR section sets forth the criteria that the USEPA Administrator uses to add hazardous wastes to the lists of hazardous wastes in 40 CFR sections 261.31, 261.32, and 261.33. Because the Department is adopting the federal lists verbatim as a requirement of authorization, the only criterion used by the Department to list wastes is that the wastes be listed in 40 CFR Part 261 as hazardous wastes. The Department will add to these lists only those wastes added by the EPA to 40 CFR Part 261 Subpart D.

ARTICLE 3: CHARACTERISTICS OF HAZARDOUS WASTE

This article is based on 40 CFR Part 261 Subpart C and Title 22 CCR sections 66693, 66694, 66696, 66699, 66702, 66705, and 66708. It sets forth and describes each of the characteristics of hazardous waste.

Section 66261.20: This section is based on 40 CFR section 261.20 which states that a waste exhibiting any of the characteristics of a hazardous waste is a hazardous waste, that a hazardous waste number assigned to each characteristic is to be used for reporting and recordkeeping, and that a sample taken by any of the Part 261 Appendix I methods will be considered a representative sample. This section conforms with the federal regulation with the exception of the generic changes specified in the introduction to this Statement of Reasons and as follows:

In section 66261.20 (a), the reference to wastes excluded from regulation "under" section 261.4 is being replaced by a reference to exclusion "pursuant to" section 66261.4(b) because the new terminology is more accurate regulatory language.

The comment following section 66261.20 (a) is not being incorporated. This comment refers to section 66262.11 which contains the regulatory requirements referred to in this comment. Because this comment is not regulatory in nature and is not necessary, it is not being incorporated.

In section 66261.20 (b), the language is modified to highlight the limit of the applicability of EPA waste numbers to wastes exhibiting a federal characteristic of a hazardous waste. This subsection establishes the applicability of hazardous waste numbers assigned to the four federal characteristics of a hazardous waste set forth in sections 66261.21, 66261.22(a)(1), 66261.22(a)(2), 66261.23, and 66261.24(a)(1). These numbers are used for notification, reporting, and recordkeeping required elsewhere in the Department's hazardous waste regulations. Because some wastes are identified as hazardous due to California-only characteristics, the federal hazardous waste numbers are not applicable to these wastes. This distinction is further addressed in specific regulations.

In section 66261.20 (b), the language in this subsection was amended to correct the awkward sentence structure and to replace the reference to the notification requirements of the "Act" (RCRA) to Health and Safety Code section 25153.6, the State law establishing equivalent notification requirements. The phrase "but is not listed as a hazardous waste in Article 4 of this chapter", is deleted in accordance with 55 FR 106, June 1, 1990, pp. 22520-22720. The EPA amended the language because generators must use both the listed waste code and the characteristic waste code to determine whether listed wastes

also exhibit any hazardous characteristic for the purposes of compliance with 40 CFR Part 268.

In section 66261.20 (c), the requirement that sampling and sample management be performed in accordance with the sampling methods set forth in EPA document SW-846 has been included. This document is incorporated by reference in section 66260.11. This addition is necessary because SW-846 is specified in current Title 22 CCR section 66694 as the standard for representative sampling methods and sample management. The remainder of the subsection is being modified to correct the context of the reference to Appendix I.

The comment at the end of 40 CFR section 261.20 is not being incorporated. This comment states that the sampling methods in 40 CFR Part 261 Appendix I have not been adopted into law. Because sampling methods have been adopted into regulation in existing State law (Title 22 CCR section 66694) and are being adopted in the proposed regulations (Appendix I to this chapter), this comment is not appropriate for the Department's regulations.

Section 66261.21: This section is based on 40 CFR section 261.21. It defines the characteristic of ignitability, one of the characteristics of hazardous waste. This section conforms with the federal regulation with the exception of the generic changes specified in the introduction to this Statement of Reasons and as follows:

In section 66261.21 (a)(1), the article "a" is being placed before the term "flash point" as a grammatical correction.

In sections 66261.21 (a)(1) and (a)(3), the reference to equivalent test methods approved by the EPA Administrator pursuant to federal regulations is being replaced by a reference to the Department's procedure and requirements for approval of equivalent testing methods. This substitution is necessary because the State has authority to allow alternate testing or analytical methods for analysis of wastes in certain instances. This substitution has no effect on maintenance of federal equivalency because the State's authority to allow alternate testing or analytical methods for analysis of federally regulated wastes is conditioned by the requirement that the alternate method be previously approved by the EPA.

In sections 66261.21 (a)(3) and (a)(4), dates are being appended to the 49 CFR references in order to specify which version of those regulations is being incorporated.

In section 66261.21(b), the phrase "but is not listed as a hazardous waste in Article 4 of this chapter", is deleted in accordance with 55 FR 106, June 1, 1990, pp. 22520-22720. The

EPA amended the language because generators must use both the listed waste code and the characteristic waste code to determine whether listed wastes also exhibit any hazardous characteristic for the purposes of compliance with 40 CFR Part 268.

This section implements, interprets or makes specific the statutory definitions of "(h)azardous waste", Health and Safety Code section 25117 and "RCRA hazardous waste", Health and Safety Code section 25120.2 and are added as reference citations.

Section 66261.22: This section is based on 40 CFR section 261.22. It defines the characteristic of corrosivity. This section conforms with the federal regulation with the exception of the generic changes specified in the introduction to this Statement of Reasons and as follows:

In sections 66261.22 (a)(1) and (a)(2), the reference to equivalent test methods approved by the EPA Administrator pursuant to federal regulations is being replaced by reference to the Department's procedure and requirements for approval of equivalent testing methods. This substitution is necessary because the State has authority to allow alternate testing or analytical methods for analysis of wastes in certain instances. This substitution has no effect on maintenance of federal equivalency because the State's authority to allow alternate testing or analytical methods for analysis of federally regulated wastes is conditioned by the requirement that the alternate method be previously approved by the EPA.

In section 66261.22 (a)(1), the method number is changed from 5.2 to 9040 which is the correct number for the method in the third edition of the referenced document.

In sections 66261.22 (a)(1) and (a)(2), the title of the EPA document referred to is being corrected and the third edition is being referred to. The reference to the third edition clarifies that the Department is requiring usage of the most recent version of SW-846 in these instances.

In section 66261.22 (a)(3), a State-only process is established by which the characteristic of corrosivity can be determined for nonaqueous materials by measuring the pH of a test solution. This section requires the use of Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" incorporated by reference in section 66260.11, or an alternate method approved by the Department pursuant to section 66260.21. The requirement that nonaqueous materials be tested for corrosivity exists in current Title 22 CCR section 66708 (a)(1), but has no counterpart in current federal law.

In section 66261.22 (a)(4), a State-only process is established by which the characteristic of corrosivity can be determined for nonliquid materials by measurement of the rate at which they corrode steel. This subsection requires the use of NACE Standard TM-01-69 contained in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" incorporated by reference in section 66260.11, or an alternate method approved by the Department pursuant to section 66260.21. The requirement that nonliquid materials be tested for corrosivity exists in current Title 22 CCR section 66708 (a)(2), but has no counterpart in current federal law.

In section 66261.22 (b), a qualification is added to the corresponding federal regulation limiting the applicability of the EPA Hazardous Waste Number for corrosivity to those materials identified as hazardous pursuant to sections 66261.22 (a)(1) and (a)(2). This limitation is necessary because the federal regulations contain no equivalent provisions to those in sections 66261.22 (a)(3) and (a)(4). Wastes hazardous pursuant to sections 66261.22 (a)(3) and (a)(4) do not have EPA Hazardous Waste Numbers. The phrase "but is not listed as a hazardous waste in Article 4 of this chapter", is deleted in accordance with 55 FR 106, June 1, 1990, pp. 22520-22720. The EPA amended the language because generators must use both the listed waste code and the characteristic waste code to determine whether listed wastes also exhibit any hazardous characteristic for the purposes of compliance with 40 CFR Part 268.

This section implements, interprets or makes specific the statutory definitions of "(h)azardous waste", Health and Safety Code section 25117 and "RCRA hazardous waste", Health and Safety Code section 25120.2 and are added as reference citations.

Section 66261.23: This section is based on 40 CFR section 261.23. It defines the characteristic of reactivity. This section conforms with the corresponding federal regulation except for generic changes specified in the introduction to this Statement of Reasons and as follows:

In section 66261.23(a)(8), dates are being appended to the 49 CFR citations in order to specify which version of those regulations is being incorporated.

In section 66261.23(b), the phrase "but is not listed as a hazardous waste in Article 4 of this chapter", is deleted in accordance with 55 FR 106, June 1, 1990, pp. 22520-22720. The EPA amended the language because generators must use both the listed waste code and the characteristic waste code to determine whether listed wastes also exhibit any hazardous characteristic for the purposes of compliance with 40 CFR Part 268.

This section implements, interprets or makes specific the statutory definitions of "(h)azardous waste", Health and Safety Code section 25117 and "RCRA hazardous waste", Health and Safety Code section 25120.2 and are added as reference citations.

Section 66261.24: This section is based on 40 CFR section 261.24 and existing Title 22 CCR sections 66696 and 66699. Section 66261.24 identifies those wastes which are hazardous because of their toxicity. This section conforms with the corresponding federal regulation except for the generic changes specified in the introduction to this Statement of Reasons and as follows:

Section 66261.24 (a) is being added because additional tests for meeting the characteristic of toxicity have been carried over from existing Title 22, CCR. This introductory subsection is being added to be consistent with the format of the three preceding characteristics of hazardous waste where multiple criteria have been specified.

Section 66261.24 (a)(1) is based on 40 CFR section 261.24 (a) which establishes the characteristic of toxicity. In this subsection, the phrase "A solid waste..." introducing this paragraph is being replaced by "It..." because the new introductory paragraph (a) establishes that "it" is "a waste." In this subsection, the word "if" is being replaced with the word "when" because the conditional "if" is already applied to this section in subsection (a). On March 29, 1990 (55 FR 61), the EPA adopted as a final rule the new Toxicity Characteristic which added 25 organic chemicals to the existing list of 14 constituents already regulated under RCRA. The rule establishes regulatory levels for the new organic chemicals listed and replaces the Extraction Procedure (EP) toxicity test with the Toxicity Characteristic Leaching Procedure (TCLP). The TCLP is adopted as proposed by the EPA and is applicable to all RCRA regulated wastes. Although the California Waste Extraction Test (WET) is determined to be more stringent than the federal EP toxicity test, the WET has not been determined to be more stringent than the federal TCLP. Therefore, unless the waste is excluded or exempted from federal regulation pursuant to 40 CFR section 261.4, generators must first perform the TCLP on samples of their waste to determine if their waste exhibits the federal toxicity characteristic.

Sections 66261.24(a)(1)(A) and 66261.24(a)(1)(B) are based on 40 CFR section 66261.24(b). These sections have been redesignated independently for clarity. In addition, minor typographical errors in Table I have been corrected.

In section 66261.24(a)(1)(A), the phrase "pursuant to subsection (a)(1) of this section" is added to clarify that only wastes which exhibit the characteristic of subsection

(a)(1) have the EPA Hazardous Waste Number specified in Table I. Also, the phrase "but is not listed as a hazardous waste in Article 4 of this chapter", is deleted in accordance with 55 FR 106, June 1, 1990, pp. 22520-22720. The EPA amended the language because generators must use both the listed waste code and the characteristic waste code to determine whether listed wastes also exhibit any hazardous characteristic for the purposes of compliance with 40 CFR Part 268.

In section 66261.24(a)(1)(B), Table I is amended following the final rule adoption by the EPA in 55 FR 61, March 29, 1990, pp. 11798-11877. The table was modified to reflect the new organic chemicals listed as part of the new toxicity characteristic rule. Included in the listings are the assigned EPA hazardous waste numbers, the chemical abstracts service numbers, and the regulatory levels.

Sections 66261.24 (a)(2), (a)(2)(A), and (a)(2)(B) are based on current Title 22 CCR section 66699. These subsections do not have counterparts in federal law. These sections set forth threshold standards determinative of the characteristic of toxicity for the substances specified therein. Title 22 CCR section 66699 has been incorporated into proposed section 66261.24 with the following changes:

In section 66261.24 (a)(2), the word "It" is being substituted for the introductory phrase in existing Title 22 CCR section 66699 (a) in order to make the language of this subsection consistent with the format of the introductory paragraph of section 66261.24.

The subsection breakdown into sections 66699 (a)(1) and (a)(2) in current Title 22 CCR section 66699 is being eliminated. This elimination reduces the format complexity of this subsection without changing the regulatory requirements. The footnote relating to elemental metals has been amended to correct the sentence structure.

The phrase "of waste extract" has been added to clarify the reference to the Waste Extraction Test (WET). This change explains that the subsequent tables refer to the concentration of contaminants in the waste extract as determined by the WET rather than the concentration of contaminants in the waste itself. In current Title 22, the reference to the extract is not clearly stated and must be determined by inference by reading the procedure for carrying out the WET.

The phrase "equals or" has been added in two places to modify the reference to the stated concentration limits in sections 66261.24 (a)(2)(A) and (a)(2)(B). This change is necessary for two reasons. First, the federal standard for those contaminants common to both regulatory systems, found in 40 CFR section 261.24 (a), states that wastes containing the

listed contaminants at concentrations equal to or greater than the concentrations listed in Table I of 40 CFR section 261.24 are hazardous wastes. Second, the existing definitions of "STLC" and "TTLC", found in Title 22 CCR sections 66194 and 66206, define these terms as concentrations which, if equaled or exceeded, render the waste hazardous. Therefore, for consistency with both federal and existing State regulations, this phrase is being added.

Section 66261.24 (a)(2)(A) Table II is based on the table in existing Title 22 CCR section 66699 (b). Footnote designations which indicate the proper application of the footnotes have been added to the existing Title 22 text.

Section 66261.24 (a)(2)(A) Table II contains a change in the numerical value for the Soluble Threshold Limit concentration for trivalent chromium with a corresponding footnote denoted by a double asterisk. The federal hazardous waste level for soluble chromium, trivalent or hexavalent, is 5 mg/l. Existing State regulations differentiate between trivalent and hexavalent chromium. The State level for soluble trivalent chromium is 560 mg/l. To ensure that wastes exhibiting the federal characteristic of toxicity for chromium are identified as hazardous wastes in the State, the numerical value in Table II is being changed and a footnote is being added. The footnote sets forth the procedures to follow in order to demonstrate that such a presumptive RCRA hazardous waste is a non-RCRA hazardous waste. Consequently, the current State regulatory threshold for trivalent chromium remains. The change adds another step in order to maintain the stringency of the regulations. The reference to Method 1310 of SW-846 in the footnote is replaced with a reference to the TCLP, which is in Appendix I of Chapter 18, following the final rule adoption by the EPA in 55 FR 61, March 29, 1990, pp. 11798-11877. Method 1310 is the EP toxicity test which was replaced by the TCLP. The parentheses in the footnote to this subsection were removed to clarify that the phrase within the parentheses is regulatory language.

Sections 66261.24 (a)(3) through (a)(8) are being transferred from current Title 22 CCR sections 66696 (a)(1) through (a)(6), respectively. The word "It" has been added at the beginning of each subsection. This change is being made in order to conform to the format of the rest of this section.

In section 66261.24 (a)(6), the California Department of Fish and Game fish bioassay procedure is being substituted for the procedures described in "Standard Methods for the Examination of Water and Wastewater" specified in the current Title 22 because the fish bioassay is the updated method acceptable to the State agency responsible for protection of fish resources. During the public comment period, the Department received comments concerning reference to a new fish bioassay

procedure. The proposed procedure, "Static Acute Bioassay Procedures for Hazardous Waste Samples", referenced in this subsection is not new. It is based on the method in Part 800 of the "Standard Methods for Examination of Water and Wastewater", but has been modified by the California Department of Fish and Game to describe special sample preparation and procedures to use specifically for hazardous waste samples. The California Department of Fish and Game certifies laboratories for bioassay testing using the procedure they developed with the expectation that laboratories are already familiar with the basic protocol in the "Standard Methods for Examination of Water and Wastewater". The Department modified the language to reference both procedures to clarify that the bioassay test must be performed according to the procedures described in Part 800 and the California Department of Fish and Game method. The change in the date in the California Department of Fish and Game method reflects the most current version of the procedure.

In section 66261.24 (b), the phrase "are (is) toxic according to the criterion of" is being replaced by the phrase "exhibit(s) the characteristic of toxicity because ..." which conforms to the use of the term "characteristic" instead of the term "criterion" in these regulations. This replacement occurs in two places and is consistent with the initial sentence in section 66261.24 (a). Also, the phrase "is not hazardous by" is being changed to read "does not exhibit" for consistency. Method 8240 is being added to the specified gas chromatographic procedures and for these procedures the cited reference to SW-846 is being updated to the third edition. This method is included in Table 4 of Appendix III and is a method for which laboratories may be certified by the Department. For clarity, the term "eight-hour inhalation LC₅₀" is replaced with the term "acute inhalation LC₅₀" which is defined in Title 22, CCR, section 66260.10 as "...the concentration of a substance or mixture of substances in air, in parts per million by volume if the substance or mixture of substances is a gas or vapor, which when inhaled continuously for 8 hours..." because the terms are synonymous.

In sections 66261.24 (b) and (c), the word "criterion" is being replaced by the word "characteristic" in order to conform to the terminology being used in these proposed regulations.

In sections 66261.24 (b) and (c), the requirement that a waste "is not listed in Article 4 of this chapter" is being added to the criteria for non-hazardous classifications in order to conform to the federal requirement that a hazardous waste listed in Article 4 be regulated as a hazardous waste unless delisted by EPA.

In section 66261.24 (c), the phrase "are toxic according to any criterion of" is being replaced by the phrase "exhibit(s) the characteristic of toxicity because..." which conforms to the use of the term "characteristic" instead of the term "criterion" in these regulations. The phrase "is not hazardous by" is being replaced by "does not exhibit" for consistency. The phrase "oral or dermal" has been added because it was inadvertently omitted from the equation in the proposed regulations.

This section implements, interprets or makes specific the statutory definitions of "(h)azardous waste", Health and Safety Code section 25117 and "RCRA hazardous waste", Health and Safety Code section 25120.2 and are added as reference citations.

ARTICLE 4: LISTS OF HAZARDOUS WASTES

This article sets forth the full text of the lists of hazardous wastes which appear in 40 CFR Part 261 Subpart D. Existing State law incorporates wastes listed in 40 CFR Part 261 Subpart D by reference in Title 22 CCR sections 66696 (a)(7)(A) through (a)(7)(D). Therefore, the adoption of the full text of these lists has no substantive impact.

Section 66261.30: This section is based on 40 CFR section 261.30. This section identifies hazard codes which indicate the properties which caused EPA to list wastes as generic hazardous wastes. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this statement of reasons and as follows:

Section 66261.30 (a) is being modified by addition of the adjective "RCRA" to the term hazardous waste to clarify that the listed wastes are being included in the category of federally regulated hazardous waste, unless excluded from that category as specified. A sentence is being added stating that the source of these lists of hazardous wastes is exclusively the CFR.

In section 66261.30 (b), the phrase "EP Toxic Waste" and its corresponding Hazard Code, "(E)", are not being adopted because this code is not used in any of the lists in this article.

In section 66261.30 (c), the reference to the notification requirements of section 3010 of RCRA is being replaced by a reference to Health and Safety Code section 25153.6, the State law establishing equivalent notification requirements.

Section 66261.30 (d) is not being adopted because that section makes reference to the small quantity generator exemption in 40 CFR section 261.5 which is not being included in these proposed regulations.

This section implements, interprets or makes specific the statutory definitions of "(h)azardous waste", Health and Safety Code section 25117 and "RCRA hazardous waste", Health and Safety Code section 25120.2 and are added as reference citations.

Section 66261.31: This section is based on 40 CFR section 261.31. This section lists hazardous wastes from non-specific sources and assigns hazardous waste numbers to those wastes. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this Statement of Reasons and as follows:

In section 66261.31, introductory paragraph, the reference to wastes excluded from regulation "under" sections 260.20 and 260.22 is being replaced by a reference to exclusions "pursuant to" those sections because this new terminology is more accurate regulatory language. The reference to Appendix IX is not being incorporated because that federal appendix is not being adopted.

In the heading for the list of hazardous wastes, the words "Industry and" appearing before "EPA Hazardous Waste No." are being deleted to maintain consistency in the headings used throughout the lists of Article 4 as well as in Appendices VII and VIII.

The hazardous waste description for F024 listed waste is amended and a new listing for F025 is added to this section following the final rule adoption by the EPA in 54 FR 236, December 11, 1989, pp. 50968-50979. The hazardous waste description for F019 listed waste is amended in this section following the final rule adoption by the EPA in 55 FR 31, February 14, 1990, pp. 5340-5342. A new listing for F039 was added to this section following the final rule adoption by the EPA in 55 FR 106, June 1, 1990, pp. 22520-22720.

A sentence is being added to the beginning of the footnote following the list to clarify the meaning of the hazard code for F003 listed waste. The language of the federal footnote was changed from advisory to regulatory language.

This section implements, interprets or makes specific the statutory definitions of "(h)azardous waste", Health and Safety Code section 25117 and "RCRA hazardous waste", Health and Safety Code section 25120.2 and are added as reference citations.

Section 66261.32: This section is based on 40 CFR section 261.32. This section lists hazardous wastes from specific sources and assigns hazardous waste numbers to those wastes. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this Statement of Reasons and as follows:

In section 66261.32, introductory paragraph, the reference to wastes excluded from regulation "under" sections 260.20 and 260.22 is being replaced by a reference to exclusions "pursuant to" those sections because this new terminology is more accurate regulatory language. The reference to Appendix IX is not being incorporated because that federal appendix is not being adopted.

In the heading for the list of hazardous wastes, the words "Industry and" appearing before "EPA Hazardous Waste No." are being deleted to maintain consistency in the headings used

throughout the lists of Article 4 as well as in Appendices VII and VIII.

In the description of the wastes with Waste numbers K117, K118, and K136, the word "ethene" is being changed to "ethylene" because the latter term is more commonly used.

The hazardous waste number K068 is a typographical error. The correct hazardous waste number is K088. The Department added two listings, K131 and K132, to this section following the final rule adoption by the EPA in Federal Register Vol. 54, No. 193, pgs. 41402-8, October 6, 1989.

Four new listings, K107, K108, K109 and K110, are added to this section following the final rule adoption by the EPA in 55 FR 85, May 2, 1990, pp. 18507-18513.

This section implements, interprets or makes specific the statutory definitions of "(h)azardous waste", Health and Safety Code section 25117 and "RCRA hazardous waste", Health and Safety Code section 25120.2 and are added as reference citations.

Section 66261.33: This section is based on 40 CFR section 261.33. This section lists commercial chemical products and specifies the conditions under which they become hazardous wastes. This section conforms to the corresponding federal regulation except for the generic changes explained in the introduction to this Statement of Reasons and as follows:

In section 66261.33, introductory paragraph, the reference to "waste oil or used oil" is being deleted. These words appear in 40 CFR section 261.33 because used oil is not a hazardous waste under the federal regulations unless it exhibits a characteristic of hazardous waste. In existing State law, used oil (waste oil) is a hazardous waste pursuant to Health and Safety Code section 25250 et seq. Disposal of used oil by deposition on land and use as a dust suppressant are prohibited pursuant to Health and Safety Code section 25250.5. In addition, a mixture of any one of the materials in the lists of section 66261.33, when that material is regulated per this section, will be a hazardous waste according to the mixture rules found in proposed section 66261.3 and existing Title 22 CCR section 66300 (a)(2). The phrases "in lieu of their original intended use", are deleted to be consistent with existing State law in Health and Safety Code section 25143.2(e)(1) and (e)(2). Hazardous wastes which are recycled in a manner constituting disposal are subject to hazardous waste regulation.

The federal phrases which follow the reference to section 66261.2(b) are deleted to remain consistent with the

activities referenced in section 66261.(b) and the section's intended meaning. (See comment a-10.)

In section 66261.33 (a), the comment found after 40 CFR section 261.33 (d) is being incorporated into the regulatory language of subsection (a). The information in the federal comment is a clarification of the meaning of the phrase "commercial chemical product or manufacturing intermediate having the generic name listed in" This comment is being included in the text of the proposed regulations because it is regulatory in nature.

In section 66261.33 (c), the reference to the federal exception for empty containers as defined in 40 CFR section 261.7 is not being incorporated because 40 CFR section 261.7 is not being incorporated into these regulations. Instead, the Department has adopted as emergency regulation Title 22 CCR section 66730 (R-91-3, effective February 18, 1991), a modified, more stringent definition for contaminated containers. These regulations are referenced as section 66261.7 in place of 40 CFR 261.7. Additionally, a reference to subsection (f) is added to this section following the final rule adoption by the EPA in 55 FR 106, June 1, 1990, pp. 22520-22720. The amendment was made to clarify an oversight by the EPA. Residues remaining in a container or in an inner liner contaminated with "U-listed" wastes are subject to regulation, unless excepted from regulation pursuant to section 66261.7.

The comment following 40 CFR section 261.33 (c) is not being incorporated because it is superseded by the provisions of Health and Safety Code section 25143.2 (b).

In section 66261.33 (e), the statement that certain wastes are subject to the small quantity generator exclusion of 40 CFR section 261.5 is not being incorporated because that CFR section is itself not being included in these proposed regulations.

In section 66261.33 (e), the comment following 40 CFR section 261.33(e) is being incorporated into the regulatory language because the information in the comment sets forth the hazard codes for each listing in the tables that follow.

In section 66261.33 (e), the duplicate listings of substances in which the 9th Collective Index CAS name and common name are identical are not being incorporated. The 9th Collective Index CAS name, which included the molecular formula, will be used to designate those wastes with waste numbers P021, P029, P033, P073, P074, P098, P104, P106, and P121.

In section 66261.33 (e), "EPA" is being inserted at the heading of the list in order to maintain consistency in the

headings used throughout Article 4 as well as in Appendices VII and VIII. Also, a listing for P107, strontium sulfide is added to this section because it was inadvertently omitted in the proposed regulations.

In section 66261.33 (f), the word "following" is being inserted to clarify which commercial chemical products are being referred to.

In section 66261.33 (f), the words "identified as" are being deleted because they are not necessary.

In section 66261.33 (f), the statement that certain wastes are subject to the small quantity generator exclusion of 40 CFR section 261.5 is itself not being incorporated because that section is not being included in the proposed regulations.

In section 66261.33 (f), the comment following 40 CFR section 261.33 (f) is being incorporated into the regulatory language because the information in the comment sets forth the hazard codes for each listing in the tables that follow.

In section 66261.33 (f), "EPA" is being inserted at the heading of the list in order to maintain consistency in the headings used throughout Article 4 as well as in Appendices VII and VIII.

In section 66261.33 (f), the CAS chemical name for U027 (listed as Propane,2,2'-oxybis [2-chloro-]) is being changed to correct the nomenclature.

In section 66261.33 (f), the duplicate listings of substances in which the 9th Collective Index CAS name and common name are identical are not being incorporated. The 9th Collective Index CAS name, which included the molecular formula, will be used to designate those wastes with waste numbers U135 and U205.

In section 66261.33 (f), the designation "(I,T)" will be inserted after toluene to include ignitability as one of its primary hazardous properties.

This section implements, interprets or makes specific the statutory definitions of "(h)azardous waste", Health and Safety Code section 25117 and "RCRA hazardous waste", Health and Safety Code section 25120.2 and are added as reference citations.

ARTICLE 5: CATEGORIES OF HAZARDOUS WASTE

This article sets forth categories of hazardous waste identified as hazardous pursuant to the characteristics set forth in Article 3 of this chapter or the lists of hazardous wastes in Article 4 of this chapter. This article has no 40 CFR counterpart and consists of Title 22 CCR sections 66717, 66720, 66723, 66740, 66742, 66744, and 66746, and two new sections. The first two sections establish criteria which differentiate between "RCRA hazardous waste" as defined in section 66260.10 of this division, and "non-RCRA hazardous waste", as defined in Health and Safety Code section 25117.9. The remainder of this article describes the categories of "extremely hazardous waste" and "special waste", sets forth criteria for the identification of those wastes, and establishes special management standards for several of these categories of hazardous waste.

It is necessary to differentiate between hazardous wastes regulated under RCRA and hazardous wastes regulated only under State law because California's authority to issue variances (Health and Safety Code (Health and Safety Code section) section 25143) is limited to wastes not regulated pursuant to RCRA.

Section 66261.100: The introductory paragraph in this section was deleted because it serves no regulatory purpose and is not necessary. This section sets forth criteria for identification of hazardous wastes regulated under regulations promulgated by the EPA pursuant to RCRA (Title 40 CFR Part 261). Specific provisions of this section are:

Section 66261.100 (a) states that a hazardous waste is a RCRA hazardous waste if it meets any of the specified criteria.

Section 66261.100 (a)(1) identifies a hazardous waste as a RCRA hazardous waste if it meets certain characteristics. The reference to "EP" is deleted in light of the change made in section 66261.24(a)(1). These characteristics and their 40 CFR counterparts are:

66261.21	40 CFR section 261.21
66261.22 (a)(1) and (a)(2)	40 CFR section 261.22
66261.23	40 CFR section 261.23
66261.24(a)(1)	40 CFR section 261.24

State hazardous waste management standards for these wastes must always be equivalent to or more stringent than the 40 CFR standards. These wastes must be identified as RCRA hazardous waste because several less stringent hazardous waste management standards appear in existing State law which must be limited so as not to apply to any hazardous waste identified as a RCRA hazardous waste and not otherwise exempted from federal regulation.

Section 66261.100 (a)(2) is deleted in light of the change made in section 66261.24(a)(1). The Waste Extraction Test (WET) has not been determined to be more stringent than the Toxicity Characteristic Leaching Procedure (TCLP); and therefore, cannot be used in lieu of the federal extraction test. A hazardous waste is identified as a RCRA hazardous waste if the extract from the TCLP performed on that hazardous waste contains any of the specified contaminants listed in section 66261.24 (a)(1)(B) at or in excess of the specified levels. These contaminant levels are those levels used to identify the federal characteristic of toxicity as set forth in 40 CFR section 261.24. These wastes must be identified as RCRA hazardous waste because several less stringent hazardous waste management standards appear in existing State law which must be limited so as not to apply to any hazardous waste identified as a RCRA hazardous waste and not otherwise exempted.

Section 66261.100 (a)(2) (originally proposed as section 66261.100(a)(3)) states that a hazardous waste is a RCRA hazardous waste if it appears on the lists of hazardous wastes in Article 4 of this chapter, unless it has been excluded from the lists of hazardous wastes in 40 CFR Part 261 by the USEPA Administrator. The phrase "from 40 CFR Part 261, Subpart D" was added because the USEPA Administrator only has the authority to exclude wastes listed in 40 CFR Part 261 and not wastes listed in Article 4 of this chapter. The lists in proposed Article 4 are taken directly from 40 CFR Part 261 Subpart D. A specific description of listed wastes appears in section 66261.30 (a). These wastes must be identified as RCRA hazardous waste because several less stringent hazardous waste management standards exist in State law which may not be applied to a RCRA hazardous waste not otherwise exempted from federal regulation. For clarity, a sentence is added to advise the regulated community that wastes excluded by the USEPA Administrator pursuant to 40 CFR sections 260.20 and 260.22 are listed in 40 CFR Part 261, Appendix IX.

Section 66261.100 (a)(3) (originally proposed as section 66261.100(a)(4)) states that a hazardous waste is a RCRA hazardous waste if it is identified as a hazardous waste pursuant to specific subsections of section 66261.3.

This section implements, interprets or makes specific the statutory definitions of "(h)azardous waste", Health and Safety Code section 25117 and "RCRA hazardous waste", Health and Safety Code section 25120.2 and are added as reference citations.

Section 66261.101: This section sets forth criteria for identification of those hazardous wastes meeting the statutory definition of "non-RCRA hazardous waste" in Health and Safety Code section section 25117.9. It is necessary to differentiate between

RCRA hazardous waste and non-RCRA hazardous waste because several less stringent hazardous waste management standards appear in existing State law which must be limited so as not to apply to any hazardous waste identified as a RCRA waste and not otherwise exempted.

Section 66261.101 (a) states that a hazardous waste is a non-RCRA hazardous waste if it meets all of the criteria specified thereafter.

Section 66261.101 (a)(1) specifies that a non-RCRA hazardous waste cannot include hazardous waste meeting any of the characteristics listed therein. These characteristics and their 40 CFR counterparts are:

66261.21	40 CFR section 261.21
66261.22 (a)(1) and (a)(2)	40 CFR section 261.22
66261.23	40 CFR section 261.23
66261.24(a)(1)	40 CFR section 261.24

State hazardous waste management standards for these specified wastes must be equivalent to or more stringent than the applicable 40 CFR standards because these requirements will be enforced in lieu of federal law after California receives authorization to administer the RCRA program. Hazardous wastes exhibiting any of these characteristics must not be identified as non-RCRA hazardous waste because several hazardous waste management standards exist in current State law which are less stringent than federal law and these can be legally applied only to non-RCRA hazardous waste. The reference to "EP" is deleted in light of the change made in section 66261.24(a)(1).

Section 66261.101 (a)(2) specifies that under the scheme established by subsection (a), a non-RCRA hazardous waste must be identified as hazardous solely by meeting the criteria or any of the characteristics specified therein. The characteristics and criteria specified apply only to non-RCRA hazardous waste.

Section 66261.101 (a)(3) specifies that a hazardous waste cannot be a non-RCRA hazardous waste if it appears on the lists of hazardous wastes in Article 4 of this chapter unless that hazardous waste has been excluded from the lists of hazardous wastes in 40 CFR Part 261 by the USEPA Administrator. These lists are taken directly from 40 CFR Part 261 Subpart D. A description of federal listed wastes appears in section 66261.30 (a). These wastes must not be identified as non-RCRA hazardous waste because several hazardous waste management standards exist in current State law which are less stringent than federal law and these may be legally applied only to non-RCRA hazardous waste.

Section 66261.101 (b) states that a hazardous waste is a non-RCRA hazardous waste if it exhibits any characteristic set forth in Article 3 of Chapter 11 and any of the criteria specified thereafter. Consequently, this section addresses only waste which is not listed in Article 4 of Chapter 11.

Sections 66261.101 (b)(1) refers to provisions of section 66261.2 which establish criteria for potential non-RCRA hazardous waste.

Originally proposed section 66261.101 (b)(2) which referred to waste mixtures identified as non-RCRA hazardous waste pursuant to section 66261.3(e), was deleted because section 66261.3(e) was deleted.

Sections 66261.101(b)(2) (originally proposed as section 66261.101(b)(3)) refers to 40 CFR section 261.4 which exempts certain materials from classification as solid waste or hazardous waste. Because this section of federal law exempts qualifying materials from regulation as hazardous waste under federal law, these materials meet the statutory definition (Health and Safety Code section 25117.9) of non-RCRA hazardous waste and can be classified as such. 40 CFR section 261.4 is not being included in the proposed regulations because it is less stringent than state law as explained in the corresponding sections of this Statement of Reasons. Thus, proposed section 66261.101 (b)(2) refers the reader directly to the federal regulations.

Section 66261.101(c) (originally proposed as section 66261.101(b)(4)) refers to 40 CFR section 261.7 which exempts empty containers from management as hazardous wastes. Because this section of federal law exempts qualifying wastes from regulation as hazardous waste under federal law, these wastes meet the statutory definition (Health and Safety Code section 25117.9) of non-RCRA hazardous waste and can be classified as such. The Department is adopting a more stringent definition for contaminated containers in proposed section 66261.7, which if met will allow for management as nonhazardous waste.

Section 66261.101(d) (originally proposed as section 66261.101(c)) is deleted in light of the change made in section 66261.24(a)(1). The EP toxicity test was repealed and replaced with the TCLP. The WET has not been determined to be more stringent than the TCLP; and therefore, cannot be used in lieu of the federal extraction test.

Section 66261.101(d) (originally proposed as section 66261.101(d), then changed to subsection (e) during the second comment period) is a "catch-all" provision which states that a waste may be a non-RCRA hazardous waste if the generator can demonstrate that the waste would not be regulated as a hazardous waste under RCRA. This demonstration can be made by

an analysis of 40 CFR or RCRA, by letter from EPA, or other unspecified means. This subsection is necessary because these regulations do not identify every material exempted from regulation as hazardous waste by EPA. Several commentators stated that use of the word "demonstrate" elsewhere in regulation implied that a demonstration to the Department was necessary in order to classify a waste and that self-classification is no longer permissible. This was not the Department's intent. In response, the Department replaced the word "demonstrate" with the word "determine" in all applicable sections to clarify that generators can self-classify their wastes.

Section 66261.101(e) (originally proposed as section 66261.101(e), then changed to subsection (f) during the second comment period) lists information that the State or EPA can request from any person claiming that their waste is a non-RCRA hazardous waste. This information must be submitted if requested because the State has a number of less stringent provisions of law, such as the State's administratively granted variance. The application of these less stringent provisions must be limited to non-RCRA hazardous waste in order to comply with federal law. In addition, these less stringent provisions must be limited to non-RCRA hazardous waste in order for the State to be eligible to be authorized to administer the federal RCRA program. Lastly, this information must be available on request for the EPA to take enforcement action against federally regulated hazardous wastes. The EPA reserves the authority in authorized states to take enforcement action against persons generating or managing federally regulated hazardous waste and would need proof that a specific waste is federally regulated before taking action.

Section 66261.101(e)(1) (originally proposed as section 66261.101 (e)(1), then changed to subsection (f)(1) during the second comment period) specifies that the Department or EPA may request information demonstrating that a waste meets the criteria of one of the preceding subsections of section 66261.101.

Section 66261.101(e)(2) (originally proposed as section 66261.101(e)(2), then changed to subsection (f)(2) during the second comment period) specified that the Department or EPA may request analytical information generated by a certified laboratory demonstrating that a waste is not toxic according to federal regulations. The reference to Method 1310 of SW-846 in the this subsection is replaced with a reference to the TCLP, which is in Appendix I of Chapter 18, following the final rule adoption by the EPA in 55 FR 61, March 29, 1990, pp. 11798-11877. Method 1310 is the EP toxicity test which was replaced by the TCLP.

Section 66261.101(e)(3) (originally proposed as section 66261.101 (e)(3), then changed to subsection (f)(3) during the second comment period) specifies that the Department or EPA may request a representative sample of any waste claimed to be a non-RCRA hazardous waste. This information may be necessary so that the Department or EPA may independently corroborate any analytical results obtained by the person classifying the waste. Health and Safety Code section 25185 (a)(2) authorizes the Department to obtain a sample of a waste from any person generating or managing a hazardous waste.

This section implements, interprets or makes specific the statutory definitions of "(h)azardous waste", Health and Safety Code section 25117 and "non-RCRA hazardous waste", Health and Safety Code section 25117.9 and are added as reference citations.

Section 66261.107: This section is based on existing Title 22 CCR section 66717 which establishes the applicability of the criteria for extremely hazardous wastes. Because this section has no 40 CFR counterpart, it is being transferred into the proposed regulations. Changes made to this section include the correction of the internal references to match the numbering of the proposed regulations, replacement of the word "chapter" with the word "division," and clarification that specific provisions pertain to extremely hazardous waste.

This section implements, interprets or makes specific the statutory definitions of "(e)xtremely hazardous waste", Health and Safety Code section 25115 and "(h)azardous waste", Health and Safety Code section 25117 and are added as reference citations.

Section 66261.110: This section is based on existing Title 22 CCR section 66720 which establishes the criteria for extremely hazardous wastes. Because this section has no 40 CFR counterpart, it is being transferred into the proposed regulations. Changes made to this section include only the correction of the internal references to match the numbering of the proposed regulations and replacement of the word "paragraphs" with the word "subsection". Also, the word "waste" was inserted in the section title for grammatical purposes.

In section 66261.110(a)(5) the phrase "extreme hazard to the public health", was replaced with the phrase "that human exposure to the waste or material may likely result in death, disabling personal injury or serious illness" to clarify the statutory intent of the definition of extremely hazardous waste. The phrase "of the waste or material" replaces the reference to the word "its" for grammatical clarity.

In section 66261.110 (b), the language was modified to allow generators to self-classify their waste as not extremely

hazardous by calculating the acute oral or dermal toxicity of the wastes using the equation in Title 22, CCR, section 66261.24 (c). This change is consistent with the intent of the Department's self-classification approach to waste classification. The word "toxic" is replaced with the word "hazardous" to conform with the term usage in subsection (a) of this section. The language in this subsection was further modified to clarify that generators not only can determine the calculated acute oral of acute dermal toxicity of their waste, but also that the waste is not extremely hazardous as long as neither criterion is exhibited.

This section implements, interprets or makes specific the statutory definitions of "(e)xtremely hazardous waste", Health and Safety Code section 25115 and "(h)azardous waste", Health and Safety Code section 25117 and are added as reference citations.

Section 66261.113: This section is based on existing Title 22 CCR section 66723 which establishes the Total Threshold Limit Concentration values of persistent and bioaccumulative toxic substances in extremely hazardous wastes. Because this section has no 40 CFR counterpart, it is being transferred into the proposed regulations. The footnote relating to elemental metals has been amended to correct the sentence structure.

This section implements, interprets or makes specific the statutory definitions of "(e)xtremely hazardous waste", Health and Safety Code section 25115 and "(h)azardous waste", Health and Safety Code section 25117 and are added as reference citations.

Section 66261.120: This section is identical to existing Title 22 CCR section 66740 which establishes a noninclusive list of hazardous wastes which can be classified as special wastes. Because this section has no 40 CFR counterpart, it is being transferred into the proposed regulations. Changes made to this section include only the correction of the internal references to match the numbering of the proposed regulations and the correction of a typographical error in the spelling of "furnace" in subsection (a) (9).

This section implements, interprets or makes specific the statutory definition of "(h)azardous waste", Health and Safety Code section 25117 and is added as a reference citation.

Section 66261.122: This section is based on existing Title 22 CCR section 66742 which establishes criteria and requirements of a special waste. Because this section has no 40 CFR counterpart, it is being transferred into the proposed regulations. Changes made to this section include the correction of the internal references to match the numbering of the proposed regulations and as follows:

In section 66261.122 (b), the phrase "meet any of the following criteria" is being added in order to clarify the relationship of the criteria which follow.

In section 66261.122 (b)(1), the phrase "Wastes which are" is being added to reconcile the internal syntax of the regulation.

In section 66261.122 (b)(1)(A), the word "criterion" is being replaced with the word "characteristic" because that term is used throughout the regulations.

In section 66261.122 (b)(1)(A), the reference to existing Title 22 CCR section 66696(a)(7) is being moved to proposed subsection (b)(1)(E).

In section 66261.122 (b)(1)(A), the reference to existing Title 22 CCR section 66696(b) is being deleted because it was inappropriately included. Section 66696 (b) is a method of classifying a waste as nonhazardous based on calculations involving the concentration of constituents and the individual toxicity of each constituent. Section 66261.122 (b)(1)(A) contains a list of criteria (characteristics) of hazardous waste intended to preclude certain hazardous wastes from classification as a special waste. Since current Title 22 CCR section 66696(b) is not a criterion of a hazardous waste, reference to it is not appropriate in this subsection. Moreover, section 66696(b) precludes any waste from being classified as nonhazardous if the waste is hazardous by any other criterion. A special waste is hazardous by a particular criterion; therefore, it is clearly not appropriate to refer to section 66696(b) within this proposed subsection.

In section 66261.122 (b)(1)(C), the reference to section 66261.24 (a)(7) was deleted because it is in conflict with the exclusion cited in Title 22, CCR, section 66261.122 (b)(1)(A). Wastes which are toxic pursuant to Title 22, CCR, section 66261.24 (a)(7) are not eligible to be classified as special waste. Similarly, wastes which are toxic pursuant to Title 22, CCR section 66261.24 (a)(2)(B) are not eligible to be classified as a special waste. Special wastes can only be toxic pursuant to Title 22, CCR section 66261.24 (a)(2)(A), and therefore, it was necessary to clarify this limitation in regulation and to parallel the criteria already cited in Title 22, CCR section 66162.122 (b)(2)(C).

In section 66261.122 (b)(1)(D), the reference to 40 CFR section 261.24 is replaced with a reference to proposed section 66261.24 (a)(1) (originally proposed as section 66261.100 (a)(2)). Section 66261.24 (a)(1) specifically defines the federal characteristic of toxicity. Also, section 66261.100 (a)(2) is deleted in light of the change made in section 66261.24 (a)(1). Generators must first determine if

their waste is federally regulated as a hazardous waste by using the TCLP. A special waste cannot be a RCRA hazardous waste. The reference to section 66261.4 (b) is deleted because it is inappropriate in this subsection. All wastes which are exempt from regulation as a hazardous waste are not eligible for classification as a special waste. The waste must meet all of the criteria and requirements set forth in this section.

In section 66261.122 (b)(1)(D), the reference to delisting pursuant to 40 CFR section 260.22 is being deleted. This reference in existing regulations would allow an excluded waste that exhibits the federal characteristic of toxicity to be classified as a special waste. This allowance conflicts with the last sentence in 40 CFR section 260.22 (a)(2). This regulation was not adopted to maintain stringency with federal regulations.

In section 66261.122 (b)(1)(D), the reference to exemption under 40 CFR section 261.5 is being deleted because the Department is not adopting 40 CFR section 261.5. Special requirements for small quantity generators are not effective in California.

In section 66261.122 (b)(1)(D), the reference to exemption under 40 CFR section 261.6 was not adopted. This reference is to a waste which is exempt from regulation because it is being recycled. This reference is inappropriate in this subsection because an exempted recyclable material is not disposed of and classification of a waste as a special waste is made to allow disposal at a facility which is not operated pursuant to a hazardous waste facility permit.

Section 66261.122 (b)(1)(E) incorporates the provisions of Title 22 CCR section 66696 (a)(7). This provision now includes an exception for listed wastes excluded by EPA. For clarity, a sentence is added to advise the regulated community that wastes excluded by the USEPA Administrator pursuant to 40 CFR sections 260.20 and 260.22 are listed in 40 CFR Part 261, Appendix IX.

In section 66261.122 (b)(2)(A), the word "acutely" is being deleted. The use of this adjective in conjunction with the word "toxic" would conflict with the term "acutely hazardous waste" used elsewhere in this chapter. This word is unnecessary because the inclusion of the references clearly indicates the applicability of this requirement.

In section 66261.122 (b)(3), the reference to existing Article 15 is being deleted. This reference is being replaced by a reference to Health and Safety Code section 25122.7 which defines "restricted hazardous waste". For clarity, a citation to section 66268.32 is added to this subsection to inform the

regulated community where the land disposal restrictions can be found in regulation.

This section implements, interprets or makes specific the statutory definition of "(h)azardous waste", Health and Safety Code section 25117 and is added as a reference citation.

Section 66261.124: This section is based on existing Title 22 CCR section 66744 which establishes standards and procedures for classification of waste as a special waste. Because this section has no 40 CFR counterpart, it is being transferred into the proposed regulations. Changes were made to this section to correct the internal references to match the numbering of the proposed regulations and as follows:

Section 66261.124 (a): The word "generator" was replaced with the word "person" to clarify that persons other than the generator may request the Department's approval to classify and manage a hazardous waste as a special waste.

Section 66261.124(a)(1): This subsection was modified to include reference to a billing address for receipt of the fee assessment required by Health and Safety Code section 25205.8 as part of the information needed to complete the Department's evaluation.

Section 66261.124 (b) through (j): In response to a comment received during the public comment period, the Department incorporated a timeframe for departmental response to a request for classification and management of a hazardous waste as a special waste and added new subsections (b) through (j) to this section. In accordance with the Permit Reform Act of 1981, California Government Code section 15376, the Department determined its median, minimum, and maximum times for processing a request, from the receipt of the initial application to the final application decision. The processing times were based on the Department's actual performance during October 1987 - October 1989, the two years immediately preceding the proposal of this regulation. During this time period, the data base for processing special waste classifications was too small (3 special waste classifications) to generate meaningful statistics. Instead, the Department based the statistics on all determinations, including requests submitted pursuant to current Title 22, CCR, sections 66305 and 66310, as well as Title 22, CCR, section 66744. Using all classifications (90 classifications) that were made during the two year time period as the data base resulted in a median response time of 11 months, a minimum response time of 2 days, and a maximum response time of 39 months. The Department considered these statistics in determining an appropriate regulatory response time for processing requests; however, the Department proposes a more reasonable response time of 60 days upon receipt of a complete

application. The Department justifies the response time as follows. Since fiscal year 1985/1986, the Department has had an annual backlog of about 350 requests resulting in much of the response time being due to waiting in queue. With the recent passage of Senate Bill 475, codified in part as Health and Safety Code section 25205.8 (a) which states, "The board shall assess a fee of seven thousand five hundred dollars (\$7,500) upon a person requesting the department to classify a waste as hazardous or nonhazardous...", many requests were withdrawn greatly reducing the backlog. Because the backlog has been reduced and the number of requests submitted is expected to be less in light of the fee associated with requesting the Department to make a classification, the Department expects to be able to respond to the work load within the timeframe proposed.

In section 66261.124 (b), the Department establishes a 30 day timeframe to acknowledge receipt of an application. This timeframe is similar to the one already established in current Title 22, CCR, section 66305(d).

In sections 66261.124 (c) and (d), the Department establishes a 60 day timeframe to evaluate an application and render a decision. This timeframe is similar to the one already established in current Title 22, CCR, section 66305(e). The 60 day timeframe was chosen based upon the time needed by the Department to complete the evaluation process in order to render a determination on a special waste application. As part of the evaluation, the Department reviews the information submitted concerning the waste source and description, verifies the accuracy of the data, statistically evaluates the analytical data and assures that all the criteria and requirements set forth in title 22, CCR section 66261.122 are met. In subsection (c), after reviewing the application, if it is found to be incomplete, a letter identifying the deficiencies is prepared and sent to the generator. In subsection (d), if the application is complete, a determination letter which requires internal review by departmental management before release is prepared and sent to the generator. The 60 day timeframe is considered reasonable to perform application review, data evaluation, letter preparation and internal review of the letter.

In sections 66261.124 (e) and (f), the Department establishes a 90 day timeframe for applicants to submit the requested information with the allowance of one extension not to exceed 90 days. This change in regulation was added to assist in streamlining the evaluation process. The Department considers 90 days as a reasonable period of time to collect and submit additional data. If more than 180 days are needed, the application is most likely so deficient that it is not ready for departmental evaluation; and therefore, the Department has reason to disapprove the application. The EPA adopted similar

operating procedures concerning delisting petitions submitted pursuant to 40 CFR 260.20 and 260.22 (Federal Register Vol. 53 No.42, pgs. 6822-24, March 3, 1988).

Sections 66261.124 (g), (h), (i), and (j) were added to set forth the administrative procedures concerning the application for approval to classify and manage a hazardous waste as a special waste.

Section 66261.124 (b): This subsection was renumbered to subsection (k) to accommodate the additions above.

This section implements the statutory authority to establish a timeline for authorization decisions in Government Code section 15376 and is added as an authority and reference citation. Also, this section implements the statutory provision for fees for waste classification in Health and Safety Code section 25205.8 and is added as a reference citation.

Section 66261.126: This section is identical to existing Title 22 CCR section 66746 which establishes standards for management of special waste. Because this section has no 40 CFR counterpart, it is being transferred into the proposed regulations. Changes made to this section include the correction of the internal references to match the numbering of the proposed regulations and as follows:

Section 66261.126 (a)(1): This section has been revised to clarify that Waste Discharge Requirements must be issued by the Regional Water Quality Control Board with jurisdiction over the facility. The reference in existing Title 22 CCR section 66746 to regulations in Title 23 CCR is not being adopted because the citation is inaccurate.

Section 66261.126 (a)(2): The term "owner" has been added to conform to the format used throughout the proposed regulations.

Section 66261.126 (b): The term "owner" has been added to clarify that both the owner and the operator of a landfill are subject to the requirements of proposed Division 4.5. In addition, the term "unpermitted" is being replaced by the accurate reference to a facility operated without a hazardous waste facility permit.

Section 66261.126 (c): The conjunction "or" connecting "owner" and "operator" has been changed to "and" to clarify that when the specified requirements are met, both parties are exempt from closure and financial assurance requirements. In addition, the language in existing Title 22 CCR section 66746 relating to variances has been revised to remove imprecise regulatory language. The revisions to the existing provisions are deemed non-substantive by the Department.

Section 66261.126 (c): The reference to subsection (f) in existing Title 22 CCR section 66746(e) is not being incorporated because subsection (f) is not being incorporated.

Section 66746 (f) of existing Title 22 CCR is not being incorporated into section 66261.126. The subject of that section is controlled by Health and Safety Code section 25189.5 (c) which allows that hazardous waste may be disposed of at any point authorized in Chapter 6.5 of Division 20 of the Health and Safety Code. Since Title 22 CCR section 66746 (f) does not clearly reflect the terms of the Health and Safety Code, it is not being incorporated into section 66261.126.

Section 66261.126 (f): The term "owner" has been added to this provision to conform to the format used throughout the proposed regulations.

This section interprets the statutory definition of "(h)azardous waste facility", Health and Safety Code section 25117.1 and is added as a reference citation.

Appendices to Chapter 11: The appendices to Chapter 11 are based on the appendices to 40 CFR Part 261, Title 22, CCR, Article 9, and Title 22 CCR section 66700. These appendices set forth sampling and analytical methods, lists of hazardous constituents, and a list of California Hazardous Waste Codes. The 40 CFR appendices have been changed to include the State's analytical methods as set forth in existing Title 22, CCR, and to include the list of presumptive hazardous wastes in existing Title 22, CCR, Article 9. Several of the 40 CFR appendices have not been included as explained below.

APPENDIX I: This appendix is based on Appendix I to 40 CFR Part 261. It conforms with the corresponding federal appendix except for the generic changes explained in the introduction to this Statement of Reasons and as follows:

A reference to the sampling methods in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" incorporated by reference in proposed section 66260.11, has been included. This reference currently appears in existing Title 22 CCR section 66694.

Several sampling methods appearing in 40 CFR Appendix I are being deleted because these methods appear in the document referred to in the sentence being added to the appendix.

The ASTM standard method numbers were amended to reflect the most recent version of each method. There were no substantive changes between versions. Complete reference citations are being added to better identify the actual ASTM methods. These 5 methods are also being incorporated by reference in section 66260.11.

APPENDIX II: This new appendix contains the California Waste Extraction Test or WET. Appendix II to 40 CFR Part 261 is not being adopted. The federal appendix contained the federal test for identifying wastes which are hazardous because they exhibit the characteristic of EP toxicity. This test is not being included in the proposed regulations because the Department currently uses the WET to identify such hazardous wastes. The WET has been judged to be equivalent or more stringent than the EP toxicity test by the EPA. Thus, in order to preserve the stringency of current State law and to preserve the format of the federal appendix, the WET is replacing the EP toxicity test in Appendix II. On March 29, 1990 (55 FR 61), the EPA adopted as a final rule the new Toxicity Characteristic which added 25 organic chemicals to the existing list of 14 constituents already regulated under RCRA. The rule establishes regulatory levels for the new organic chemicals listed and replaces the EP toxicity test with the Toxicity Characteristic Leaching Procedure (TCLP). To determine if a waste exhibits the characteristic of toxicity pursuant to federal law, a generator will test his waste using the TCLP set forth in Appendix I of Chapter 18. To determine if a waste exhibits the characteristic of toxicity pursuant to State law, a generator will continue to test his waste using the WET. Proposed Appendix II to Chapter 11 has been taken verbatim from existing Title 22 CCR section 66700 except for the following changes:

References in existing Title 22 CCR section 66700 have been changed to reflect the terminology and numbering of the proposed regulations. These changes are non-substantive. Also, numerous typographical errors have been corrected.

The analytical methods set forth in existing Title 22 CCR sections 66700 (b)(2) through (b)(5) are not being adopted in this appendix. These analytical methods now appear in proposed Appendix III to Chapter 11.

In subdivision (c), the sample preparation procedure is established for analysis for total and extractable content of the specified inorganic substances and for the extractable content of the specified organic substances. The sample preparation for the analysis for the total content of the specified organic substances is established in a new subdivision (d). Current state regulations establish the use of a 2-millimeter sieve for all the above-mentioned sample preparations. Method 3550 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" establishes the use of a 1-millimeter sieve in sample preparation for the analysis for total content of organic substances. In order to maintain stringency with federal regulations, the sample preparation for analysis for total content of the specified organic substances must include use of a 1-millimeter sieve rather than a 2-millimeter sieve. New subdivisions (d)(1) through (d)(4) duplicate the procedures of subdivision (c)(1) through

(c) (4), except for the use of a 1-millimeter sieve and changes in references to subsequent subdivisions.

Because of insertion of the new subdivision (d), the subsequent subdivisions of existing Title 22 CCR sections 66700 (d) through (g) have been changed to subdivisions (e) through (h).

In subdivision (g) (2), the edition and year of the referenced document is changed to reflect the correct edition to be used for proper description of the required equipment. A phrase is inserted for regarding incorporation of the specified document.

APPENDIX III: This appendix is based on Appendix III to 40 CFR Part 261 which lists chemical analysis test methods. The 40 CFR appendix is being adopted almost verbatim. Changes to Appendix III to 40 CFR Part 261 reflected in proposed Appendix III to Chapter 11 are:

In the introductory paragraph, the phrase "SW-846, U.S. Environmental Protection Agency" is added after the reference to "Test Methods for Evaluating Solid Waste...", to clarify the source of subsequent references to "SW-846" in Tables 1, 2, and 3. The edition and year are not added because two editions are used in the first three tables and the contents of the editions are clearly identified in each table.

At the end of the introductory paragraph, a reference to Table 4 of this appendix has been added to specify those analytical methods used to determine whether the waste is hazardous by containing a persistent and bioaccumulative substance listed in section 66261.24. Because this list is used to identify non-RCRA hazardous waste, these methods are included in a table separate from the equivalent 40 CFR appendix.

In Table 1, the spelling of "benzo(b)fluoranthene" is being corrected.

In the footnote of Table 1, the spelling of "Analyze" is being corrected.

In the footnote of Table 1, the phrase "should be considered" is replaced with "shall be deemed."

In Table 2, the second edition methods for cadmium, 7130 and 7131, are being corrected.

In Table 3, the second edition methods for antimony, 7040 and 7041, are being corrected.

In Table 3, the second edition method for chromium, 7190, is being corrected.

Tables 2 and 3 are being amended following the final rule adoption by the EPA in 54 FR 188, September 29, 1989, pp. 40260-40269. The EPA adopted these methods as approved methods for use in meeting the regulatory requirements under Subtitle C of RCRA. These new methods are found in the Third Edition of SW-846, and may be used in conjunction with, or in addition to the methods found in the Second Edition of SW-846. These methods supersede the methods in the First Edition of SW-846.

Table 4 is being added to this appendix. This table appears in existing Title 22 CCR section 66700 as subsections (b)(2) through (b)(5). This table contains analytical methods for some constituents not addressed by 40 CFR Appendix III to Part 261. These methods must be added to the proposed regulations in order to preserve the stringency of current State law. Although some methods are also included in the 40 CFR Appendix III, all methods are listed together for clarity in determining non-RCRA hazardous waste and for the convenience of the reader.

APPENDIX IV THROUGH VI: These appendices are reserved for:

Appendix IV	Reserved for Radioactive Waste Test Methods
Appendix V	Reserved for Infectious Waste Treatment Specifications
Appendix VI	Reserved for Etiologic Agents

These appendices conform to the corresponding 40 CFR appendices which are also reserved. When the EPA promulgates regulations filling these reserved appendices, the Department will adopt those regulations into the reserved appendices.

APPENDIX VII: This appendix is based on Appendix VII to 40 CFR Part 261. It lists the hazardous chemical compounds that caused the EPA to list each waste included in the lists of hazardous wastes in 40 CFR Part 261 Subpart D. This appendix conforms to the corresponding federal appendix except for technical corrections to several of the entries and the corrections to chemical names are in the entries for hazardous waste numbers:

F001 (punctuation error), F002, F024 (two places), K001, K002 (punctuation error), K027, K035 (punctuation error), K065, K066, K073, and K091.

K068 was a typographical error. The correct hazardous waste number in K088. The Department added two listings, K131 and K132, to this appendix following the final rule adoption by the EPA in 54 FR 41402 on October 6, 1989. The Department added six listings to this appendix. F025 is added following

the final rule adoption by the EPA in 54 FR 236, December 11, 1989, pp. 50968-50979. F039 is added following the final rule adoption by the EPA in 55 FR 106, June 1, 1990, pp. 22520-22720. K107, K108, K109 and K110 are added following the final rule adoption by the EPA in 55 FR 85, May 2, 1990, pp. 18496-18506.

APPENDIX VIII: This appendix is based on Appendix VIII to 40 CFR Part 261. It lists hazardous constituents which may be used as a criterion for listing hazardous wastes, which are used as parameters for groundwater monitoring and which are used for development of performance standards with incinerator permits. This appendix conforms to the corresponding federal appendix except for the insertion of the term "EPA" before "Hazardous Waste No." in the heading to maintain consistency in the headings used throughout Article 4 and Appendix VII as well as the following technical corrections to several of the entries:

The word "dust" is being added after the word "Beryllium" to conform this entry to the waste listing in 40 CFR section 261.33 (e).

The spelling of chlornaphazine is being corrected.

The nomenclature in the CAS name of dichlorisopropyl ether is being corrected.

The spelling of diethylstilbestrol is being corrected.

The EPA Hazardous Waste Number of lasiocarpine is corrected.

The Chemical Abstracts Number for Nitrosamines, N.O.S., is corrected. The Chemical Abstracts Name for reserpine is corrected. Concentration limits for Warfarin are being changed from "less than 0.3%" to "of 0.3% or less" to conform with the waste listing in 40 CFR section 261.33 (f).

Allyl chloride is added to this appendix following the final rule adoption by the EPA in 54 FR 236, December 11, 1989, pp. 50968-50979. Strontium sulfide is being added because it was inadvertently omitted in the proposed regulations.

APPENDIX IX : 40 CFR Appendix IX is being deleted. This appendix contains site-specific listed hazardous wastes which have been excluded from the lists of hazardous wastes pursuant to 40 CFR sections 260.20 and 260.22. The Department has merely adopted the lists and is not adding or excluding wastes from these lists. In addition, the Department is not seeking authority to add specific hazardous wastes to this list. The Department feels that, because it can only duplicate additions to this list by the USEPA and cannot add new hazardous wastes to this list on its own, there is no need to include this list.

APPENDIX X: Appendix X to 40 CFR Part 261, Method of Analysis for Chlorinated Dibenzo-p-dioxins and -Dibenzofurans, was not adopted as an appendix to Chapter 11 because it has been added as Method 8280 in the 3rd Edition of SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods". SW-846 was incorporated by reference in Title 22, CCR, section 66260.11. Therefore, it was not necessary to list the method as a separate appendix. Instead, this appendix consists of the provisions of existing Title 22 CCR, Division 4, Chapter 30, Article 9. This appendix conforms to the existing Title 22 CCR regulation except for the generic changes discussed in the introduction to this Statement of Reasons and the following:

The references to the term "criteria" used throughout this appendix have been changed to "characteristic" because that is the term used throughout all of the proposed regulations.

Existing subsections (a) and (b) were not adopted because they were determined to be unnecessary in this context. Existing subsections (c) and (d) were combined and designated subdivision (a). Subsection (e) has been designated as subdivision (b).

In the original version of subdivision (a), the word "potential" was replaced with the word "presumed" to clarify that a waste which consists of or contains a chemical listed in this subdivision is presumed to be a hazardous waste. Several comments were received which challenged this change, for example Comment F-4.2. A discussion of the basis for this change is provided in the response to that comment. In response to the concerns raised by the public, subdivision (a) was revised following the first public comment period to more clearly explain the presumptive nature of the list of chemical names and to clearly specify that a generator may rebut the presumption by following the waste classification procedures in proposed section 66262.11.

In addition, the codes for toxic and ignitable properties of hazardous wastes are being changed from "T" and "F" to "X" and "I", respectively. The ignitable property is based on the ignitability criteria of existing state regulations and is identical to the basis in existing federal regulations for employing the Hazard Code "I" in the listed wastes. For consistency in usage, the code for the ignitable property in Appendix X will also be "I". The toxic property is based on the toxicity criteria of existing state regulations and is not identical to the basis in existing federal regulations for employing the Hazard Code "T" in the listed wastes. To differentiate the bases for these toxic codes, the code for the toxic property in Appendix X will be "X", rather than "T". A phrase was added to explain that listed materials designated with an asterisk are presumed to be extremely hazardous wastes

unless the presumption is rebutted by application of sections 66261.110 and 66261.113.

In subdivision (a), the spelling is being corrected for the entry for dichloromethylether (121), chlordane (182), isopropyl percarbonate (279), and para-(5-amino-3-phenyl-1H-1,2,4-triazol-1-yl)-N,N,N',N'-tetramethyl phosphonic diamide (775).

In subdivision (a), the "S" code after the entry for naphthalene (524) and the "I" code after the entry for phenyldichloroarsine (581) are being deleted. These codes for sensitizer and irritant, respectively, were proposed regulations (R-45-78), but were never adopted. These codes were erroneously left in existing state regulations.

In subdivision (b), the language was modified to clarify that wastes listed in this subdivision are presumed to be hazardous wastes unless it is determined that the waste is not a hazardous waste pursuant to the procedures established in Title 22 CCR section 66262.11. The changes to this subdivision are also further addressed in the response to Comment F-4.2.

In subdivision (b), the codes for toxic and ignitable properties are being changed from "T" and "F" to "X" and "I", respectively. These changes are for the same reasons stated above in reference to subdivision (a).

In subdivision (b), the list of common names was amended to clarify the basis for which wastes denoted with a dagger were listed. The following materials were specifically addressed:

Baghouse waste refers to the dust waste collected in a baghouse or other dry air pollution control device. Numerous industries such as, glass manufacturers, foundries, and ferrous and nonferrous metal smelters generate baghouse waste. Baghouse waste commonly contains high concentrations of inorganic metals. Baghouse waste is listed for toxicity and is denoted with an "X". (Draft Staff Report, Proposed Treatment Standards for Non-RCRA Fly Ash, Bottom Ash, Retort Ash, Baghouse Waste and Gas Scrubber Waste).

Catalyst may be inorganic, organic, or a complex of organic groups and metal halides. Examples of catalysts include: chromic oxide, cobalt, copper salts, hydrogen fluoride, molybdenum oxide, nickel, phosphoric acid, platinum, silver, sulfuric acid, and vanadium pentoxide. Based upon these examples, catalysts are listed for toxicity, ignitability, and corrosivity and are denoted with an "X", "I", and "C". (Hawley's, Condensed Chemical Dictionary, 11th Edition, 1987).

Chemical cleaners was deleted because it is redundant of the listing for cleaning solvents.

Chemical toilet waste was deleted because it is duplicative of the listing for toxic chemical toilet waste.

Drilling fluids refer to the additives used to aid in the production and removal of cuttings from a bore hole or well. There are a variety of applications for drilling fluid additives, such as, weighting, mud conditioning, corrosion inhibition, thickening, and microbial inhibition. Examples of drilling additives include paraformaldehyde, chrome lignosulfonate, copper lignosulfonate, sodium chromate, calcium hydroxide, calcium oxide, chromic chloride, chromium potassium sulfate, copper carbonate, sodium hydroxide, potassium hydroxide, zinc bromide, zinc carbonate, zinc chloride, zinc chromate, zinc sulfate, and phosphoric acid. Based upon these examples, drilling fluids are listed for toxicity and corrosivity and are denoted with an "X" and "C". (Gray, G.R., et. al., 1980).

Drilling muds refer to the mud waste generated from the drilling of a bore hole or well. Drilling mud waste may consist of drilling fluids, soil, and low concentrations of the drilling resource. Drilling fluids have been identified as toxic and corrosive. Following the use of drilling fluids in a mud system, corrosivity will probably no longer be of concern; however, toxicity may be depending on the concentration of the drilling fluids added and the type of geologic formation that is drilled through. Drilling mud is listed for toxicity and is denoted with an "X".

Dyes refer to intensely colored substances used for the coloration of various substrates. Dyes are retained in these substrates by physical adsorption, salt or metal-complex formation, solution, mechanical retention, or chemical bonding. There are inorganic and organic dyes. Inorganic dyes may be toxic because of the presence of inorganic metals. There are numerous organic dyes, some of which are acutely toxic and some which have shown through testing to cause long term adverse effects. Dyes are listed for toxicity and are denoted with an "X". (Kirk-Othmer, Encyclopedia of Chemical Technology, 3rd Edition, 1985 and NIOSH Registry of Toxic Effects of Chemical Substances, 1985-6).

Laboratory waste includes a variety of wastestreams such as solvents, acids, bases, catalysts, explosive or reactive materials, and contaminated lab ware. Laboratory waste may be toxic, ignitable, reactive, or corrosive depending on the wastestream. Therefore, laboratory waste is listed for toxicity, ignitability, reactivity, and corrosivity and is denoted with an "X", "I", "R", and "C". (Waste Audit Study,

August 1988, Texas Water Commission, September 1988, and New York State Environmental Facilities Corp., January 1985).

Liquid cement is a flammable liquid. Therefore, it is listed for ignitability and is denoted with an "I". (49 CFR Section 171.101 and NIOSH Registry Of Toxic Effects of Chemical Substances, 1985-6).

Mine tailings refer to the waste generated from the physical and chemical beneficiation processes that are used to separate valuable metal or mineral from interbedded rock. Mine tailings may be used in dump or heap leaching which is a beneficiation process that involves spraying the material with acid or cyanide to leach out metals. Mine tailings may contain high concentrations of inorganic metals and may contain residual concentrations of cyanide. Mine tailings are listed for toxicity and reactivity and are denoted with an "X" and "R". (EPA Report to Congress, December 1985, University of California Berkeley, July 1988, and California Department of Health Services, September 1988).

Pigments refer to substances usually in dry form that impart color to another substance or mixture. Pigments are differentiated from dyes by application method rather than chemical composition. Pigments retain their crystalline or particulate form throughout their application process. There are inorganic and organic pigments. Inorganic pigments may be toxic because of the presence of inorganic metals. Some organic pigments may be acutely toxic or have been shown through testing to cause adverse long term effects. Pigments are listed for toxicity and are denoted with an "X". (Hawley's Condensed Chemical Dictionary, 11th Edition, 1987, Kirk-Othmer, Encyclopedia of Chemical Technology, 3rd Edition, 1985, and NIOSH Registry of Toxic Effects of Chemical Substances, 1985-6).

Printing ink refers to a mixture of a coloring substance such as pigments, dyes, or toners, dispersed or dissolved in a vehicle or carrier forming a fluid or paste which can then be printed on a substrate. Inks may be water based or solvent based. Because printing inks may be composed of pigments or dyes which are identified as toxic as discussed earlier, printing inks are also listed as toxic and are denoted with an "X". (Kirk-Othmer, Encyclopedia of Chemical Technology, 3rd Edition, 1985, Waste Audit Study, Revised May 1989).

Tank bottom sediments refer to the sediments or sludge that accumulate in the bottom of tanks and that is generated whenever tanks are cleaned. Depending upon what the tank had held, the constituents of the tank bottoms will vary. Generally, the heavier particles will settle to the tank bottom. Tank bottom sediments will commonly be contaminated with various inorganic and organic constituents of the stored

waste. Tank bottom sediments are listed for toxicity and are denoted with an "X". (Waste evaluations made for Western Oil and Gas Association File no. 864, Union Oil Co. File no. 883, and Chevron USA File no. 380, Staff Report for the Treatment Standard for Oily Petroleum Waste, March 1988).

Tank cleaning sludges was deleted because it is redundant of the listing for tank bottom sediments.

Waste chemicals was deleted because it is less specific and redundant of the list of chemical names in subdivision (a) of this appendix.

Waste epoxides refer to the class of chemicals which contain a reactive organic group resulting from the bonding of an oxygen atom with two other atoms, usually carbons. Examples of epoxides include ethylene oxide, propylene oxide, epichlorohydrin, and butylene oxide. Epoxides have been shown to have acute oral and dermal toxicity as well as cause long term adverse effects. Numerous epoxides such as, ethylene oxide, propylene oxide, and butylene oxide, have low flash points and would be considered ignitable. Waste epoxides are listed for toxicity and ignitability and are denoted with an "X" and "I". (Clayton, G.D., et. al., 3rd Edition, 1981, Hawley's Condensed Chemical Dictionary, 11th Edition, 1987).

In subdivision (b), the spelling is being corrected for waste epoxides.

This section implements the statutory definitions of "(e)xtremely hazardous waste", Health and Safety Code section 25115 and "(h)azardous waste", Health and Safety Code section 25117 and are added as reference citations.

APPENDIX XI: This appendix contains the organic lead test method developed by the Department's Hazardous Materials Laboratory. The test method is based upon two references, DuPont Petroleum Laboratory, Petroleum Laboratory Method, M-111-74 and Standard Test Method for Lead in Gasoline by Atomic Absorption Spectrometry, ASTM D-3237-79. This test is currently used by the regulated community to determine levels of organic lead in wastes. A number of laboratories have been certified to carry out this test. The regulatory threshold value for organic lead compounds is set forth in current Title 22 CCR section 66699 (c) and is being included in the toxicity characteristic as set forth in proposed section 66261.24. The organic lead test method in this appendix is needed in order for generators to determine if their waste meets the toxicity characteristic with respect to organic lead. It is also a necessary component of the laboratory certification process because it will provide a method in regulation for laboratories to be certified to perform.

This analytical method has no counterpart in federal regulations. There is no organic lead test method in any of the documents, such as "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", referenced in federal and state regulations. The organic lead test method in this appendix is consistent in format with those methods incorporated by reference in federal and state regulations. The organic lead test method in this appendix contains the following subdivisions:

- Scope and application
- Summary of method
- Safety
- Interferences
- Apparatus and materials
- Reagents
- Sample collection, preservation, and handling
- Procedure
- Calculations
- Quality control
- Method performance

APPENDIX XII: This appendix contains the California hazardous waste codes. California hazardous waste codes establish specific descriptions for all materials identified as hazardous wastes solely pursuant to State hazardous waste control law. These codes are currently found on the back of the California Uniform Hazardous Waste Manifest. Inclusion of these codes in the proposed regulation is necessary because the EPA hazardous waste codes are applicable only to hazardous wastes identified under the federal waste classification scheme, described in the proposed regulations as "RCRA hazardous wastes." The waste codes in Appendix XII are necessary to describe the additional universe of wastes identified as hazardous by the California hazardous waste classification system, known as "non-RCRA hazardous wastes." To preserve the current stringency of California law, the codes listed in Appendix XII are applicable to all hazardous wastes. It is further necessary to apply the California hazardous waste codes to all hazardous waste in order to preserve the continuity of the information collected by the Department's Hazardous Waste Information System (HWIS). HWIS data, historically collected and indexed by waste code, are crucial to decisions made in implementing the State hazardous waste planning efforts and in making the treatment capacity evaluations mandated under Health and Safety Code sections 25155 et seq., and 25179 et seq.